

1 AMENDMENT TO SENATE BILL 1784

2 AMENDMENT NO. _____. Amend Senate Bill 1784 by replacing
3 the title with the following:

4 "AN ACT concerning financial regulation."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 1. Short title. This Act may be cited as the
8 High Risk Home Loan Act.

9 Section 5. Purpose and construction. The purpose of
10 this Act is to protect borrowers who enter into high risk
11 home loans from abuse that occurs in the credit marketplace
12 when creditors and brokers are not sufficiently regulated in
13 Illinois. This Act is to be construed as a borrower
14 protection statute for all purposes. This Act shall be
15 liberally construed to effectuate its purpose.

16 Section 10. Definitions. As used in this Act:

17 "Approved credit counselor" means a credit counselor
18 approved by the Director of Financial Institutions.

19 "Borrower" means a natural person who seeks or obtains a
20 high risk home loan.

1 "Commissioner" means the Commissioner of the Office of
2 Banks and Real Estate.

3 "Department" means the Department of Financial
4 Institutions.

5 "Director" means the Director of Financial Institutions.

6 "Good faith" means honesty in fact in the conduct or
7 transaction concerned.

8 "High risk home loan" means a home equity loan in which
9 (i) at the time of origination, the annual percentage rate
10 exceeds by more than 6 percentage points in the case of a
11 first lien mortgage, or by more than 8 percentage points in
12 the case of a junior mortgage, the yield on U.S. Treasury
13 securities having comparable periods of maturity to the loan
14 maturity as of the fifteenth day of the month immediately
15 preceding the month in which the application for the loan is
16 received by the lender or (ii) the total points and fees
17 payable by the consumer at or before closing will exceed the
18 greater of 5% of the total loan amount or \$800. The \$800
19 figure shall be adjusted annually on January 1 by the annual
20 percentage change in the Consumer Price Index for All Urban
21 Consumers for all items published by the United States
22 Department of Labor. "High risk home loan" does not include a
23 loan that is made primarily for a business purpose unrelated
24 to the residential real property securing the loan or to an
25 open-end credit plan subject to 12 CFR 226 (2000, no
26 subsequent amendments or editions are included).

27 "Home equity loan" means any loan secured by the
28 borrower's primary residence where the proceeds are not used
29 as purchase money for the residence.

30 "Lender" means a natural or artificial person who
31 transfers, deals in, offers, or makes a high risk home loan.
32 "Lender" includes, but is not limited to, creditors and
33 brokers.

34 "Office" means the Office of Banks and Real Estate.

1 "Points and fees" means all items required to be
2 disclosed as points and fees under 12 CFR 226.32 (2000, no
3 subsequent amendments or editions included); the premium of
4 any single premium credit life, credit disability, credit
5 unemployment, or any other life or health insurance that is
6 financed directly or indirectly into the loan; and
7 compensation paid directly or indirectly to a mortgage
8 broker, including a broker that originates a loan in its own
9 name in a table-funded transaction, not otherwise included in
10 12 CFR 226.4.

11 "Reasonable" means fair, proper, just, or prudent under
12 the circumstances.

13 "Servicer" means any entity chartered under the Illinois
14 Banking Act, the Savings Bank Act, the Illinois Credit Union
15 Act, or the Illinois Savings and Loan Act of 1985 and any
16 person or entity licensed under the Residential Mortgage
17 License Act of 1987, the Consumer Installment Loan Act, or
18 the Sales Finance Agency Act who is responsible for the
19 collection or remittance for, or has the right or obligation
20 to collect or remit for, any lender, note owner, or note
21 holder or for a licensee's own account, of payments,
22 interest, principal, and trust items (such as hazard
23 insurance and taxes on a residential mortgage loan) in
24 accordance with the terms of the residential mortgage loan,
25 including loan payment follow-up, delinquency loan follow-up,
26 loan analysis, and any notifications to the borrower that are
27 necessary to enable the borrower to keep the loan current and
28 in good standing.

29 "Total loan amount" has the same meaning as that term is
30 given in 12 CFR 226.32 and shall be calculated in accordance
31 with the Federal Reserve Board's Official Staff Commentary to
32 that regulation.

33 Section 15. Ability to repay. A lender shall not

1 transfer, deal in, offer, or make a high risk home loan if
2 the lender does not believe at the time the loan is
3 consummated that the borrower will be able to make the
4 scheduled payments to repay the obligation based upon a
5 consideration of his or her current and expected income,
6 current obligations, employment status, and other financial
7 resources (other than the borrower's equity in the dwelling
8 that secures repayment of the loan). A borrower shall be
9 presumed to be able to repay the loan if, at the time the
10 loan is consummated, or at the time of the first rate
11 adjustment, in the case of a lower introductory interest
12 rate, the borrower's scheduled monthly payments on the loan
13 (including principal, interest, taxes, insurance, and
14 assessments), combined with the scheduled payments for all
15 other disclosed debts, do not exceed 50% of the borrower's
16 monthly gross income.

17 Section 20. Verification of ability to repay loan. The
18 lender shall verify the borrower's ability to repay the loan
19 in the case of a high risk home loan. The verification shall
20 require, at a minimum, the following:

21 (1) That the borrower prepare and submit to the
22 lender a personal income and expense statement in a form
23 prescribed by the Commissioner or the Director, who may
24 permit the use of other forms such as the URLA (Fannie
25 Mae Form 1003 (10/92), available from Fannie Mae, 3900
26 Wisconsin Avenue, NW, Washington, D.C. 20016-2892, and
27 Freddie Mac Form 85 (10/92), available from Freddie Mac
28 at 1101 Pennsylvania Avenue, NW, Suite 950, P.O. Box
29 37347, Washington, D.C. 20077-0001, no subsequent
30 amendments or editions) and Transmittal Summary (Fannie
31 Mae Form 1077 (3/97), available from Fannie Mae, 3900
32 Wisconsin Avenue, NW, Washington, D.C. 20016-2892, and
33 Freddie Mac Form 1008 (3/97), available from Freddie Mac

1 at 1101 Pennsylvania Avenue, NW, Suite 950, P.O. Box
2 37347, Washington, D.C. 20077-0001, no subsequent
3 amendments or editions).

4 (2) That the borrower's income is verified by means
5 of tax returns, pay stubs, accounting statements, or
6 other prudent means.

7 (3) That a credit report is obtained regarding the
8 borrower.

9 Section 25. Good faith dealings; fraudulent or deceptive
10 practices. A lender must act in good faith in all relations
11 with a borrower, including but not limited to, transferring,
12 dealing in, offering, or making a high risk home loan.

13 No lender shall employ fraudulent or deceptive acts or
14 practices in the making of a high risk home loan, including
15 deceptive marketing and sales efforts.

16 Section 40. Pre-paid insurance products and warranties.
17 No lender shall transfer, deal in, offer, or make a high risk
18 home loan that finances a single premium credit life, credit
19 disability, credit unemployment, or any other life or health
20 insurance, directly or indirectly. Insurance calculated and
21 paid on a monthly basis shall not be considered to be
22 financed by the lender.

23 Section 45. Refinancing prohibited in certain cases. No
24 lender shall refinance any high risk home loan where such
25 refinancing charges additional points and fees within a
26 12-month period after the original loan agreement was signed,
27 unless the refinancing results in a tangible net benefit to
28 the borrower.

29 Section 55. Financing of points and fees. No lender
30 shall transfer, deal in, offer, or make a high risk home loan

1 that finances points and fees in excess of 6% of the total
2 loan amount.

3 Section 60. Payments to contractors. No lender shall
4 make a payment of any proceeds of a high risk home loan
5 directly to a contractor under a home improvement contract
6 other than:

7 (1) by instrument payable to the borrower or
8 payable jointly to the borrower and contractor; or

9 (2) at the election of the borrower, by a
10 third-party escrow agreement in accordance with the terms
11 established in a written agreement that is signed by the
12 borrower, the lender, and the contractor before the date
13 of payment.

14 Section 65. Negative amortization. No lender shall
15 transfer, deal in, offer, or make a high risk home loan,
16 other than a loan secured only by a reverse mortgage, with
17 terms under which the outstanding balance will increase at
18 any time over the course of the loan because the regular
19 periodic payments do not cover the full amount of the
20 interest due, unless the negative amortization is the
21 consequence of a temporary forbearance sought by the
22 borrower.

23 Section 70. Negative equity. No lender shall transfer,
24 deal in, offer, or make a high risk home loan where the loan
25 amount exceeds the value of the property securing the loan.

26 Section 80. Late payment fee. A lender shall not
27 transfer, deal in, offer, or make a high risk home loan that
28 provides for a late payment fee, except under the following
29 conditions:

30 (1) the late payment fee shall not be in excess of

1 5% of the amount of the payment past due;

2 (2) the late payment fee shall only be assessed for
3 a payment past due for 15 days or more;

4 (3) the late payment fee shall not be imposed more
5 than once with respect to a single late payment;

6 (4) a late payment fee that the lender has
7 collected shall be reimbursed if the borrower presents
8 proof of having made a timely payment; and

9 (5) a lender shall treat each payment as posted on
10 the same business day as it was received by the lender,
11 servicer, or lender's agent or at the address provided to
12 the borrower by the lender, servicer, or lender's agent
13 for making payments.

14 Section 85. Payment compounding. No lender shall
15 transfer, deal in, offer, or make a high risk home loan that
16 includes terms under which more than 2 periodic payments
17 required under the loan are consolidated and paid in advance
18 from the loan proceeds provided to the borrower.

19 Section 90. Call provision. No lender shall transfer,
20 deal in, offer, or make a high risk home loan that contains a
21 provision that permits the lender, in its sole discretion, to
22 accelerate the indebtedness, provided that this provision
23 does not prohibit acceleration of a loan in good faith due to
24 a borrower's failure to abide by the material terms of the
25 loan.

26 Section 95. Disclosure prior to making a high risk home
27 loan. A lender shall not transfer, deal in, offer, or make a
28 high risk home loan unless the lender has given the following
29 notice or a substantially similar notice in writing, to the
30 borrower, acknowledged in writing and signed by the borrower
31 not later than the time the notice is required under the

1 notice provision contained in 12 CFR 226.31(c):
2 NOTICE TO BORROWER
3 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN
4 AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN
5 RATES AND FEES. LOAN RATES AND CLOSING COSTS AND FEES VARY
6 BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND
7 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE
8 LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL
9 SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY
10 BASED ON WHICH LENDER OR BROKER YOU SELECT. IF YOU ACCEPT THE
11 TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON
12 YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT
13 INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE
14 LOAN. YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND AN APPROVED
15 CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR
16 REGARDING THE RATE, FEES, AND PROVISIONS OF THIS LOAN BEFORE
17 YOU PROCEED. A LIST OF APPROVED CREDIT COUNSELORS IS
18 AVAILABLE BY CONTACTING EITHER THE ILLINOIS DEPARTMENT OF
19 FINANCIAL INSTITUTIONS OR THE ILLINOIS OFFICE OF BANKS AND
20 REAL ESTATE. YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
21 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR
22 HAVE SIGNED A LOAN APPLICATION. ALSO, YOUR PAYMENTS ON
23 EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD
24 NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR
25 EXISTING LENDERS.

26 Section 100. Counseling prior to perfecting foreclosure
27 proceedings.

28 (a) If a high risk home loan becomes delinquent by more
29 than 30 days, the servicer shall send a notice advising the
30 borrower that he or she may wish to seek approved credit
31 counseling.

32 (b) The notice required in subsection (a) shall, at a
33 minimum, include the following language:

1 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
2 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR BEST
3 INTEREST TO SEEK APPROVED CREDIT COUNSELING. A LIST OF
4 APPROVED CREDIT COUNSELORS MAY BE OBTAINED FROM EITHER THE
5 ILLINOIS DEPARTMENT OF FINANCIAL INSTITUTIONS OR THE ILLINOIS
6 OFFICE OF BANKS AND REAL ESTATE."

7 (c) If, within 15 days after mailing the notice provided
8 for under subsection (b), a lender, servicer, or lender's
9 agent is notified in writing by an approved credit counselor
10 and the approved credit counselor advises the lender,
11 servicer, or lender's agent that the borrower is seeking
12 approved credit counseling, then the lender, servicer, or
13 lender's agent shall not institute legal action under Part 15
14 of Article XV of the Code of Civil Procedure for 30 days
15 after the date of that notice. Only one such 30-day period of
16 forbearance is allowed under this Section per subject loan.

17 (d) If, within the 30-day period provided under
18 subsection (c), the lender, servicer, or lender's agent, the
19 approved credit counselor, and the borrower agree to a debt
20 management plan, then the lender, servicer, or lender's agent
21 shall not institute legal action under Part 15 of Article XV
22 of the Code of Civil Procedure for as long as the debt
23 management plan is complied with by the borrower.

24 The agreed debt management plan must be in writing and
25 signed by the lender, servicer, or lender's agent, the
26 approved credit counselor, and the borrower. No modification
27 of an approved debt management plan can be made without the
28 mutual agreement of the lender, servicer, or lender's agent,
29 the approved credit counselor, and the borrower.

30 Upon written notice to the lender, servicer, or lender's
31 agent, the borrower may change approved credit counselors.

32 (e) If the borrower fails to comply with the agreed debt
33 management plan, then nothing in this Section shall be
34 construed to impair the legal right of the lender, servicer,

1 or lender's agent to enforce the contract.

2 Section 105. Right to cure.

3 (a) Before an action is filed to foreclose or collect
4 money due pursuant to a high risk home loan or before other
5 action is taken to seize or transfer ownership of property
6 subject to a high risk home loan, the lender or lender's
7 assignee of the loan shall deliver to the borrower a notice
8 of the right to cure the default, informing the borrower of
9 all of the following:

10 (1) The nature of the default.

11 (2) The borrower's right to cure the default by
12 paying the sum of money required, provided that a lender
13 or assignee shall accept any partial payment made or
14 tendered in response to the notice. If the amount
15 necessary to cure the default will change within 30 days
16 of the notice due to the application of a daily interest
17 rate or the addition of late fees, as allowed by the Act,
18 the notice shall give sufficient information to enable
19 the borrower to calculate the amount at any point within
20 the 30-day period.

21 (3) The date by which the borrower may cure the
22 default to avoid a court action, acceleration and
23 initiation of foreclosure, or other action to seize the
24 property, which date shall not be less than 30 days after
25 the date the notice is delivered, and the name, address,
26 and telephone number of a person to whom the payment or
27 tender shall be made.

28 (4) That if the borrower does not cure the default
29 by the date specified, the lender or assignee may file an
30 action for money due or take steps to terminate the
31 borrower's ownership in the property by requiring payment
32 in full of the high risk home loan and commencing a
33 foreclosure proceeding or other action to seize the

1 property.

2 (5) The name, address, and telephone number of a
3 person whom the borrower may contact if the borrower
4 disagrees with the assertion that a default has occurred
5 or the correctness of the calculation of the amount
6 required to cure the default.

7 (b) If a lender or assignee asserts that grounds for
8 acceleration exist and requires the payment in full of all
9 sums secured by the high risk home loan, the borrower or
10 anyone authorized to act on the borrower's behalf may, at any
11 time before the title is transferred by means of foreclosure,
12 by judicial proceeding and sale, or other means, cure the
13 default, and reinstate the high risk home loan. Cure of the
14 default shall reinstate the borrower to the same position as
15 if the default had not occurred and shall nullify, as of the
16 date of the cure, an acceleration of any obligation under the
17 high risk home loan arising from the default.

18 (c) To cure a default under this Section, a borrower
19 shall not be required to pay any charge, fee, or penalty
20 attributable to the exercise of the right to cure a default,
21 other than the fees specifically allowed by this subsection.
22 The borrower shall not be liable for any attorney fees
23 relating to the default that are incurred by the lender or
24 assignee prior to or during the 30-day period set forth in
25 subsection (a) of this Section, nor for any such fees in
26 excess of \$100 that are incurred by the lender or assignee
27 after the expiration of the 30-day period but before the
28 lender or assignee files a foreclosure or other judicial
29 action or takes other action to seize or transfer ownership
30 of the real estate. After the lender or assignee files a
31 foreclosure or other judicial action or takes other action to
32 seize or transfer ownership of the real estate, the borrower
33 shall only be liable for attorney fees that are reasonable
34 and actually incurred by the lender or assignee, based on a

1 reasonable hourly rate and a reasonable number of hours.

2 (d) If a default is cured prior to the initiation of any
3 action to foreclose or to seize the residence, the lender or
4 assignee shall not institute a proceeding or other action for
5 that default. If a default is cured after the initiation of
6 any action, the lender or assignee shall take such steps as
7 are necessary to terminate the action.

8 (e) A lender or a lender's assignee of a high risk home
9 loan that has the legal right to foreclose shall use the
10 judicial foreclosure procedures provided by law. In such a
11 proceeding, the borrower may assert the nonexistence of a
12 default and any other claim or defense to acceleration and
13 foreclosure, including any claim or defense based on a
14 violation of the Act, though no such claim or defense shall
15 be deemed a compulsory counterclaim.

16 Section 110. Mortgage Awareness Program.

17 (a) The Mortgage Awareness Program is a counseling and
18 educational component that must be provided by the Director
19 and the Commissioner.

20 (b) The core curriculum of the Mortgage Awareness
21 Program shall include all of the following:

- 22 (1) Explanation of the amount financed.
- 23 (2) Explanation of the finance charge.
- 24 (3) Explanation of the annual percentage rate.
- 25 (4) Explanation of the total payments.
- 26 (5) Explanation of the loan costs, including
27 broker's fees, finance charges, points, and origination
28 fees.
- 29 (6) Explanation of the right of rescission.
- 30 (7) Explanation of foreclosure procedures.
- 31 (8) Explanation of the significant debt ratios,
32 including total debt to income, loan debt to income, and
33 loan debt to value of residence.

