



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/6/2004, by Kimberly A. Lightford

**SYNOPSIS AS INTRODUCED:**

20 ILCS 3205/5	from Ch. 17, par. 455
205 ILCS 5/2	from Ch. 17, par. 302
205 ILCS 5/5	from Ch. 17, par. 311
205 ILCS 5/10	from Ch. 17, par. 317
205 ILCS 5/13.5	
205 ILCS 5/16.8 new	
205 ILCS 5/18	from Ch. 17, par. 325
205 ILCS 5/21.2	
205 ILCS 5/46	from Ch. 17, par. 357
205 ILCS 5/48	from Ch. 17, par. 359
205 ILCS 5/49	from Ch. 17, par. 361
205 ILCS 5/71	from Ch. 17, par. 383
205 ILCS 10/3.02	from Ch. 17, par. 2505
205 ILCS 510/0.05	
205 ILCS 510/1.8 new	
205 ILCS 510/5	from Ch. 17, par. 4655
205 ILCS 510/9.5 new	
205 ILCS 620/5-1	from Ch. 17, par. 1555-1
205 ILCS 620/5-9	from Ch. 17, par. 1555-9
205 ILCS 5/9.5 rep.	

Amends the Office of Banks and Real Estate Act, the Illinois Banking Act, the Illinois Bank Holding Company Act of 1957, the Pawnbroker Regulation Act, and the Corporate Fiduciary Act. Expands the power of the Commissioner of Banks and Real Estate to deter certain practices of financial institutions, make available to the public any formal enforcement action as defined, and impose other disciplinary actions. Redefines the general corporate powers of banks organized under this Act or subject to this Act to own, possess, and carry as assets stock of one or more corporations. Creates provisions concerning approval of directors and senior executive officers. Provides that no pawnshop shall employ an individual who has been convicted of certain crimes, as defined, without the prior written approval of the Commissioner of Banks and Real Estate. Creates provisions concerning the operation of pawnshops after license revocation, suspension, or denial. Increases certain penalties and fines. Makes other changes. Effective immediately.

LRB093 18472 SAS 44186 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT in relation to financial institutions.

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

4 Section 5. The Office of Banks and Real Estate Act is  
5 amended by changing Section 5 as follows:

6 (20 ILCS 3205/5) (from Ch. 17, par. 455)

7 Sec. 5. Powers. In addition to all the other powers and  
8 duties provided by law, the Commissioner shall have the  
9 following powers:

10 (a) To exercise the rights, powers and duties formerly  
11 vested by law in the Director of Financial Institutions under  
12 the Illinois Banking Act.

13 (b) To exercise the rights, powers and duties formerly  
14 vested by law in the Department of Financial Institutions under  
15 "An act to provide for and regulate the administration of  
16 trusts by trust companies", approved June 15, 1887, as amended.

17 (c) To exercise the rights, powers and duties formerly  
18 vested by law in the Director of Financial Institutions under  
19 "An act authorizing foreign corporations, including banks and  
20 national banking associations domiciled in other states, to act  
21 in a fiduciary capacity in this state upon certain conditions  
22 herein set forth", approved July 13, 1953, as amended.

23 (d) Whenever the Commissioner is authorized or required by  
24 law to consider or to make findings regarding the character of  
25 incorporators, directors, management personnel, or other  
26 relevant individuals under the Illinois Banking Act, the  
27 Corporate Fiduciary Act, the Pawnbroker Regulation Act, or at  
28 other times as the Commissioner deems necessary for the purpose  
29 of carrying out the Commissioner's statutory powers and  
30 responsibilities, the Commissioner shall consider criminal  
31 history record information, including nonconviction  
32 information, pursuant to the Criminal Identification Act. The

1 Commissioner shall, in the form and manner required by the  
2 Department of State Police and the Federal Bureau of  
3 Investigation, cause to be conducted a criminal history record  
4 investigation to obtain information currently contained in the  
5 files of the Department of State Police or the Federal Bureau  
6 of Investigation, provided that the Commissioner need not cause  
7 additional criminal history record investigations to be  
8 conducted on individuals for whom the Commissioner, a federal  
9 bank regulatory agency, or any other government agency has  
10 caused such investigations to have been conducted previously  
11 unless such additional investigations are otherwise required  
12 by law or unless the Commissioner deems such additional  
13 investigations to be necessary for the purposes of carrying out  
14 the Commissioner's statutory powers and responsibilities. The  
15 Department of State Police shall provide, on the Commissioner's  
16 request, information concerning criminal charges and their  
17 disposition currently on file with respect to a relevant  
18 individual. Information obtained as a result of an  
19 investigation under this Section shall be used in determining  
20 eligibility to be an incorporator, director, management  
21 personnel, or other relevant individual in relation to a  
22 financial institution or other entity supervised by the  
23 Commissioner. Upon request and payment of fees in conformance  
24 with the requirements of Section 2605-400 of the Department of  
25 State Police Law (20 ILCS 2605/2605-400), the Department of  
26 State Police is authorized to furnish, pursuant to positive  
27 identification, such information contained in State files as is  
28 necessary to fulfill the request.

29 (e) When issuing charters, permits, licenses, or other  
30 authorizations, the Commissioner may impose such terms and  
31 conditions on the issuance as he deems necessary or  
32 appropriate. Failure to abide by those terms and conditions may  
33 result in the revocation of the issuance, the imposition of  
34 corrective orders, or the imposition of civil money penalties.

35 (f) If the Commissioner has reasonable cause to believe  
36 that any entity that has not submitted an application for

1 authorization or licensure is conducting any activity that  
2 would otherwise require authorization or licensure by the  
3 Commissioner, the Commissioner shall have the power to subpoena  
4 witnesses, to compel their attendance, and to require the  
5 production of any relevant books, papers, accounts, and  
6 documents in order to determine whether the entity is subject  
7 to authorization or licensure by the Commissioner or the Office  
8 of Banks and Real Estate.

9 (g) The Commissioner may, through the Attorney General,  
10 request the circuit court of any county to issue an injunction  
11 to restrain any person from violating the provisions of any Act  
12 administered by the Commissioner.

13 (h) Whenever the Commissioner is authorized to take any  
14 action or required by law to consider or make findings, the  
15 Commissioner may delegate or appoint, in writing, an officer or  
16 employee of the Office of Banks and Real Estate to take that  
17 action or make that finding.

18 (i) Whenever the Commissioner issues an Order of  
19 Prohibition or Order of Removal under Section 48(7) of the  
20 Illinois Banking Act, Section 3.074(b) of the Illinois Bank  
21 Holding Company Act of 1957, Section 5-6 of the Corporate  
22 Fiduciary Act, or Section 0.05 of the Pawnbroker Regulation  
23 Act, which order becomes a final administrative decision under  
24 the Administrative Review Law, he or she shall refuse to issue  
25 a new license under any of the Acts administered by the  
26 Commissioner or shall revoke an outstanding license of a person  
27 who is subject to such an order unless that person obtains the  
28 Commissioner's prior written approval for maintenance or  
29 reissuance of the license.

30 (Source: P.A. 91-239, eff. 1-1-00; 92-483, eff. 8-23-01.)

31 Section 10. The Illinois Banking Act is amended by changing  
32 Sections 2, 5, 10, 13.5, 18, 21.2, 46, 48, 49, and 71, and by  
33 adding Section 16.8 as follows:

34 (205 ILCS 5/2) (from Ch. 17, par. 302)

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

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

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

9           "Affiliate facility" of a bank means a main banking  
10 premises or branch of another commonly owned bank. The main  
11 banking premises or any branch of a bank may be an "affiliate  
12 facility" with respect to one or more other commonly owned  
13 banks.

14           "Appropriate federal banking agency" means the Federal  
15 Deposit Insurance Corporation, the Federal Reserve Bank of  
16 Chicago, or the Federal Reserve Bank of St. Louis, as  
17 determined by federal law.

18           "Bank" means any person engaged in the business of  
19 receiving deposits, other than trust funds, that is  
20 incorporated under the laws of this or any other state or which  
21 is operating under the Code of Law for the District of  
22 Columbia. For purposes of this Section, "trust funds" means  
23 funds held in a fiduciary capacity and includes, without being  
24 limited to, funds held as trustee, executor, administrator,  
25 guardian, or agent ~~doing a banking business whether subject to~~  
26 ~~the laws of this or any other jurisdiction.~~

27           A "banking house", "branch", "branch bank" or "branch  
28 office" shall mean any place of business of a bank at which  
29 deposits are received, other than trust funds ~~checks paid, or~~  
30 ~~loans made~~, but shall not include any place at which only  
31 records thereof are made, posted, or kept. A place of business  
32 at which deposits are received, other than trust funds, ~~checks~~  
33 ~~paid, or loans made~~ shall not be deemed to be a branch, branch  
34 bank, or branch office if the place of business is adjacent to  
35 and connected with the main banking premises, or if it is  
36 separated from the main banking premises by not more than an

1 alley; provided always that (i) if the place of business is  
2 separated by an alley from the main banking premises there is a  
3 connection between the two by public or private way or by  
4 subterranean or overhead passage, and (ii) if the place of  
5 business is in a building not wholly occupied by the bank, the  
6 place of business shall not be within any office or room in  
7 which any other business or service of any kind or nature other  
8 than the business of the bank is conducted or carried on. A  
9 place of business at which deposits are received, ~~checks paid,~~  
10 ~~or loans made~~ shall not be deemed to be a branch, branch bank,  
11 or branch office (i) of any bank if the place is a terminal  
12 established and maintained in accordance with paragraph (17) of  
13 Section 5 of this Act, or (ii) of a commonly owned bank by  
14 virtue of transactions conducted at that place on behalf of the  
15 other commonly owned bank under paragraph (23) of Section 5 of  
16 this Act if the place is an affiliate facility with respect to  
17 the other bank.

18 "Branch of an out-of-state bank" means a branch established  
19 or maintained in Illinois by an out-of-state bank as a result  
20 of a merger between an Illinois bank and the out-of-state bank  
21 that occurs on or after May 31, 1997, or any branch established  
22 by the out-of-state bank following the merger.

23 "Bylaws" means the bylaws of a bank that are adopted by the  
24 bank's board of directors or shareholders for the regulation  
25 and management of the bank's affairs. If the bank operates as a  
26 limited liability company, however, "bylaws" means the  
27 operating agreement of the bank.

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

31 "Composite rating" means the rating assigned to a state  
32 bank by the Commissioner or by the state bank's appropriate  
33 federal banking agency and accepted by the Commissioner, based  
34 on a composite evaluation of individual performance components  
35 as defined by the Uniform Financial Institutions Rating System  
36 adopted by the Federal Financial Institutions Examination

1 Council, as now or hereafter amended.

2 "Capital" includes the aggregate of outstanding capital  
3 stock and preferred stock.

4 "Cash flow reserve account" means the account within the  
5 books and records of the Commissioner of Banks and Real Estate  
6 used to record funds designated to maintain a reasonable Bank  
7 and Trust Company Fund operating balance to meet agency  
8 obligations on a timely basis.

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

11 "Commissioner" means the Commissioner of Banks and Real  
12 Estate or a person authorized by the Commissioner, the Office  
13 of Banks and Real Estate Act, or this Act to act in the  
14 Commissioner's stead.

15 "Commonly owned banks" means 2 or more banks that each  
16 qualify as a bank subsidiary of the same bank holding company  
17 pursuant to Section 18 of the Federal Deposit Insurance Act;  
18 "commonly owned bank" refers to one of a group of commonly  
19 owned banks but only with respect to one or more of the other  
20 banks in the same group.

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

25 "Company" means a corporation, limited liability company,  
26 partnership, business trust, association, or similar  
27 organization and, unless specifically excluded, includes a  
28 "State bank" and a "bank".

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

30 "Consolidation" takes place when 2 or more banks, or a  
31 trust company and a bank, are extinguished and by the same  
32 process a new bank is created, taking over the assets and  
33 assuming the liabilities of the banks or trust company passing  
34 out of existence.

35 "Continuing bank" means a merging bank, the charter of  
36 which becomes the charter of the resulting bank.

1 "Converting bank" means a State bank converting to become a  
2 national bank, or a national bank converting to become a State  
3 bank.

4 "Converting trust company" means a trust company  
5 converting to become a State bank.

6 "Court" means a court of competent jurisdiction.

7 "Director" means a member of the board of directors of a  
8 bank. In the case of a manager-managed limited liability  
9 company, however, "director" means a manager of the bank and,  
10 in the case of a member-managed limited liability company,  
11 "director" means a member of the bank. The term "director" does  
12 not include an advisory director, honorary director, director  
13 emeritus, or similar person, unless the person is otherwise  
14 performing functions similar to those of a member of the board  
15 of directors.

16 "Eligible depository institution" means an insured savings  
17 association that is in default, an insured savings association  
18 that is in danger of default, a State or national bank that is  
19 in default or a State or national bank that is in danger of  
20 default, as those terms are defined in this Section, or a new  
21 bank as that term defined in Section 11(m) of the Federal  
22 Deposit Insurance Act or a bridge bank as that term is defined  
23 in Section 11(n) of the Federal Deposit Insurance Act or a new  
24 federal savings association authorized under Section  
25 11(d) (2) (f) of the Federal Deposit Insurance Act.

