

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Banking Act is amended by changing
5 Sections 2, 5c, 13, and 15 as follows:

6 (205 ILCS 5/2) (from Ch. 17, par. 302)

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

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

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

15 "Affiliate facility" of a bank means a main banking
16 premises or branch of another commonly owned bank. The main
17 banking premises or any branch of a bank may be an "affiliate
18 facility" with respect to one or more other commonly owned
19 banks.

20 "Appropriate federal banking agency" means the Federal
21 Deposit Insurance Corporation, the Federal Reserve Bank of
22 Chicago, or the Federal Reserve Bank of St. Louis, as
23 determined by federal law.

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

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

1 bank under paragraph (23) of Section 5 of this Act if the place
2 is an affiliate facility with respect to the other bank.

3 "Branch of an out-of-state bank" means a branch established
4 or maintained in Illinois by an out-of-state bank as a result
5 of a merger between an Illinois bank and the out-of-state bank
6 that occurs on or after May 31, 1997, or any branch established
7 by the out-of-state bank following the merger.

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

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

16 "Capital" includes the aggregate of outstanding capital
17 stock and preferred stock.

18 "Cash flow reserve account" means the account within the
19 books and records of the Commissioner of Banks and Real Estate
20 used to record funds designated to maintain a reasonable Bank
21 and Trust Company Fund operating balance to meet agency
22 obligations on a timely basis.

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

25 "Commissioner" means the Commissioner of Banks and Real
26 Estate or a person authorized by the Commissioner, the Office

1 of Banks and Real Estate Act, or this Act to act in the
2 Commissioner's stead.

3 "Commonly owned banks" means 2 or more banks that each
4 qualify as a bank subsidiary of the same bank holding company
5 pursuant to Section 18 of the Federal Deposit Insurance Act;
6 "commonly owned bank" refers to one of a group of commonly
7 owned banks but only with respect to one or more of the other
8 banks in the same group.

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

13 "Company" means a corporation, limited liability company,
14 partnership, business trust, association, or similar
15 organization and, unless specifically excluded, includes a
16 "State bank" and a "bank".

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

18 "Consolidation" takes place when 2 or more banks, or a
19 trust company and a bank, are extinguished and by the same
20 process a new bank is created, taking over the assets and
21 assuming the liabilities of the banks or trust company passing
22 out of existence.

23 "Continuing bank" means a merging bank, the charter of
24 which becomes the charter of the resulting bank.

25 "Converting bank" means a State bank converting to become a
26 national bank, or a national bank converting to become a State

1 bank.

2 "Converting trust company" means a trust company
3 converting to become a State bank.

4 "Court" means a court of competent jurisdiction.

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

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

24 "Fiduciary" means trustee, agent, executor, administrator,
25 committee, guardian for a minor or for a person under legal
26 disability, receiver, trustee in bankruptcy, assignee for

1 creditors, or any holder of similar position of trust.

2 "Financial institution" means a bank, savings bank,
3 savings and loan association, credit union, or any licensee
4 under the Consumer Installment Loan Act or the Sales Finance
5 Agency Act and, for purposes of Section 48.3, any proprietary
6 network, funds transfer corporation, or other entity providing
7 electronic funds transfer services, or any corporate
8 fiduciary, its subsidiaries, affiliates, parent company, or
9 contractual service provider that is examined by the
10 Commissioner. For purposes of Section 5c and subsection (b) of
11 Section 13 of this Act, "financial institution" includes any
12 proprietary network, funds transfer corporation, or other
13 entity providing electronic funds transfer services, and any
14 corporate fiduciary.

15 "Foundation" means the Illinois Bank Examiners' Education
16 Foundation.

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

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

26 "In danger of default" means a State or national bank, a

1 federally chartered insured savings association or an Illinois
2 state chartered insured savings association with respect to
3 which the Commissioner or the appropriate federal banking
4 agency has advised the Federal Deposit Insurance Corporation
5 that:

6 (1) in the opinion of the Commissioner or the
7 appropriate federal banking agency,

8 (A) the State or national bank or insured savings
9 association is not likely to be able to meet the
10 demands of the State or national bank's or savings
11 association's obligations in the normal course of
12 business; and

13 (B) there is no reasonable prospect that the State
14 or national bank or insured savings association will be
15 able to meet those demands or pay those obligations
16 without federal assistance; or

17 (2) in the opinion of the Commissioner or the
18 appropriate federal banking agency,

19 (A) the State or national bank or insured savings
20 association has incurred or is likely to incur losses
21 that will deplete all or substantially all of its
22 capital; and

23 (B) there is no reasonable prospect that the
24 capital of the State or national bank or insured
25 savings association will be replenished without
26 federal assistance.