- 1 (9) Explanation of adjustable rate mortgage.
- 2 (10) Explanation of balloon payments.
- 3 (11) Explanation of credit options.
- 4 (12) Explanation of each item that appears on a
- 5 good faith estimate.

6 (13) Explanation of pre-payment penalties.

7 (c) Counseling session attendees must complete a
8 personal income and expense statement, as well as a balance
9 sheet, on forms provided by the Commissioner or the Director.

10 (d) Prior to signing a certificate of completion,
11 approved credit counselors shall privately discuss with each
12 attendee that attendee's income and expense statement and
13 balance sheet, as well as the terms of any loan the attendee
14 currently has or may be contemplating, and provide a third
15 party review to establish the affordability of the loan.

16 (e) Counseling session attendees must be given a
17 brochure that contains information covered by the Mortgage
18 Awareness Program.

19 (f) Any lender, prior to making a high risk home loan,
20 shall inform the borrower in writing of the requirement to
21 participate in the Mortgage Awareness Program.

22 (g) No lender shall offer less favorable loan terms to a
23 borrower due to a borrower's participation in the Mortgage
24 Awareness Program.

25 (h) The borrower may not waive participation in the
26 Mortgage Awareness Program.

27 Section 115. Report of default and foreclosure rates on
28 conventional loans.

29 (a) On or before October 1 and April 1 of each year,
30 each servicer of Illinois residential mortgage loans shall
31 report to the Commissioner the default and foreclosure data
32 of conventional loans for the 6-month periods ending June 30
33 and December 31, respectively.

1 (b) Each servicer shall report the following
2 information:

3 (1) The average quarterly dollar amount of
4 conventional one to 4 family mortgage loans secured by
5 Illinois real estate.

6 (2) The average quarterly number of conventional
7 one to 4 family mortgage loans secured by Illinois real
8 estate.

9 (3) The average quarterly dollar amount of
10 conventional one to 4 family mortgage loans secured by
11 Illinois real estate that are in default over 90 days.

12 (4) The average quarterly number of conventional
13 one to 4 family mortgage loans secured by Illinois real
14 estate that are in default over 90 days.

15 (5) The dollar amount of foreclosures on one to 4
16 family conventional loans completed during the reporting
17 period.

18 (6) The number of foreclosures on one to 4 family
19 conventional loans completed during the reporting period.

20 (7) Whether any of the loans where a foreclosure
21 was completed were originated less than 18 months before
22 the completed foreclosure.

23 (8) Whether any of the loans where a foreclosure
24 was completed had a note rate greater than 10% for first
25 lien mortgage loans or greater than 12% in the case of a
26 junior lien.

27 (c) An officer of the servicer shall sign the form.

28 Section 120. Commissioner's review and analysis.

29 (a) The Commissioner shall review and analyze the
30 default and foreclosure rate data reports submitted under
31 Section 115.

32 (b) The reports and their analyses may be used for the
33 following purposes:

1 (1) In setting the scope of a regularly scheduled
2 examination.

3 (2) In setting the scope of a special examination.

4 (3) In comparing the reported information of a bank
5 to other banks subject to the Illinois Banking Act.

6 (4) In comparing the reported information of a
7 servicer.

8 (c) The Commissioner may correspond with a servicer to
9 seek clarification of information contained in its report and
10 to gather additional data concerning loans in default or
11 loans in foreclosure.

12 Section 125. Third party review of high risk home loans.

13 (a) In the case of any high risk home loan, the borrower
14 shall be afforded the opportunity to seek independent review
15 by the Office or the Department of the loan terms, in order
16 to determine affordability of the loan, when and if the
17 General Assembly appropriates adequate funding to the Office
18 or the Department specifically for this Section.

19 (b) The Office or the Department shall inform the
20 borrower of the amount the borrower has available for a
21 monthly mortgage payment based upon the borrower's budget.

22 (c) The Office or the Department shall review loan
23 information pertaining to balloon payments and adjustable
24 interest rates and other items disclosed by the loan
25 documents affecting amount of payment and shall inform the
26 borrower of such items.

27 (d) If, based upon the review, the borrower determines
28 that the loan is not in his or her best economic interest,
29 the reviewer shall so notify the lender. This determination
30 shall enable the borrower to withdraw from the contemplated
31 loan with no financial penalty.

32 Section 130. Circumstances voiding mandatory arbitration

1 provisions. Without regard to whether a borrower is acting
2 individually or on behalf of others similarly situated, a
3 mandatory arbitration provision of a high risk home loan
4 agreement that is oppressive, unfair, unconscionable, or
5 substantially in derogation of the rights of the borrower is
6 void.

7 Section 135. Enforcement and remedies.

8 (a) The remedies provided in this Act are cumulative and
9 apply to persons or entities subject to this Act.

10 (b) Any violation of this Act constitutes a violation of
11 the Consumer Fraud and Deceptive Business Practices Act.

12 (c) If any provision of an agreement for a high risk
13 home loan violates this Act, then that provision is
14 unenforceable against the borrower.

15 (d) Any action brought against a lender for a violation
16 under this Act is also assertable against any subsequent
17 holder of the high risk home loan that is the subject of the
18 action unless the subsequent holder demonstrates, by a
19 preponderance of the evidence, that a reasonable person would
20 not determine that, prior to becoming a holder of the loan, a
21 violation of the Act has been undertaken relative to the high
22 risk home loan.

23 Section 140. Limitation of lender's liability. A lender
24 and subsequent holder of the high risk loan is not liable for
25 a violation of this Act if:

26 (1) within 30 days of the loan closing and prior to
27 receiving any notice from the borrower of the violation,
28 the lender has made appropriate restitution to the
29 borrower and appropriate adjustments are made to the
30 loan; or

31 (2) the violation was not intentional and resulted
32 from a bona fide error in fact, notwithstanding the

1 maintenance of procedures reasonably adopted to avoid
2 such errors, and within 60 days of the discovery of the
3 violation and prior to receiving any notice from the
4 borrower of the violation, the borrower is notified of
5 the violation, appropriate restitution is made to the
6 borrower, and appropriate adjustments are made to the
7 loan.

8 Section 145. Subterfuge prohibited. No lender, with the
9 intent to avoid the application or provisions of this Act,
10 shall (i) divide a loan transaction into separate parts or
11 (ii) perform any other subterfuge.

12 Section 150. Preemption of administrative rules. Any
13 relevant administrative rule promulgated before the effective
14 date of this Act by the Department or the Office is
15 preempted.

16 Section 153. Reporting of violations. The Office and the
17 Department must report to the Attorney General all violations
18 of this Act of which they become aware.

19 Section 155. Rulemaking. The Office and the Department
20 may adopt reasonable rules to implement and administer this
21 Act.

22 Section 160. Judicial review. All final administrative
23 decisions under this Act are subject to judicial review
24 pursuant to the provisions of the Administrative Review Law
25 and any rules adopted pursuant thereto.

26 Section 165. Waiver prohibited. There shall be no waiver
27 of any provision of this Act.

1 Section 170. Superiority of Act. To the extent this Act
2 conflicts with any other Illinois State financial regulation
3 laws, this Act is superior and supersedes those laws for the
4 purposes of regulating high risk home loans in Illinois.

5 Section 175. Severability. The provisions of this Act
6 are severable under Section 1.31 of the Statute on Statutes.

7 Section 180. Home rule. It is declared to be the public
8 policy of this State, pursuant to subsection (h) of Section 6
9 of Article VII of the Illinois Constitution of 1970, that any
10 power or function set forth in this Act to be exercised by
11 the State is an exclusive State power or function. Such power
12 or function shall not be exercised concurrently, either
13 directly or indirectly, by any unit of local government,
14 including home rule units, except as otherwise provided in
15 this Act.

16 Section 800. The Deposit of State Moneys Act is amended
17 by changing Sections 11 and 11.1 as follows:

18 (15 ILCS 520/11) (from Ch. 130, par. 30)

19 Sec. 11. Protection of public deposits; eligible
20 collateral.

21 (a) For deposits not insured by an agency of the federal
22 government, the State Treasurer, in his or her discretion,
23 may accept as collateral any of the following classes of
24 securities, provided there has been no default in the payment
25 of principal or interest thereon:

26 (1) Bonds, notes, or other securities constituting
27 direct and general obligations of the United States, the
28 bonds, notes, or other securities constituting the direct
29 and general obligation of any agency or instrumentality
30 of the United States, the interest and principal of which

1 is unconditionally guaranteed by the United States, and
2 bonds, notes, or other securities or evidence of
3 indebtedness constituting the obligation of a U.S. agency
4 or instrumentality.

5 (2) Direct and general obligation bonds of the
6 State of Illinois or of any other state of the United
7 States.

8 (3) Revenue bonds of this State or any authority,
9 board, commission, or similar agency thereof.

10 (4) Direct and general obligation bonds of any
11 city, town, county, school district, or other taxing body
12 of any state, the debt service of which is payable from
13 general ad valorem taxes.

14 (5) Revenue bonds of any city, town, county, or
15 school district of the State of Illinois.

16 (6) Obligations issued, assumed, or guaranteed by
17 the International Finance Corporation, the principal of
18 which is not amortized during the life of the obligation,
19 but no such obligation shall be accepted at more than 90%
20 of its market value.

21 (7) Illinois Affordable Housing Program Trust Fund
22 Bonds or Notes as defined in and issued pursuant to the
23 Illinois Housing Development Act.

24 (8) In an amount equal to at least market value of
25 that amount of funds deposited exceeding the insurance
26 limitation provided by the Federal Deposit Insurance
27 Corporation or the National Credit Union Administration
28 or other approved share insurer: (i) securities, (ii)
29 mortgages, (iii) letters of credit issued by a Federal
30 Home Loan Bank, or (iv) loans covered by a State Guaranty
31 under the Illinois Farm Development Act.

32 (b) The State Treasurer may establish a system to
33 aggregate permissible securities received as collateral from
34 financial institutions in a collateral pool to secure State

1 deposits of the institutions that have pledged securities to
2 the pool.

3 (c) The Treasurer may at any time declare any particular
4 security ineligible to qualify as collateral when, in the
5 Treasurer's judgment, it is deemed desirable to do so.

6 (d) Notwithstanding any other provision of this Section,
7 as security the State Treasurer may, in his discretion,
8 accept a bond, executed by a company authorized to transact
9 the kinds of business described in clause (g) of Section 4 of
10 the Illinois Insurance Code, in an amount not less than the
11 amount of the deposits required by this Section to be
12 secured, payable to the State Treasurer for the benefit of
13 the People of the State of Illinois, in a form that is
14 acceptable to the State Treasurer.

15 (Source: P.A. 87-510; 87-575; 87-895; 88-93.)

16 (15 ILCS 520/11.1) (from Ch. 130, par. 30.1)

17 Sec. 11.1. The State Treasurer may, in his or her
18 discretion, accept as security for State deposits insured
19 certificates of deposit or share certificates issued to the
20 depository institution pledging them as security and may
21 require security in the amount of 125% of the value of the
22 State deposit. Such certificate of deposit or share
23 certificate shall:

24 (1) be fully insured by the Federal Deposit Insurance
25 Corporation, the Federal Savings and Loan Insurance
26 Corporation or the National Credit Union Share Insurance Fund
27 or issued by a depository institution which is rated within
28 the 3 highest classifications established by at least one of
29 the 2 standard rating services;

30 (2) be issued by a financial institution having assets
31 of \$15,000,000 ~~\$30,000,000~~ or more; and

32 (3) be issued by either a savings and loan association
33 having a capital to asset ratio of at least 2%, by a bank

1 having a capital to asset ratio of at least 6% or by a credit
2 union having a capital to asset ratio of at least 4%.

3 The depository institution shall effect the assignment of
4 the certificate of deposit or share certificate to the State
5 Treasurer and shall agree, that in the event the issuer of
6 the certificate fails to maintain the capital to asset ratio
7 required by this Section, such certificate of deposit or
8 share certificate shall be replaced by additional suitable
9 security.

10 (Source: P.A. 85-803.)

11 Section 805. The Public Funds Deposit Act is amended by
12 changing Section 1 as follows:

13 (30 ILCS 225/1) (from Ch. 102, par. 34)

14 Sec. 1. Deposits. Any treasurer or other custodian of
15 public funds may deposit such funds in a savings and loan
16 association, savings bank, or State or national bank in this
17 State. When such deposits become collected funds and are not
18 needed for immediate disbursement, they shall be invested
19 within 2 working days at prevailing rates or better. The
20 treasurer or other custodian of public funds may require such
21 bank, savings bank, or savings and loan association to
22 deposit with him or her securities guaranteed by agencies and
23 instrumentalities of the federal government equal in market
24 value to the amount by which the funds deposited exceed the
25 federally insured amount. Any treasurer or other custodian of
26 public funds may accept as security for public funds
27 deposited in such bank, savings bank, or savings and loan
28 association any securities or other eligible collateral
29 authorized by Sections 11 and 11.1 of the Deposit of State
30 Moneys Act (15 ILCS 520/11 and 11.1) or Section 6 of the
31 Public Funds Investment Act (30 ILCS 235/6). Such treasurer
32 or other custodian is authorized to enter into an agreement

1 with any such bank, savings bank, or savings and loan
2 association, with any federally insured financial institution
3 or trust company, or with any agency of the U.S. government
4 relating to the deposit of such securities. Any such
5 treasurer or other custodian shall be discharged from
6 responsibility for any funds for which securities are so
7 deposited with him or her, and the funds for which securities
8 are so deposited shall not be subject to any otherwise
9 applicable limitation as to amount.

10 No bank, savings bank, or savings and loan association
11 shall receive public funds as permitted by this Section,
12 unless it has complied with the requirements established
13 pursuant to Section 6 of the Public Funds Investment Act.

14 (Source: P.A. 91-211, eff. 7-20-99.)

15 Section 810. The State Officers and Employees Money
16 Disposition Act is amended by changing Section 2c as follows:

17 (30 ILCS 230/2c) (from Ch. 127, par. 173a)

18 Sec. 2c. Every such officer, board, commission,
19 commissioner, department, institution, arm or agency is
20 authorized to demand and receive a bond and securities in
21 amount and kind satisfactory to him from any bank or savings
22 and loan association in which moneys held by such officer,
23 board, commission, commissioner, department, institution, arm
24 or agency for or on behalf of the State of Illinois, may be
25 on deposit, such securities to be held by the officer, board,
26 commission, commissioner, department, institution, arm or
27 agency for the period that such moneys are so on deposit and
28 then returned together with interest, dividends and other
29 accruals to the bank or savings and loan association. The
30 bond or undertaking and such securities shall be conditioned
31 for the return of the moneys deposited in conformity with the
32 terms of the deposit.

1 Whenever funds deposited with a bank or savings and loan
2 association exceed the amount of federal deposit insurance
3 coverage, a bond, or pledged securities, or other eligible
4 collateral shall be obtained. Only the types of securities or
5 other eligible collateral which the State Treasurer may, in
6 his or her discretion, accept for amounts not insured by the
7 Federal Deposit Insurance Corporation or the Federal Savings
8 and Loan Insurance Corporation under Section 11 of "An Act in
9 relation to State moneys", approved June 28, 1919, as
10 amended, may be accepted as pledged securities. The market
11 value of the bond or pledged securities shall at all times be
12 equal to or greater than the uninsured portion of the deposit
13 unless the funds deposited are collateralized pursuant to a
14 system established by the State Treasurer to aggregate
15 permissible securities received as collateral from financial
16 institutions in a collateral pool to secure State deposits of
17 the institution that have pledged securities to the pool.

18 All securities deposited by a bank or savings and loan
19 association under the provisions of this Section shall remain
20 the property of the depository and may be stamped by the
21 depository so as to indicate that such securities are
22 deposited as collateral. Should the bank or savings and loan
23 association fail or refuse to pay over the moneys, or any
24 part thereof, deposited with it, the officer, board,
25 commission, commissioner, department, institution, arm or
26 agency may sell such securities upon giving 5 days notice to
27 the depository of his intention to so sell such securities.
28 Such sale shall transfer absolute ownership of the securities
29 so sold to the vendee thereof. The surplus, if any, over the
30 amount due to the State and the expenses of the sale shall be
31 paid to the bank or savings and loan association. Actions may
32 be brought in the name of the People of the State of Illinois
33 to enforce the claims of the State with respect to any
34 securities deposited by a bank or savings and loan

1 association.

2 No bank or savings and loan association shall receive
3 public funds as permitted by this Section, unless it has
4 complied with the requirements established pursuant to
5 Section 6 of "An Act relating to certain investments of
6 public funds by public agencies", approved July 23, 1943, as
7 now or hereafter amended.

8 (Source: P.A. 85-257.)

9 Section 815. The Public Funds Investment Act is amended
10 by changing Section 6 as follows:

11 (30 ILCS 235/6) (from Ch. 85, par. 906)

12 Sec. 6. Report of financial institutions.

13 (a) No bank shall receive any public funds unless it has
14 furnished the corporate authorities of a public agency
15 submitting a deposit with copies of the last two sworn
16 statements of resources and liabilities which the bank is
17 required to furnish to the Commissioner of Banks and Real
18 Estate or to the Comptroller of the Currency. Each bank
19 designated as a depository for public funds shall, while
20 acting as such depository, furnish the corporate authorities
21 of a public agency with a copy of all statements of resources
22 and liabilities which it is required to furnish to the
23 Commissioner of Banks and Real Estate or to the Comptroller
24 of the Currency; provided, that if such funds or moneys are
25 deposited in a bank, the amount of all such deposits not
26 collateralized or insured by an agency of the federal
27 government shall not exceed 75% of the capital stock and
28 surplus of such bank, and the corporate authorities of a
29 public agency submitting a deposit shall not be discharged
30 from responsibility for any funds or moneys deposited in any
31 bank in excess of such limitation.