26 "Fiduciary" means trustee, agent, executor, administrator,  
27 committee, guardian for a minor or for a person under legal  
28 disability, receiver, trustee in bankruptcy, assignee for  
29 creditors, or any holder of similar position of trust.

30 "Financial institution" means a bank, savings and loan  
31 association, credit union, or any licensee under the Consumer  
32 Installment Loan Act or the Sales Finance Agency Act and, for  
33 purposes of Section 48.3, any proprietary network, funds  
34 transfer corporation, or other entity providing electronic  
35 funds transfer services, or any corporate fiduciary, its  
36 subsidiaries, affiliates, parent company, or contractual



1 service provider that is examined by the Commissioner.

2 "Foundation" means the Illinois Bank Examiners' Education  
3 Foundation.

4 "General obligation" means a bond, note, debenture,  
5 security, or other instrument evidencing an obligation of the  
6 government entity that is the issuer that is supported by the  
7 full available resources of the issuer, the principal and  
8 interest of which is payable in whole or in part by taxation.

9 "Guarantee" means an undertaking or promise to answer for  
10 payment of another's debt or performance of another's duty,  
11 liability, or obligation whether "payment guaranteed" or  
12 "collection guaranteed".

13 "In danger of default" means a State or national bank, a  
14 federally chartered insured savings association or an Illinois  
15 state chartered insured savings association with respect to  
16 which the Commissioner or the appropriate federal banking  
17 agency has advised the Federal Deposit Insurance Corporation  
18 that:

19 (1) in the opinion of the Commissioner or the  
20 appropriate federal banking agency,

21 (A) the State or national bank or insured savings  
22 association is not likely to be able to meet the  
23 demands of the State or national bank's or savings  
24 association's obligations in the normal course of  
25 business; and

26 (B) there is no reasonable prospect that the State  
27 or national bank or insured savings association will be  
28 able to meet those demands or pay those obligations  
29 without federal assistance; or

30 (2) in the opinion of the Commissioner or the  
31 appropriate federal banking agency,

32 (A) the State or national bank or insured savings  
33 association has incurred or is likely to incur losses  
34 that will deplete all or substantially all of its  
35 capital; and

36 (B) there is no reasonable prospect that the

1 capital of the State or national bank or insured  
2 savings association will be replenished without  
3 federal assistance.

4 "In default" means, with respect to a State or national  
5 bank or an insured savings association, any adjudication or  
6 other official determination by any court of competent  
7 jurisdiction, the Commissioner, the appropriate federal  
8 banking agency, or other public authority pursuant to which a  
9 conservator, receiver, or other legal custodian is appointed  
10 for a State or national bank or an insured savings association.

11 "Insured savings association" means any federal savings  
12 association chartered under Section 5 of the federal Home  
13 Owners' Loan Act and any State savings association chartered  
14 under the Illinois Savings and Loan Act of 1985 or a  
15 predecessor Illinois statute, the deposits of which are insured  
16 by the Federal Deposit Insurance Corporation. The term also  
17 includes a savings bank organized or operating under the  
18 Savings Bank Act.

19 "Insured savings association in recovery" means an insured  
20 savings association that is not an eligible depository  
21 institution and that does not meet the minimum capital  
22 requirements applicable with respect to the insured savings  
23 association.

24 "Issuer" means for purposes of Section 33 every person who  
25 shall have issued or proposed to issue any security; except  
26 that (1) with respect to certificates of deposit, voting trust  
27 certificates, collateral-trust certificates, and certificates  
28 of interest or shares in an unincorporated investment trust not  
29 having a board of directors (or persons performing similar  
30 functions), "issuer" means the person or persons performing the  
31 acts and assuming the duties of depositor or manager pursuant  
32 to the provisions of the trust, agreement, or instrument under  
33 which the securities are issued; (2) with respect to trusts  
34 other than those specified in clause (1) above, where the  
35 trustee is a corporation authorized to accept and execute  
36 trusts, "issuer" means the entrusters, depositors, or creators

1 of the trust and any manager or committee charged with the  
2 general direction of the affairs of the trust pursuant to the  
3 provisions of the agreement or instrument creating the trust;  
4 and (3) with respect to equipment trust certificates or like  
5 securities, "issuer" means the person to whom the equipment or  
6 property is or is to be leased or conditionally sold.

7 "Letter of credit" and "customer" shall have the meanings  
8 ascribed to those terms in Section 5-102 of the Uniform  
9 Commercial Code.

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

12 "Maker or obligor" means for purposes of Section 33 the  
13 issuer of a security, the promisor in a debenture or other debt  
14 security, or the mortgagor or grantor of a trust deed or  
15 similar conveyance of a security interest in real or personal  
16 property.

17 "Merged bank" means a merging bank that is not the  
18 continuing, resulting, or surviving bank in a consolidation or  
19 merger.

20 "Merger" includes consolidation.

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

22 "Merging trust company" means a trust company party to a  
23 merger with a State bank.

24 "Mid-tier bank holding company" means a corporation that  
25 (a) owns 100% of the issued and outstanding shares of each  
26 class of stock of a State bank, (b) has no other subsidiaries,  
27 and (c) 100% of the issued and outstanding shares of the  
28 corporation are owned by a parent bank holding company.

29 "Municipality" means any municipality, political  
30 subdivision, school district, taxing district, or agency.

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

34 "Out-of-state bank" means a bank chartered under the laws  
35 of a state other than Illinois, a territory of the United  
36 States, or the District of Columbia.

1 "Parent bank holding company" means a corporation that is a  
2 bank holding company as that term is defined in the Illinois  
3 Bank Holding Company Act of 1957 and owns 100% of the issued  
4 and outstanding shares of a mid-tier bank holding company.

5 "Person" means an individual, corporation, limited  
6 liability company, partnership, joint venture, trust, estate,  
7 or unincorporated association.

8 "Public agency" means the State of Illinois, the various  
9 counties, townships, cities, towns, villages, school  
10 districts, educational service regions, special road  
11 districts, public water supply districts, fire protection  
12 districts, drainage districts, levee districts, sewer  
13 districts, housing authorities, the Illinois Bank Examiners'  
14 Education Foundation, the Chicago Park District, and all other  
15 political corporations or subdivisions of the State of  
16 Illinois, whether now or hereafter created, whether herein  
17 specifically mentioned or not, and shall also include any other  
18 state or any political corporation or subdivision of another  
19 state.

20 "Public funds" or "public money" means current operating  
21 funds, special funds, interest and sinking funds, and funds of  
22 any kind or character belonging to, in the custody of, or  
23 subject to the control or regulation of the United States or a  
24 public agency. "Public funds" or "public money" shall include  
25 funds held by any of the officers, agents, or employees of the  
26 United States or of a public agency in the course of their  
27 official duties and, with respect to public money of the United  
28 States, shall include Postal Savings funds.

29 "Published" means, unless the context requires otherwise,  
30 the publishing of the notice or instrument referred to in some  
31 newspaper of general circulation in the community in which the  
32 bank is located at least once each week for 3 successive weeks.  
33 ~~Publishing shall be accomplished by, and at the expense of, the~~  
34 ~~bank required to publish. Where publishing is required, the~~  
35 ~~bank shall submit to the Commissioner that evidence of the~~  
36 ~~publication as the Commissioner shall deem appropriate.~~

1 "Qualified financial contract" means any security  
2 contract, commodity contract, forward contract, including spot  
3 and forward foreign exchange contracts, repurchase agreement,  
4 swap agreement, and any similar agreement, any option to enter  
5 into any such agreement, including any combination of the  
6 foregoing, and any master agreement for such agreements. A  
7 master agreement, together with all supplements thereto, shall  
8 be treated as one qualified financial contract. The contract,  
9 option, agreement, or combination of contracts, options, or  
10 agreements shall be reflected upon the books, accounts, or  
11 records of the bank, or a party to the contract shall provide  
12 documentary evidence of such agreement.

13 "Recorded" means the filing or recording of the notice or  
14 instrument referred to in the office of the Recorder of the  
15 county wherein the bank is located.

16 "Resulting bank" means the bank resulting from a merger or  
17 conversion.

18 "Securities" means stocks, bonds, debentures, notes, or  
19 other similar obligations.

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

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

25 "State Banking Board" means the State Banking Board of  
26 Illinois.

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

33 "Surplus" means the aggregate of (i) amounts paid in excess  
34 of the par value of capital stock and preferred stock; (ii)  
35 amounts contributed other than for capital stock and preferred  
36 stock and allocated to the surplus account; and (iii) amounts

1 transferred from undivided profits.

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

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

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

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

1 calendar quarter on the basis of the effective date of the  
2 charter, merger, consolidation, or conversion.

3 (Source: P.A. 92-483, eff. 8-23-01; 93-561, eff. 1-1-04.)

4 (205 ILCS 5/5) (from Ch. 17, par. 311)

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

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

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

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

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

29 (5) To adopt and operate reasonable bonus plans,  
30 profit-sharing plans, stock-bonus plans, stock-option plans,  
31 pension plans and similar incentive plans for its directors,  
32 officers and employees.

33 (5.1) To manage, operate and administer a fund for the  
34 investment of funds by a public agency or agencies, including  
35 any unit of local government or school district, or any person.

1 The fund for a public agency shall invest in the same type of  
2 investments and be subject to the same limitations provided for  
3 the investment of public funds. The fund for public agencies  
4 shall maintain a separate ledger showing the amount of  
5 investment for each public agency in the fund. "Public funds"  
6 and "public agency" as used in this Section shall have the  
7 meanings ascribed to them in Section 1 of the Public Funds  
8 Investment Act.

9 (6) To make reasonable donations for the public welfare or  
10 for charitable, scientific, religious or educational purposes.

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

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

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

17 (c) to secure deposits of public money of the United  
18 States, whenever required by the laws of the United States,  
19 including without being limited to, revenues and funds the  
20 deposit of which is subject to the control or regulation of  
21 the United States or any of its officers, agents, or  
22 employees and Postal Savings funds;

23 (d) to secure deposits of public money of any state or  
24 of any political corporation or subdivision thereof  
25 including, without being limited to, revenues and funds the  
26 deposit of which is subject to the control or regulation of  
27 any state or of any political corporation or subdivisions  
28 thereof or of any of their officers, agents, or employees;

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

31 (f) (blank); and

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

36 (8) To own, possess, and carry as assets all or part of the



1 real estate necessary in or with which to do its banking  
2 business, either directly or indirectly through the ownership  
3 of all or part of the capital stock, shares or interests in any  
4 corporation, association, trust engaged in holding any part or  
5 parts or all of the bank premises, engaged in such business and  
6 in conducting a safe deposit business in the premises or part  
7 of them, or engaged in any activity that the bank is permitted  
8 to conduct in a subsidiary pursuant to paragraph (12) of this  
9 Section 5.

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

18 (10) To do any act, including the acquisition of stock,  
19 necessary to obtain insurance of its deposits, or part thereof,  
20 and any act necessary to obtain a guaranty, in whole or in  
21 part, of any of its loans or investments by the United States  
22 or any agency thereof, and any act necessary to sell or  
23 otherwise dispose of any of its loans or investments to the  
24 United States or any agency thereof, and to acquire and hold  
25 membership in the Federal Reserve System.

26 (11) Notwithstanding any other provisions of this Act or  
27 any other law, to do any act and to own, possess, and carry as  
28 assets property of the character, including stock, that is at  
29 the time authorized or permitted to national banks by an Act of  
30 Congress, but subject always to the same limitations and  
31 restrictions as are applicable to national banks by the  
32 pertinent federal law and subject to applicable provisions of  
33 the Financial Institutions Insurance Sales Law.

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

1 (a) holding title to and administering assets acquired  
2 as a result of the collection or liquidating of loans,  
3 investments, or discounts, subject to the following  
4 conditions:

5 (i) Holding period. A bank subsidiary may not  
6 hold real estate for more than the time period allowed  
7 pursuant to subsection (9) of this Section. A bank  
8 subsidiary holding securities held in satisfaction of  
9 debts previously contracted must divest as soon as  
10 possible consistent with obtaining a reasonable  
11 return, not to exceed 5 years from the date that  
12 ownership of the securities was originally transferred  
13 to the bank. In the case of securities held in  
14 satisfaction of debts previously contracted, the  
15 Commissioner may extend the holding period for up to an  
16 additional 5 years if a bank provides a clearly  
17 convincing demonstration as to why an additional  
18 holding period is needed.

19 (ii) Accounting treatment. A bank shall  
20 account for securities held in satisfaction of debts  
21 previously contracted in accordance with Generally  
22 Accepted Accounting Principles.

23 (iii) Non-speculative purpose. A bank may not  
24 hold securities held in satisfaction of debts  
25 previously contracted for speculative purposes; or

26 (b) holding title to and administering personal  
27 property acquired by the bank, directly or indirectly  
28 through a subsidiary, for the purpose of leasing to others,  
29 provided the lease or leases and the investment of the  
30 bank, directly or through a subsidiary, in that personal  
31 property otherwise comply with Section 35.1 of this Act; or

32 (c) carrying on or administering any of the activities  
33 excepting the receipt of deposits or the payment of checks  
34 or other orders for the payment of money in which a bank  
35 may engage in carrying on its general banking business;  
36 provided, however, that nothing contained in this

1 paragraph (c) shall be deemed to permit a bank organized  
2 under this Act or subject hereto to do, either directly or  
3 indirectly through any subsidiary, any act, including the  
4 making of any loan or investment, or to own, possess, or  
5 carry as assets any property that if done by or owned,  
6 possessed, or carried by the State bank would be in  
7 violation of or prohibited by any provision of this Act.

