

1 AN ACT concerning business practices.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Deposit of State Moneys Act is amended by
5 adding Section 22.6 as follows:

6 (15 ILCS 520/22.6 new)

7 Sec. 22.6. Prohibited investments. Notwithstanding any
8 other provision of this Act to the contrary, State moneys may
9 not be invested in any publicly held corporation that was
10 formerly incorporated in the United States and that after the
11 year 1998 has incorporated in the United States and that
12 after the year 1998 has incorporated in a foreign country,
13 allowing it to avoid taxes imposed by the United States or a
14 state thereof, referred to in this Section as an "expatriate
15 corporation". No State moneys shall remain invested in the
16 securities or other obligations of an expatriate corporation
17 after January 1, 2006 unless the disinvestment is determined
18 to be adverse to the State. Nothing in this Section shall
19 require disinvestment in an index fund.

20 Section 10. The State Finance Act is amended by adding
21 Section 5.595 as follows:

22 (30 ILCS 105/5.595 new)

23 Sec. 5.595. The Corporate Crime Fund.

24 Section 15. The Public Funds Investment Act is amended
25 by adding Section 2.6 as follows:

26 (30 ILCS 235/2.6 new)

27 Sec. 2.6. Prohibited investments. Notwithstanding any

1 other provision of this Act to the contrary, public funds may
2 not be invested in any publicly held corporation that was
3 formerly incorporated in the United States and that after the
4 year 1998 has incorporated in the United States and that
5 after the year 1998 has incorporated in a foreign country,
6 allowing it to avoid taxes imposed by the United States or a
7 state thereof, referred to in this Section as an "expatriate
8 corporation". No public funds shall remain invested in the
9 securities or other obligations of an expatriate corporation
10 after January 1, 2006 unless the disinvestment is determined
11 to be adverse to the public agency. Nothing in this Section
12 shall require disinvestment in an index fund.

13 Section 20. The Illinois Pension Code is amended by
14 adding Section 1-109.3 as follows:

15 (40 ILCS 5/1-109.3 new)

16 Sec. 1-109.3. Prohibited advisor; investments.

17 (a) The State Board of Investment and the boards of
18 trustees of the State-funded retirement systems shall not
19 employ an investment advisor unless the investment advisor
20 complies with all of the following:

21 (1) Before investing the assets of the system in a
22 company, an investment advisor shall disclose
23 periodically any client relationship with a company,
24 including management of corporate 401(k) plans or 403(b)
25 plans, where the investment advisor could invest the
26 assets of the system in the securities of the client.

27 (2) Before investing the assets of the system in a
28 company, an investment advisor shall:

29 (A) consider the corporate governance policies
30 and practices of the company; and

31 (B) consider the quality and integrity of the
32 company's accounting and financial data, including

1 its 10-K, 10-Q, and other public filings and
2 statements, and whether the company's outside
3 auditors are prevented from providing consulting or
4 non-audit services to the company.

5 (3) Before investing the assets of the system in a
6 company, an investment advisor shall consider whether a
7 majority of its board of directors are not employees of
8 the company or persons who do not receive compensation
9 for their professional services to the company.

10 (4) An investment advisor shall not invest the
11 assets of the system in a company that is currently under
12 investigation by the United States Securities and
13 Exchange System, the Illinois Securities Department, or
14 both.

15 (b) Notwithstanding any other provision of this Act to
16 the contrary, assets of the system may not be invested in any
17 publicly held corporation that was formerly incorporated in
18 the United States and that after the year 1998 has
19 incorporated in the United States and that after the year
20 1998 has incorporated in a foreign country, allowing it to
21 avoid taxes imposed by the United States or a state thereof,
22 referred to in this Section as an "expatriate corporation".
23 No assets of the system shall remain invested in the
24 securities or other obligations of an expatriate corporation
25 after January 1, 2006 unless the disinvestment is determined
26 to be adverse to the public agency. Nothing in this Section
27 shall require disinvestment in an index fund.

28 Section 25. The Criminal Code of 1961 is amended by
29 changing Section 29A-3 and adding Sections 17-26, 17-27, and
30 29A-4 as follows:

31 (720 ILCS 5/17-26 new)

32 Sec. 17-26. Misconduct by a corporate official.

1 (a) A person is guilty of a crime when:

2 (1) being a director of a corporation, he knowingly
3 with a purpose to defraud, concurs in any vote or act of
4 the directors of the corporation, or any of them, which
5 has the purpose of:

6 (A) making a dividend except in the manner
7 provided by law;

8 (B) dividing, withdrawing or in any manner
9 paying any stockholder any part of the capital stock
10 of the corporation except in the manner provided by
11 law;

12 (C) discounting or receiving any note or other
13 evidence of debt in payment of an installment of
14 capital stock actually called in and required to be
15 paid, or with purpose of providing the means of
16 making such payment;