32 (b) No savings bank or savings and loan association

1 shall receive public funds unless it has furnished the
2 corporate authorities of a public agency submitting a deposit
3 with copies of the last 2 sworn statements of resources and
4 liabilities which the savings bank or savings and loan
5 association is required to furnish to the Commissioner of
6 Banks and Real Estate or the Federal Deposit Insurance
7 Corporation. Each savings bank or savings and loan
8 association designated as a depository for public funds
9 shall, while acting as such depository, furnish the corporate
10 authorities of a public agency with a copy of all statements
11 of resources and liabilities which it is required to furnish
12 to the Commissioner of Banks and Real Estate or the Federal
13 Deposit Insurance Corporation; provided, that if such funds
14 or moneys are deposited in a savings bank or savings and loan
15 association, the amount of all such deposits not
16 collateralized or insured by an agency of the federal
17 government shall not exceed 75% of the net worth of such
18 savings bank or savings and loan association as defined by
19 the Federal Deposit Insurance Corporation, and the corporate
20 authorities of a public agency submitting a deposit shall not
21 be discharged from responsibility for any funds or moneys
22 deposited in any savings bank or savings and loan association
23 in excess of such limitation.

24 (c) No credit union shall receive public funds unless it
25 has furnished the corporate authorities of a public agency
26 submitting a share deposit with copies of the last two
27 reports of examination prepared by or submitted to the
28 Illinois Department of Financial Institutions or the National
29 Credit Union Administration. Each credit union designated as
30 a depository for public funds shall, while acting as such
31 depository, furnish the corporate authorities of a public
32 agency with a copy of all reports of examination prepared by
33 or furnished to the Illinois Department of Financial
34 Institutions or the National Credit Union Administration;

1 provided that if such funds or moneys are invested in a
2 credit union account, the amount of all such investments not
3 collateralized or insured by an agency of the federal
4 government or other approved share insurer shall not exceed
5 50% of the unimpaired capital and surplus of such credit
6 union, which shall include shares, reserves and undivided
7 earnings and the corporate authorities of a public agency
8 making an investment shall not be discharged from
9 responsibility for any funds or moneys invested in a credit
10 union in excess of such limitation.

11 (d) Whenever a public agency deposits any public funds
12 in a financial institution, the public agency may enter into
13 an agreement with the financial institution requiring any
14 funds not insured by the Federal Deposit Insurance
15 Corporation or the National Credit Union Administration or
16 other approved share insurer to be collateralized by any of
17 the following classes of securities, provided there has been
18 no default in the payment of principal or interest thereon:

19 (1) Bonds, notes, or other securities constituting
20 direct and general obligations of the United States, the
21 bonds, notes, or other securities constituting the direct
22 and general obligation of any agency or instrumentality
23 of the United States, the interest and principal of which
24 is unconditionally guaranteed by the United States, and
25 bonds, notes, or other securities or evidence of
26 indebtedness constituting the obligation of a U.S. agency
27 or instrumentality.

28 (2) Direct and general obligation bonds of the
29 State of Illinois or of any other state of the United
30 States.

31 (3) Revenue bonds of this State or any authority,
32 board, commission, or similar agency thereof.

33 (4) Direct and general obligation bonds of any
34 city, town, county, school district, or other taxing body

1 of any state, the debt service of which is payable from
2 general ad valorem taxes.

3 (5) Revenue bonds of any city, town, county, or
4 school district of the State of Illinois.

5 (6) Obligations issued, assumed, or guaranteed by
6 the International Finance Corporation, the principal of
7 which is not amortized during the life of the obligation,
8 but no such obligation shall be accepted at more than 90%
9 of its market value.

10 (7) Illinois Affordable Housing Program Trust Fund
11 Bonds or Notes as defined in and issued pursuant to the
12 Illinois Housing Development Act.

13 (8) In an amount equal to at least market value of
14 that amount of funds deposited exceeding the insurance
15 limitation provided by the Federal Deposit Insurance
16 Corporation or the National Credit Union Administration
17 or other approved share insurer: (i) securities, (ii)
18 mortgages, (iii) letters of credit issued by a Federal
19 Home Loan Bank, or (iv) loans covered by a State Guaranty
20 under the Illinois Farm Development Act.

21 (9) Certificates of deposit or share certificates
22 issued to the depository institution pledging them as
23 security. The public agency may require security in the
24 amount of 125% of the value of the public agency deposit.
25 Such certificate of deposit or share certificate shall:

26 (i) be fully insured by the Federal Deposit
27 Insurance Corporation, the Federal Savings and Loan
28 Insurance Corporation, or the National Credit Union
29 Share Insurance Fund or issued by a depository
30 institution which is rated within the 3 highest
31 classifications established by at least one of the 2
32 standard rating services;

33 (ii) be issued by a financial institution
34 having assets of \$15,000,000 or more; and

1 (iii) be issued by either a savings and loan
2 association having a capital to asset ratio of at
3 least 2%, by a bank having a capital to asset ratio
4 of at least 6% or by a credit union having a capital
5 to asset ratio of at least 4%.

6 The depository institution shall effect the assignment of
7 the certificate of deposit or share certificate to the public
8 agency and shall agree that, in the event the issuer of the
9 certificate fails to maintain the capital to asset ratio
10 required by this Section, such certificate of deposit or
11 share certificate shall be replaced by additional suitable
12 security.

13 (e) The public agency may accept a system established by
14 the State Treasurer to aggregate permissible securities
15 received as collateral from financial institutions in a
16 collateral pool to secure public deposits of the institutions
17 that have pledged securities to the pool.

18 (f) The public agency may at any time declare any
19 particular security ineligible to qualify as collateral when,
20 in the public agency's judgment, it is deemed desirable to do
21 so.

22 (g) Notwithstanding any other provision of this Section,
23 as security a public agency may, at its discretion, accept a
24 bond, executed by a company authorized to transact the kinds
25 of business described in clause (g) of Section 4 of the
26 Illinois Insurance Code, in an amount not less than the
27 amount of the deposits required by this Section to be
28 secured, payable to the public agency for the benefit of the
29 People of the unit of government, in a form that is
30 acceptable to the public agency securities,---mortgages,
31 letters--of--credit--issued--by--a-Federal-Home-Loan-Bank,-or
32 loans-covered-by-a-State-Guaranty--under--the--Illinois--Farm
33 Development--Act--in-an-amount-equal-to-at-least-market-value
34 of-that-amount-of-funds--deposited--exceeding--the--insurance

1 limitation---provided---by---the---Federal---Deposit---Insurance
2 Corporation-or-the-National-Credit---Union---Administration---or
3 ether-approved-share-insurer.

4 (h) ~~(e)~~ Paragraphs (a), (b), (c), and (d), (e), (f), and
5 (g) of this Section do not apply to the University of
6 Illinois, Southern Illinois University, Chicago State
7 University, Eastern Illinois University, Governors State
8 University, Illinois State University, Northeastern Illinois
9 University, Northern Illinois University, Western Illinois
10 University, the Cooperative Computer Center and public
11 community colleges.

12 (Source: P.A. 91-324, eff. 1-1-00; 91-773, eff. 6-9-00.)

13 Section 820. The Illinois Banking Act is amended by
14 changing Sections 2, 5, and 17 and by adding Section 13.6 as
15 follows:

16 (205 ILCS 5/2) (from Ch. 17, par. 302)

17 Sec. 2. General definitions. In this Act, unless the
18 context otherwise requires, the following words and phrases
19 shall have the following meanings:

20 "Accommodation party" shall have the meaning ascribed to
21 that term in Section 3-419 of the Uniform Commercial Code.

22 "Action" in the sense of a judicial proceeding includes
23 recoupments, counterclaims, set-off, and any other proceeding
24 in which rights are determined.

25 "Affiliate facility" of a bank means a main banking
26 premises or branch of another commonly owned bank. The main
27 banking premises or any branch of a bank may be an "affiliate
28 facility" with respect to one or more other commonly owned
29 banks.

30 "Appropriate federal banking agency" means the Federal
31 Deposit Insurance Corporation, the Federal Reserve Bank of
32 Chicago, or the Federal Reserve Bank of St. Louis, as

1 determined by federal law.

2 "Bank" means any person doing a banking business whether
3 subject to the laws of this or any other jurisdiction.

4 A "banking house", "branch", "branch bank" or "branch
5 office" shall mean any place of business of a bank at which
6 deposits are received, checks paid, or loans made, but shall
7 not include any place at which only records thereof are made,
8 posted, or kept. A place of business at which deposits are
9 received, checks paid, or loans made shall not be deemed to
10 be a branch, branch bank, or branch office if the place of
11 business is adjacent to and connected with the main banking
12 premises, or if it is separated from the main banking
13 premises by not more than an alley; provided always that (i)
14 if the place of business is separated by an alley from the
15 main banking premises there is a connection between the two
16 by public or private way or by subterranean or overhead
17 passage, and (ii) if the place of business is in a building
18 not wholly occupied by the bank, the place of business shall
19 not be within any office or room in which any other business
20 or service of any kind or nature other than the business of
21 the bank is conducted or carried on. A place of business at
22 which deposits are received, checks paid, or loans made shall
23 not be deemed to be a branch, branch bank, or branch office
24 (i) of any bank if the place is a terminal established and
25 maintained in accordance with paragraph (17) of Section 5 of
26 this Act, or (ii) of a commonly owned bank by virtue of
27 transactions conducted at that place on behalf of the other
28 commonly owned bank under paragraph (23) of Section 5 of this
29 Act if the place is an affiliate facility with respect to the
30 other bank.

31 "Branch of an out-of-state bank" means a branch
32 established or maintained in Illinois by an out-of-state bank
33 as a result of a merger between an Illinois bank and the
34 out-of-state bank that occurs on or after May 31, 1997, or

1 any branch established by the out-of-state bank following the
2 merger.

3 "Bylaws" means the bylaws of a bank that are adopted by
4 the bank's board of directors or shareholders for the
5 regulation and management of the bank's affairs. If the bank
6 operates as a limited liability company, however, "bylaws"
7 means the operating agreement of the bank.

8 "Call report fee" means the fee to be paid to the
9 Commissioner by each State bank pursuant to paragraph (a) of
10 subsection (3) of Section 48 of this Act.

11 "Capital" includes the aggregate of outstanding capital
12 stock and preferred stock.

13 "Cash flow reserve account" means the account within the
14 books and records of the Commissioner of Banks and Real
15 Estate used to record funds designated to maintain a
16 reasonable Bank and Trust Company Fund operating balance to
17 meet agency obligations on a timely basis.

18 "Charter" includes the original charter and all
19 amendments thereto and articles of merger or consolidation.

20 "Commissioner" means the Commissioner of Banks and Real
21 Estate or a person authorized by the Commissioner, the Office
22 of Banks and Real Estate Act, or this Act to act in the
23 Commissioner's stead.

24 "Commonly owned banks" means 2 or more banks that each
25 qualify as a bank subsidiary of the same bank holding company
26 pursuant to Section 18 of the Federal Deposit Insurance Act;
27 "commonly owned bank" refers to one of a group of commonly
28 owned banks but only with respect to one or more of the other
29 banks in the same group.

30 "Community" means a city, village, or incorporated town
31 and also includes the area served by the banking offices of a
32 bank, but need not be limited or expanded to conform to the
33 geographic boundaries of units of local government.

34 "Company" means a corporation, limited liability company,

1 partnership, business trust, association, or similar
2 organization and, unless specifically excluded, includes a
3 "State bank" and a "bank".

4 "Consolidating bank" means a party to a consolidation.

5 "Consolidation" takes place when 2 or more banks, or a
6 trust company and a bank, are extinguished and by the same
7 process a new bank is created, taking over the assets and
8 assuming the liabilities of the banks or trust company
9 passing out of existence.

10 "Continuing bank" means a merging bank, the charter of
11 which becomes the charter of the resulting bank.

12 "Converting bank" means a State bank converting to become
13 a national bank, or a national bank converting to become a
14 State bank.

15 "Converting trust company" means a trust company
16 converting to become a State bank.

17 "Court" means a court of competent jurisdiction.

18 "Director" means a member of the board of directors of a
19 bank. In the case of a manager-managed limited liability
20 company, however, "director" means a manager of the bank and,
21 in the case of a member-managed limited liability company,
22 "director" means a member of the bank. The term "director"
23 does not include an advisory director, honorary director,
24 director emeritus, or similar person, unless the person is
25 otherwise performing functions similar to those of a member
26 of the board of directors.

27 "Eligible depository institution" means an insured
28 savings association that is in default, an insured savings
29 association that is in danger of default, a State or national
30 bank that is in default or a State or national bank that is
31 in danger of default, as those terms are defined in this
32 Section, or a new bank as that term defined in Section 11(m)
33 of the Federal Deposit Insurance Act or a bridge bank as that
34 term is defined in Section 11(n) of the Federal Deposit

1 Insurance Act or a new federal savings association authorized
2 under Section 11(d)(2)(f) of the Federal Deposit Insurance
3 Act.

4 "Fiduciary" means trustee, agent, executor,
5 administrator, committee, guardian for a minor or for a
6 person under legal disability, receiver, trustee in
7 bankruptcy, assignee for creditors, or any holder of similar
8 position of trust.

9 "Financial institution" means a bank, savings and loan
10 association, credit union, or any licensee under the Consumer
11 Installment Loan Act or the Sales Finance Agency Act and, for
12 purposes of Section 48.3, any proprietary network, funds
13 transfer corporation, or other entity providing electronic
14 funds transfer services, or any corporate fiduciary, its
15 subsidiaries, affiliates, parent company, or contractual
16 service provider that is examined by the Commissioner.

17 "Foundation" means the Illinois Bank Examiners' Education
18 Foundation.

19 "General obligation" means a bond, note, debenture,
20 security, or other instrument evidencing an obligation of the
21 government entity that is the issuer that is supported by the
22 full available resources of the issuer, the principal and
23 interest of which is payable in whole or in part by taxation.

24 "Guarantee" means an undertaking or promise to answer for
25 payment of another's debt or performance of another's duty,
26 liability, or obligation whether "payment guaranteed" or
27 "collection guaranteed".

28 "In danger of default" means a State or national bank, a
29 federally chartered insured savings association or an
30 Illinois state chartered insured savings association with
31 respect to which the Commissioner or the appropriate federal
32 banking agency has advised the Federal Deposit Insurance
33 Corporation that:

34 (1) in the opinion of the Commissioner or the

1 appropriate federal banking agency,

2 (A) the State or national bank or insured
3 savings association is not likely to be able to meet
4 the demands of the State or national bank's or
5 savings association's obligations in the normal
6 course of business; and

7 (B) there is no reasonable prospect that the
8 State or national bank or insured savings
9 association will be able to meet those demands or
10 pay those obligations without federal assistance; or

11 (2) in the opinion of the Commissioner or the
12 appropriate federal banking agency,

13 (A) the State or national bank or insured
14 savings association has incurred or is likely to
15 incur losses that will deplete all or substantially
16 all of its capital; and

17 (B) there is no reasonable prospect that the
18 capital of the State or national bank or insured
19 savings association will be replenished without
20 federal assistance.

21 "In default" means, with respect to a State or national
22 bank or an insured savings association, any adjudication or
23 other official determination by any court of competent
24 jurisdiction, the Commissioner, the appropriate federal
25 banking agency, or other public authority pursuant to which a
26 conservator, receiver, or other legal custodian is appointed
27 for a State or national bank or an insured savings
28 association.

29 "Insured savings association" means any federal savings
30 association chartered under Section 5 of the federal Home
31 Owners' Loan Act and any State savings association chartered
32 under the Illinois Savings and Loan Act of 1985 or a
33 predecessor Illinois statute, the deposits of which are
34 insured by the Federal Deposit Insurance Corporation. The

1 term also includes a savings bank organized or operating
2 under the Savings Bank Act.

3 "Insured savings association in recovery" means an
4 insured savings association that is not an eligible
5 depository institution and that does not meet the minimum
6 capital requirements applicable with respect to the insured
7 savings association.

8 "Issuer" means for purposes of Section 33 every person
9 who shall have issued or proposed to issue any security;
10 except that (1) with respect to certificates of deposit,
11 voting trust certificates, collateral-trust certificates, and
12 certificates of interest or shares in an unincorporated
13 investment trust not having a board of directors (or persons
14 performing similar functions), "issuer" means the person or
15 persons performing the acts and assuming the duties of
16 depositor or manager pursuant to the provisions of the trust,
17 agreement, or instrument under which the securities are
18 issued; (2) with respect to trusts other than those specified
19 in clause (1) above, where the trustee is a corporation
20 authorized to accept and execute trusts, "issuer" means the
21 entrusters, depositors, or creators of the trust and any
22 manager or committee charged with the general direction of
23 the affairs of the trust pursuant to the provisions of the
24 agreement or instrument creating the trust; and (3) with
25 respect to equipment trust certificates or like securities,
26 "issuer" means the person to whom the equipment or property
27 is or is to be leased or conditionally sold.

28 "Letter of credit" and "customer" shall have the meanings
29 ascribed to those terms in Section 5-102 of the Uniform
30 Commercial Code.

31 "Main banking premises" means the location that is
32 designated in a bank's charter as its main office.

33 "Maker or obligor" means for purposes of Section 33 the
34 issuer of a security, the promisor in a debenture or other

1 debt security, or the mortgagor or grantor of a trust deed or
2 similar conveyance of a security interest in real or personal
3 property.

4 "Merged bank" means a merging bank that is not the
5 continuing, resulting, or surviving bank in a consolidation
6 or merger.

7 "Merger" includes consolidation.

8 "Merging bank" means a party to a bank merger.

9 "Merging trust company" means a trust company party to a
10 merger with a State bank.