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

13 Any bank intending to establish a subsidiary under this  
14 subsection (12) shall give written notice to the Commissioner  
15 60 days prior to the subsidiary's commencing of business or, as  
16 the case may be, prior to acquiring stock in a corporation that  
17 has already commenced business. After receiving the notice, the  
18 Commissioner may waive or reduce the balance of the 60 day  
19 notice period. The Commissioner may specify the form of the  
20 notice and may promulgate rules and regulations to administer  
21 this subsection (12).

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

27 (14) To own and lease personal property acquired by the  
28 bank at the request of a prospective lessee and upon the  
29 agreement of that person to lease the personal property  
30 provided that the lease, the agreement with respect thereto,  
31 and the amount of the investment of the bank in the property  
32 comply with Section 35.1 of this Act.

33 (15) (a) To establish and maintain, in addition to the main  
34 banking premises, branches offering any banking services  
35 permitted at the main banking premises of a State bank.

36 (b) To establish and maintain, after May 31, 1997,

1 branches in another state that may conduct any activity in  
2 that state that is authorized or permitted for any bank  
3 that has a banking charter issued by that state, subject to  
4 the same limitations and restrictions that are applicable  
5 to banks chartered by that state.

6 (16) (Blank).

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

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

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

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

30 (21) To make debt or equity investments in corporations or  
31 projects, whether for profit or not for profit, designed to  
32 promote the development of the community and its welfare,  
33 provided that the aggregate investment in all of these  
34 corporations and in all of these projects does not exceed 10%  
35 of the unimpaired capital and unimpaired surplus of the bank  
36 and provided that this limitation shall not apply to

1 creditworthy loans by the bank to those corporations or  
2 projects. Upon written application to the Commissioner, a bank  
3 may make an investment that would, when aggregated with all  
4 other such investments, exceed 10% of the unimpaired capital  
5 and unimpaired surplus of the bank. The Commissioner may  
6 approve the investment if he is of the opinion and finds that  
7 the proposed investment will not have a material adverse effect  
8 on the safety and soundness of the bank.

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

12 (23) With respect to affiliate facilities:

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

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

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

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

1 for insurance.

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

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

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

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

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

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

26 (Source: P.A. 92-483, eff. 8-23-01; 92-811, eff. 8-21-02;  
27 93-561; eff.1-1-04.)

28 (205 ILCS 5/10) (from Ch. 17, par. 317)

29 Sec. 10. Permit to organize.

30 (a) Upon the filing of an application for a permit to  
31 organize, the Commissioner shall investigate the truth of the  
32 statements therein and shall consider the proposed bank's  
33 capital structure, its future earnings prospects, the general  
34 character, experience, and qualifications of its proposed  
35 management, its proposed plan of operation, and the convenience

1 and needs of the area sought to be served, and notwithstanding  
2 the provisions of Section 7 of this Act, the Commissioner shall  
3 not approve the application and issue a permit to organize  
4 unless he shall be of the opinion and finds:

5 (1) that the proposed capital at least meets the  
6 minimum requirements of this Act determined by the  
7 Commissioner pursuant to Section 7 of this Act including  
8 additional capital necessitated by the circumstances of  
9 the proposed bank including its size, scope of operations  
10 and market in which it proposes to operate;

11 (2) that the future earnings prospects are favorable;

12 (3) that the general character, experience, and  
13 qualifications of its proposed management and its proposed  
14 plan of operation are such as to assure reasonable promise  
15 of successful, safe and sound operation;

16 (4) (Blank) ~~that the name of the proposed bank is not~~  
17 ~~the same as or deceptively similar to a name reserved with~~  
18 ~~the Commissioner's office under Section 9.5 or to the name~~  
19 ~~of any other bank then operating in this State; and~~

20 (5) that the convenience and needs of the area sought  
21 to be served by the proposed bank will be promoted.

22 (b) The Commissioner shall revoke the permit to organize  
23 and order liquidation of any funds collected in the event that  
24 the organizers do not obtain a charter from the Commissioner  
25 authorizing the bank to commence business within 6 months from  
26 the date of the issuance of the permit, unless a request has  
27 been submitted, in writing, to the Commissioner for an  
28 extension and the request has been approved.

29 (c) The Commissioner may impose such terms and conditions,  
30 if any, on the issuance of the permit to organize as the  
31 Commissioner deems appropriate and necessary for the  
32 organization of the bank.

33 (Source: P.A. 91-452, eff. 1-1-00; 92-483, eff. 8-23-01.)

34 (205 ILCS 5/13.5)

35 Sec. 13.5. Formation and merger of interim banks.

1 (a) An interim bank may be chartered as a State bank for  
2 the exclusive purpose of accomplishing a corporate  
3 restructuring through merger with an existing State bank,  
4 national bank, trust company, or an insured savings  
5 association. An interim bank shall be chartered and merged  
6 pursuant to the provisions of this Section. The interim bank  
7 shall not accept deposits, make loans, pay checks, or engage in  
8 the general banking business or any part thereof, and shall not  
9 be subject to the provisions of this Act other than those set  
10 forth in this Section; provided, however, that if the interim  
11 bank becomes the resulting bank in a merger, such resulting  
12 bank shall have all of the powers, rights, and duties of a  
13 State bank and must comply with all applicable provisions of  
14 this Act.

15 (b) An interim State bank may be organized upon application  
16 by 5 or more incorporators or by a bank holding company. The  
17 application shall be made on forms prescribed by the  
18 Commissioner which shall request, at a minimum, the following  
19 information:

20 (1) the names and addresses of the incorporators;

21 (2) the proposed name and address of the interim bank;

22 (3) the name and address of all banks with which the  
23 interim bank will be merging;

24 (4) a copy of the merger agreement by which the interim  
25 bank will be merged with the banks identified in item (3)  
26 containing the same information required in merger  
27 agreements pursuant to subsection (1) of Section 22 of this  
28 Act; and

29 (5) an acknowledgement that the interim bank shall not  
30 engage in the general banking business or any part thereof  
31 unless and until the interim bank becomes the resulting  
32 bank in a merger.

33 (c) The merger agreement must be approved by all of the  
34 incorporators of the interim bank and must be approved by the  
35 existing State bank with which the interim bank will merge, as  
36 required by Section 22 of this Act.



1 (d) Upon receipt of the application to organize the interim  
2 bank and the merger agreement submitted pursuant to this  
3 Section and Section 22 of this Act, the Commissioner may issue  
4 a charter to the interim bank and approve the merger agreement  
5 if the Commissioner makes the findings set forth in subsection  
6 (3) of Section 22 of this Act. The interim bank's charter shall  
7 not take effect until, and shall only be effective for purposes  
8 of, the merger.

9 (e) Nothing in this Section affects the obligations of an  
10 existing State bank with which the interim bank will merge, or  
11 the rights of minority or dissenting shareholders of the  
12 existing State bank, in connection with the approval,  
13 execution, and accomplishment of a merger agreement as provided  
14 elsewhere in this Act.

15 (f) Nothing in this Section affects the obligations of the  
16 parties to obtain the Commissioner's approval under Section 18  
17 of this Act if the interim bank merger results in a change of  
18 control of the resulting bank.

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

20 (205 ILCS 5/16.8 new)

21 Sec. 16.8. Prior approval required for directors, senior  
22 executive officers.

23 (a) A state bank shall obtain the Commissioner's prior  
24 written approval before adding an individual to the board of  
25 directors or the employing an individual as a senior executive  
26 officer of the bank if:

27 (1) the state bank, at its last regular examination,  
28 was assigned a Composite Rating of 3, 4, or 5, or

29 (2) the Commissioner determines that such prior  
30 approval is appropriate.

31 (b) A state bank may not add an individual to the board of  
32 directors or employ an individual as a senior executive officer  
33 if the Commissioner issues a notice of disapproval of such  
34 addition or employment.

35 (c) The Commissioner may prescribe, by regulation,

1 conditions under which the prior approval requirement of  
2 subsection (a) of this Section may be waived in the event of  
3 extraordinary circumstances.

4 (d) Waivers issued under subsection (c) shall not affect  
5 the authority of the Commissioner to issue notices of  
6 disapproval of such additions or employment of such individuals  
7 within 30 days after each such waiver.

8 (e) The Commissioner shall issue a notice of disapproval if  
9 the competence, experience, character, or integrity of the  
10 individual with respect to whom the request for approval is  
11 submitted indicates that it would not be in the best interests  
12 of the depositors of the depository institution or in the best  
13 interest of the public to permit the individual to be employed  
14 by, or associated with, the state bank.

15 (205 ILCS 5/18) (from Ch. 17, par. 325)

16 Sec. 18. Change in control.

17 (a) Before a change may occur in the ownership of  
18 outstanding stock of any State bank, whether by sale and  
19 purchase, gift, bequest or inheritance, or any other means,  
20 including the acquisition of stock of the State bank by any  
21 bank holding company, which will result in control or a change  
22 in the control of the bank or before a change in the control of  
23 a holding company having control of the outstanding stock of a  
24 State bank whether by sale and purchase, gift, bequest or  
25 inheritance, or any other means, including the acquisition of  
26 stock of such holding company by any other bank holding  
27 company, which will result in control or a change in control of  
28 the bank or holding company, or before a transfer of  
29 substantially all the assets or liabilities of the State bank,  
30 the Commissioner shall be of the opinion and find:

31 (1) that the general character of proposed management  
32 or of the person desiring to purchase substantially all the  
33 assets or to assume substantially all the liabilities of  
34 the State bank, after the change in control, is such as to  
35 assure reasonable promise of successful, safe and sound

1 operation;

2 (1.1) that depositors' interests will not be  
3 jeopardized by the purchase or assumption and that adequate  
4 provision has been made for all liabilities as required for  
5 a voluntary liquidation under Section 68 of this Act;

6 (2) that the future earnings prospects of the person  
7 desiring to purchase substantially all assets or to assume  
8 substantially all the liabilities of the State bank, after  
9 the proposed change in control, are favorable;

10 (3) that any prior involvement by the persons proposing  
11 to obtain control, to purchase substantially all the  
12 assets, or to assume substantially all the liabilities of  
13 the State bank or by the proposed management personnel with  
14 any other financial institution, whether as stockholder,  
15 director, officer or customer, was conducted in a safe and  
16 sound manner; and

17 (4) that if the acquisition is being made by a bank  
18 holding company, the acquisition is authorized under the  
19 Illinois Bank Holding Company Act of 1957.

20 (a-5) In cases where a person acquires stock of a State  
21 bank in satisfaction of a debt previously contracted in good  
22 faith and the acquisition results in control or a change in  
23 control of the State bank, the person shall, within 90 days  
24 after the acquisition, file with the Commissioner notice of the  
25 change in control containing information enabling the  
26 Commissioner to make the findings provided in subsection (a) of  
27 this Section.

28 (b) Persons desiring to purchase control of an existing  
29 state bank, to purchase substantially all the assets, or to  
30 assume substantially all the liabilities of the State bank  
31 shall, prior to that purchase, submit to the Commissioner:

32 (1) a statement of financial worth;

33 (2) satisfactory evidence that any prior involvement  
34 by the persons and the proposed management personnel with  
35 any other financial institution, whether as stockholder,  
36 director, officer or customer, was conducted in a safe and

1 sound manner; and

2 (3) such other relevant information as the  
3 Commissioner may request to substantiate the findings  
4 under subsection (a) of this Section.

5 A person who has submitted information to the Commissioner  
6 pursuant to this subsection (b) is under a continuing  
7 obligation until the Commissioner takes action on the  
8 application to immediately supplement that information if  
9 there are any material changes in the information previously  
10 furnished or if there are any material changes in any  
11 circumstances that may affect the Commissioner's opinion and  
12 findings. In addition, a person submitting information under  
13 this subsection shall notify the Commissioner of the date when  
14 the change in control is finally effected.

15 The Commissioner may impose such terms and conditions on  
16 the approval of the change in control application as he deems  
17 necessary or appropriate.

18 If an applicant, whose application for a change in control  
19 has been approved pursuant to subsection (a) of this Section,  
20 fails to effect the change in control within 180 days after the  
21 date of the Commissioner's approval, the Commissioner shall  
22 revoke that approval unless a request has been submitted, in  
23 writing, to the Commissioner for an extension and the request  
24 has been approved.

25 (b-1) Any person who obtains ownership of stock of an  
26 existing State bank or stock of a holding company that controls  
27 the State bank by gift, bequest, or inheritance such that  
28 ownership of the stock would constitute control of the State  
29 bank or holding company may obtain title and ownership of the  
30 stock, but may not exercise management or control of the  
31 business and affairs of the bank or vote his or her shares so  
32 as to exercise management or control unless and until the  
33 Commissioner approves an application for the change of control  
34 as provided in subsection (b) of this Section.