17 (D) receiving or discounting any note or other
18 evidence of debt with the purpose of enabling any
19 stockholder to withdraw any part of the money paid
20 in by him on his stock; or

21 (E) applying any portion of the funds of such
22 corporation, directly or indirectly, to the purchase
23 of shares of its own stock, except in the manner
24 provided by law; or

25 (2) being a director of officer of a corporation,
26 he, with purpose to defraud:

27 (A) issues, participates in issuing, or
28 concurs in a vote to issue any increase of its
29 capital stock beyond the amount of the capital stock
30 thereof, duly authorized by or in pursuance of law;

31 (B) sells, or agrees to sell, or is directly
32 interested in the sale of any share of stock of such
33 corporation, or in any agreement to sell such stock,
34 unless at the time of the sale or agreement he is an

1 actual owner of such share, provided that the
 2 foregoing shall not apply to a sale by or on behalf
 3 of an underwriter or dealer in connection with a
 4 bona fide public offering of shares of stock of such
 5 corporation;

6 (C) executes a scheme or attempts to execute a
 7 scheme to obtain any share of stock of such
 8 corporation by means of false representation; or

9 (3) Being a director or officer of a corporation,
 10 he with purpose to defraud or evade a financial
 11 disclosure reporting requirement of this State or of
 12 Section 13(A) or 15(D) of the Securities Exchange Act of
 13 1934, as amended, 15 U. S. C. 78M(A) or 78O(D), he:

14 (A) causes or attempts to cause a corporation
 15 or accounting firm representing the corporation or
 16 any other individual or entity to fail to file a
 17 financial disclosure report as required by State or
 18 federal law; or

19 (B) causes or attempts to cause a corporation
 20 or accounting firm representing the corporation or
 21 any other individual or entity to file a financial
 22 disclosure report, as required by State or federal
 23 law, that contains a material omission or
 24 misstatement of fact.

25 (b) If the benefit derived from a violation of this
 26 Section is \$500,000 or more, the offender is guilty of a
 27 Class 1 felony. If the benefit derived from a violation of
 28 this Section is less than \$500,000, the offender is guilty of
 29 a Class 2 felony.

30 (720 ILCS 5/17-27 new)

31 Sec. 17-27. Fraud in insolvency.

32 (a) A person commits a crime if, knowing that
 33 proceedings have or are about to be instituted for the

1 appointment of a receiver or other person entitled to
2 administer property for the benefit of creditors, or that any
3 other composition or liquidation for the benefit of creditors
4 has been or is about to be made, he:

5 (1) destroys, removes, conceals, encumbers,
6 transfers, or otherwise deals with any property or
7 obtains any substantial part of or interest in the
8 debtor's estate with purpose to defeat or obstruct the
9 claim of any creditor, or otherwise to obstruct the
10 operation of any law relating to administration of
11 property for the benefit of creditors;

12 (2) knowingly falsifies any writing or record
13 relating to the property; or

14 (3) knowingly misrepresents or refuses to disclose
15 to a receiver or other person entitled to administer
16 property for the benefit of creditors, the existence,
17 amount, or location of the property, or any other
18 information which the actor could be legally required to
19 furnish in relation to such administration.

20 (b) If the benefit derived from a violation of this
21 Section in \$500,000 or more, the offender is guilty of a
22 Class 1 felony. If the benefit derived from a violation of
23 this Section is less than \$500,000, the offender is guilty of
24 a Class 2 felony.

25 (720 ILCS 5/29A-3) (from Ch. 38, par. 29A-3)

26 Sec. 29A-3. Sentence.

27 (a) If the benefit offered, conferred, or agreed to be
28 conferred, solicited, accepted or agreed to be accepted is
29 less than \$500,000, commercial bribery or commercial bribe
30 receiving is a business offense for which a fine shall be
31 imposed not to exceed \$5,000.

32 (b) If the benefit offered, conferred, or agreed to be
33 conferred, solicited, accepted, or agreed to be accepted in

1 violation of this Article is \$500,000 or more, the offender
2 is guilty of a Class 1 felony.

3 (Source: P.A. 77-2638.)

4 (720 ILCS 5/29A-4 new)

5 Sec. 29A-4. Corporate Crime Fund.

6 (a) In addition to any fines, penalties, and assessments
7 otherwise authorized under this Code, any person convicted of
8 a violation of this Article shall be assessed a penalty of
9 not more than 3 times the value of all property involved in
10 the criminal activity.

11 (b) The penalties assessed under subsection (a) shall be
12 deposited into the Corporate Crime Fund, a special fund
13 hereby created in the State treasury. Moneys in the Fund
14 shall be used to make restitution to a person who has
15 suffered property loss as a result of violations of this
16 Article. The court may determine the reasonable amount,
17 terms, and conditions of the restitution. In determining the
18 amount and method of payment of restitution, the court shall
19 take into account all financial resources of the defendant.