11 "Mid-tier bank holding company" means a corporation that
12 (a) owns 100% of the issued and outstanding shares of each
13 class of stock of a State bank, (b) has no other
14 subsidiaries, and (c) 100% of the issued and outstanding
15 shares of the corporation are owned by a parent bank holding
16 company.

17 "Municipality" means any municipality, political
18 subdivision, school district, taxing district, or agency.

19 "National bank" means a national banking association
20 located in this State and after May 31, 1997, means a
21 national banking association without regard to its location.

22 "Out-of-state bank" means a bank chartered under the laws
23 of a state other than Illinois, a territory of the United
24 States, or the District of Columbia.

25 "Parent bank holding company" means a corporation that is
26 a bank holding company as that term is defined in the
27 Illinois Bank Holding Company Act of 1957 and owns 100% of
28 the issued and outstanding shares of a mid-tier bank holding
29 company.

30 "Person" means an individual, corporation, limited
31 liability company, partnership, joint venture, trust, estate,
32 or unincorporated association.

33 "Public agency" means the State of Illinois, the various
34 counties, townships, cities, towns, villages, school

1 districts, educational service regions, special road
2 districts, public water supply districts, fire protection
3 districts, drainage districts, levee districts, sewer
4 districts, housing authorities, the Illinois Bank Examiners'
5 Education Foundation, the Chicago Park District, and all
6 other political corporations or subdivisions of the State of
7 Illinois, whether now or hereafter created, whether herein
8 specifically mentioned or not, and shall also include any
9 other state or any political corporation or subdivision of
10 another state.

11 "Public funds" or "public money" means current operating
12 funds, special funds, interest and sinking funds, and funds
13 of any kind or character belonging to, in the custody of, or
14 subject to the control or regulation of the United States or
15 a public agency. "Public funds" or "public money" shall
16 include funds held by any of the officers, agents, or
17 employees of the United States or of a public agency in the
18 course of their official duties and, with respect to public
19 money of the United States, shall include Postal Savings
20 funds.

21 "Published" means, unless the context requires otherwise,
22 the publishing of the notice or instrument referred to in
23 some newspaper of general circulation in the community in
24 which the bank is located at least once each week for 3
25 successive weeks. Publishing shall be accomplished by, and
26 at the expense of, the bank required to publish. Where
27 publishing is required, the bank shall submit to the
28 Commissioner that evidence of the publication as the
29 Commissioner shall deem appropriate.

30 "Qualified financial contract" means any security
31 contract, commodity contract, forward contract, including
32 spot and forward foreign exchange contracts, repurchase
33 agreement, swap agreement, and any similar agreement, any
34 option to enter into any such agreement, including any

1 combination of the foregoing, and any master agreement for
2 such agreements. A master agreement, together with all
3 supplements thereto, shall be treated as one qualified
4 financial contract. The contract, option, agreement, or
5 combination of contracts, options, or agreements shall be
6 reflected upon the books, accounts, or records of the bank,
7 or a party to the contract shall provide documentary evidence
8 of such agreement.

9 "Recorded" means the filing or recording of the notice or
10 instrument referred to in the office of the Recorder of the
11 county wherein the bank is located.

12 "Resulting bank" means the bank resulting from a merger
13 or conversion.

14 "Securities" means stocks, bonds, debentures, notes, or
15 other similar obligations.

16 "Stand-by letter of credit" means a letter of credit
17 under which drafts are payable upon the condition the
18 customer has defaulted in performance of a duty, liability,
19 or obligation.

20 "State bank" means any banking corporation that has a
21 banking charter issued by the Commissioner under this Act.

22 "State Banking Board" means the State Banking Board of
23 Illinois.

24 "Subsidiary" with respect to a specified company means a
25 company that is controlled by the specified company. For
26 purposes of paragraphs (8) and (12) of Section 5 of this Act,
27 "control" means the exercise of operational or managerial
28 control of a corporation by the bank, either alone or
29 together with other affiliates of the bank.

30 "Surplus" means the aggregate of (i) amounts paid in
31 excess of the par value of capital stock and preferred stock;
32 (ii) amounts contributed other than for capital stock and
33 preferred stock and allocated to the surplus account; and
34 (iii) amounts transferred from undivided profits.

1 "Tier 1 Capital" and "Tier 2 Capital" have the meanings
2 assigned to those terms in regulations promulgated for the
3 appropriate federal banking agency of a state bank, as those
4 regulations are now or hereafter amended.

5 "Trust company" means a limited liability company or
6 corporation incorporated in this State for the purpose of
7 accepting and executing trusts.

8 "Undivided profits" means undistributed earnings less
9 discretionary transfers to surplus.

10 "Unimpaired capital and unimpaired surplus", for the
11 purposes of paragraph (21) of Section 5 and Sections 32, 33,
12 34, 35.1, 35.2, and 47 of this Act means the sum of the state
13 bank's Tier 1 Capital and Tier 2 Capital plus such other
14 shareholder equity as may be included by regulation of the
15 Commissioner. Unimpaired capital and unimpaired surplus
16 shall be calculated on the basis of the date of the last
17 quarterly call report filed with the Commissioner preceding
18 the date of the transaction for which the calculation is
19 made, provided that: (i) when a material event occurs after
20 the date of the last quarterly call report filed with the
21 Commissioner that reduces or increases the bank's unimpaired
22 capital and unimpaired surplus by 10% or more, then the
23 unimpaired capital and unimpaired surplus shall be calculated
24 from the date of the material event for a transaction
25 conducted after the date of the material event; and (ii) if
26 the Commissioner determines for safety and soundness reasons
27 that a state bank should calculate unimpaired capital and
28 unimpaired surplus more frequently than provided by this
29 paragraph, the Commissioner may by written notice direct the
30 bank to calculate unimpaired capital and unimpaired surplus
31 at a more frequent interval. In the case of a state bank
32 newly chartered under Section 13 or a state bank resulting
33 from a merger, consolidation, or conversion under Sections 21
34 through 26 for which no preceding quarterly call report has

1 been filed with the Commissioner, unimpaired capital and
2 unimpaired surplus shall be calculated for the first calendar
3 quarter on the basis of the effective date of the charter,
4 merger, consolidation, or conversion.

5 (Source: P.A. 92-483, eff. 8-23-01.)

6 (205 ILCS 5/5) (from Ch. 17, par. 311)

7 Sec. 5. General corporate powers. A bank organized
8 under this Act or subject hereto shall be a body corporate
9 and politic and shall, without specific mention thereof in
10 the charter, have all the powers conferred by this Act and
11 the following additional general corporate powers:

12 (1) To sue and be sued, complain, and defend in its
13 corporate name.

14 (2) To have a corporate seal, which may be altered at
15 pleasure, and to use the same by causing it or a facsimile
16 thereof to be impressed or affixed or in any manner
17 reproduced, provided that the affixing of a corporate seal to
18 an instrument shall not give the instrument additional force
19 or effect, or change the construction thereof, and the use of
20 a corporate seal is not mandatory.

21 (3) To make, alter, amend, and repeal bylaws, not
22 inconsistent with its charter or with law, for the
23 administration of the affairs of the bank. If this Act does
24 not provide specific guidance in matters of corporate
25 governance, the provisions of the Business Corporation Act of
26 1983 may be used if so provided in the bylaws, and if the
27 bank is a limited liability company, the provisions of the
28 Limited Liability Company Act shall be used.

29 (4) To elect or appoint and remove officers and agents
30 of the bank and define their duties and fix their
31 compensation.

32 (5) To adopt and operate reasonable bonus plans,
33 profit-sharing plans, stock-bonus plans, stock-option plans,

1 pension plans and similar incentive plans for its directors,
2 officers and employees.

3 (5.1) To manage, operate and administer a fund for the
4 investment of funds by a public agency or agencies, including
5 any unit of local government or school district, or any
6 person. The fund for a public agency shall invest in the
7 same type of investments and be subject to the same
8 limitations provided for the investment of public funds. The
9 fund for public agencies shall maintain a separate ledger
10 showing the amount of investment for each public agency in
11 the fund. "Public funds" and "public agency" as used in this
12 Section shall have the meanings ascribed to them in Section 1
13 of the Public Funds Investment Act.

14 (6) To make reasonable donations for the public welfare
15 or for charitable, scientific, religious or educational
16 purposes.

17 (7) To borrow or incur an obligation; and to pledge its
18 assets:

19 (a) to secure its borrowings, its lease of personal
20 or real property or its other nondeposit obligations;

21 (b) to enable it to act as agent for the sale of
22 obligations of the United States;

23 (c) to secure deposits of public money of the
24 United States, whenever required by the laws of the
25 United States, including without being limited to,
26 revenues and funds the deposit of which is subject to the
27 control or regulation of the United States or any of its
28 officers, agents, or employees and Postal Savings funds;

29 (d) to secure deposits of public money of any state
30 or of any political corporation or subdivision thereof
31 including, without being limited to, revenues and funds
32 the deposit of which is subject to the control or
33 regulation of any state or of any political corporation
34 or subdivisions thereof or of any of their officers,

1 agents, or employees;

2 (e) to secure deposits of money whenever required
3 by the National Bankruptcy Act;

4 (f) (blank); and

5 (g) to secure trust funds commingled with the
6 bank's funds, whether deposited by the bank or an
7 affiliate of the bank, pursuant to Section 2-8 of the
8 Corporate Fiduciary Act.

9 (8) To own, possess, and carry as assets all or part of
10 the real estate necessary in or with which to do its banking
11 business, either directly or indirectly through the ownership
12 of all or part of the capital stock, shares or interests in
13 any corporation, association, trust engaged in holding any
14 part or parts or all of the bank premises, engaged in such
15 business and in conducting a safe deposit business in the
16 premises or part of them, or engaged in any activity that the
17 bank is permitted to conduct in a subsidiary pursuant to
18 paragraph (12) of this Section 5.

19 (9) To own, possess, and carry as assets other real
20 estate to which it may obtain title in the collection of its
21 debts or that was formerly used as a part of the bank
22 premises, but title to any real estate except as herein
23 permitted shall not be retained by the bank, either directly
24 or by or through a subsidiary, as permitted by subsection
25 (12) of this Section for a total period of more than 10 years
26 after acquiring title, either directly or indirectly.

27 (10) To do any act, including the acquisition of stock,
28 necessary to obtain insurance of its deposits, or part
29 thereof, and any act necessary to obtain a guaranty, in whole
30 or in part, of any of its loans or investments by the United
31 States or any agency thereof, and any act necessary to sell
32 or otherwise dispose of any of its loans or investments to
33 the United States or any agency thereof, and to acquire and
34 hold membership in the Federal Reserve System.

1 (11) Notwithstanding any other provisions of this Act or
2 any other law, to do any act and to own, possess, and carry
3 as assets property of the character, including stock, that is
4 at the time authorized or permitted to national banks by an
5 Act of Congress, but subject always to the same limitations
6 and restrictions as are applicable to national banks by the
7 pertinent federal law and subject to applicable provisions of
8 the Financial Institutions Insurance Sales Law.

9 (12) To own, possess, and carry as assets stock of one
10 or more corporations that is, or are, engaged in one or more
11 of the following businesses:

12 (a) holding title to and administering assets
13 acquired as a result of the collection or liquidating of
14 loans, investments, or discounts; or

15 (b) holding title to and administering personal
16 property acquired by the bank, directly or indirectly
17 through a subsidiary, for the purpose of leasing to
18 others, provided the lease or leases and the investment
19 of the bank, directly or through a subsidiary, in that
20 personal property otherwise comply with Section 35.1 of
21 this Act; or

22 (c) carrying on or administering any of the
23 activities excepting the receipt of deposits or the
24 payment of checks or other orders for the payment of
25 money in which a bank may engage in carrying on its
26 general banking business; provided, however, that nothing
27 contained in this paragraph (c) shall be deemed to permit
28 a bank organized under this Act or subject hereto to do,
29 either directly or indirectly through any subsidiary, any
30 act, including the making of any loan or investment, or
31 to own, possess, or carry as assets any property that if
32 done by or owned, possessed, or carried by the State bank
33 would be in violation of or prohibited by any provision
34 of this Act.

1 The provisions of this subsection (12) shall not apply to
2 and shall not be deemed to limit the powers of a State bank
3 with respect to the ownership, possession, and carrying of
4 stock that a State bank is permitted to own, possess, or
5 carry under this Act.

6 Any bank intending to establish a subsidiary under this
7 subsection (12) shall give written notice to the Commissioner
8 60 days prior to the subsidiary's commencing of business or,
9 as the case may be, prior to acquiring stock in a corporation
10 that has already commenced business. After receiving the
11 notice, the Commissioner may waive or reduce the balance of
12 the 60 day notice period. The Commissioner may specify the
13 form of the notice and may promulgate rules and regulations
14 to administer this subsection (12).

15 (13) To accept for payment at a future date not
16 exceeding one year from the date of acceptance, drafts drawn
17 upon it by its customers; and to issue, advise, or confirm
18 letters of credit authorizing the holders thereof to draw
19 drafts upon it or its correspondents.

20 (14) To own and lease personal property acquired by the
21 bank at the request of a prospective lessee and upon the
22 agreement of that person to lease the personal property
23 provided that the lease, the agreement with respect thereto,
24 and the amount of the investment of the bank in the property
25 comply with Section 35.1 of this Act.

26 (15) (a) To establish and maintain, in addition to the
27 main banking premises, branches offering any banking
28 services permitted at the main banking premises of a
29 State bank.

30 (b) To establish and maintain, after May 31, 1997,
31 branches in another state that may conduct any activity
32 in that state that is authorized or permitted for any
33 bank that has a banking charter issued by that state,
34 subject to the same limitations and restrictions that are

1 applicable to banks chartered by that state.

2 (16) (Blank).

3 (17) To establish and maintain terminals, as authorized
4 by the Electronic Fund Transfer Act.

5 (18) To establish and maintain temporary service booths
6 at any International Fair held in this State which is
7 approved by the United States Department of Commerce, for the
8 duration of the international fair for the sole purpose of
9 providing a convenient place for foreign trade customers at
10 the fair to exchange their home countries' currency into
11 United States currency or the converse. This power shall not
12 be construed as establishing a new place or change of
13 location for the bank providing the service booth.

14 (19) To indemnify its officers, directors, employees,
15 and agents, as authorized for corporations under Section 8.75
16 of the Business Corporation Act of 1983.

17 (20) To own, possess, and carry as assets stock of, or
18 be or become a member of, any corporation, mutual company,
19 association, trust, or other entity formed exclusively for
20 the purpose of providing directors' and officers' liability
21 and bankers' blanket bond insurance or reinsurance to and for
22 the benefit of the stockholders, members, or beneficiaries,
23 or their assets or businesses, or their officers, directors,
24 employees, or agents, and not to or for the benefit of any
25 other person or entity or the public generally.

26 (21) To make debt or equity investments in corporations
27 or projects, whether for profit or not for profit, designed
28 to promote the development of the community and its welfare,
29 provided that the aggregate investment in all of these
30 corporations and in all of these projects does not exceed 10%
31 of the unimpaired capital and unimpaired surplus of the bank
32 and provided that this limitation shall not apply to
33 creditworthy loans by the bank to those corporations or
34 projects. Upon written application to the Commissioner, a

1 bank may make an investment that would, when aggregated with
2 all other such investments, exceed 10% of the unimpaired
3 capital and unimpaired surplus of the bank. The Commissioner
4 may approve the investment if he is of the opinion and finds
5 that the proposed investment will not have a material adverse
6 effect on the safety and soundness of the bank.

7 (22) To own, possess, and carry as assets the stock of a
8 corporation engaged in the ownership or operation of a travel
9 agency or to operate a travel agency as a part of its
10 business.

11 (23) With respect to affiliate facilities:

12 (a) to conduct at affiliate facilities for and on
13 behalf of another commonly owned bank, if so authorized
14 by the other bank, all transactions that the other bank
15 is authorized or permitted to perform; and

16 (b) to authorize a commonly owned bank to conduct
17 for and on behalf of it any of the transactions it is
18 authorized or permitted to perform at one or more
19 affiliate facilities.

20 Any bank intending to conduct or to authorize a commonly
21 owned bank to conduct at an affiliate facility any of the
22 transactions specified in this paragraph (23) shall give
23 written notice to the Commissioner at least 30 days before
24 any such transaction is conducted at the affiliate facility.

25 (24) To act as the agent for any fire, life, or other
26 insurance company authorized by the State of Illinois, by
27 soliciting and selling insurance and collecting premiums on
28 policies issued by such company; and to receive for services
29 so rendered such fees or commissions as may be agreed upon
30 between the bank and the insurance company for which it may
31 act as agent; provided, however, that no such bank shall in
32 any case assume or guarantee the payment of any premium on
33 insurance policies issued through its agency by its
34 principal; and provided further, that the bank shall not

1 guarantee the truth of any statement made by an assured in
2 filing his application for insurance.

3 (25) Notwithstanding any other provisions of this Act or
4 any other law, to offer any product or service that is at the
5 time authorized or permitted to any insured savings
6 association or out-of-state bank by applicable law, provided
7 that powers conferred only by this subsection (25):

8 (a) shall always be subject to the same limitations
9 and restrictions that are applicable to the insured
10 savings association or out-of-state bank for the product
11 or service by such applicable law;

12 (b) shall be subject to applicable provisions of
13 the Financial Institutions Insurance Sales Law;

14 (c) shall not include the right to own or conduct a
15 real estate brokerage business for which a license would
16 be required under the laws of this State; and

17 (d) shall not be construed to include the
18 establishment or maintenance of a branch, nor shall they
19 be construed to limit the establishment or maintenance of
20 a branch pursuant to subsection (11).