35 (c) Whenever a state bank makes a loan or loans, secured,  
36 or to be secured, by 25% or more of the outstanding stock of a

1 state bank, the president or other chief executive officer of  
2 the lending bank shall promptly report such fact to the  
3 Commissioner upon obtaining knowledge of such loan or loans,  
4 except that no report need be made in those cases where the  
5 borrower has been the owner of record of the stock for a period  
6 of one year or more, or the stock is that of a newly organized  
7 bank prior to its opening.

8 (d) The reports required by subsections (b) and (c) of this  
9 Section 18, other than those relating to a transfer of assets  
10 or assumption of liabilities, shall contain the following  
11 information to the extent that it is known by the person making  
12 the report: (1) the number of shares involved; (2) the names of  
13 the sellers (or transferors); (3) the names of the purchasers  
14 (or transferees); (4) the names of the beneficial owners if the  
15 shares are registered in another name; (5) the purchase price,  
16 if applicable; (6) the total number of shares owned by the  
17 sellers (or transferors), the purchasers (or transferees) and  
18 the beneficial owners both immediately before and after the  
19 transaction; and, (7) in the case of a loan, the name of the  
20 borrower, the amount of the loan, the name of the bank issuing  
21 the stock securing the loan and the number of shares securing  
22 the loan. In addition to the foregoing, such reports shall  
23 contain such other information which is requested by the  
24 Commissioner to inform the Commissioner of the effect of the  
25 transaction upon control of the bank whose stock is involved.

26 (d-1) The reports required by subsection (b) of this  
27 Section 18 that relate to purchase of assets and assumption of  
28 liabilities shall contain the following information to the  
29 extent that it is known by the person making the report: (1)  
30 the value, amount, and description of the assets transferred;  
31 (2) the amount, type, and to whom each type of liabilities are  
32 owed; (3) the names of the purchasers (or transferees); (4) the  
33 names of the beneficial owners if the shares of a purchaser or  
34 transferee are registered in another name; (5) the purchase  
35 price, if applicable; and, (6) in the case of a loan obtained  
36 to effect a purchase, the name of the borrower, the amount and

1 terms of the loan, and the description of the assets securing  
2 the loan. In addition to the foregoing, these reports shall  
3 contain any other information that is requested by the  
4 Commissioner to inform the Commissioner of the effect of the  
5 transaction upon the bank from which assets are purchased or  
6 liabilities are transferred.

7 (e) Whenever such a change as described in subsection (a)  
8 of this Section 18 occurs, each state bank shall report  
9 promptly to the Commissioner any changes or replacement of its  
10 chief executive officer or of any director occurring in the  
11 next 12 month period, including in its report a statement of  
12 the past and current business and professional affiliations of  
13 the new chief executive officer or directors.

14 (f) (Blank).

15 (g) (1) Except as otherwise expressly provided in this  
16 subsection (g), the Commissioners shall not approve an  
17 application for a change in control if upon consummation of  
18 the change in control the persons applying for the change  
19 in control, including any affiliates of the persons  
20 applying, would control 30% or more of the total amount of  
21 deposits which are located in this State at insured  
22 depository institutions. For purposes of this subsection  
23 (g), the words "insured depository institution" shall mean  
24 State banks, national banks, and insured savings  
25 associations. For purposes of this subsection (g), the word  
26 "deposits" shall have the meaning ascribed to that word in  
27 Section 3(1) of the Federal Deposit Insurance Act. For  
28 purposes of this subsection (g), the total amount of  
29 deposits which are considered to be located in this State  
30 at insured depository institutions shall equal the sum of  
31 all deposits held at the main banking premises and branches  
32 in the State of Illinois of State banks, national banks, or  
33 insured savings associations. For purposes of this  
34 subsection (g), the word "affiliates" shall have the  
35 meaning ascribed to that word in Section 35.2 of this Act.

36 (2) Notwithstanding the provisions of subsection

1 (g) (1) of this Section, the Commissioner may approve an  
2 application for a change in control for a bank that is in  
3 default or in danger of default. Except in those instances  
4 in which an application for a change in control is for a  
5 bank that is in default or in danger of default, the  
6 Commissioner may not approve a change in control which does  
7 not meet the requirements of subsection (g) (1) of this  
8 Section. The Commissioner may not waive the provisions of  
9 subsection (g) (1) of this Section, whether pursuant to  
10 Section 3(d) of the federal Bank Holding Company Act of  
11 1956 or Section 44(d) of the Federal Deposit Insurance Act,  
12 except as expressly provided in this subsection (g) (2).

13 (h) As used in this Section, the term "control" means the  
14 power, directly or indirectly, acting through or acting in  
15 concert with one or more persons, to direct the management or  
16 policies of the bank or to vote 25% or more of the outstanding  
17 stock of the bank. If there is any question as to whether a  
18 change in control application should be filed, the question  
19 shall be resolved in favor of filing the application with the  
20 Commissioner.

21 As used in this Section, "substantially all" the assets or  
22 liabilities of a State bank means that portion of the assets or  
23 liabilities of a State bank such that their purchase or  
24 transfer will materially impair the ability of the State bank  
25 to continue successful, safe, and sound operations or to  
26 continue as a going concern or would cause the bank to lose its  
27 federal deposit insurance.

28 As used in this Section, "purchase" includes a transfer by  
29 gift, bequest, inheritance, or any other means.

30 As used in this Section, "acting in concert" means knowing  
31 participation in a joint activity or parallel action towards a  
32 common goal of acquiring control of a state bank, whether or  
33 not pursuant to an express agreement.

34 (Source: P.A. 92-483, eff. 8-23-01; 92-811, eff. 8-21-02.)

1           Sec. 21.2. Interstate mergers; minimum age requirement.

2           (a) No out of state bank and no national bank whose main  
3 banking premises is located in a state other than Illinois  
4 shall merge with ~~or into~~, or shall acquire all or substantially  
5 all of the assets of an Illinois bank that has existed and  
6 continuously operated as a bank for 5 years or less.

7           (b) For purposes of subsection (a) of this Section, an  
8 Illinois bank that is the resulting bank following a merger  
9 involving an Illinois interim bank shall be considered to have  
10 been in existence and continuously operated during the  
11 existence and continuous operation of the Illinois merged bank.  
12 As used in this subsection (b), the words "interim bank" shall  
13 mean a bank which shall not accept deposits, make loans, pay  
14 checks, or engage in the general business of banking or any  
15 part thereof, and is chartered solely for the purpose of  
16 merging with or acquiring control of, or acquiring all or  
17 substantially all of the assets of an existing Illinois bank.

18           (c) The provisions of subsection (a) of the Section shall  
19 not apply to the merger or acquisition of all or substantially  
20 all of the assets of an Illinois bank:

21           (1) if the merger or acquisition is part of a purchase  
22 or acquisition with respect to which the Federal Deposit  
23 Insurance Corporation provides assistance under Section  
24 13(c) of the Federal Deposit Insurance Act; or

25           (2) if the Illinois bank is in default or in danger of  
26 default.

27           (Source: P.A. 90-226, eff. 7-25-97.)

28           (205 ILCS 5/46) (from Ch. 17, par. 357)

29           Sec. 46. Misleading practices and names prohibited;  
30 penalty.

31           (a) No person, firm, partnership, or corporation that is  
32 not a bank shall transact business in this State in a manner  
33 which has a substantial likelihood of misleading the public by  
34 implying that the business is a bank, or shall use the word  
35 "banc", "bank", "banker", or "banking" in connection with the



1 business. Any person, firm, partnership or corporation  
2 violating this Section shall be deemed guilty of a Class A  
3 misdemeanor, and the Attorney General or State's Attorney of  
4 the county in which any such violation occurs may restrain such  
5 violation by a complaint for injunctive relief.

6 (b) If the Commissioner is of the opinion and finds that a  
7 person, firm, partnership, or corporation that is not a bank  
8 has transacted or intends to transact business in this State in  
9 a manner which has a substantial likelihood of misleading the  
10 public by implying that the business is a bank, or has used or  
11 intends to use the word "banc", "bank", "banker", or "banking"  
12 in connection with the business, then the Commissioner may  
13 direct that person, firm, partnership, or corporation to cease  
14 and desist from transacting the business or using the word  
15 "banc", "bank", "banker", or "banking". If that person, firm,  
16 partnership, or corporation persists in transacting the  
17 business or using the word "banc", "bank", "banker", or  
18 "banking", then the Commissioner may impose a civil penalty of  
19 up to \$10,000 for each violation. Each day that the person,  
20 firm, partnership, or corporation continues transacting the  
21 business or using the word "banc", "bank", "banker", or  
22 "banking" in connection with the business shall constitute a  
23 separate violation of these provisions.

24 (c) A person, firm, partnership, or corporation that is not  
25 a bank, and is not transacting or intending to transact  
26 business in this State in a manner that has a substantial  
27 likelihood of misleading the public by implying that such  
28 business is a bank, may apply to the Commissioner for  
29 permission to use the word "banc", "bank", "banker", or  
30 "banking" in connection with the business. If the Commissioner  
31 determines that there is no substantial likelihood of  
32 misleading the public, and upon such conditions as the  
33 Commissioner may impose to prevent the person, firm,  
34 partnership, or corporation from holding itself out in a  
35 misleading manner, then such person, firm, partnership, or  
36 corporation may use the word "banc", "bank", "banker", or

1 "banking".

2 (d) (1) Unless otherwise expressly permitted by law, no  
3 person, firm, partnership, or corporation may use the name  
4 of an existing bank when marketing to or soliciting  
5 business from customers or prospective customers if the  
6 reference to the existing bank is made without the consent  
7 of the existing bank.

8 (1.5) Unless otherwise expressly permitted by law, no  
9 person, firm, partnership, or corporation may use a name  
10 similar to that of an existing bank when marketing to or  
11 soliciting business from customers or prospective  
12 customers if the similar name is used in a manner that  
13 could cause a reasonable person to believe that the  
14 marketing material or solicitation originated from or is  
15 endorsed by the existing bank or that the existing bank is  
16 in any other way responsible for the marketing material or  
17 solicitation.

18 (2) An existing bank may, in addition to any other  
19 remedies available under the law, report an alleged  
20 violation of this subsection (d) to the Commissioner. If  
21 the Commissioner finds the marketing material or  
22 solicitation in question to be in violation of this  
23 subsection, the Commissioner may direct the person, firm,  
24 partnership, or corporation to cease and desist from using  
25 that marketing material or solicitation in Illinois. If  
26 that person, firm, partnership, or corporation persists in  
27 the use of the marketing material or solicitation, then the  
28 Commissioner may impose a civil penalty of up to \$10,000  
29 for each violation. Each instance in which the marketing  
30 material or solicitation is sent to a customer or  
31 prospective customer shall constitute a separate violation  
32 of these provisions. The Commissioner is authorized to  
33 promulgate rules to administer these provisions.

34 (3) (Blank).

35 (Source: P.A. 92-476, eff. 8-23-01; 92-811, eff. 8-21-02.)

1 (205 ILCS 5/48) (from Ch. 17, par. 359)

2 Sec. 48. Commissioner's powers; duties. The Commissioner  
3 shall have the powers and authority, and is charged with the  
4 duties and responsibilities designated in this Act, and a State  
5 bank shall not be subject to any other visitorial power other  
6 than as authorized by this Act, except those vested in the  
7 courts, or upon prior consultation with the Commissioner, a  
8 foreign bank regulator with an appropriate supervisory  
9 interest in the parent or affiliate of a state bank. In the  
10 performance of the Commissioner's duties:

11 (1) The Commissioner shall call for statements from all  
12 State banks as provided in Section 47 at least one time during  
13 each calendar quarter.

14 (2) (a) The Commissioner, as often as the Commissioner  
15 shall deem necessary or proper, and no less frequently than 18  
16 months following the preceding examination, shall appoint a  
17 suitable person or persons to make an examination of the  
18 affairs of every State bank, except that for every eligible  
19 State bank, as defined by regulation, the Commissioner in lieu  
20 of the examination may accept on an alternating basis the  
21 examination made by the eligible State bank's appropriate  
22 federal banking agency pursuant to Section 111 of the Federal  
23 Deposit Insurance Corporation Improvement Act of 1991,  
24 provided the appropriate federal banking agency has made such  
25 an examination. A person so appointed shall not be a  
26 stockholder or officer or employee of any bank which that  
27 person may be directed to examine, and shall have powers to  
28 make a thorough examination into all the affairs of the bank  
29 and in so doing to examine any of the officers or agents or  
30 employees thereof on oath and shall make a full and detailed  
31 report of the condition of the bank to the Commissioner. In  
32 making the examination the examiners shall include an  
33 examination of the affairs of all the affiliates of the bank,  
34 as defined in subsection (b) of Section 35.2 of this Act, or  
35 subsidiaries of the bank as shall be necessary to disclose  
36 fully the conditions of the subsidiaries or affiliates, the

1 relations between the bank and the subsidiaries or affiliates  
2 and the effect of those relations upon the affairs of the bank,  
3 and in connection therewith shall have power to examine any of  
4 the officers, directors, agents, or employees of the  
5 subsidiaries or affiliates on oath. After May 31, 1997, the  
6 Commissioner may enter into cooperative agreements with state  
7 regulatory authorities of other states to provide for  
8 examination of State bank branches in those states, and the  
9 Commissioner may accept reports of examinations of State bank  
10 branches from those state regulatory authorities. These  
11 cooperative agreements may set forth the manner in which the  
12 other state regulatory authorities may be compensated for  
13 examinations prepared for and submitted to the Commissioner.