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

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

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

21 "Issuer" means for purposes of Section 33 every person who
22 shall have issued or proposed to issue any security; except
23 that (1) with respect to certificates of deposit, voting trust
24 certificates, collateral-trust certificates, and certificates
25 of interest or shares in an unincorporated investment trust not
26 having a board of directors (or persons performing similar

1 functions), "issuer" means the person or persons performing the
2 acts and assuming the duties of depositor or manager pursuant
3 to the provisions of the trust, agreement, or instrument under
4 which the securities are issued; (2) with respect to trusts
5 other than those specified in clause (1) above, where the
6 trustee is a corporation authorized to accept and execute
7 trusts, "issuer" means the entrusters, depositors, or creators
8 of the trust and any manager or committee charged with the
9 general direction of the affairs of the trust pursuant to the
10 provisions of the agreement or instrument creating the trust;
11 and (3) with respect to equipment trust certificates or like
12 securities, "issuer" means the person to whom the equipment or
13 property is or is to be leased or conditionally sold.

14 "Letter of credit" and "customer" shall have the meanings
15 ascribed to those terms in Section 5-102 of the Uniform
16 Commercial Code.

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

19 "Maker or obligor" means for purposes of Section 33 the
20 issuer of a security, the promisor in a debenture or other debt
21 security, or the mortgagor or grantor of a trust deed or
22 similar conveyance of a security interest in real or personal
23 property.

24 "Merged bank" means a merging bank that is not the
25 continuing, resulting, or surviving bank in a consolidation or
26 merger.

1 "Merger" includes consolidation.

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

3 "Merging trust company" means a trust company party to a
4 merger with a State bank.

5 "Mid-tier bank holding company" means a corporation that
6 (a) owns 100% of the issued and outstanding shares of each
7 class of stock of a State bank, (b) has no other subsidiaries,
8 and (c) 100% of the issued and outstanding shares of the
9 corporation are owned by a parent bank holding company.

10 "Municipality" means any municipality, political
11 subdivision, school district, taxing district, or agency.

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

15 "Out-of-state bank" means a bank chartered under the laws
16 of a state other than Illinois, a territory of the United
17 States, or the District of Columbia.

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

22 "Person" means an individual, corporation, limited
23 liability company, partnership, joint venture, trust, estate,
24 or unincorporated association.

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

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

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

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

1 publication as the Commissioner shall deem appropriate.

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

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

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

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

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

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

26 "State Banking Board" means the State Banking Board of

1 Illinois.

2 "Subsidiary" with respect to a specified company means a
3 company that is controlled by the specified company. For
4 purposes of paragraphs (8) and (12) of Section 5 of this Act,
5 "control" means the exercise of operational or managerial
6 control of a corporation by the bank, either alone or together
7 with other affiliates of the bank.

8 "Surplus" means the aggregate of (i) amounts paid in excess
9 of the par value of capital stock and preferred stock; (ii)
10 amounts contributed other than for capital stock and preferred
11 stock and allocated to the surplus account; and (iii) amounts
12 transferred from undivided profits.

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

17 "Trust company" means a limited liability company or
18 corporation incorporated in this State for the purpose of
19 accepting and executing trusts.

20 "Undivided profits" means undistributed earnings less
21 discretionary transfers to surplus.