21 Not less than 30 days before engaging in any activity
22 under the authority of this subsection, a bank shall provide
23 written notice to the Commissioner of its intent to engage in
24 the activity. The notice shall indicate the specific federal
25 or state law, rule, regulation, or interpretation the bank
26 intends to use as authority to engage in the activity.

27 (Source: P.A. 91-330, eff. 7-29-99; 91-849, eff. 6-22-00;
28 92-483, eff. 8-23-01; 92-811, eff. 8-21-02.)

29 (205 ILCS 5/13.6 new)

30 Sec. 13.6. Banks as limited liability companies.

31 (a) A bank may be organized as a limited liability
32 company, may convert to a limited liability company, or may
33 merge with and into a limited liability company under the

1 applicable laws of this State and of the United States,
2 including any rules promulgated thereunder. A bank organized
3 as a limited liability company shall be subject to the
4 provisions of the Limited Liability Company Act in addition
5 to this Act, provided that if a provision of the Limited
6 Liability Company Act conflicts with a provision of this Act
7 or with any rule of the Commissioner, the provision of this
8 Act or the rule of the Commissioner shall apply.

9 (b) Any filing required to be made under the Limited
10 Liability Company Act shall be made exclusively with the
11 Commissioner, and the Commissioner shall possess the
12 exclusive authority to regulate the bank as provided in this
13 Act.

14 (c) Any organization as, conversion to, and merger with
15 or into a limited liability company shall be subject to the
16 prior approval of the Commissioner.

17 (d) A bank that is a limited liability company shall be
18 subject to all of the provisions of this Act in the same
19 manner as a bank that is organized in stock form.

20 (e) The Commissioner may promulgate rules to ensure that
21 a bank that is a limited liability company (i) is operating
22 in a safe and sound manner and (ii) is subject to the
23 Commissioner's authority in the same manner as a bank that is
24 organized in stock form.

25 (205 ILCS 5/17) (from Ch. 17, par. 324)

26 Sec. 17. Changes in charter.

27 (a) By compliance with the provisions of this Act a
28 State bank may:

29 (1) (blank);

30 (2) increase, decrease or change its capital stock,
31 whether issued or unissued, provided that in no case
32 shall the capital be diminished to the prejudice of its
33 creditors;

1 (3) provide for authorized but unissued capital
2 stock reserved for issuance for one or more of the
3 purposes provided for in subsection (5) of Section 14
4 hereof;

5 (4) authorize preferred stock, or increase,
6 decrease or change the preferences, qualifications,
7 limitations, restrictions or special or relative rights
8 of its preferred stock, whether issued or unissued, or
9 delegate authority to its board of directors as provided
10 in subsection (d), provided that in no case shall the
11 capital be diminished to the prejudice of its creditors;

12 (5) increase, decrease or change the par value of
13 its shares of its capital stock or preferred stock,
14 whether issued or unissued, or delegate authority to its
15 board of directors as provided in subsection (d);

16 (6) (blank);

17 (7) eliminate cumulative voting rights under all or
18 specified circumstances, or eliminate voting rights
19 entirely, as to any class or classes or series of stock
20 of the bank pursuant to paragraph (3) of Section 15,
21 provided that one class of shares or series thereof shall
22 always have voting in respect to all matters in the bank,
23 and provided further that the proposal to eliminate such
24 voting rights receives the approval of the holders of 70%
25 of the outstanding shares of stock entitled to vote as
26 provided in paragraph (7) of subsection (b) of this
27 Section 17;

28 (8) increase, decrease, or change its capital stock
29 or preferred stock, whether issued or unissued, for the
30 purpose of eliminating fractional shares or avoiding the
31 issuance of fractional shares, provided that in no case
32 shall the capital be diminished to the prejudice of its
33 creditors; or

34 (9) make such other change in its charter as may be

1 authorized in this Act.

2 (b) To effect a change or changes in a State bank's
3 charter as provided for in this Section 17:

4 (1) The board of directors shall adopt a resolution
5 setting forth the proposed amendment and directing that
6 it be submitted to a vote at a meeting of stockholders,
7 which may be either an annual or special meeting.

8 (2) If the meeting is a special meeting, written or
9 printed notice setting forth the proposed amendment or
10 summary thereof shall be given to each stockholder of
11 record entitled to vote at such meeting at least 30 days
12 before such meeting and in the manner provided in this
13 Act for the giving of notice of meetings of stockholders.

14 (3) At such special meeting, a vote of the
15 stockholders entitled to vote shall be taken on the
16 proposed amendment. Except as provided in paragraph (7)
17 of this subsection (b), the proposed amendment shall be
18 adopted upon receiving the affirmative vote of the
19 holders of at least two-thirds of the outstanding shares
20 of stock entitled to vote at such meeting, unless holders
21 of preferred stock are entitled to vote as a class in
22 respect thereof, in which event the proposed amendment
23 shall be adopted upon receiving the affirmative vote of
24 the holders of at least two-thirds of the outstanding
25 shares of each class of shares entitled to vote as a
26 class in respect thereof and of the total outstanding
27 shares entitled to vote at such meeting. Any number of
28 amendments may be submitted to the stockholders and voted
29 upon by them at one meeting. A certificate of the
30 amendment, or amendments, verified by the president, or a
31 vice-president, or the cashier, shall be filed
32 immediately in the office of the Commissioner.

33 (4) At any annual meeting without a resolution of
34 the board of directors and without a notice and prior

1 publication, as hereinabove provided, a proposition for a
2 change in the bank's charter as provided for in this
3 Section 17 may be submitted to a vote of the stockholders
4 entitled to vote at the annual meeting, except that no
5 proposition for authorized but unissued capital stock
6 reserved for issuance for one or more of the purposes
7 provided for in subsection (5) of Section 14 hereof shall
8 be submitted without complying with the provisions of
9 said subsection. The proposed amendment shall be adopted
10 upon receiving the affirmative vote of the holders of at
11 least two-thirds of the outstanding shares of stock
12 entitled to vote at such meeting, unless holders of
13 preferred stock are entitled to vote as a class in
14 respect thereof, in which event the proposed amendment
15 shall be adopted upon receiving the affirmative vote of
16 the holders of at least two-thirds of the outstanding
17 shares of each class of shares entitled to vote as a
18 class in respect thereof and the total outstanding shares
19 entitled to vote at such meeting. A certificate of the
20 amendment, or amendments, verified by the president, or a
21 vice-president or cashier, shall be filed immediately in
22 the office of the Commissioner.

23 (5) If an amendment or amendments shall be approved
24 in writing by the Commissioner, the amendment or
25 amendments so adopted and so approved shall be
26 accomplished in accordance with the vote of the
27 stockholders. The Commissioner may impose such terms and
28 conditions on the approval of the amendment or amendments
29 as he deems necessary or appropriate. The Commissioner
30 shall revoke such approval in the event such amendment or
31 amendments are not effected within one year from the date
32 of the issuance of the Commissioner's certificate and
33 written approval except for transactions permitted under
34 subsection (5) of Section 14 of this Act.

1 (6) No amendment or amendments shall affect suits
2 in which the bank is a party, nor affect causes of
3 action, nor affect rights of persons in any particular,
4 nor shall actions brought against such bank by its former
5 name be abated by a change of name.

6 (7) A proposal to amend the charter to eliminate
7 cumulative voting rights under all or specified
8 circumstances, or to eliminate voting rights entirely, as
9 to any class or classes or series or stock of a bank,
10 pursuant to paragraph (3) of Section 15 and paragraph (7)
11 of subsection (a) of this Section 17, shall be adopted
12 only upon such proposal receiving the approval of the
13 holders of 70% of the outstanding shares of stock
14 entitled to vote at the meeting where the proposal is
15 presented for approval, unless holders of preferred stock
16 are entitled to vote as a class in respect thereof, in
17 which event the proposed amendment shall be adopted upon
18 receiving the approval of the holders of 70% of the
19 outstanding shares of each class of shares entitled to
20 vote as a class in respect thereof and of the total
21 outstanding shares entitled to vote at the meeting where
22 the proposal is presented for approval. The proposal to
23 amend the charter pursuant to this paragraph (7) may be
24 voted upon at the annual meeting or a special meeting.

25 (8) Written or printed notice of a stockholders'
26 meeting to vote on a proposal to increase, decrease or
27 change the capital stock or preferred stock pursuant to
28 paragraph (8) of subsection (a) of this Section 17 and to
29 eliminate fractional shares or avoid the issuance of
30 fractional shares shall be given to each stockholder of
31 record entitled to vote at the meeting at least 30 days
32 before the meeting and in the manner provided in this Act
33 for the giving of notice of meetings of stockholders, and
34 shall include all of the following information:

1 (A) A statement of the purpose of the proposed
2 reverse stock split.

3 (B) A statement of the amount of consideration
4 being offered for the bank's stock.

5 (C) A statement that the bank considers the
6 transaction fair to the stockholders, and a
7 statement of the material facts upon which this
8 belief is based.

9 (D) A statement that the bank has secured an
10 opinion from a third party with respect to the
11 fairness, from a financial point of view, of the
12 consideration to be paid, the identity and
13 qualifications of the third party, how the third
14 party was selected, and any material relationship
15 between the third party and the bank.

16 (E) A summary of the opinion including the
17 basis for and the methods of arriving at the
18 findings and any limitation imposed by the bank in
19 arriving at fair value and a statement making the
20 opinion available for reviewing or copying by any
21 stockholder.

22 (F) A statement that objecting stockholders
23 will be entitled to the fair value of those shares
24 that are voted against the charter amendment, if a
25 proper demand is made on the bank and the
26 requirements are satisfied as specified in this
27 Section.

28 If a stockholder shall file with the bank, prior to or at the
29 meeting of stockholders at which the proposed charter
30 amendment is submitted to a vote, a written objection to the
31 proposed charter amendment and shall not vote in favor
32 thereof, and if the stockholder, within 20 days after
33 receiving written notice of the date the charter amendment
34 was accomplished pursuant to paragraph (5) of subsection (a)

1 of this Section 17, shall make written demand on the bank for
2 payment of the fair value of the stockholder's shares as of
3 the day prior to the date on which the vote was taken
4 approving the charter amendment, the bank shall pay to the
5 stockholder, upon surrender of the certificate or
6 certificates representing the stock, the fair value thereof.
7 The demand shall state the number of shares owned by the
8 objecting stockholder. The bank shall provide written notice
9 of the date on which the charter amendment was accomplished
10 to all stockholders who have filed written objections in
11 order that the objecting stockholders may know when they must
12 file written demand if they choose to do so. Any stockholder
13 failing to make demand within the 20-day period shall be
14 conclusively presumed to have consented to the charter
15 amendment and shall be bound by the terms thereof. If within
16 30 days after the date on which a charter amendment was
17 accomplished the value of the shares is agreed upon between
18 the objecting stockholders and the bank, payment therefor
19 shall be made within 90 days after the date on which the
20 charter amendment was accomplished, upon the surrender of the
21 stockholder's certificate or certificates representing the
22 shares. Upon payment of the agreed value the objecting
23 stockholder shall cease to have any interest in the shares or
24 in the bank. If within such period of 30 days the
25 stockholder and the bank do not so agree, then the objecting
26 stockholder may, within 60 days after the expiration of the
27 30-day period, file a complaint in the circuit court asking
28 for a finding and determination of the fair value of the
29 shares, and shall be entitled to judgment against the bank
30 for the amount of the fair value as of the day prior to the
31 date on which the vote was taken approving the charter
32 amendment with interest thereon to the date of the judgment.
33 The practice, procedure and judgment shall be governed by the
34 Civil Practice Law. The judgment shall be payable only upon

1 and simultaneously with the surrender to the bank of the
2 certificate or certificates representing the shares. Upon
3 payment of the judgment, the objecting stockholder shall
4 cease to have any interest in the shares or the bank. The
5 shares may be held and disposed of by the bank. Unless the
6 objecting stockholder shall file such complaint within the
7 time herein limited, the stockholder and all persons claiming
8 under the stockholder shall be conclusively presumed to have
9 approved and ratified the charter amendment, and shall be
10 bound by the terms thereof. The right of an objecting
11 stockholder to be paid the fair value of the stockholder's
12 shares of stock as herein provided shall cease if and when
13 the bank shall abandon the charter amendment.

14 (c) The purchase and holding and later resale of
15 treasury stock of a state bank pursuant to the provisions of
16 subsection (6) of Section 14 may be accomplished without a
17 change in its charter reflecting any decrease or increase in
18 capital stock.

19 (d) A State bank may amend its charter for the purpose
20 of authorizing its board of directors to issue preferred
21 stock; to increase, decrease, or change the par value of
22 shares of its preferred stock, whether issued or unissued; or
23 to increase, decrease, or change the preferences,
24 qualifications, limitations, restrictions, or special or
25 relative rights of its preferred stock, whether issued or
26 unissued; provided that in no case shall the capital be
27 diminished to the prejudice of the bank's creditors. An
28 amendment to the bank's charter granting such authority shall
29 establish ranges, limits, or restrictions that must be
30 observed when the board exercises the discretion authorized
31 by the amendment.

32 Once such an amendment is adopted and approved as
33 provided in this subsection, and without further action by
34 the bank's stockholders, the board may exercise its delegated

1 authority by adopting a resolution specifying the actions
2 that it is taking with respect to the preferred stock. The
3 board may fully exercise its delegated authority through one
4 resolution or it may exercise its delegated authority through
5 a series of resolutions, provided that the board's actions
6 remain at all times within the ranges, limitations, and
7 restrictions specified in the amendment to the bank's
8 charter.

9 A resolution adopted by the board under this authority
10 shall be submitted to the Commissioner for approval. The
11 Commissioner shall approve the resolution, or state any
12 objections to the resolution, within 30 days after the
13 receipt of the resolution adopted by the board. If no
14 objections are specified by the Commissioner within that time
15 frame, the resolution will be deemed to be approved by the
16 Commissioner. Once approved, the resolution shall be
17 incorporated as an addendum to the bank's charter and the
18 board may proceed to effect the changes set forth in the
19 resolution.

20 (Source: P.A. 91-322, eff. 1-1-00; 92-483, eff. 8-23-01.)

21 Section 825. The Savings Bank Act is amended by changing
22 Sections 1007.55 and 1008 and by adding Section 1007.125 as
23 follows:

24 (205 ILCS 205/1007.55) (from Ch. 17, par. 7301-7.55)

25 Sec. 1007.55. "Director" means any director, trustee, or
26 other person performing similar functions with respect to any
27 organization whether incorporated or unincorporated. In the
28 case of a manager-managed limited liability company, however,
29 "director" means a manager of the savings bank, and in the
30 case of a member-managed limited liability company,
31 "director" means a member of the savings bank. The term
32 "director" does not include an advisory director, honorary

1 director, director emeritus, or similar person, unless the
2 person is otherwise performing functions similar to those of
3 a director.

4 (205 ILCS 205/1007.125 new)

5 Sec. 1007.125. "Bylaws" means the bylaws of a savings
6 bank that are adopted by the savings bank's board of
7 directors or shareholders for the regulation and management
8 of the savings bank's affairs. If the savings bank operates
9 as a limited liability company, however, "bylaws" means the
10 operating agreement of the savings bank.

11 (Source: P.A. 86-1213.)

12 (205 ILCS 205/1008) (from Ch. 17, par. 7301-8)

13 Sec. 1008. General corporate powers.

14 (a) A savings bank operating under this Act shall be a
15 body corporate and politic and shall have all of the powers
16 conferred by this Act including, but not limited to, the
17 following powers:

18 (1) To sue and be sued, complain, and defend in its
19 corporate name and to have a common seal, which it may
20 alter or renew at pleasure.

21 (2) To obtain and maintain insurance by a deposit
22 insurance corporation as defined in this Act.

23 (3) To act as a fiscal agent for the United States,
24 the State of Illinois or any department, branch, arm, or
25 agency of the State or any unit of local government or
26 school district in the State, when duly designated for
27 that purpose, and as agent to perform reasonable
28 functions as may be required of it.

29 (4) To become a member of or deal with any
30 corporation or agency of the United States or the State
31 of Illinois, to the extent that the agency assists in
32 furthering or facilitating its purposes or powers and to

1 that end to purchase stock or securities thereof or
2 deposit money therewith, and to comply with any other
3 conditions of membership or credit.

4 (5) To make donations in reasonable amounts for the
5 public welfare or for charitable, scientific, religious,
6 or educational purposes.

7 (6) To adopt and operate reasonable insurance,
8 bonus, profit sharing, and retirement plans for officers
9 and employees and for directors including, but not
10 limited to, advisory, honorary, and emeritus directors,
11 who are not officers or employees.

12 (7) To reject any application for membership; to
13 retire deposit accounts by enforced retirement as
14 provided in this Act and the bylaws; and to limit the
15 issuance of, or payments on, deposit accounts, subject,
16 however, to contractual obligations.

17 (8) To purchase stock in service corporations and
18 to invest in any form of indebtedness of any service
19 corporation as defined in this Act, subject to
20 regulations of the Commissioner.

21 (9) To purchase stock of a corporation whose
22 principal purpose is to operate a safe deposit company or
23 escrow service company.

24 (10) To exercise all the powers necessary to
25 qualify as a trustee or custodian under federal or State
26 law, provided that the authority to accept and execute
27 trusts is subject to the provisions of the Corporate
28 Fiduciary Act and to the supervision of those activities
29 by the Commissioner.

30 (11) (Blank).

31 (12) To establish, maintain, and operate terminals
32 as authorized by the Electronic Fund Transfer Act.

33 (13) To pledge its assets:

34 (A) to enable it to act as agent for the sale

1 of obligations of the United States;

2 (B) to secure deposits;

3 (C) to secure deposits of money whenever
4 required by the National Bankruptcy Act;

5 (D) (blank); and

6 (E) to secure trust funds commingled with the
7 savings bank's funds, whether deposited by the
8 savings bank or an affiliate of the savings bank, as
9 required under Section 2-8 of the Corporate
10 Fiduciary Act.