14 (b) After May 31, 1997, the Commissioner is authorized to  
15 examine, as often as the Commissioner shall deem necessary or  
16 proper, branches of out-of-state banks. The Commissioner may  
17 establish and may assess fees to be paid to the Commissioner  
18 for examinations under this subsection (b). The fees shall be  
19 borne by the out-of-state bank, unless the fees are borne by  
20 the state regulatory authority that chartered the out-of-state  
21 bank, as determined by a cooperative agreement between the  
22 Commissioner and the state regulatory authority that chartered  
23 the out-of-state bank.

24 (2.5) Whenever any State bank, any subsidiary or affiliate  
25 of a State bank, or after May 31, 1997, any branch of an  
26 out-of-state bank causes to be performed, by contract or  
27 otherwise, any bank services for itself, whether on or off its  
28 premises:

29 (a) that performance shall be subject to examination by  
30 the Commissioner to the same extent as if services were  
31 being performed by the bank or, after May 31, 1997, branch  
32 of the out-of-state bank itself on its own premises; and

33 (b) the bank or, after May 31, 1997, branch of the  
34 out-of-state bank shall notify the Commissioner of the  
35 existence of a service relationship. The notification  
36 shall be submitted with the first statement of condition

1 (as required by Section 47 of this Act) due after the  
2 making of the service contract or the performance of the  
3 service, whichever occurs first. The Commissioner shall be  
4 notified of each subsequent contract in the same manner.

5 For purposes of this subsection (2.5), the term "bank  
6 services" means services such as sorting and posting of checks  
7 and deposits, computation and posting of interest and other  
8 credits and charges, preparation and mailing of checks,  
9 statements, notices, and similar items, or any other clerical,  
10 bookkeeping, accounting, statistical, or similar functions  
11 performed for a State bank, including but not limited to  
12 electronic data processing related to those bank services.

13 (3) The expense of administering this Act, including the  
14 expense of the examinations of State banks as provided in this  
15 Act, shall to the extent of the amounts resulting from the fees  
16 provided for in paragraphs (a), (a-2), and (b) of this  
17 subsection (3) be assessed against and borne by the State  
18 banks:

19 (a) Each bank shall pay to the Commissioner a Call  
20 Report Fee ~~which shall be paid in quarterly installments~~  
21 ~~equal to one fourth of the sum of the annual fixed fee of~~  
22 ~~\$800, plus a variable fee based on the assets shown on the~~  
23 ~~quarterly statement of condition delivered to the~~  
24 ~~Commissioner in accordance with Section 47 for the~~  
25 ~~preceding quarter according to the following schedule: 16¢~~  
26 ~~per \$1,000 of the first \$5,000,000 of total assets, 15¢ per~~  
27 ~~\$1,000 of the next \$20,000,000 of total assets, 13¢ per~~  
28 ~~\$1,000 of the next \$75,000,000 of total assets, 9¢ per~~  
29 ~~\$1,000 of the next \$400,000,000 of total assets, 7¢ per~~  
30 ~~\$1,000 of the next \$500,000,000 of total assets, and 5¢ per~~  
31 ~~\$1,000 of all assets in excess of \$1,000,000,000, of the~~  
32 ~~State bank. The Call Report Fee shall be calculated and~~  
33 ~~assessed in accordance with a formula prescribed by rule by~~  
34 the Commissioner and billed to the banks for remittance at  
35 the time of the quarterly statements of condition provided  
36 for in Section 47. The Commissioner may require payment of

1 the fees provided in this Section by an electronic transfer  
2 of funds or an automatic debit of an account of each of the  
3 State banks. In case more than one examination of any bank  
4 is deemed by the Commissioner to be necessary in any  
5 examination frequency cycle specified in subsection 2(a)  
6 of this Section, and is performed at his direction, the  
7 Commissioner may assess a reasonable additional fee to  
8 recover the cost of the additional examination; provided,  
9 however, that an examination conducted at the request of  
10 the State Treasurer pursuant to the Uniform Disposition of  
11 Unclaimed Property Act shall not be deemed to be an  
12 additional examination under this Section. ~~In lieu of the~~  
13 ~~method and amounts set forth in this paragraph (a) for the~~  
14 ~~calculation of the Call Report Fee, The the Commissioner~~  
15 may specify by rule that the Call Report Fees provided by  
16 this Section may be assessed semiannually or some other  
17 period ~~and may provide in the rule the formula to be used~~  
18 ~~for calculating and assessing the periodic Call Report Fees~~  
19 ~~to be paid by State banks.~~

20 (a-1) If in the opinion of the Commissioner an  
21 emergency exists or appears likely, the Commissioner may  
22 assign an examiner or examiners to monitor the affairs of a  
23 State bank with whatever frequency he deems appropriate,  
24 including but not limited to a daily basis. The reasonable  
25 and necessary expenses of the Commissioner during the  
26 period of the monitoring shall be borne by the subject  
27 bank. The Commissioner shall furnish the State bank a  
28 statement of time and expenses if requested to do so within  
29 30 days of the conclusion of the monitoring period.

30 (a-2) On and after January 1, 1990, the reasonable and  
31 necessary expenses of the Commissioner during examination  
32 of the performance of electronic data processing services  
33 under subsection (2.5) shall be borne by the banks for  
34 which the services are provided. An amount, based upon a  
35 fee structure prescribed by the Commissioner, shall be paid  
36 by the banks or, after May 31, 1997, branches of

1 out-of-state banks receiving the electronic data  
2 processing services along with the Call Report Fee assessed  
3 under paragraph (a) of this subsection (3).

4 (a-3) After May 31, 1997, the reasonable and necessary  
5 expenses of the Commissioner during examination of the  
6 performance of electronic data processing services under  
7 subsection (2.5) at or on behalf of branches of  
8 out-of-state banks shall be borne by the out-of-state  
9 banks, unless those expenses are borne by the state  
10 regulatory authorities that chartered the out-of-state  
11 banks, as determined by cooperative agreements between the  
12 Commissioner and the state regulatory authorities that  
13 chartered the out-of-state banks.

14 (b) "Fiscal year" for purposes of this Section 48 is  
15 defined as a period beginning July 1 of any year and ending  
16 June 30 of the next year. The Commissioner shall receive  
17 for each fiscal year, commencing with the fiscal year  
18 ending June 30, 1987, a contingent fee equal to the lesser  
19 of the aggregate of the fees paid by all State banks under  
20 paragraph (a) of subsection (3) for that year, or the  
21 amount, if any, whereby the aggregate of the administration  
22 expenses, as defined in paragraph (c), for that fiscal year  
23 exceeds the sum of the aggregate of the fees payable by all  
24 State banks for that year under paragraph (a) of subsection  
25 (3), plus any amounts transferred into the Bank and Trust  
26 Company Fund from the State Pensions Fund for that year,  
27 plus all other amounts collected by the Commissioner for  
28 that year under any other provision of this Act, plus the  
29 aggregate of all fees collected for that year by the  
30 Commissioner under the Corporate Fiduciary Act, excluding  
31 the receivership fees provided for in Section 5-10 of the  
32 Corporate Fiduciary Act, and the Foreign Banking Office  
33 Act. The aggregate amount of the contingent fee thus  
34 arrived at for any fiscal year shall be apportioned  
35 amongst, assessed upon, and paid by the State banks and  
36 foreign banking corporations, respectively, in the same

1 proportion that the fee of each under paragraph (a) of  
2 subsection (3), respectively, for that year bears to the  
3 aggregate for that year of the fees collected under  
4 paragraph (a) of subsection (3). The aggregate amount of  
5 the contingent fee, and the portion thereof to be assessed  
6 upon each State bank and foreign banking corporation,  
7 respectively, shall be determined by the Commissioner and  
8 shall be paid by each, respectively, within 120 days of the  
9 close of the period for which the contingent fee is  
10 computed and is payable, and the Commissioner shall give 20  
11 days advance notice of the amount of the contingent fee  
12 payable by the State bank and of the date fixed by the  
13 Commissioner for payment of the fee.

14 (c) The "administration expenses" for any fiscal year  
15 shall mean the ordinary and contingent expenses for that  
16 year incident to making the examinations provided for by,  
17 and for otherwise administering, this Act, the Corporate  
18 Fiduciary Act, excluding the expenses paid from the  
19 Corporate Fiduciary Receivership account in the Bank and  
20 Trust Company Fund, the Foreign Banking Office Act, the  
21 Electronic Fund Transfer Act, and the Illinois Bank  
22 Examiners' Education Foundation Act, including all  
23 salaries and other compensation paid for personal services  
24 rendered for the State by officers or employees of the  
25 State, including the Commissioner and the Deputy  
26 Commissioners, all expenditures for telephone and  
27 telegraph charges, postage and postal charges, office  
28 stationery, supplies and services, and office furniture  
29 and equipment, including typewriters and copying and  
30 duplicating machines and filing equipment, surety bond  
31 premiums, and travel expenses of those officers and  
32 employees, employees, expenditures or charges for the  
33 acquisition, enlargement or improvement of, or for the use  
34 of, any office space, building, or structure, or  
35 expenditures for the maintenance thereof or for furnishing  
36 heat, light, or power with respect thereto, all to the



1 extent that those expenditures are directly incidental to  
2 such examinations or administration. The Commissioner  
3 shall not be required by paragraphs (c) or (d-1) of this  
4 subsection (3) to maintain in any fiscal year's budget  
5 appropriated reserves for accrued vacation and accrued  
6 sick leave that is required to be paid to employees of the  
7 Commissioner upon termination of their service with the  
8 Commissioner in an amount that is more than is reasonably  
9 anticipated to be necessary for any anticipated turnover in  
10 employees, whether due to normal attrition or due to  
11 layoffs, terminations, or resignations.

12 (d) The aggregate of all fees collected by the  
13 Commissioner under this Act, the Corporate Fiduciary Act,  
14 or the Foreign Banking Office Act on and after July 1,  
15 1979, shall be paid promptly after receipt of the same,  
16 accompanied by a detailed statement thereof, into the State  
17 treasury and shall be set apart in a special fund to be  
18 known as the "Bank and Trust Company Fund", except as  
19 provided in paragraph (c) of subsection (11) of this  
20 Section. All earnings received from investments of funds in  
21 the Bank and Trust Company Fund shall be deposited in the  
22 Bank and Trust Company Fund and may be used for the same  
23 purposes as fees deposited in that Fund. The amount from  
24 time to time deposited into the Bank and Trust Company Fund  
25 shall be used to offset the ordinary administration  
26 ~~administrative~~ expenses of the Commissioner of Banks and  
27 Real Estate as defined in this Section. Nothing in this  
28 amendatory Act of 1979 shall prevent continuing the  
29 practice of paying expenses involving salaries,  
30 retirement, social security, and State-paid insurance  
31 premiums of State officers by appropriations from the  
32 General Revenue Fund. However, the General Revenue Fund  
33 shall be reimbursed for those payments made on and after  
34 July 1, 1979, by an annual transfer of funds from the Bank  
35 and Trust Company Fund.

36 (d-1) Adequate funds shall be available in the Bank and

1 Trust Company Fund to permit the timely payment of  
2 administration expenses. In each fiscal year the total  
3 administration expenses shall be deducted from the total  
4 fees collected by the Commissioner and the remainder  
5 transferred into the Cash Flow Reserve Account, unless the  
6 balance of the Cash Flow Reserve Account prior to the  
7 transfer equals or exceeds one-third ~~one-fourth~~ of the  
8 total initial appropriations from the Bank and Trust  
9 Company Fund for the subsequent year, in which case the  
10 remainder shall be credited to State banks and foreign  
11 banking corporations and applied against their fees for the  
12 subsequent year. The amount credited to each State bank and  
13 foreign banking corporation shall be in the same proportion  
14 as the Call Report Fees paid by each for the year bear to  
15 the total Call Report Fees collected for the year. If,  
16 after a transfer to the Cash Flow Reserve Account is made  
17 or if no remainder is available for transfer, the balance  
18 of the Cash Flow Reserve Account is less than one-third  
19 ~~one-fourth~~ of the total initial appropriations for the  
20 subsequent year and the amount transferred is less than 5%  
21 of the total Call Report Fees for the year, additional  
22 amounts needed to make the transfer equal to 5% of the  
23 total Call Report Fees for the year shall be apportioned  
24 amongst, assessed upon, and paid by the State banks and  
25 foreign banking corporations in the same proportion that  
26 the Call Report Fees of each, respectively, for the year  
27 bear to the total Call Report Fees collected for the year.  
28 The additional amounts assessed shall be transferred into  
29 the Cash Flow Reserve Account. For purposes of this  
30 paragraph (d-1), the calculation of the fees collected by  
31 the Commissioner shall exclude the receivership fees  
32 provided for in Section 5-10 of the Corporate Fiduciary  
33 Act.

34 (e) The Commissioner may upon request certify to any  
35 public record in his keeping and shall have authority to  
36 levy a reasonable charge for issuing certifications of any

1 public record in his keeping.