22 "Unimpaired capital and unimpaired surplus", for the
23 purposes of paragraph (21) of Section 5 and Sections 32, 33,
24 34, 35.1, 35.2, and 47 of this Act means the sum of the state
25 bank's Tier 1 Capital and Tier 2 Capital plus such other
26 shareholder equity as may be included by regulation of the

1 Commissioner. Unimpaired capital and unimpaired surplus shall
2 be calculated on the basis of the date of the last quarterly
3 call report filed with the Commissioner preceding the date of
4 the transaction for which the calculation is made, provided
5 that: (i) when a material event occurs after the date of the
6 last quarterly call report filed with the Commissioner that
7 reduces or increases the bank's unimpaired capital and
8 unimpaired surplus by 10% or more, then the unimpaired capital
9 and unimpaired surplus shall be calculated from the date of the
10 material event for a transaction conducted after the date of
11 the material event; and (ii) if the Commissioner determines for
12 safety and soundness reasons that a state bank should calculate
13 unimpaired capital and unimpaired surplus more frequently than
14 provided by this paragraph, the Commissioner may by written
15 notice direct the bank to calculate unimpaired capital and
16 unimpaired surplus at a more frequent interval. In the case of
17 a state bank newly chartered under Section 13 or a state bank
18 resulting from a merger, consolidation, or conversion under
19 Sections 21 through 26 for which no preceding quarterly call
20 report has been filed with the Commissioner, unimpaired capital
21 and unimpaired surplus shall be calculated for the first
22 calendar quarter on the basis of the effective date of the
23 charter, merger, consolidation, or conversion.

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

25 (205 ILCS 5/5c) (from Ch. 17, par. 312.2)

1 Sec. 5c. Ownership of a bankers' bank. ~~A With the approval~~
2 ~~of the Commissioner,~~ a bank may acquire shares of stock of a
3 bank or holding company which owns or controls such bank if the
4 stock of such bank or company is owned exclusively (except to
5 the extent directors' qualifying shares are required by law) by
6 depository institutions or depository institution holding
7 companies and such bank or company and all subsidiaries thereof
8 are engaged exclusively in providing services to or for other
9 financial depository institutions, their holding companies,
10 and the officers, directors, and employees of such institutions
11 and companies, and in providing ~~correspondent banking~~ services
12 at the request of other financial depository institutions or
13 their holding companies (also referred to as a "bankers'
14 bank"). The bank may also provide products and services to its
15 officers, directors, and employees. In no event shall the total
16 amount of such stock held by a bank in such bank or holding
17 company exceed 10 percent of its capital and surplus (including
18 undivided profits) and in no event shall a bank acquire more
19 than 5 percent of any class of voting securities of such bank
20 or company.

21 (Source: P.A. 89-603, eff. 8-2-96.)

22 (205 ILCS 5/13) (from Ch. 17, par. 320)

23 Sec. 13. Issuance of charter.

24 (a) When the directors have organized as provided in
25 Section 12 of this Act, and the capital stock and the preferred

1 stock, if any, together with a surplus of not less than 50% of
2 the capital, has been all fully paid in and a record of the
3 same filed with the Commissioner, the Commissioner or some
4 competent person of the Commissioner's appointment shall make a
5 thorough examination into the affairs of the proposed bank, and
6 if satisfied (i) that all the requirements of this Act have
7 been complied with, (ii) that no intervening circumstance has
8 occurred to change the Commissioner's findings made pursuant to
9 Section 10 of this Act, and (iii) that the prior involvement by
10 any stockholder who will own a sufficient amount of stock to
11 have control, as defined in Section 18 of this Act, of the
12 proposed bank with any other financial institution, whether as
13 stockholder, director, officer, or customer, was conducted in a
14 safe and sound manner, upon payment into the Commissioner's
15 office of the reasonable expenses of the examination, as
16 determined by the Commissioner, the Commissioner shall issue a
17 charter authorizing the bank to commence business as authorized
18 in this Act. All charters issued by the Commissioner or any
19 predecessor agency which chartered State banks, including any
20 charter outstanding as of September 1, 1989, shall be
21 perpetual. For the 2 years after the Commissioner has issued a
22 charter to a bank, the bank shall request and obtain from the
23 Commissioner prior written approval before it may change senior
24 management personnel or directors.