11 (14) To accept for payment at a future date not to
12 exceed one year from the date of acceptance, drafts drawn
13 upon it by its customers; and to issue, advise, or
14 confirm letters of credit authorizing holders thereof to
15 draw drafts upon it or its correspondents.

16 (15) Subject to the regulations of the
17 Commissioner, to own and lease personal property acquired
18 by the savings bank at the request of a prospective
19 lessee and, upon the agreement of that person, to lease
20 the personal property.

21 (16) To establish temporary service booths at any
22 International Fair in this State that is approved by the
23 United States Department of Commerce for the duration of
24 the international fair for the purpose of providing a
25 convenient place for foreign trade customers to exchange
26 their home countries' currency into United States
27 currency or the converse. To provide temporary periodic
28 service to persons residing in a bona fide nursing home,
29 senior citizens' retirement home, or long-term care
30 facility. These powers shall not be construed as
31 establishing a new place or change of location for the
32 savings bank providing the service booth.

33 (17) To indemnify its officers, directors,
34 employees, and agents, as authorized for corporations

1 under Section 8.75 of the Business Corporations Act of
2 1983.

3 (18) To provide data processing services to others
4 on a for-profit basis.

5 (19) To utilize any electronic technology to
6 provide customers with home banking services.

7 (20) Subject to the regulations of the
8 Commissioner, to enter into an agreement to act as a
9 surety.

10 (21) Subject to the regulations of the
11 Commissioner, to issue credit cards, extend credit
12 therewith, and otherwise engage in or participate in
13 credit card operations.

14 (22) To purchase for its own account shares of
15 stock of a bankers' bank, described in Section 13(b)(1)
16 of the Illinois Banking Act, on the same terms and
17 conditions as a bank may purchase such shares. In no
18 event shall the total amount of such stock held by a
19 savings bank in such bankers' bank exceed 10% of its
20 capital and surplus (including undivided profits) and in
21 no event shall a savings bank acquire more than 5% of any
22 class of voting securities of such bankers' bank.

23 (23) With respect to affiliate facilities:

24 (A) to conduct at affiliate facilities any of
25 the following transactions for and on behalf of any
26 affiliated depository institution, if so authorized
27 by the affiliate or affiliates: receiving deposits;
28 renewing deposits; cashing and issuing checks,
29 drafts, money orders, travelers checks, or similar
30 instruments; changing money; receiving payments on
31 existing indebtedness; and conducting ministerial
32 functions with respect to loan applications,
33 servicing loans, and providing loan account
34 information; and

1 (B) to authorize an affiliated depository
2 institution to conduct for and on behalf of it, any
3 of the transactions listed in this subsection at one
4 or more affiliate facilities.

5 A savings bank intending to conduct or to authorize
6 an affiliated depository institution to conduct at an
7 affiliate facility any of the transactions specified in
8 this subsection shall give written notice to the
9 Commissioner at least 30 days before any such transaction
10 is conducted at an affiliate facility. All conduct under
11 this subsection shall be on terms consistent with safe
12 and sound banking practices and applicable law.

13 (24) Subject to Article XLIV of the Illinois
14 Insurance Code, to act as the agent for any fire, life,
15 or other insurance company authorized by the State of
16 Illinois, by soliciting and selling insurance and
17 collecting premiums on policies issued by such company;
18 and may receive for services so rendered such fees or
19 commissions as may be agreed upon between the said
20 savings bank and the insurance company for which it may
21 act as agent; provided, however, that no such savings
22 bank shall in any case assume or guarantee the payment of
23 any premium on insurance policies issued through its
24 agency by its principal; and provided further, that the
25 savings bank shall not guarantee the truth of any
26 statement made by an assured in filing his application
27 for insurance.

28 (25) To become a member of the Federal Home Loan
29 Bank and to have the powers granted to a savings
30 association organized under the Illinois Savings and Loan
31 Act of 1985 or the laws of the United States, subject to
32 regulations of the Commissioner.

33 (26) To offer any product or service that is at the
34 time authorized or permitted to a bank by applicable law,

1 but subject always to the same limitations and
2 restrictions that are applicable to the bank for the
3 product or service by such applicable law and subject to
4 the applicable provisions of the Financial Institutions
5 Insurance Sales Law and rules of the Commissioner.

6 (b) If this Act or the regulations adopted under this
7 Act fail to provide specific guidance in matters of corporate
8 governance, the provisions of the Business Corporation Act of
9 1983 may be used, or if the savings bank is a limited
10 liability company, the provisions of the Limited Liability
11 Company shall be used.

12 (c) A savings bank may be organized as a limited
13 liability company, may convert to a limited liability
14 company, or may merge with and into a limited liability
15 company, under the applicable laws of this State and of the
16 United States, including any rules promulgated thereunder. A
17 savings bank organized as a limited liability company shall
18 be subject to the provisions of the Limited Liability Company
19 Act in addition to this Act, provided that if a provision of
20 the Limited Liability Company Act conflicts with a provision
21 of this Act or with any rule of the Commissioner, the
22 provision of this Act or the rule of the Commissioner shall
23 apply.

24 Any filing required to be made under the Limited
25 Liability Company Act shall be made exclusively with the
26 Commissioner, and the Commissioner shall possess the
27 exclusive authority to regulate the savings bank as provided
28 in this Act.

29 Any organization as, conversion to, and merger with or
30 into a limited liability company shall be subject to the
31 prior approval of the Commissioner.

32 A savings bank that is a limited liability company shall
33 be subject to all of the provisions of this Act in the same
34 manner as a savings bank that is organized in stock form.

1 The Commissioner may promulgate rules to ensure that a
2 savings bank that is a limited liability company (i) is
3 operating in a safe and sound manner and (ii) is subject to
4 the Commissioner's authority in the same manner as a savings
5 bank that is organized in stock form.

6 (Source: P.A. 91-97, eff. 7-9-99; 91-357, eff. 7-29-99;
7 92-483, eff. 8-23-01.)

8 Section 830. The Residential Mortgage License Act of
9 1987 is amended by changing Sections 1-4, 2-4, 2-6, 3-2, 3-5,
10 and 4-5 and by adding Sections 4-8.1, 4-8.2, and Article 7 as
11 follows:

12 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

13 Sec. 1-4. Definitions.

14 (a) "Residential real property" or "residential real
15 estate" shall mean real property located in this State
16 improved by a one-to-four family dwelling used or occupied,
17 wholly or partly, as the home or residence of one or more
18 persons and may refer, subject to regulations of the
19 Commissioner, to unimproved real property upon which those
20 kinds dwellings are to be constructed.

21 (b) "Making a residential mortgage loan" or "funding a
22 residential mortgage loan" shall mean for compensation or
23 gain, either directly or indirectly, advancing funds or
24 making a commitment to advance funds to a loan applicant for
25 a residential mortgage loan.

26 (c) "Soliciting, processing, placing, or negotiating a
27 residential mortgage loan" shall mean for compensation or
28 gain, either directly or indirectly, accepting or offering to
29 accept an application for a residential mortgage loan,
30 assisting or offering to assist in the processing of an
31 application for a residential mortgage loan on behalf of a
32 borrower, or negotiating or offering to negotiate the terms

1 or conditions of a residential mortgage loan with a lender on
2 behalf of a borrower including, but not limited to, the
3 submission of credit packages for the approval of lenders,
4 the preparation of residential mortgage loan closing
5 documents, including a closing in the name of a broker.

6 (d) "Exempt person or entity" shall mean the following:

7 (1) (i) Any banking organization or foreign banking
8 corporation licensed by the Illinois Commissioner of
9 Banks and Real Estate or the United States Comptroller of
10 the Currency to transact business in this State; (ii) any
11 national bank, federally chartered savings and loan
12 association, federal savings bank, federal credit union;
13 (iii) any pension trust, bank trust, or bank trust
14 company; (iv) any savings and loan association, savings
15 bank, or credit union organized under the laws of this or
16 any other state; (v) any Illinois Consumer Installment
17 Loan Act licensee; (vi) any insurance company authorized
18 to transact business in this State; (vii) any entity
19 engaged solely in commercial mortgage lending; (viii) any
20 service corporation of a savings and loan association or
21 savings bank organized under the laws of this State or
22 the service corporation of a federally chartered savings
23 and loan association or savings bank having its principal
24 place of business in this State, other than a service
25 corporation licensed or entitled to reciprocity under the
26 Real Estate License Act of 2000; or (ix) any first tier
27 subsidiary of a bank, the charter of which is issued
28 under the Illinois Banking Act by the Illinois
29 Commissioner of Banks and Real Estate, or the first tier
30 subsidiary of a bank chartered by the United States
31 Comptroller of the Currency and that has its principal
32 place of business in this State, provided that the first
33 tier subsidiary is regularly examined by the Illinois
34 Commissioner of Banks and Real Estate or the Comptroller

1 of the Currency, or a consumer compliance examination is
2 regularly conducted by the Federal Reserve Board.

3 (1.5) Any employee of a person or entity mentioned
4 in item (1) of this subsection.

5 (2) Any person or entity that either (i) has a
6 physical presence in Illinois or (ii) does not originate
7 mortgage loans in the ordinary course of business making
8 or acquiring residential mortgage loans with his or her
9 or its own funds for his or her or its own investment
10 without intent to make, acquire, or resell more than 10
11 residential mortgage loans in any one calendar year.

12 (3) Any person employed by a licensee to assist in
13 the performance of the activities regulated by this Act
14 who is compensated in any manner by only one licensee.

15 (4) Any person licensed pursuant to the Real Estate
16 License Act of 2000, who engages only in the taking of
17 applications and credit and appraisal information to
18 forward to a licensee or an exempt entity under this Act
19 and who is compensated by either a licensee or an exempt
20 entity under this Act, but is not compensated by either
21 the buyer (applicant) or the seller.

22 (5) Any individual, corporation, partnership, or
23 other entity that originates, services, or brokers
24 residential mortgage loans, as these activities are
25 defined in this Act, and who or which receives no
26 compensation for those activities, subject to the
27 Commissioner's regulations with regard to the nature and
28 amount of compensation.

29 (6) A person who prepares supporting documentation
30 for a residential mortgage loan application taken by a
31 licensee and performs ministerial functions pursuant to
32 specific instructions of the licensee who neither
33 requires nor permits the preparer to exercise his or her
34 discretion or judgment; provided that this activity is

1 engaged in pursuant to a binding, written agreement
2 between the licensee and the preparer that:

3 (A) holds the licensee fully accountable for
4 the preparer's action; and

5 (B) otherwise meets the requirements of this
6 Section and this Act, does not undermine the
7 purposes of this Act, and is approved by the
8 Commissioner.

9 (e) "Licensee" or "residential mortgage licensee" shall
10 mean a person, partnership, association, corporation, or any
11 other entity who or which is licensed pursuant to this Act to
12 engage in the activities regulated by this Act.

13 (f) "Mortgage loan" "residential mortgage loan" or "home
14 mortgage loan" shall mean a loan to or for the benefit of any
15 natural person made primarily for personal, family, or
16 household use, primarily secured by either a mortgage on
17 residential real property or certificates of stock or other
18 evidence of ownership interests in and proprietary leases
19 from, corporations, partnerships, or limited liability
20 companies formed for the purpose of cooperative ownership of
21 residential real property, all located in Illinois.

22 (g) "Lender" shall mean any person, partnership,
23 association, corporation, or any other entity who either
24 lends or invests money in residential mortgage loans.

25 (h) "Ultimate equitable owner" shall mean a person who,
26 directly or indirectly, owns or controls an ownership
27 interest in a corporation, foreign corporation, alien
28 business organization, trust, or any other form of business
29 organization regardless of whether the person owns or
30 controls the ownership interest through one or more persons
31 or one or more proxies, powers of attorney, nominees,
32 corporations, associations, partnerships, trusts, joint stock
33 companies, or other entities or devices, or any combination
34 thereof.

1 (i) "Residential mortgage financing transaction" shall
2 mean the negotiation, acquisition, sale, or arrangement for
3 or the offer to negotiate, acquire, sell, or arrange for, a
4 residential mortgage loan or residential mortgage loan
5 commitment.

6 (j) "Personal residence address" shall mean a street
7 address and shall not include a post office box number.

8 (k) "Residential mortgage loan commitment" shall mean a
9 contract for residential mortgage loan financing.

10 (l) "Party to a residential mortgage financing
11 transaction" shall mean a borrower, lender, or loan broker in
12 a residential mortgage financing transaction.

13 (m) "Payments" shall mean payment of all or any of the
14 following: principal, interest and escrow reserves for taxes,
15 insurance and other related reserves, and reimbursement for
16 lender advances.

17 (n) "Commissioner" shall mean the Commissioner of Banks
18 and Real Estate or a person authorized by the Commissioner,
19 the Office of Banks and Real Estate Act, or this Act to act
20 in the Commissioner's stead.

21 (o) "Loan brokering", "brokering", or "brokerage
22 service" shall mean the act of helping to obtain from another
23 entity, for a borrower, a loan secured by residential real
24 estate situated in Illinois or assisting a borrower in
25 obtaining a loan secured by residential real estate situated
26 in Illinois in return for consideration to be paid by either
27 the borrower or the lender including, but not limited to,
28 contracting for the delivery of residential mortgage loans to
29 a third party lender and soliciting, processing, placing, or
30 negotiating residential mortgage loans.

31 (p) "Loan broker" or "broker" shall mean a person,
32 partnership, association, corporation, or limited liability
33 company, other than those persons, partnerships,
34 associations, corporations, or limited liability companies

1 exempted from licensing pursuant to Section 1-4, subsection
2 (d), of this Act, who performs the activities described in
3 subsections (c) and (o) of this Section.

4 (q) "Servicing" shall mean the collection or remittance
5 for or the right or obligation to collect or remit for any
6 lender, noteowner, noteholder, or for a licensee's own
7 account, of payments, interests, principal, and trust items
8 such as hazard insurance and taxes on a residential mortgage
9 loan in accordance with the terms of the residential mortgage
10 loan; and includes loan payment follow-up, delinquency loan
11 follow-up, loan analysis and any notifications to the
12 borrower that are necessary to enable the borrower to keep
13 the loan current and in good standing.

14 (r) "Full service office" shall mean office and staff in
15 Illinois reasonably adequate to handle efficiently
16 communications, questions, and other matters relating to any
17 application for, or an existing home mortgage secured by
18 residential real estate situated in Illinois with respect to
19 which the licensee is brokering, funding originating,
20 purchasing, or servicing. The management and operation of
21 each full service office must include observance of good
22 business practices such as adequate, organized, and accurate
23 books and records; ample phone lines, hours of business,
24 staff training and supervision, and provision for a mechanism
25 to resolve consumer inquiries, complaints, and problems. The
26 Commissioner shall issue regulations with regard to these
27 requirements and shall include an evaluation of compliance
28 with this Section in his or her periodic examination of each
29 licensee.

30 (s) "Purchasing" shall mean the purchase of conventional
31 or government-insured mortgage loans secured by residential
32 real estate situated in Illinois from either the lender or
33 from the secondary market.

34 (t) "Borrower" shall mean the person or persons who seek

1 the services of a loan broker, originator, or lender.

2 (u) "Originating" shall mean the issuing of commitments
3 for and funding of residential mortgage loans.

4 (v) "Loan brokerage agreement" shall mean a written
5 agreement in which a broker or loan broker agrees to do
6 either of the following:

7 (1) obtain a residential mortgage loan for the
8 borrower or assist the borrower in obtaining a
9 residential mortgage loan; or

10 (2) consider making a residential mortgage loan to
11 the borrower.

12 (w) "Advertisement" shall mean the attempt by
13 publication, dissemination, or circulation to induce,
14 directly or indirectly, any person to enter into a
15 residential mortgage loan agreement or residential mortgage
16 loan brokerage agreement relative to a mortgage secured by
17 residential real estate situated in Illinois.

18 (x) "Residential Mortgage Board" shall mean the
19 Residential Mortgage Board created in Section 1-5 of this
20 Act.

21 (y) "Government-insured mortgage loan" shall mean any
22 mortgage loan made on the security of residential real estate
23 insured by the Department of Housing and Urban Development or
24 Farmers Home Loan Administration, or guaranteed by the
25 Veterans Administration.

26 (z) "Annual audit" shall mean a certified audit of the
27 licensee's books and records and systems of internal control
28 performed by a certified public accountant in accordance with
29 generally accepted accounting principles and generally
30 accepted auditing standards.

31 (aa) "Financial institution" shall mean a savings and
32 loan association, savings bank, credit union, or a bank
33 organized under the laws of Illinois or a savings and loan
34 association, savings bank, credit union or a bank organized

1 under the laws of the United States and headquartered in
2 Illinois.

3 (bb) "Escrow agent" shall mean a third party, individual
4 or entity charged with the fiduciary obligation for holding
5 escrow funds on a residential mortgage loan pending final
6 payout of those funds in accordance with the terms of the
7 residential mortgage loan.

8 (cc) "Net worth" shall have the meaning ascribed thereto
9 in Section 3-5 of this Act.

10 (dd) "Affiliate" shall mean:

11 (1) any entity that directly controls or is
12 controlled by the licensee and any other company that is
13 directly affecting activities regulated by this Act that
14 is controlled by the company that controls the licensee;

15 (2) any entity:

16 (A) that is controlled, directly or
17 indirectly, by a trust or otherwise, by or for the
18 benefit of shareholders who beneficially or
19 otherwise control, directly or indirectly, by trust
20 or otherwise, the licensee or any company that
21 controls the licensee; or

22 (B) a majority of the directors or trustees of
23 which constitute a majority of the persons holding
24 any such office with the licensee or any company
25 that controls the licensee;

26 (3) any company, including a real estate investment
27 trust, that is sponsored and advised on a contractual
28 basis by the licensee or any subsidiary or affiliate of
29 the licensee.