2 (f) In addition to fees authorized elsewhere in this  
3 Act, the Commissioner may, in connection with a review,  
4 approval, or provision of a service, levy a reasonable  
5 charge to recover the cost of the review, approval, or  
6 service.

7 (4) Nothing contained in this Act shall be construed to  
8 limit the obligation relative to examinations and reports of  
9 any State bank, deposits in which are to any extent insured by  
10 the United States or any agency thereof, nor to limit in any  
11 way the powers of the Commissioner with reference to  
12 examinations and reports of that bank.

13 (5) The nature and condition of the assets in or investment  
14 of any bonus, pension, or profit sharing plan for officers or  
15 employees of every State bank or, after May 31, 1997, branch of  
16 an out-of-state bank shall be deemed to be included in the  
17 affairs of that State bank or branch of an out-of-state bank  
18 subject to examination by the Commissioner under the provisions  
19 of subsection (2) of this Section, and if the Commissioner  
20 shall find from an examination that the condition of or  
21 operation of the investments or assets of the plan is unlawful,  
22 fraudulent, or unsafe, or that any trustee has abused his  
23 trust, the Commissioner shall, if the situation so found by the  
24 Commissioner shall not be corrected to his satisfaction within  
25 60 days after the Commissioner has given notice to the board of  
26 directors of the State bank or out-of-state bank of his  
27 findings, report the facts to the Attorney General who shall  
28 thereupon institute proceedings against the State bank or  
29 out-of-state bank, the board of directors thereof, or the  
30 trustees under such plan as the nature of the case may require.

31 (6) The Commissioner shall have the power:

32 (a) To promulgate reasonable rules for the purpose of  
33 administering the provisions of this Act.

34 (a-5) To impose conditions on any approval issued by  
35 the Commissioner if he determines that the conditions are  
36 necessary or appropriate. These conditions shall be

1 imposed in writing and shall continue in effect for the  
2 period prescribed by the Commissioner.

3 (b) To issue orders against any person, if the  
4 Commissioner has reasonable cause to believe that an unsafe  
5 or unsound banking practice has occurred, is occurring, or  
6 is about to occur, if any person has violated, is  
7 violating, or is about to violate any law, rule, condition  
8 imposed by the Commissioner, or written agreement with the  
9 Commissioner, or for the purpose of administering the  
10 provisions of this Act and any rule promulgated in  
11 accordance with this Act. The Commissioner may make  
12 available to the public any formal enforcement action or  
13 modification to such formal enforcement action. For  
14 purposes of this subsection, "formal enforcement action"  
15 means a Order to Cease and Desist, an Order of Prohibition,  
16 an Order of Removal, or an Order Assessing a Civil Monetary  
17 Penalty.

18 (b-1) To enter into agreements with a bank establishing  
19 a program to correct the condition of the bank or its  
20 practices.

21 (c) To appoint hearing officers to execute any of the  
22 powers granted to the Commissioner under this Section for  
23 the purpose of administering this Act and any rule  
24 promulgated in accordance with this Act and otherwise to  
25 authorize, in writing, an officer or employee of the Office  
26 of Banks and Real Estate to exercise his powers under this  
27 Act.

28 (d) To subpoena witnesses, to compel their attendance,  
29 to administer an oath, to examine any person under oath,  
30 and to require the production of any relevant books,  
31 papers, accounts, and documents in the course of and  
32 pursuant to any investigation being conducted, or any  
33 action being taken, by the Commissioner in respect of any  
34 matter relating to the duties imposed upon, or the powers  
35 vested in, the Commissioner under the provisions of this  
36 Act or any rule promulgated in accordance with this Act.

1 (e) To conduct hearings.

2 (7) Whenever, in the opinion of the Commissioner, any  
3 director, officer, employee, or agent of a State bank or any  
4 subsidiary or bank holding company of the bank or, after May  
5 31, 1997, of any branch of an out-of-state bank or any  
6 subsidiary or bank holding company of the bank shall have  
7 violated any law, rule, or order relating to that bank or any  
8 subsidiary or bank holding company of the bank, shall have  
9 obstructed or impeded any examination or investigation by the  
10 Commissioner, shall have engaged in an unsafe or unsound  
11 practice in conducting the business of that bank or any  
12 subsidiary or bank holding company of the bank, or shall have  
13 violated any law or engaged or participated in any unsafe or  
14 unsound practice in connection with any financial institution  
15 or other business entity such that the character and fitness of  
16 the director, officer, employee, or agent does not assure  
17 reasonable promise of safe and sound operation of the State  
18 bank, the Commissioner may issue an order of removal. If, in  
19 the opinion of the Commissioner, any former director, officer,  
20 employee, or agent of a State bank or any subsidiary or bank  
21 holding company of the bank, prior to the termination of his or  
22 her service with that bank or any subsidiary or bank holding  
23 company of the bank, violated any law, rule, or order relating  
24 to that State bank or any subsidiary or bank holding company of  
25 the bank, obstructed or impeded any examination or  
26 investigation by the Commissioner, engaged in an unsafe or  
27 unsound practice in conducting the business of that bank or any  
28 subsidiary or bank holding company of the bank, or violated any  
29 law or engaged or participated in any unsafe or unsound  
30 practice in connection with any financial institution or other  
31 business entity such that the character and fitness of the  
32 director, officer, employee, or agent would not have assured  
33 reasonable promise of safe and sound operation of the State  
34 bank, the Commissioner may issue an order prohibiting that  
35 person from further service with a bank or any subsidiary or  
36 bank holding company of the bank as a director, officer,

1 employee, or agent. An order issued pursuant to this subsection  
2 shall be served upon the director, officer, employee, or agent.  
3 A copy of the order shall be sent to each director of the bank  
4 affected by registered mail. The person affected by the action  
5 may request a hearing before the State Banking Board within 10  
6 days after receipt of the order. The hearing shall be held by  
7 the Board within 30 days after the request has been received by  
8 the Board. The Board shall make a determination approving,  
9 modifying, or disapproving the order of the Commissioner as its  
10 final administrative decision. If a hearing is held by the  
11 Board, the Board shall make its determination within 60 days  
12 from the conclusion of the hearing. Any person affected by a  
13 decision of the Board under this subsection (7) of Section 48  
14 of this Act may have the decision reviewed only under and in  
15 accordance with the Administrative Review Law and the rules  
16 adopted pursuant thereto. A copy of the order shall also be  
17 served upon the bank of which he is a director, officer,  
18 employee, or agent, whereupon he shall cease to be a director,  
19 officer, employee, or agent of that bank. The Commissioner may  
20 institute a civil action against the director, officer, or  
21 agent of the State bank or, after May 31, 1997, of the branch  
22 of the out-of-state bank against whom any order provided for by  
23 this subsection (7) of this Section 48 has been issued, and  
24 against the State bank or, after May 31, 1997, out-of-state  
25 bank, to enforce compliance with or to enjoin any violation of  
26 the terms of the order. Any person who has been the subject of  
27 an order of removal or an order of prohibition issued by the  
28 Commissioner under this subsection, Section 3.074(b) of the  
29 Illinois Bank Holding Company Act of 1957, or Section 5-6 of  
30 the Corporate Fiduciary Act may not thereafter serve as  
31 director, officer, employee, or agent of any State bank or of  
32 any branch of any out-of-state bank, or of any corporate  
33 fiduciary, as defined in Section 1-5.05 of the Corporate  
34 Fiduciary Act, or of any other entity that is subject to  
35 licensure or regulation by the Commissioner or the Office of  
36 Banks and Real Estate unless the Commissioner has granted prior

1 approval in writing.

2 For purposes of this paragraph (7), "bank holding company"  
3 has the meaning prescribed in Section 2 of the Illinois Bank  
4 Holding Company Act of 1957.

5 (8) The Commissioner may impose civil penalties of up to  
6 \$100,000 ~~\$10,000~~ against any person for each violation of any  
7 provision of this Act, any rule promulgated in accordance with  
8 this Act, any order of the Commissioner, any condition imposed  
9 by the Commissioner, or any other action which in the  
10 Commissioner's discretion is an unsafe or unsound banking  
11 practice.

12 (9) The Commissioner may impose civil penalties of up to  
13 \$100 against any person for the first failure to comply with  
14 reporting requirements set forth in the report of examination  
15 of the bank and up to \$200 for the second and subsequent  
16 failures to comply with those reporting requirements.

17 (10) All final administrative decisions of the  
18 Commissioner hereunder shall be subject to judicial review  
19 pursuant to the provisions of the Administrative Review Law.  
20 For matters involving administrative review, venue shall be in  
21 either Sangamon County or Cook County.

22 (11) The endowment fund for the Illinois Bank Examiners'  
23 Education Foundation shall be administered as follows:

24 (a) (Blank).

25 (b) The Foundation is empowered to receive voluntary  
26 contributions, gifts, grants, bequests, and donations on  
27 behalf of the Illinois Bank Examiners' Education  
28 Foundation from national banks and other persons for the  
29 purpose of funding the endowment of the Illinois Bank  
30 Examiners' Education Foundation.

31 (c) The aggregate of all special educational fees  
32 collected by the Commissioner and property received by the  
33 Commissioner on behalf of the Illinois Bank Examiners'  
34 Education Foundation under this subsection (11) on or after  
35 June 30, 1986, shall be either (i) promptly paid after  
36 receipt of the same, accompanied by a detailed statement

1           thereof, into the State Treasury and shall be set apart in  
2           a special fund to be known as "The Illinois Bank Examiners'  
3           Education Fund" to be invested by either the Treasurer of  
4           the State of Illinois in the Public Treasurers' Investment  
5           Pool or in any other investment he is authorized to make or  
6           by the Illinois State Board of Investment as the board of  
7           trustees of the Illinois Bank Examiners' Education  
8           Foundation may direct or (ii) deposited into an account  
9           maintained in a commercial bank or corporate fiduciary in  
10          the name of the Illinois Bank Examiners' Education  
11          Foundation pursuant to the order and direction of the Board  
12          of Trustees of the Illinois Bank Examiners' Education  
13          Foundation.

14          (12) (Blank).

15          (Source: P.A. 91-16, eff. 7-1-99; 92-20, eff. 7-1-01; 92-483,  
16          eff. 8-23-01; 92-651, eff. 7-11-02.)

17          (205 ILCS 5/49) (from Ch. 17, par. 361)

18          Sec. 49. False statements; penalty.

19          (a) It is unlawful for any officer, director, or employee  
20          of any State bank or subsidiary or holding company of that bank  
21          or, after May 31, 1997, branch out of an out-of-state bank  
22          subject to examination by the Commissioner or any person filing  
23          an application or notice or submitting information in  
24          connection with an application or notice with the Commissioner  
25          to willfully and knowingly subscribe to or make, or cause to be  
26          made, any false statement or false entry with intent to deceive  
27          any person or persons authorized to examine into the affairs of  
28          the bank or the subsidiary or holding company of that bank, the  
29          branch of an out-of-state bank, or the applicant or with intent  
30          to deceive the Commissioner or his administrative officers in  
31          the performance of their duties under this Act. A person who  
32          violates this Section is guilty of a Class 3 felony.

33          (b) Any state bank or officer, director, or employee of any  
34          state bank or, after May 31, 1997, branch of an out of state  
35          bank subject to examination by the Commissioner who shall



1 refuse access to information or documents requested by the  
2 Commissioner pursuant to any investigation being conducted or  
3 any action being taken by the Commissioner relating to the  
4 duties imposed upon or the powers vested in the Commissioner  
5 under the provisions of this Act or any rule promulgated in  
6 accordance with this Act, may be subject to disciplinary action  
7 pursuant to Section 48 of this Act.

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

9 (205 ILCS 5/71) (from Ch. 17, par. 383)

10 Sec. 71. Voluntary dissolution; Commissioner's fee. The  
11 Commissioner shall be entitled to a fee, which shall be paid at  
12 the time of deposit, on all money deposited with him for the  
13 account of one dissolving bank. The Commissioner shall  
14 establish this fee by rule. ~~of two per cent of the first five~~  
15 ~~thousand dollars and one per cent of all sums in excess of five~~  
16 ~~thousand dollars.~~

17 (Source: Laws 1965, p. 2020.)