25 The original charter, duly certified by the Commissioner,
26 or a certified copy shall be evidence in all courts and places

1 of the existence and authority of the bank to do business. Upon
2 the issuance of the charter by the Commissioner, the bank shall
3 be deemed fully organized and may proceed to do business. The
4 Commissioner may, in the Commissioner's discretion, withhold
5 the issuing of the charter when the Commissioner has reason to
6 believe that the bank is organized for any purpose other than
7 that contemplated by this Act. The Commissioner shall revoke
8 the charter and order liquidation in the event that the bank
9 does not commence a general banking business within one year
10 from the date of the issuance of the charter, unless a request
11 has been submitted, in writing, to the Commissioner for an
12 extension and the request has been approved. After commencing a
13 general banking business, a bank may change its name by filing
14 written notice with the Commissioner at least 30 days prior to
15 the effective date of such change. A bank chartered under this
16 Act may change its main banking premises by filing written
17 application with the Commissioner, on forms prescribed by the
18 Commissioner, provided (i) the change shall not be a removal to
19 a new location without complying with the capital requirements
20 of Section 7 and of subsection (1) of Section 10 of this Act;
21 (ii) the Commissioner approves the relocation or change; and
22 (iii) the bank complies with any applicable federal law or
23 regulation. The application shall be deemed to be approved if
24 the Commissioner has not acted on the application within 30
25 days after receipt of the application, unless within the 30-day
26 time frame the Commissioner informs the bank that an extension

1 of time is necessary prior to the Commissioner's action on the
2 application.

3 (b) (1) The Commissioner may also issue a charter to a bank
4 that is owned exclusively by other depository institutions
5 or depository institution holding companies and is
6 organized to engage exclusively in providing services to or
7 for other financial ~~depository~~ institutions, their holding
8 companies, and the officers, directors, and employees of
9 such institutions and companies, and in providing
10 ~~correspondent banking~~ services at the request of other
11 financial ~~depository~~ institutions or their holding
12 companies (also referred to as a "bankers' bank"). The bank
13 may also provide products and services to its officers,
14 directors, and employees.

15 (2) A bank chartered pursuant to paragraph (1) shall,
16 except as otherwise specifically determined or limited by
17 the Commissioner in an order or pursuant to a rule, be
18 vested with the same rights and privileges and subject to
19 the same duties, restrictions, penalties, and liabilities
20 now or hereafter imposed under this Act.

21 (c) A bank chartered under this Act after November 1, 1985,
22 and an out-of-state bank that merges with a State bank and
23 establishes or maintains a branch in this State after May 31,
24 1997, shall obtain from and, at all times while it accepts or
25 retains deposits, maintain with the Federal Deposit Insurance
26 Corporation, or such other instrumentality of or corporation

1 chartered by the United States, deposit insurance as authorized
2 under federal law.

3 (d) (i) A bank that has a banking charter issued by the
4 Commissioner under this Act may, pursuant to a written
5 purchase and assumption agreement, transfer substantially
6 all of its assets to another State bank or national bank in
7 consideration, in whole or in part, for the transferee
8 banks' assumption of any part or all of its liabilities.
9 Such a transfer shall in no way be deemed to impair the
10 charter of the transferor bank or cause the transferor bank
11 to forfeit any of its rights, powers, interests,
12 franchises, or privileges as a State bank, nor shall any
13 voluntary reduction in the transferor bank's activities
14 resulting from the transfer have any such effect; provided,
15 however, that a State bank that transfers substantially all
16 of its assets pursuant to this subsection (d) and following
17 the transfer does not accept deposits and make loans, shall
18 not have any rights, powers, interests, franchises, or
19 privileges under subsection (15) of Section 5 of this Act
20 until the bank has resumed accepting deposits and making
21 loans.

22 (ii) The fact that a State bank does not resume
23 accepting deposits and making loans for a period of 24
24 months commencing on September 11, 1989 or on a date of the
25 transfer of substantially all of a State bank's assets,
26 whichever is later, or such longer period as the

1 Commissioner may allow in writing, may be the basis for a
2 finding by the Commissioner under Section 51 of this Act
3 that the bank is unable to continue operations.

4 (iii) The authority provided by subdivision (i) of this
5 subsection (d) shall terminate on May 31, 1997, and no bank
6 that has transferred substantially all of its assets
7 pursuant to this subsection (d) shall continue in existence
8 after May 31, 1997.