30 The Commissioner may define by rule and regulation any
31 terms used in this Act for the efficient and clear
32 administration of this Act.

33 (ee) "First tier subsidiary" shall be defined by
34 regulation incorporating the comparable definitions used by

1 the Office of the Comptroller of the Currency and the
2 Illinois Commissioner of Banks and Real Estate.

3 (ff) "Gross delinquency rate" means the quotient
4 determined by dividing (1) the sum of (i) the number of
5 government-insured residential mortgage loans funded or
6 purchased by a licensee in the preceding calendar year that
7 are delinquent and (ii) the number of conventional
8 residential mortgage loans funded or purchased by the
9 licensee in the preceding calendar year that are delinquent
10 by (2) the sum of (i) the number of government-insured
11 residential mortgage loans funded or purchased by the
12 licensee in the preceding calendar year and (ii) the number
13 of conventional residential mortgage loans funded or
14 purchased by the licensee in the preceding calendar year.

15 (gg) "Delinquency rate factor" means the factor set by
16 rule of the Commissioner that is multiplied by the average
17 gross delinquency rate of licensees, determined annually for
18 the immediately preceding calendar year, for the purpose of
19 determining which licensees shall be examined by the
20 Commissioner pursuant to subsection (b) of Section 4-8 of
21 this Act.

22 (hh) "Loan originator" means any natural person who, for
23 compensation or in the expectation of compensation, either
24 directly or indirectly makes, offers to make, solicits,
25 places, or negotiates a residential mortgage loan.

26 (Source: P.A. 90-772, eff. 1-1-99; 91-245, eff. 12-31-99.)

27 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

28 Sec. 2-4. Averments of Licensee. Each application for
29 license or for the renewal of a license shall be accompanied
30 by the following averments stating that the applicant:

31 (a) Will maintain at least one full service office
32 within the State of Illinois pursuant to Section 3-4 of this
33 Act;

1 (b) Will maintain staff reasonably adequate to meet the
2 requirements of Section 3-4 of this Act;

3 (c) Will keep and maintain for 36 months the same
4 written records as required by the federal Equal Credit
5 Opportunity Act, and any other information required by
6 regulations of the Commissioner regarding any home mortgage
7 in the course of the conduct of its residential mortgage
8 business;

9 (d) Will file with the Commissioner, when due, any
10 report or reports which it is required to file under any of
11 the provisions of this Act;

12 (e) Will not engage, whether as principal or agent, in
13 the practice of rejecting residential mortgage applications
14 without reasonable cause, or varying terms or application
15 procedures without reasonable cause, for home mortgages on
16 real estate within any specific geographic area from the
17 terms or procedures generally provided by the licensee within
18 other geographic areas of the State;

19 (f) Will not engage in fraudulent home mortgage
20 underwriting practices;

21 (g) Will not make payment, whether directly or
22 indirectly, of any kind to any in house or fee appraiser of
23 any government or private money lending agency with which an
24 application for a home mortgage has been filed for the
25 purpose of influencing the independent judgment of the
26 appraiser with respect to the value of any real estate which
27 is to be covered by such home mortgage;

28 (h) Has filed tax returns (State and Federal) for the
29 past 3 years or filed with the Commissioner an accountant's
30 or attorney's statement as to why no return was filed;

31 (i) Will not engage in any discrimination or redlining
32 activities prohibited by Section 3-8 of this Act;

33 (j) Will not knowingly make any false promises likely to
34 influence or persuade, or pursue a course of

1 misrepresentation and false promises through agents,
2 solicitors, advertising or otherwise;

3 (k) Will not knowingly misrepresent, circumvent or
4 conceal, through whatever subterfuge or device, any of the
5 material particulars or the nature thereof, regarding a
6 transaction to which it is a party to the injury of another
7 party thereto;

8 (l) Will disburse funds in accordance with its
9 agreements;

10 (m) Has not committed a crime against the law of this
11 State, any other state or of the United States, involving
12 moral turpitude, fraudulent or dishonest dealing, and that no
13 final judgment has been entered against it in a civil action
14 upon grounds of fraud, misrepresentation or deceit which has
15 not been previously reported to the Commissioner;

16 (n) Will account or deliver to any person any personal
17 property such as money, fund, deposit, check, draft,
18 mortgage, other document or thing of value, which has come
19 into its possession, and which is not its property, or which
20 it is not in law or equity entitled to retain under the
21 circumstances, at the time which has been agreed upon or is
22 required by law, or, in the absence of a fixed time, upon
23 demand of the person entitled to such accounting and
24 delivery;

25 (o) Has not engaged in any conduct which would be cause
26 for denial of a license;

27 (p) Has not become insolvent;

28 (q) Has not submitted an application for a license under
29 this Act which contains a material misstatement;

30 (r) Has not demonstrated by course of conduct,
31 negligence or incompetence in performing any act for which it
32 is required to hold a license under this Act;

33 (s) Will advise the Commissioner in writing of any
34 changes to the information submitted on the most recent

1 application for license within 30 days of said change. The
2 written notice must be signed in the same form as the
3 application for license being amended;

4 (t) Will comply with the provisions of this Act, or with
5 any lawful order, rule or regulation made or issued under the
6 provisions of this Act;

7 (u) Will submit to periodic examination by the
8 Commissioner as required by this Act;

9 (v) Will advise the Commissioner in writing of judgments
10 entered against, and bankruptcy petitions by, the license
11 applicant within 5 days of occurrence;

12 (w) Will advise the Commissioner in writing within 30
13 days when the license applicant requests a licensee under
14 this Act to repurchase a loan, and the circumstances
15 therefor; and

16 (x) Will advise the Commissioner in writing within 30
17 days when the license applicant is requested by another
18 entity to repurchase a loan, and the circumstances therefor.

19 (y) Will at all times act in a manner consistent with
20 subsections (a) and (b) of Section 1-2 of this Act.

21 (x) Will not knowingly hire or employ a loan originator
22 who is not registered with the Commissioner as required under
23 Section 7-1 of this Act.

24 A licensee who fails to fulfill obligations of an
25 averment, to comply with averments made, or otherwise
26 violates any of the averments made under this Section shall
27 be subject to the penalties in Section 4-5 of this Act.

28 (Source: P.A. 90-301, eff. 8-1-97.)

29 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

30 Sec. 2-6. License issuance and renewal; fee.

31 (a) Beginning May 1, 1992, licenses issued before
32 January 1, 1988, shall be renewed every 2 years on May 1.
33 Beginning May 1, 1992, licenses issued on or after January 1,

1 1988, shall be renewed every 2 years on the anniversary of
2 the date of the issuance of the original license. Licenses
3 issued for first time applicants on or after May 1, 1992,
4 shall be renewed on the first anniversary of their issuance
5 and every 2 years thereafter. Properly completed renewal
6 application forms and filing fees must be received by the
7 Commissioner 60 45 days prior to the renewal date.

8 (b) It shall be the responsibility of each licensee to
9 accomplish renewal of its license; failure of the licensee to
10 receive renewal forms absent a request sent by certified mail
11 for such forms will not waive said responsibility. Failure by
12 a licensee to submit a properly completed renewal application
13 form and fees in a timely fashion, absent a written extension
14 from the Commissioner, will result in the assessment of
15 additional fees, as follows:

16 (1) A fee of \$500 will be assessed to the licensee
17 30 days after the proper renewal date and \$1,000 each
18 month thereafter, until the license is either renewed or
19 expires pursuant to Section 2-6, subsections (c) and (d),
20 of this Act.

21 (2) Such fee will be assessed without prior notice
22 to the licensee, but will be assessed only in cases
23 wherein the Commissioner has in his or her possession
24 documentation of the licensee's continuing activity for
25 which the unrenewed license was issued.

26 (c) A license which is not renewed by the date required
27 in this Section shall automatically become inactive. No
28 activity regulated by this Act shall be conducted by the
29 licensee when a license becomes inactive. An inactive
30 license may be reactivated by filing a completed reactivation
31 application with the Commissioner, payment of the renewal
32 fee, and payment of a reactivation fee equal to the renewal
33 fee.

34 (d) A license which is not renewed within one year of

1 becoming inactive shall expire.

2 (e) A licensee ceasing an activity or activities
3 regulated by this Act and desiring to no longer be licensed
4 shall so inform the Commissioner in writing and, at the same
5 time, convey the license and all other symbols or indicia of
6 licensure. The licensee shall include a plan for the
7 withdrawal from regulated business, including a timetable for
8 the disposition of the business. Upon receipt of such
9 written notice, the Commissioner shall issue a certified
10 statement canceling the license.

11 (Source: P.A. 90-301, eff. 8-1-97.)

12 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

13 Sec. 3-2. Annual audit.

14 (a) At the licensee's fiscal year-end, but in no case
15 more than 12 months after the last audit conducted pursuant
16 to this Section, except as otherwise provided in this
17 Section, it shall be mandatory for each residential mortgage
18 licensee to cause its books and accounts to be audited by a
19 certified public accountant not connected with such licensee.
20 The books and records of all licensees under this Act shall
21 be maintained on an accrual basis. The audit must be
22 sufficiently comprehensive in scope to permit the expression
23 of an opinion on the financial statements, which must be
24 prepared in accordance with generally accepted accounting
25 principles, and must be performed in accordance with
26 generally accepted auditing standards. Notwithstanding the
27 requirements of this subsection, a licensee that is a first
28 tier subsidiary may submit audited consolidated financial
29 statements of its parent as long as the consolidated
30 statements are supported by consolidating statements. The
31 licensee's chief financial officer shall attest to the
32 licensee's financial statements disclosed in the
33 consolidating statements.

1 (b) As used herein, the term "expression of opinion"
2 includes either (1) an unqualified opinion, (2) a qualified
3 opinion, (3) a disclaimer of opinion, or (4) an adverse
4 opinion.

5 (c) If a qualified or adverse opinion is expressed or if
6 an opinion is disclaimed, the reasons therefore must be fully
7 explained. An opinion, qualified as to a scope limitation,
8 shall not be acceptable.

9 (d) The most recent audit report shall be filed with the
10 Commissioner within 90 days after the end of the licensee's
11 fiscal year at--the--time--of--the--annual--license--renewal
12 payment. The report filed with the Commissioner shall be
13 certified by the certified public accountant conducting the
14 audit. The Commissioner may promulgate rules regarding late
15 audit reports.

16 (e) If any licensee required to make an audit shall fail
17 to cause an audit to be made, the Commissioner shall cause
18 the same to be made by a certified public accountant at the
19 licensee's expense. The Commissioner shall select such
20 certified public accountant by advertising for bids or by
21 such other fair and impartial means as he or she establishes
22 by regulation.

23 (f) In lieu of the audit required by this Section, the
24 Commissioner may accept any audit made in conformance with
25 the audit requirements of the U.S. Department of Housing and
26 Urban Development.

27 (g) With respect to licensees who solely broker
28 residential mortgage loans as defined in subsection (o) of
29 Section 1-4, instead of the audit required by this Section,
30 the Commissioner may accept compilation financial statements
31 prepared at least every 12 months, and the compilation
32 financial statement must be prepared by an independent
33 certified public accountant licensed under the Illinois
34 Public Accounting Act with full disclosure in accordance with

1 generally accepted accounting principals and must shall be
2 submitted within 90 days after the end of the licensee's
3 fiscal year at--the--time--of--the--annual--license--renewal
4 payment. If a licensee under this Section fails to file a
5 compilation as required, the Commissioner shall cause an
6 audit of the licensee's books and accounts to be made by a
7 certified public accountant at the licensee's expense. The
8 Commissioner shall select the certified public accountant by
9 advertising for bids or by such other fair and impartial
10 means as he or she establishes by rule. A licensee who files
11 false or misleading compilation financial statements is
12 guilty of a business offense and shall be fined not less than
13 \$5,000.

14 (h) The workpapers of the certified public accountants
15 employed by each licensee for purposes of this Section are to
16 be made available to the Commissioner or the Commissioner's
17 designee upon request and may be reproduced by the
18 Commissioner or the Commissioner's designee to enable to the
19 Commissioner to carry out the purposes of this Act.

20 (i) Notwithstanding any other provision of this Section,
21 if a licensee relying on subsection (g) of this Section
22 causes its books to be audited at any other time or causes
23 its financial statements to be reviewed, a complete copy of
24 the audited or reviewed financial statements shall be
25 delivered to the Commissioner at the time of the annual
26 license renewal payment following receipt by the licensee of
27 the audited or reviewed financial statements. All workpapers
28 shall be made available to the Commissioner upon request.
29 The financial statements and workpapers may be reproduced by
30 the Commissioner or the Commissioner's designee to carry out
31 the purposes of this Act.

32 (Source: P.A. 89-74, eff. 6-30-95; 89-355, eff. 8-17-95;
33 90-772, eff. 1-1-99.)

1 (205 ILCS 635/3-5) (from Ch. 17, par. 2323-5)

2 Sec. 3-5. Net worth requirement. A licensee that holds a
3 license on the effective date of this amendatory Act of the
4 93rd General Assembly Every-licensee shall have and maintain
5 a net worth of not less than \$100,000; however, no later than
6 2 years after the effective date of this amendatory Act of
7 the 93rd General Assembly, the licensee must maintain a net
8 worth of not less than \$150,000. A licensee that first
9 obtains a license after the effective date of this amendatory
10 Act of the 93rd General Assembly must have and maintain a net
11 worth of not less than \$150,000. Notwithstanding other
12 requirements of this Section, the net worth requirement for a
13 residential mortgage licensee ~~lic~~ensees whose only licensable
14 activity is that of brokering residential mortgage loans and
15 that holds a license on the effective date of this amendatory
16 Act of the 93rd General Assembly shall be \$35,000; however,
17 no later than 2 years after the effective date of this
18 amendatory Act of the 93rd General Assembly, the licensee
19 must maintain a net worth of not less than \$50,000. Such a
20 licensee that first obtains a license after the effective
21 date of this amendatory Act of the 93rd General Assembly must
22 have and maintain a net worth of not less than \$50,000. Net
23 worth shall be evidenced by a balance sheet prepared by a
24 certified public accountant in accordance with generally
25 accepted accounting principles and generally accepted
26 auditing standards or by the compilation financial statements
27 authorized under subsection (g) of Section 3-2. The
28 Commissioner may promulgate rules with respect to net worth
29 definitions and requirements for residential mortgage
30 licensees as necessary to accomplish the purposes of this
31 Act. In lieu of the net worth requirement established by
32 this Section, the Commissioner may accept evidence of
33 conformance by the licensee with the net worth requirements
34 of the United States Department of Housing and Urban

1 Development.

2 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

3 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

4 Sec. 4-5. Suspension, revocation of licenses; fines.

5 (a) Upon written notice to a licensee, the Commissioner
6 may suspend or revoke any license issued pursuant to this Act
7 if he or she shall make a finding of one or more of the
8 following in the notice that:

9 (1) Through separate acts or an act or a course of
10 conduct, the licensee has violated any provisions of this
11 Act, any rule or regulation promulgated by the
12 Commissioner or of any other law, rule or regulation of
13 this State or the United States.

14 (2) Any fact or condition exists which, if it had
15 existed at the time of the original application for such
16 license would have warranted the Commissioner in refusing
17 originally to issue such license.

18 (3) If a licensee is other than an individual, any
19 ultimate equitable owner, officer, director, or member of
20 the licensed partnership, association, corporation, or
21 other entity has so acted or failed to act as would be
22 cause for suspending or revoking a license to that party
23 as an individual.

24 (b) No license shall be suspended or revoked, except as
25 provided in this Section, nor shall any licensee be fined
26 without notice of his or her right to a hearing as provided
27 in Section 4-12 of this Act.

28 (c) The Commissioner, on good cause shown that an
29 emergency exists, may suspend any license for a period not
30 exceeding 180 days, pending investigation. Upon a showing
31 that a licensee has failed to meet the experience or
32 educational requirements of Section 2-2 or the requirements
33 of subsection (g) of Section 3-2, the Commissioner shall

1 suspend, prior to hearing as provided in Section 4-12, the
2 license until those requirements have been met.

3 (d) The provisions of subsection (e) of Section 2-6 of
4 this Act shall not affect a licensee's civil or criminal
5 liability for acts committed prior to surrender of a license.

6 (e) No revocation, suspension or surrender of any
7 license shall impair or affect the obligation of any
8 pre-existing lawful contract between the licensee and any
9 person.

10 (f) Every license issued under this Act shall remain in
11 force and effect until the same shall have expired without
12 renewal, have been surrendered, revoked or suspended in
13 accordance with the provisions of this Act, but the
14 Commissioner shall have authority to reinstate a suspended
15 license or to issue a new license to a licensee whose license
16 shall have been revoked if no fact or condition then exists
17 which would have warranted the Commissioner in refusing
18 originally to issue such license under this Act.

19 (g) Whenever the Commissioner shall revoke or suspend a
20 license issued pursuant to this Act or fine a licensee under
21 this Act, he or she shall forthwith execute in duplicate a
22 written order to that effect. The Commissioner shall publish
23 notice of such order in the Illinois Register and a newspaper
24 of general circulation in the county in which the license is
25 located and shall forthwith serve a copy of such order upon
26 the licensee. Any such order may be reviewed in the manner
27 provided by Section 4-12 of this Act.

28 (h) When the Commissioner finds any person in violation
29 of the grounds set forth in subsection (i), he or she may
30 enter an order imposing one or more of the following
31 penalties:

32 (1) Revocation of license;

33 (2) Suspension of a license subject to
34 reinstatement upon satisfying all reasonable conditions

1 the Commissioner may specify;

2 (3) Placement of the licensee or applicant on
3 probation for a period of time and subject to all
4 reasonable conditions as the Commissioner may specify;

5 (4) Issuance of a reprimand;

6 (5) Imposition of a fine not to exceed \$25,000
7 \$10,000 for each count of separate offense; and

8 (6) Denial of a license.