18 Section 15. The Illinois Bank Holding Company Act of 1957  
19 is amended by changing Section 3.02 as follows:

20 (205 ILCS 10/3.02) (from Ch. 17, par. 2505)

21 Sec. 3.02. Unlawful acts; exceptions.

22 (a) Except as otherwise provided in this Act, it shall be  
23 unlawful:

24 (1) for any action to be taken that causes any company  
25 to become a bank holding company as defined in this Act  
26 with respect to any Illinois bank;

27 (2) for any action to be taken that causes an Illinois  
28 bank to become a subsidiary of a bank holding company;

29 (3) for any bank holding company to acquire direct or  
30 indirect ownership or control of any voting shares of an  
31 Illinois bank that possesses a charter issued by the  
32 Commissioner, unless the holding company complies with the  
33 change in control requirements set forth in Section 18 of

1 the Illinois Banking Act;

2 (4) for any bank holding company or subsidiary thereof  
3 other than a bank, to acquire all or substantially all of  
4 the assets of an Illinois bank;

5 (5) for any bank holding company owning or controlling,  
6 as defined in this Act, an Illinois bank to merge or  
7 consolidate with any other bank holding company;

8 (6) for any bank holding company that is not well  
9 capitalized, as that term is defined in 12 C.F.R. 225.2(r),  
10 as now or hereafter amended ~~with a ratio of total capital~~  
11 ~~to total assets of less than 7%, as measured and applied in~~  
12 ~~accordance with regulations of the Board of Governors of~~  
13 ~~the Federal Reserve System in effect on the date of the~~  
14 ~~filing of the application with the Board of Governors of~~  
15 ~~the Federal Reserve System,~~ to acquire direct or indirect  
16 ownership or control by purchase of stock, merger,  
17 consolidation, acquisition of assets or otherwise, of any  
18 Illinois bank or banks if the application for such  
19 acquisition is filed on or after July 1, 1986; provided  
20 that the requirement ~~total capital to total assets ratio~~  
21 ~~requirements~~ of this paragraph (6) and of the succeeding  
22 paragraph (7) that the bank holding company be well  
23 capitalized shall be applicable only to a bank holding  
24 company which is directly acquiring such direct or indirect  
25 control of any Illinois bank or banks and shall not be  
26 applicable to any bank holding company of which the  
27 acquiring company is a subsidiary; or

28 (7) for any bank holding company that is well  
29 capitalized, as that term is defined in 12 C.F.R. 225.2(r),  
30 as now or hereafter amended, ~~with a ratio of total capital~~  
31 ~~to total assets equal to or in excess of 7%~~ to acquire  
32 direct or indirect control by purchase of stock, merger,  
33 consolidation, acquisition of assets or otherwise, of any  
34 Illinois bank or banks where such acquisition would result  
35 in the bank holding company no longer be will capitalized  
36 ~~in a reduction in such bank holding company's ratio of~~

1 ~~total capital to total assets to less than 7%, where such~~  
2 ~~ratios are measured and applied in accordance with~~  
3 ~~regulations of the Board of Governors of the Federal~~  
4 ~~Reserve System in effect on the date of the filing of the~~  
5 ~~application with the Board of Governors of the Federal~~  
6 ~~Reserve System~~ if the application for such acquisition is  
7 filed on or after July 1, 1986.

8  
9 (b) Notwithstanding subsection (a) of this Section, a  
10 transaction, occurrence or event which is described in  
11 paragraphs (1), (2), (4), and (5) of subsection (a) of this  
12 Section, and which does not result in a violation of Section  
13 3.07 of this Act, shall not be unlawful if:

14 (1) approval of the transaction, occurrence or event by  
15 the Board of Governors of the Federal Reserve System is not  
16 required by the terms of the federal Bank Holding Company  
17 Act; or

18 (2) the transaction, occurrence or event:

19 (A) has been approved by the Board of Governors of  
20 the Federal Reserve System by an order, ruling or  
21 regulation of that Board made under the federal Bank  
22 Holding Company Act, including an assessment of the  
23 applicant's record in meeting the convenience and  
24 needs of the communities it serves in accordance with  
25 the federal Community Reinvestment Act of 1977, and  
26 that order, ruling or regulation remains in effect; and

27 (B) is carried out and occurs in compliance with  
28 all conditions or restrictions, if any, contained in an  
29 order, ruling or regulation of the Board of Governors  
30 of the Federal Reserve System referred to in the  
31 foregoing subparagraph (A).

32 (Source: P.A. 88-546; 89-567, eff. 7-26-96.)

33 Section 20. The Pawnbroker Regulation Act is amended by  
34 changing Sections 0.05 and 5 and by adding Sections 1.8 and 9.5  
35 as follows:

1 (205 ILCS 510/0.05)

2 Sec. 0.05. Administration of Act.

3 (a) This Act shall be administered by the Commissioner of  
4 Banks and Real Estate who shall have all of the following  
5 powers and duties in administering this Act:

6 (1) To promulgate reasonable rules for the purpose of  
7 administering the provisions of this Act.

8 (2) To issue orders for the purpose of administering  
9 the provisions of this Act and any rule promulgated in  
10 accordance with this Act.

11 (3) To appoint hearing officers and to hire employees  
12 or to contract with appropriate persons to execute any of  
13 the powers granted to the Commissioner under this Section  
14 for the purpose of administering this Act and any rule  
15 promulgated in accordance with this Act.

16 (4) To subpoena witnesses, to compel their attendance,  
17 to administer an oath, to examine any person under oath,  
18 and to require the production of any relevant books,  
19 papers, accounts, and documents in the course of and  
20 pursuant to any investigation being conducted, or any  
21 action being taken, by the Commissioner in respect of any  
22 matter relating to the duties imposed upon, or the powers  
23 vested in, the Commissioner under the provisions of this  
24 Act or any rule promulgated in accordance with this Act.

25 (5) To conduct hearings.

26 (6) To impose civil penalties graduated up to \$1,000  
27 against any person for each violation of any provision of  
28 this Act, any rule promulgated in accordance with this Act,  
29 or any order of the Commissioner based upon the seriousness  
30 of the violation.

31 (6.5) To initiate, through the Attorney General,  
32 injunction proceedings whenever it appears to the  
33 Commissioner that any person, whether licensed under this  
34 Act or not, is engaged or about to engage in an act or  
35 practice that constitutes or will constitute a violation of

1 this Act or any rule prescribed under the authority of this  
2 Act. The Commissioner may, in his or her discretion,  
3 through the Attorney General, apply for an injunction, and  
4 upon a proper showing, any circuit court may enter a  
5 permanent or preliminary injunction or a temporary  
6 restraining order without bond to enforce this Act in  
7 addition to the penalties and other remedies provided for  
8 in this Act.

9 (7) To issue a cease and desist order and, for  
10 violations of this Act, any order issued by the  
11 Commissioner pursuant to this Act, any rule promulgated in  
12 accordance with this Act, or any other applicable law in  
13 connection with the operation of a pawnshop, to suspend a  
14 license issued under this Act for up to 30 days.

15 (8) To determine compliance with applicable law and  
16 rules related to the operation of pawnshops and to verify  
17 the accuracy of reports filed with the Commissioner, the  
18 Commissioner, not more than one time every 2 years, may,  
19 but is not required to, conduct a routine examination of a  
20 pawnshop, and in addition, the Commissioner may examine the  
21 affairs of any pawnshop at any time if the Commissioner has  
22 reasonable cause to believe that unlawful or fraudulent  
23 activity is occurring, or has occurred, therein.

24 (9) In response to a complaint, to address any  
25 inquiries to any pawnshop in relation to its affairs, and  
26 it shall be the duty of the pawnshop to promptly reply in  
27 writing to such inquiries. The Commissioner may also  
28 require reports or information from any pawnshop at any  
29 time the Commissioner may deem desirable.

30 (10) To revoke a license issued under this Act if the  
31 Commissioner determines that (a) a licensee has been  
32 convicted of a felony in connection with the operations of  
33 a pawnshop; (b) a licensee knowingly, recklessly, or  
34 continuously violated this Act, a rule promulgated in  
35 accordance with this Act, or any order of the Commissioner;  
36 (c) a fact or condition exists that, if it had existed or

1 had been known at the time of the original application,  
2 would have justified license refusal; ~~or~~ (d) the licensee  
3 knowingly submits materially false or misleading documents  
4 with the intent to deceive the Commissioner or any other  
5 party; or (e) a licensee has been the subject of an Order  
6 of Removal or Order of Prohibition issued by the  
7 Commissioner pursuant to subsection (a)(12) of this  
8 Section, Section 48(7) of the Illinois Banking Act, Section  
9 3.074(b) of the Illinois Bank Holding Company Act of 1957,  
10 or Section 5-6 of the Corporate Fiduciary Act and the Order  
11 is a final administrative decision under the  
12 Administrative Review Law.

13 (11) Following license revocation, to take possession  
14 and control of a pawnshop for the purpose of examination,  
15 reorganization, or liquidation through receivership and to  
16 appoint a receiver, which may be the Commissioner, a  
17 pawnshop, or another suitable person.

18 (12) To issue an order of removal, whenever in the  
19 opinion of the Commissioner, any director, officer, owner,  
20 employee or agent of a pawnshop has violated any law, rule,  
21 or order relating to the pawnshop or has violated any law  
22 in connection with any other business entity such that the  
23 character and fitness of the director, officer, owner,  
24 employee, or agent does not assure reasonable promise of  
25 operation of the pawnshop in a lawful and fair manner. If,  
26 in the opinion of the Commissioner, any former director,  
27 officer, owner, employee, or agent of a pawnshop, prior to  
28 the termination of his or her service with the pawnshop,  
29 violated any law, rule, or order relating to the pawnshop  
30 or violated any law in connection with any other business  
31 such that the director, officer, owner, employee, or agent  
32 would not have assured reasonable promise of operation of  
33 the pawnshop in a lawful and fair manner, the Commissioner  
34 may issue an order prohibiting that person from further  
35 service with a pawnshop as a director, officer, owner,  
36 employee, or agent. An order issued pursuant to this

1       Section shall be served upon the director, officer, owner,  
2       employee, or agent. An Order of Removal shall also be sent  
3       to the pawnshop by personal service, certified mail return  
4       receipt requested, or any other method that provides proof  
5       of service and receipt. The person affected by the action  
6       may request a hearing within 10 days after receipt of the  
7       order of removal or prohibition. The hearing shall be held  
8       within 30 days after receipt of a request for a hearing in  
9       accordance with Part 392 of Title 38 of the Illinois  
10       Administrative Code. After concluding the hearing, a  
11       hearing officer shall make a recommendation approving,  
12       modifying, or disapproving the order of the Commissioner.  
13       The Commissioner shall then issue a written determination  
14       including the conclusions of law and the findings of fact  
15       upon which the determination was made. A copy of the order  
16       shall be served upon the pawnshop of which the person is a  
17       director, officer, owner, employee, or agent, whereupon  
18       the person shall cease to be a director, officer, employee,  
19       or agent of the pawnshop or to conduct any business in  
20       connection with the pawnshop. Any person who has been  
21       removed or prohibited by an order of the Commissioner under  
22       this Section may not thereafter serve as director, officer,  
23       employee, or agent of any pawnshop or of any other entity  
24       that is subject to licensure or regulation by the  
25       Commissioner or the Office of Banks and Real Estate unless  
26       the Commissioner has granted prior approval in writing. The  
27       Commissioner may institute a civil action against the  
28       director, officer, owner, employee, or agent subject to an  
29       order issued under this Section and against the pawnshop to  
30       enforce compliance with or to enjoin any violation of the  
31       terms of the order.

32       (b) After consultation with local law enforcement  
33 officers, the Attorney General, and the industry, the  
34 Commissioner may by rule require that pawnbrokers operate video  
35 camera surveillance systems to record photographic  
36 representations of customers and retain the tapes produced for

1 up to 30 days.

2 (c) Pursuant to rule, the Commissioner shall issue licenses  
3 on an annual or multi-year basis for operating a pawnshop. Any  
4 person currently operating or who has operated a pawnshop in  
5 this State during the 2 years preceding the effective date of  
6 this amendatory Act of 1997 shall be issued a license upon  
7 payment of the fee required under this Act. New applicants  
8 shall meet standards for a license as established by the  
9 Commissioner. Except with the prior written consent of the  
10 Commissioner, no individual, either a new applicant or a person  
11 currently operating a pawnshop, may be issued a license to  
12 operate a pawnshop if the individual has been convicted of a  
13 felony or of any criminal offense relating to dishonesty or  
14 breach of trust in connection with the operations of a  
15 pawnshop. In addition, no new applicant may be issued a license  
16 to operate a pawnshop if the individual has been the subject of  
17 an Order of Removal or Order of Prohibition issued by the  
18 Commissioner pursuant to subsection (a)(12) of this Section,  
19 Section 48(7) of the Illinois Banking Act, Section 3.074(b) of  
20 the Illinois Bank Holding Company Act of 1957, or Section 5-6  
21 of the Corporate Fiduciary Act after the Order becomes a final  
22 administrative decision under the Administrative Review Law  
23 unless the applicant receives the prior written approval of the  
24 Commissioner. The Commissioner shall establish license fees.  
25 The fees shall not exceed the amount reasonably required for  
26 administration of this Act. It shall be unlawful to operate a  
27 pawnshop without a license issued by the Commissioner.

28 (d) In addition to license fees, the Commissioner may, by  
29 rule, establish fees in connection with a review, approval, or  
30 provision of a service, and levy a reasonable charge to recover  
31 the cost of the review, approval, or service (such as a change  
32 in control, change in location, or renewal of a license). The  
33 Commissioner may also levy a reasonable charge to recover the  
34 cost of an examination if the Commissioner determines that  
35 unlawful or fraudulent activity has occurred. The Commissioner  
36 may require payment of the fees and charges provided in this



1 Act by certified check, money order, an electronic transfer of  
2 funds, or an automatic debit of an account.

3 (e) The Pawnbroker Regulation Fund is established as a  
4 special fund in the State treasury. Moneys collected under this  
5 Act shall be deposited into the Fund and used for the  
6 administration of this Act. In the event that General Revenue  
7 Funds are appropriated to the Office of the Commissioner of  
8 Banks and Real Estate for the initial implementation of this  
9 Act, the Governor may direct the repayment from the Pawnbroker  
10 Regulation Fund to the General Revenue Fund of such advance in  
11 an amount not to exceed \$30,000. The Governor may direct this  
12 interfund transfer at such time as he deems appropriate by  
13 giving appropriate written notice.