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

10 (205 ILCS 5/15) (from Ch. 17, par. 322)

11 Sec. 15. Stock and stockholders. Unless otherwise provided
12 for in this Act, provisions of general application to capital
13 stock, preferred stock, and stockholders of a State bank shall
14 be as follows:

15 (1) There shall be an annual meeting of the stockholders
16 for the election of directors each year on the first business
17 day in January, unless some other date shall be fixed by the
18 by-laws. A special meeting of the stockholders may be called at
19 any time by the board of directors, and otherwise as may be
20 provided in the bylaws.

21 (2) Written or printed notice stating the place, day, and
22 hour of the meeting, and in case of a special meeting, the
23 purpose or purposes for which the meeting is called, shall be
24 delivered not less than 10 nor more than 40 days before the
25 date of the meeting either personally or by mail, by or at the

1 direction of the president, or the secretary, or the officer or
2 persons calling the meeting, to each stockholder of record
3 entitled to vote at the meeting. If mailed, the notice shall be
4 deemed to be delivered when deposited in the United States mail
5 with postage thereon prepaid addressed to the stockholder at
6 his address as it appears on the records of the bank.

7 (3) Except as provided below in this paragraph (3), each
8 outstanding share shall be entitled to one vote on each matter
9 submitted to a vote at a meeting of stockholders. Shares of its
10 own stock belonging to a bank shall not be voted, directly or
11 indirectly, at any meeting and shall not be counted in
12 determining the total number of outstanding shares at any given
13 time, but shares of its own stock held by it in a fiduciary
14 capacity may be voted and shall be counted in determining the
15 total number of outstanding shares at any given time. A
16 stockholder may vote either in person or by proxy executed in
17 writing by the stockholder or by his duly authorized
18 attorney-in-fact. No proxy shall be valid after 11 months from
19 the date of its execution, unless otherwise provided in the
20 proxy. Except as provided below in this paragraph (3), in all
21 elections for directors every stockholder (or subscriber to the
22 stock prior to the issuance of a charter) shall have the right
23 to vote, in person or by proxy, for the number of shares of
24 stock owned by him, for as many persons as there are directors
25 to be elected, or to cumulate the shares and give one candidate
26 as many votes as the number of directors multiplied by the

1 number of his or her shares of stock shall equal, or to
2 distribute them on the same principle among as many candidates
3 as he or she shall think fit. The bank charter of any bank
4 organized on or after January 1, 1984 may limit or eliminate
5 cumulative voting rights in all or specified circumstances, or
6 may eliminate voting rights entirely, as to any class or
7 classes or series of stock of the bank; provided that one class
8 of shares or series thereof shall always have voting rights in
9 respect of all matters in the bank. A bank organized prior to
10 January 1, 1984 may amend its charter to eliminate cumulative
11 voting rights under all or specified circumstances, or to
12 eliminate voting rights entirely, as to any class or classes or
13 series of stock of the bank; provided that one class of shares
14 or series thereof shall always have voting rights in respect of
15 all matters in the bank, and provided further that the proposal
16 to eliminate the voting rights receives the approval of the
17 holders of 70% of the outstanding shares of stock entitled to
18 vote as provided in paragraph (b) (7) of Section 17. A majority
19 of the outstanding shares represented in person or by proxy
20 shall constitute a quorum at a meeting of stockholders. In the
21 absence of a quorum a meeting may be adjourned from time to
22 time without notice to the stockholders.

23 (4) Whenever additional stock of a class is offered for
24 sale, stockholders of record of the same class on the date of
25 the offer shall have the right to subscribe to the proportion
26 of the shares as the stock of the class held by them bears to

1 the total of the outstanding stock of the class, and the price
2 thereof may be in excess of par value. This right shall be
3 transferable but shall terminate if not exercised within 60
4 days of the offer, unless the Commissioner shall authorize a
5 shorter time. If the right is not exercised, the stock shall
6 not be re-offered for sale to others at a lower price without
7 the stockholders of the same class again being accorded a
8 preemptive right to subscribe at the lower price.
9 Notwithstanding any of the provisions of this paragraph (4) or
10 any other provision of law, stockholders shall not have any
11 preemptive or other right to subscribe for or to purchase or
12 acquire shares of capital stock issued or to be issued under a
13 stock-option plan or upon conversion of preferred stock or
14 convertible debentures or other convertible indebtedness that
15 has been approved by stockholders in the manner required by the
16 provisions of subsection (5) of Section 14 hereof or to
17 treasury stock acquired pursuant to subsection (6) of Section
18 14.