9 (i) The following acts shall constitute grounds for
10 which the disciplinary actions specified in subsection (h)
11 above may be taken:

12 (1) Being convicted or found guilty, regardless of
13 pendency of an appeal, of a crime in any jurisdiction
14 which involves fraud, dishonest dealing, or any other act
15 of moral turpitude;

16 (2) Fraud, misrepresentation, deceit or negligence
17 in any mortgage financing transaction;

18 (3) A material or intentional misstatement of fact
19 on an initial or renewal application;

20 (4) Failure to follow the Commissioner's
21 regulations with respect to placement of funds in escrow
22 accounts;

23 (5) Insolvency or filing under any provision of the
24 Bankruptcy Code as a debtor;

25 (6) Failure to account or deliver to any person any
26 property such as any money, fund, deposit, check, draft,
27 mortgage, or other document or thing of value, which has
28 come into his or her hands and which is not his or her
29 property or which he or she is not in law or equity
30 entitled to retain, under the circumstances and at the
31 time which has been agreed upon or is required by law or,
32 in the absence of a fixed time, upon demand of the person
33 entitled to such accounting and delivery;

34 (7) Failure to disburse funds in accordance with

1 agreements;

2 (8) Any misuse, misapplication, or misappropriation
3 of trust funds or escrow funds;

4 (9) Having a license, or the equivalent, to
5 practice any profession or occupation revoked, suspended,
6 or otherwise acted against, including the denial of
7 licensure by a licensing authority of this State or
8 another state, territory or country for fraud, dishonest
9 dealing or any other act of moral turpitude;

10 (10) Failure to issue a satisfaction of mortgage
11 when the residential mortgage has been executed and
12 proceeds were not disbursed to the benefit of the
13 mortgagor and when the mortgagor has fully paid
14 licensee's costs and commission;

15 (11) Failure to comply with any order of the
16 Commissioner or rule made or issued under the provisions
17 of this Act;

18 (12) Engaging in activities regulated by this Act
19 without a current, active license unless specifically
20 exempted by this Act;

21 (13) Failure to pay in a timely manner any fee,
22 charge or fine under this Act;

23 (14) Failure to maintain, preserve, and keep
24 available for examination, all books, accounts or other
25 documents required by the provisions of this Act and the
26 rules of the Commissioner;

27 (15) Refusal to permit an investigation or
28 examination of the licensee's or its affiliates' books
29 and records or refusal to comply with the Commissioner's
30 subpoena or subpoena duces tecum;

31 (16) A pattern of substantially underestimating the
32 maximum closing costs;

33 (17) Failure to comply with or violation of any
34 provision of this Act.

1 (j) A licensee shall be subject to the disciplinary
2 actions specified in this Act for violations of subsection
3 (i) by any officer, director, shareholder, joint venture,
4 partner, ultimate equitable owner, or employee of the
5 licensee.

6 (k) Such licensee shall be subject to suspension or
7 revocation for employee actions only if there is a pattern of
8 repeated violations by employees or the licensee has
9 knowledge of the violations.

10 (l) Procedure for surrender of license:

11 (1) The Commissioner may, after 10 days notice by
12 certified mail to the licensee at the address set forth
13 on the license, stating the contemplated action and in
14 general the grounds therefor and the date, time and place
15 of a hearing thereon, and after providing the licensee
16 with a reasonable opportunity to be heard prior to such
17 action, fine such licensee an amount not exceeding
18 \$10,000 per violation, or revoke or suspend any license
19 issued hereunder if he or she finds that:

20 (i) The licensee has failed to comply with any
21 provision of this Act or any order, decision,
22 finding, rule, regulation or direction of the
23 Commissioner lawfully made pursuant to the authority
24 of this Act; or

25 (ii) Any fact or condition exists which, if it
26 had existed at the time of the original application
27 for the license, clearly would have warranted the
28 Commissioner in refusing to issue the license.

29 (2) Any licensee may surrender a license by
30 delivering to the Commissioner written notice that he or
31 she thereby surrenders such license, but surrender shall
32 not affect the licensee's civil or criminal liability for
33 acts committed prior to surrender or entitle the licensee
34 to a return of any part of the license fee.

1 (Source: P.A. 89-355, eff. 8-17-95.)

2 (205 ILCS 635/4-8.1 new)

3 Sec. 4-8.1. Confidential information. In hearings
 4 conducted under this Act, information presented into evidence
 5 that was acquired by the licensee when serving any individual
 6 in connection with a residential mortgage, including all
 7 financial information of the individual, shall be deemed
 8 strictly confidential and shall be made available only as
 9 part of the record of a hearing under this Act or otherwise
 10 (i) when the record is required, in its entirety, for
 11 purposes of judicial review or (ii) upon the express written
 12 consent of the individual served, or in the case of his or
 13 her death or disability, the consent of his or her personal
 14 representative.

15 (205 ILCS 635/4-8.2 new)

16 Sec. 4-8.2. Reports of violations. Any person licensed
 17 under this Act or any other person may report to the
 18 Commissioner any information to show that a person subject to
 19 this Act is or may be in violation of this Act.

20 (205 ILCS 635/Art. VII heading new)

21 ARTICLE VII. REGISTRATION OF LOAN ORIGINATORS

22 (205 ILCS 635/7-1 new)

23 Sec. 7-1. Registration required; rules and regulations.
 24 Beginning 6 months after the effective date of this
 25 amendatory Act of the 93rd General Assembly, it is unlawful
 26 for any natural person to act or assume to act as a loan
 27 originator, as defined in subsection (hh) of Section 1-4,
 28 without being registered with the Commissioner unless the
 29 natural person is exempt under subsection (d) of Section 1-4
 30 of this Act. The Commissioner shall promulgate rules

1 prescribing the criteria for the registration and regulation
 2 of loan originators, including but not limited to,
 3 qualifications, fees, examination, education, supervision,
 4 and enforcement.

5 Section 835. The Limited Liability Company Act is
 6 amended by changing Sections 1-25, 5-5, 5-55, 37-5, and 37-35
 7 as follows:

8 (805 ILCS 180/1-25)

9 Sec. 1-25. Nature of business. A limited liability
 10 company may be formed for any lawful purpose or business
 11 except:

12 (1) (Blank) banking~~---exclusive--of--fiduciaries~~
 13 ~~organized-for-the--purpose--of--accepting--and--executing~~
 14 ~~trusts;~~

15 (2) insurance unless, for the purpose of carrying
 16 on business as a member of a group including incorporated
 17 and individual unincorporated underwriters, the Director
 18 of Insurance finds that the group meets the requirements
 19 of subsection (3) of Section 86 of the Illinois Insurance
 20 Code and the limited liability company, if insolvent, is
 21 subject to liquidation by the Director of Insurance under
 22 Article XIII of the Illinois Insurance Code;

23 (3) the practice of dentistry unless all the
 24 members and managers are licensed as dentists under the
 25 Illinois Dental Practice Act; or

26 (4) the practice of medicine unless all the
 27 managers, if any, are licensed to practice medicine under
 28 the Medical Practice Act of 1987 and any of the following
 29 conditions apply:

30 (A) the member or members are licensed to
 31 practice medicine under the Medical Practice Act of
 32 1987; or

1 (B) the member or members are a registered
2 medical corporation or corporations organized
3 pursuant to the Medical Corporation Act; or

4 (C) the member or members are a professional
5 corporation organized pursuant to the Professional
6 Service Corporation Act of physicians licensed to
7 practice medicine in all its branches; or

8 (D) the member or members are a medical
9 limited liability company or companies.

10 (Source: P.A. 91-593, eff. 8-14-99; 92-144, eff. 7-24-01.)

11 (805 ILCS 180/5-5)

12 Sec. 5-5. Articles of organization.

13 (a) The articles of organization shall set forth all of
14 the following:

15 (1) The name of the limited liability company and
16 the address of its principal place of business which may,
17 but need not be a place of business in this State.

18 (2) The purposes for which the limited liability
19 company is organized, which may be stated to be, or to
20 include, the transaction of any or all lawful businesses
21 for which limited liability companies may be organized
22 under this Act.

23 (3) The name of its registered agent and the
24 address of its registered office.

25 (4) If the limited liability company is to be
26 managed by a manager or managers, the names and business
27 addresses of the initial manager or managers.

28 (5) If management of the limited liability company
29 is to be vested in the members under Section 15-1, then
30 the names and addresses of the initial member or members.

31 (6) The latest date, if any, upon which the limited
32 liability company is to dissolve and other events of
33 dissolution, if any, that may be agreed upon by the

1 members under Section 35-1 hereof.

2 (7) The name and address of each organizer.

3 (8) Any other provision, not inconsistent with law,
4 that the members elect to set out in the articles of
5 organization for the regulation of the internal affairs
6 of the limited liability company, including any
7 provisions that, under this Act, are required or
8 permitted to be set out in the operating agreement of the
9 limited liability company.

10 (b) A limited liability company is organized at the time
11 articles of organization are filed by the Secretary of State
12 or at any later time, not more than 60 days after the filing
13 of the articles of organization, specified in the articles of
14 organization.

15 (c) Articles of organization for the organization of a
16 limited liability company for the purpose of accepting and
17 executing trusts shall not be filed by the Secretary of State
18 until there is delivered to him or her a statement executed
19 by the Commissioner of the Office of Banks and Real Estate
20 that the organizers of the limited liability company have
21 made arrangements with the Commissioner of the Office of
22 Banks and Real Estate to comply with the Corporate Fiduciary
23 Act.

24 (d) Articles of organization for the organization of a
25 limited liability company as a bank or a savings bank must be
26 filed with the Commissioner of Banks and Real Estate or, if
27 the bank or savings bank will be organized under federal law,
28 with the appropriate federal banking regulator.

29 (Source: P.A. 90-424, eff. 1-1-98.)

30 (805 ILCS 180/5-55)

31 Sec. 5-55. Filing in Office of Secretary of State.

32 (a) Whenever any provision of this Act requires a
33 limited liability company to file any document with the

1 Office of the Secretary of State, the requirement means that:

2 (1) the original document, executed as described in
3 Section 5-45, and, if required by this Act to be filed in
4 duplicate, one copy (which may be a signed carbon or
5 photocopy) shall be delivered to the Office of the
6 Secretary of State;

7 (2) all fees and charges authorized by law to be
8 collected by the Secretary of State in connection with
9 the filing of the document shall be tendered to the
10 Secretary of State; and

11 (3) unless the Secretary of State finds that the
12 document does not conform to law, he or she shall, when
13 all fees have been paid:

14 (A) endorse on the original and on the copy
15 the word "Filed" and the month, day, and year of the
16 filing thereof;

17 (B) file in his or her office the original of
18 the document; and

19 (C) return the copy to the person who filed it
20 or to that person's representative.

21 (b) If another Section of this Act specifically
22 prescribes a manner of filing or signing a specified document
23 that differs from the corresponding provisions of this
24 Section, then the provisions of the other Section shall
25 govern.

26 (c) Whenever any provision of this Act requires a limited
27 liability company that is a bank or a savings bank to file
28 any document, that requirement means that the filing shall be
29 made exclusively with the Commissioner of Banks and Real
30 Estate or, if the bank or savings bank is organized under
31 federal law, with the appropriate federal banking regulator
32 at such times and in such manner as required by the
33 Commissioner or federal regulator.

34 (Source: P.A. 92-33, eff. 7-1-01.)

1 (805 ILCS 180/37-5)

2 Sec. 37-5. Definitions. In this Article:

3 "Corporation" means (i) a corporation under the Business
4 Corporation Act of 1983, a predecessor law, or comparable law
5 of another jurisdiction or (ii) a bank or savings bank.

6 "General partner" means a partner in a partnership and a
7 general partner in a limited partnership.

8 "Limited partner" means a limited partner in a limited
9 partnership.

10 "Limited partnership" means a limited partnership created
11 under the Revised Uniform Limited Partnership Act, a
12 predecessor law, or comparable law of another jurisdiction.

13 "Partner" includes a general partner and a limited
14 partner.

15 "Partnership" means a general partnership under the
16 Uniform Partnership Act, a predecessor law, or comparable law
17 of another jurisdiction.

18 "Partnership agreement" means an agreement among the
19 partners concerning the partnership or limited partnership.

20 "Shareholder" means a shareholder in a corporation.

21 (Source: P.A. 90-424, eff. 1-1-98.)

22 (805 ILCS 180/37-35)

23 Sec. 37-35. Article not exclusive. This Article does not
24 preclude an entity from being converted or merged under other
25 law. A bank or savings bank that converts to or merges with
26 and into a limited liability company shall be subject to the
27 provisions of this Article or to other applicable law to the
28 extent that those provisions do not conflict with the State
29 or federal law pursuant to which the conversion or merger of
30 the bank or savings bank is authorized.

31 (Source: P.A. 90-424, eff. 1-1-98.)

32 Section 840. The Illinois Fairness in Lending Act is

1 amended by changing Sections 2, 3, and 5 as follows:

2 (815 ILCS 120/2) (from Ch. 17, par. 852)

3 Sec. 2. As used in this Act:

4 (a) "Financial Institution" means any bank, credit
5 union, insurance company, mortgage banking company, savings
6 bank, or savings and loan association, or other residential
7 mortgage lender which operates or has a place of business in
8 this State.

9 (b) "Person" means any natural person.

10 (c) "Varying the terms of a loan" includes, but is not
11 limited to the following practices:

12 (1) Requiring a greater than average down payment than
13 is usual for the particular type of a loan involved.

14 (2) Requiring a shorter period of amortization than is
15 usual for the particular type of loan involved.

16 (3) Charging a higher interest rate than is usual for
17 the particular type of loan involved.

18 (4) An underappraisal of real estate or other item of
19 property offered as security.

20 (d) "Equity stripping" means to assist a person in
21 obtaining a loan secured by the person's principal residence
22 for the primary purpose of receiving fees related to the
23 financing when (i) the loan decreased the person's equity in
24 the principal residence and (ii) at the time the loan is
25 made, the financial institution does not reasonably believe
26 that the person will be able to make the scheduled payments
27 to repay the loan. "Equity stripping" does not include
28 reverse mortgages as defined in Section 5a of the Illinois
29 Banking Act.

30 (e) "Loan flipping" means to assist a person in
31 refinancing a loan secured by the person's principal
32 residence for the primary purpose of receiving fees related
33 to the refinancing when (i) the refinancing of the loan

1 results in no tangible benefit to the person and (ii) at the
2 time the loan is made, the financial institution does not
3 reasonably believe that the refinancing of the loan will
4 result in a tangible benefit to the person.

5 (f) "Principal residence" means a person's primary
6 residence that is a dwelling consisting of 4 or fewer family
7 units or that is in a dwelling consisting of condominium or
8 cooperative units.

9 (Source: P.A. 81-1391.)

10 (815 ILCS 120/3) (from Ch. 17, par. 853)

11 Sec. 3. No financial institution, in connection with or
12 in contemplation of any loan to any person, may:

13 (a) Deny or vary the terms of a loan on the basis that a
14 specific parcel of real estate offered as security is located
15 in a specific geographical area.

16 (b) Deny or vary the terms of a loan without having
17 considered all of the regular and dependable income of each
18 person who would be liable for repayment of the loan.

19 (c) Deny or vary the terms of a loan on the sole basis
20 of the childbearing capacity of an applicant or an
21 applicant's spouse.

22 (d) Utilize lending standards that have no economic
23 basis and which are discriminatory in effect.

24 (e) Engage in equity stripping or loan flipping.

25 (Source: P.A. 81-1391.)

26 (815 ILCS 120/5) (from Ch. 17, par. 855)

27 Sec. 5. (a) Subject to the limitation imposed by
28 subsection (b), any person who has been aggrieved as a result
29 of a violation of this Act may bring an action in the circuit
30 court of the county in which the particular financial
31 institution involved is located or doing business.

32 Upon a finding that a financial institution has committed

1 a violation of this Act, the court may award actual damages,
2 and may in its discretion award court costs.

3 (b) If the same events or circumstances would constitute
4 the basis for an action under this Act or an action under any
5 other Act, the aggrieved person may elect between the
6 remedies proposed by the two Acts but may not bring actions,
7 either administrative or judicial, under more than one of the
8 two Acts in relation to those same events or circumstances.

9 (Source: P.A. 81-1391.)

10 Section 845. The Consumer Fraud and Deceptive Business
11 Practices Act is amended by changing Section 2Z as follows:

12 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

13 Sec. 2Z. Violations of other Acts. Any person who
14 knowingly violates the Automotive Repair Act, the Home Repair
15 and Remodeling Act, the Dance Studio Act, the Physical
16 Fitness Services Act, the Hearing Instrument Consumer
17 Protection Act, the Illinois Union Label Act, the Job
18 Referral and Job Listing Services Consumer Protection Act,
19 the Travel Promotion Consumer Protection Act, the Credit
20 Services Organizations Act, the Automatic Telephone Dialers
21 Act, the Pay-Per-Call Services Consumer Protection Act, the
22 Telephone Solicitations Act, the Illinois Funeral or Burial
23 Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed
24 Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan
25 Act, subsection (a) or (b) of Section 3-10 of the Cigarette
26 Tax Act, subsection (a) or (b) of Section 3-10 of the
27 Cigarette Use Tax Act, the Electronic Mail Act, or paragraph
28 (6) of subsection (k) of Section 6-305 of the Illinois
29 Vehicle Code commits an unlawful practice within the meaning
30 of this Act.

31 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;
32 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.

1 1-1-02.)

2 Section 999. Effective date. This Act takes effect on

3 January 1, 2004.".