14 (f) The Commissioner may, by rule, require all pawnshops to  
15 provide for the expenses that would arise from the  
16 administration of the receivership of a pawnshop under this Act  
17 through the assessment of fees, the requirement to pledge  
18 surety bonds, or such other methods as determined by the  
19 Commissioner.

20 (g) All final administrative decisions of the Commissioner  
21 under this Act shall be subject to judicial review pursuant to  
22 the provisions of the Administrative Review Law. For matters  
23 involving administrative review, venue shall be in either  
24 Sangamon County or Cook County.

25 (Source: P.A. 92-215, eff. 8-2-01.)

26 (205 ILCS 510/1.8 new)

27 Sec. 1.8. Employment of persons convicted of a felony or a  
28 breach of trust related to the operation of a pawnshop. Except  
29 with the prior written consent of the Commissioner, no pawnshop  
30 shall employ an individual who has been convicted of a felony  
31 or of any criminal offense relating to dishonesty or breach of  
32 trust in connection with the operations of a pawnshop.

33 (205 ILCS 510/5) (from Ch. 17, par. 4655)

34 Sec. 5. Record requirements.

1           (a) Except in municipalities located in counties having  
2           3,000,000 or more inhabitants, every pawn and loan broker shall  
3           keep a standard record book that has been approved by the  
4           sheriff of the county in which the pawnbroker does business. In  
5           municipalities in counties with 3,000,000 or more inhabitants,  
6           the record book shall be approved by the police department of  
7           the municipality in which the pawn or loan broker does  
8           business. At the time of each and every loan or taking of a  
9           pledge, an accurate account and description, in the English  
10          language, of all the goods, articles and other things pawned or  
11          pledged, the amount of money, value or thing loaned thereon,  
12          the time of pledging the same, the rate of interest to be paid  
13          on such loan, and the name and residence of the person making  
14          such pawn or pledge shall be printed, typed, or written in ink  
15          in the record book. Such entry shall include the serial number  
16          or identification number of items received which bear such  
17          number. Except for items purchased from dealers possessing a  
18          federal employer ~~employee~~ identification number who have  
19          provided a receipt to the pawnbroker, every pawnbroker shall  
20          also record in his book, an accurate account and description,  
21          in the English language, of all goods, articles and other  
22          things purchased or received for the purpose of resale or loan  
23          collateral by the pawnbroker from any source, not in the course  
24          of a pledge or loan, the time of such purchase or receipt and  
25          the name and address of the person or business which sold or  
26          delivered such goods, articles, or other things to the  
27          pawnbroker. No entry in such book shall be erased, mutilated or  
28          changed.

29          (b) Every pawnbroker shall require identification to be  
30          shown him by each person pledging or pawning any goods,  
31          articles or other things to the pawnbroker. If the  
32          identification shown is a driver's license or a State  
33          identification card issued by the Secretary of State and  
34          contains a photograph of the person being identified, only one  
35          form of identification must be shown. If the identification  
36          shown is not a driver's license or a State identification card

1 issued by the Secretary of State and does not contain a  
2 photograph, 2 forms of identification must be shown, and one of  
3 the 2 forms of identification must include his or her residence  
4 address. These forms of identification shall include, but not  
5 be limited to, any of the following: driver's license, social  
6 security card, utility bill, employee or student  
7 identification card, credit card, or a civic, union or  
8 professional association membership card. In addition, in a  
9 municipality with a population of 1,000,000 or more  
10 inhabitants, if the customer does not have an identification  
11 issued by a governmental entity containing a photograph of the  
12 person being identified, the pawnbroker shall photograph the  
13 customer in color and record the customer's name, residence  
14 address, date of birth, social security number, gender, height,  
15 and weight on the reverse side of the photograph. If the  
16 customer has no social security number, the pawnbroker shall  
17 record this fact.

18 A county or municipality, including a home rule unit, may  
19 regulate a pawnbroker's identification requirements for  
20 persons pledging or pawning goods, articles, or other things to  
21 the pawnbroker in a manner that is not less restrictive than  
22 the regulation by the State of a pawnbroker's identification  
23 requirements for persons pledging or pawning goods, articles,  
24 or other things. A home rule unit may not regulate a  
25 pawnbroker's identification requirements for persons pledging  
26 or pawning goods, articles, or other things to the pawnbroker  
27 in a manner less restrictive than the regulation by the State  
28 of a pawnbroker's identification requirements for persons  
29 pledging or pawning goods, articles, or other things. This  
30 Section is a limitation under subsection (i) of Section 6 of  
31 Article VII of the Illinois Constitution on the concurrent  
32 exercise by home rule units of the powers and functions  
33 exercised by the State.

34 (c) A pawnbroker may maintain the records required by  
35 subsection (a) in computer form if the computer form has been  
36 approved by the Commissioner, the sheriff of the county in

1 which the shop is located, and the police department of the  
2 municipality in which the shop is located.

3 (d) Records, including reports to the Commissioner,  
4 maintained by pawnbrokers shall be confidential, and no  
5 disclosure of pawnbroker records shall be made except  
6 disclosures authorized by this Act or ordered by a court of  
7 competent jurisdiction. No record transferred to a  
8 governmental official shall be improperly disclosed, provided  
9 that use of those records as evidence of a felony or  
10 misdemeanor shall be a proper purpose.

11 (e) Pawnbrokers and their associations may lawfully give  
12 appropriate governmental agencies computer equipment for the  
13 purpose of transferring information pursuant to this Act.

14 (Source: P.A. 91-608, eff. 8-19-99; 92-215, eff. 8-2-01.)

15 (205 ILCS 510/9.5 new)

16 Sec. 9.5. Redemption of goods after license revocation,  
17 suspension, or denial.

18 (a) After revocation of a license and if the Commissioner  
19 has not taken possession and control of the pawnshop pursuant  
20 to Section 0.05, a pawnbroker shall maintain usual business  
21 hours at the pawnshop for not less than 30 days after the  
22 latest default date of any pawn transaction made at that  
23 pawnshop for the sole purpose of allowing a pledgor to redeem  
24 pledged goods.

25 (b) After suspension of a license, a pawnbroker shall  
26 maintain usual business hours at the pawnshop during the  
27 suspension for the sole purpose of allowing a pledgor to redeem  
28 goods or to renew a pawn transaction that matures during the  
29 suspension.

30 (c) After the denial of a license renewal application, a  
31 pawnbroker shall maintain usual business hours at the pawnshop  
32 for not less than 30 days after the latest default date of any  
33 pawn transaction made at that pawnshop for the sole purpose of  
34 allowing a pledgor to redeem pledged goods.

35 (d) The Commissioner may exercise any authority conferred

1 on the Commissioner to protect the interest of a pledgor of  
2 goods in the possession of a pawnbroker whose license has been  
3 revoked or suspended, or whose license renewal application has  
4 been denied, including the assessment of a civil money penalty  
5 and all other penalties and remedies provided for in this Act.

6 Section 25. The Corporate Fiduciary Act is amended by  
7 changing Sections 5-1 and 5-9 as follows:

8 (205 ILCS 620/5-1) (from Ch. 17, par. 1555-1)

9 Sec. 5-1. Commissioner's powers. The Commissioner of Banks  
10 and Real Estate shall have the following powers and authority  
11 and is charged with the duties and responsibilities designated  
12 in this Act:

13 (a) To promulgate, in accordance with the Illinois  
14 Administrative Procedure Act, reasonable rules for the purpose  
15 of administering the provisions of this Act and for the purpose  
16 of incorporating by reference rules promulgated by the Federal  
17 Deposit Insurance Corporation, the Board of Governors of the  
18 Federal Reserve System, the Office of the Comptroller of the  
19 Currency, the Office of Thrift Supervision, or their successors  
20 that pertain to corporate fiduciaries, including, but not  
21 limited to, standards for the operation and conduct of the  
22 affairs of corporate fiduciaries;

23 (b) To issue orders for the purpose of administering the  
24 provisions of this Act and any rule promulgated in accordance  
25 with this Act;

26 (c) To appoint hearing officers to conduct hearings held  
27 pursuant to any of the powers granted to the Commissioner under  
28 this Section for the purpose of administering this Act and any  
29 rule promulgated in accordance with this Act;

30 (d) To subpoena witnesses, to compel their attendance, to  
31 administer an oath, to examine any person under oath and to  
32 require the production of any relevant books, papers, accounts  
33 and documents in the course of and pursuant to any  
34 investigation being conducted, or any action being taken, by

1 the Commissioner in respect of any matter relating to the  
2 duties imposed upon, or the powers vested in, the Commissioner  
3 under the provisions of this Act, or any rule or regulation  
4 promulgated in accordance with this Act;

5 (e) To conduct hearings;

6 (f) To promulgate the form and content of any applications  
7 required under this Act;

8 (g) To impose civil penalties of up to \$100,000 ~~\$10,000~~  
9 against any person or corporate fiduciary for each violation of  
10 any provision of this Act, any rule promulgated in accordance  
11 with this Act, any order of the Commissioner or any other  
12 action which, in the Commissioner's discretion, is a detriment  
13 or impediment to accepting or executing trusts; and

14 (h) To address any inquiries to any corporate fiduciary, or  
15 the officers thereof, in relation to its doings and conditions,  
16 or any other matter connected with its affairs, and it shall be  
17 the duty of any corporate fiduciary or person so addressed, to  
18 promptly reply in writing to such inquiries. The Commissioner  
19 may also require reports from any corporate fiduciary at any  
20 time he may deem desirable.

21 (Source: P.A. 89-364, eff. 8-18-95; 89-508, eff. 7-3-96.)

22 (205 ILCS 620/5-9) (from Ch. 17, par. 1555-9)

23 Sec. 5-9. Statement of condition.

24 (a) Each corporate fiduciary shall file with the  
25 Commissioner, when requested, a statement under oath, of the  
26 condition of such corporate fiduciary as of the date requested.  
27 The statement of condition shall be in such form and contain  
28 such statements, returns and information, as to the affairs,  
29 business conditions, and resources of the corporate fiduciary  
30 or of its trust department, as the case may be, as the said  
31 Commissioner may, from time to time prescribe or require.

32 (b) Such statement of condition shall be verified by the  
33 affidavit of the president, vice president or principal  
34 accounting officer of said corporate fiduciary, who shall also  
35 state in such affidavit that he has examined the books and

1 accounts of said corporate fiduciary or of its trust  
2 department, as the case may be for the purpose of making said  
3 report or statement, and that the information contained in the  
4 statement or report is accurate to the best of his knowledge  
5 and belief. If the statement is submitted in electronic form,  
6 the Commissioner may, in the call for the report, specify the  
7 manner in which the appropriate officer of the corporate  
8 fiduciary shall verify the statement of condition.

9 (c) (Blank). ~~The corporate fiduciary shall cause a proper~~  
10 ~~abstract of the statements of assets and liabilities reported~~  
11 ~~under sub-section (a) of this Section to be published once in a~~  
12 ~~newspaper of general circulation, circulated in the city, town~~  
13 ~~or village where the corporate fiduciary is located. Such~~  
14 ~~publication shall be paid for by said corporate fiduciary which~~  
15 ~~shall cause to be provided to the Commissioner a certificate of~~  
16 ~~publication from the publishing newspaper in such form as the~~  
17 ~~Commissioner shall require. When the corporate fiduciary is a~~  
18 ~~State bank, qualified under this Act, the statements published~~  
19 ~~in compliance with the Illinois Banking Act may be accepted by~~  
20 ~~the Commissioner in compliance with the publication~~  
21 ~~requirements of this Section although an annual statement of~~  
22 ~~condition may still be required.~~

23 (d) Any corporate fiduciary which fails to file an accurate  
24 statement of condition on or before the date it is due, ~~to~~  
25 ~~publish the report if required to be published, or which fails~~  
26 ~~to provide evidence of such publication~~ may be fined \$100 for  
27 each day of noncompliance.

28 (e) Any corporate fiduciary which is the victim of a  
29 robbery or experiences a shortage of funds in excess of  
30 \$10,000, an apparent misapplication of the corporate  
31 fiduciary's funds by an officer, employee, director, or agent,  
32 a charge-off of assets of the corporate fiduciary, or any  
33 adverse legal action in an amount in excess of 10% of total  
34 capital and surplus of the corporate fiduciary, including but  
35 not limited to, the entry of an adverse money judgment against  
36 the corporate fiduciary shall report that information in

1 writing to the Commissioner within 7 days. Neither the  
2 corporate fiduciary, its directors, officers, employees or  
3 agents, in the preparation or filing of the reports required by  
4 this subsection, shall be subject to any liability for libel,  
5 slander or other charges resulting from information supplied in  
6 such reports, except when the supplying of such information is  
7 done in a corrupt or malicious manner or otherwise not in good  
8 faith.

9 (Source: P.A. 89-364, eff. 8-18-95.)

10 (205 ILCS 5/9.5 rep.)

11 Section 30. The Illinois Banking Act is amended by  
12 repealing Section 9.5.

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.