19 (5) For the purpose of determining stockholders entitled to
20 notice of or to vote at any meeting of stockholders, or
21 stockholders entitled to receive payment of any dividend, or in
22 order to make a determination of stockholders for any other
23 proper purpose, the board of directors of a bank may provide
24 that the stock transfer books shall be closed for a stated
25 period not to exceed, in any case, 40 days. In lieu of closing
26 the stock transfer books, the board of directors may fix in

1 advance a date as the record date for any determination of
2 stockholders, the date in any case to be not more than 40 days,
3 and in case of a meeting of stockholders, not less than 10 days
4 prior to the date on which the particular action, requiring the
5 determination of stockholders, is to be taken. If the stock
6 transfer books are not closed and no record date is fixed for
7 the determination of stockholders entitled to notice of or to
8 vote at a meeting of stockholders, or stockholders entitled to
9 receive payment of a dividend, the date on which notice of a
10 meeting is mailed or the date on which the resolution of the
11 board of directors declaring the dividend is adopted, as the
12 case may be, shall be the record date for the determination of
13 stockholders.

14 (6) Stock standing in the name of another corporation,
15 domestic or foreign, may be voted by the officer, agent, or
16 proxy as the by-laws of the corporation may prescribe, or, in
17 the absence of such provision, as the board of directors of the
18 corporation may determine. Stock standing in the name of a
19 deceased person may be voted by his or her administrator or
20 executor, either in person or by proxy. Stock standing in the
21 name of a guardian or trustee may be voted by that fiduciary
22 either in person or by proxy. Shares standing in the name of a
23 receiver may be voted by the receiver, and shares held by or
24 under control of a receiver may be voted by the receiver
25 without the transfer thereof into his or her name if authority
26 so to do be contained in an appropriate order of the court by

1 which the receiver was appointed. A stockholder whose shares of
2 stock are pledged shall be entitled to vote those shares until
3 the shares have been transferred into the name of the pledgee,
4 and thereafter the pledgee shall be entitled to vote the shares
5 so transferred.

6 (7) Shares of stock shall be transferable in accordance
7 with the general laws of this State governing the transfer of
8 corporate shares.

9 (8) The president and any other officer designated by the
10 board of directors ~~and cashier~~ of every State bank shall cause
11 to be kept at all times a full and correct list of the names and
12 residences of all the shareholders in the State bank and the
13 number of shares held by each in the office where its business
14 is transacted. The list shall be subject to the inspection of
15 all the shareholders of the State bank and the officers
16 authorized to assess taxes under State authority during
17 business hours of each day in which business may be legally
18 transacted. A copy of the list, verified by the oath of the
19 president or cashier, shall be transmitted to the Commissioner
20 of Banks and Real Estate within 10 days of any demand therefor
21 made by the Commissioner.

22 (9) Any number of shareholders of a bank may create a
23 voting trust for the purpose of conferring upon a trustee or
24 trustees the right to vote or otherwise represent their shares
25 for a period of not to exceed 10 years by entering into a
26 written voting trust agreement specifying the terms and

1 conditions of the voting trust and by transferring their shares
2 to the trustee or trustees for the purposes of the agreement.
3 The trust agreement shall not become effective until a
4 counterpart of the agreement is deposited with the bank at its
5 main banking premises. The counterpart of the voting trust
6 agreement so deposited with the bank shall be subject to the
7 same right of examination by a shareholder of the bank, in
8 person or by agent or attorney, as is the record of
9 shareholders of the bank and shall be subject to examination by
10 any holder of a beneficial interest in the voting trust, either
11 in person or by agent or attorney, at any reasonable time for
12 any proper purpose.

13 (10) Voting agreements. Shareholders may provide for the
14 voting of their shares by signing an agreement for that
15 purpose. A voting agreement created under this paragraph is not
16 subject to the provisions of paragraph (9).

17 A voting agreement created under this paragraph is
18 specifically enforceable in accordance with the principles of
19 equity.

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.