



Sen. Terry Link

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09500SB2513sam002

LRB095 18312 MJR 48614 a

1 AMENDMENT TO SENATE BILL 2513

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2513, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Banking Act is amended by changing  
6 Sections 2 and 48 as follows:

7 (205 ILCS 5/2) (from Ch. 17, par. 302)

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

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

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

16 "Affiliate facility" of a bank means a main banking

1 premises or branch of another commonly owned bank. The main  
2 banking premises or any branch of a bank may be an "affiliate  
3 facility" with respect to one or more other commonly owned  
4 banks.

5 "Appropriate federal banking agency" means the Federal  
6 Deposit Insurance Corporation, the Federal Reserve Bank of  
7 Chicago, or the Federal Reserve Bank of St. Louis, as  
8 determined by federal law.

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

11 A "banking house", "branch", "branch bank" or "branch  
12 office" shall mean any place of business of a bank at which  
13 deposits are received, checks paid, or loans made, but shall  
14 not include any place at which only records thereof are made,  
15 posted, or kept. A place of business at which deposits are  
16 received, checks paid, or loans made shall not be deemed to be  
17 a branch, branch bank, or branch office if the place of  
18 business is adjacent to and connected with the main banking  
19 premises, or if it is separated from the main banking premises  
20 by not more than an alley; provided always that (i) if the  
21 place of business is separated by an alley from the main  
22 banking premises there is a connection between the two by  
23 public or private way or by subterranean or overhead passage,  
24 and (ii) if the place of business is in a building not wholly  
25 occupied by the bank, the place of business shall not be within  
26 any office or room in which any other business or service of

1 any kind or nature other than the business of the bank is  
2 conducted or carried on. A place of business at which deposits  
3 are received, checks paid, or loans made shall not be deemed to  
4 be a branch, branch bank, or branch office (i) of any bank if  
5 the place is a terminal established and maintained in  
6 accordance with paragraph (17) of Section 5 of this Act, or  
7 (ii) of a commonly owned bank by virtue of transactions  
8 conducted at that place on behalf of the other commonly owned  
9 bank under paragraph (23) of Section 5 of this Act if the place  
10 is an affiliate facility with respect to the other bank.

11 "Branch of an out-of-state bank" means a branch established  
12 or maintained in Illinois by an out-of-state bank as a result  
13 of a merger between an Illinois bank and the out-of-state bank  
14 that occurs on or after May 31, 1997, or any branch established  
15 by the out-of-state bank following the merger.

16 "Bylaws" means the bylaws of a bank that are adopted by the  
17 bank's board of directors or shareholders for the regulation  
18 and management of the bank's affairs. If the bank operates as a  
19 limited liability company, however, "bylaws" means the  
20 operating agreement of the bank.

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

24 "Capital" includes the aggregate of outstanding capital  
25 stock and preferred stock.

26 "Cash flow reserve account" means the account within the

1 books and records of the Commissioner of Banks and Real Estate  
2 used to record funds designated to maintain a reasonable Bank  
3 and Trust Company Fund operating balance to meet agency  
4 obligations on a timely basis.

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

7 "Commissioner" means the Commissioner of Banks and Real  
8 Estate, except that beginning on the effective date of this  
9 amendatory Act of the 95th General Assembly, all references in  
10 this Act to the Commissioner of Banks of and Real Estate are  
11 deemed, in appropriate contexts, to be references to the  
12 Secretary of Financial and Professional Regulation ~~or a person~~  
13 ~~authorized by the Commissioner, the Office of Banks and Real~~  
14 ~~Estate Act, or this Act to act in the 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

1 organization and, unless specifically excluded, includes a  
2 "State bank" and a "bank".

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

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

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

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

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

16 "Court" means a court of competent jurisdiction.

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

26 "Eligible depository institution" means an insured savings

1 association that is in default, an insured savings association  
2 that is in danger of default, a State or national bank that is  
3 in default or a State or national bank that is in danger of  
4 default, as those terms are defined in this Section, or a new  
5 bank as that term defined in Section 11(m) of the Federal  
6 Deposit Insurance Act or a bridge bank as that term is defined  
7 in Section 11(n) of the Federal Deposit Insurance Act or a new  
8 federal savings association authorized under Section  
9 11(d) (2) (f) of the Federal Deposit Insurance Act.

10 "Fiduciary" means trustee, agent, executor, administrator,  
11 committee, guardian for a minor or for a person under legal  
12 disability, receiver, trustee in bankruptcy, assignee for  
13 creditors, or any holder of similar position of trust.

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

22 "Foundation" means the Illinois Bank Examiners' Education  
23 Foundation.

24 "General obligation" means a bond, note, debenture,  
25 security, or other instrument evidencing an obligation of the  
26 government entity that is the issuer that is supported by the

1 full available resources of the issuer, the principal and  
2 interest of which is payable in whole or in part by taxation.

3 "Guarantee" means an undertaking or promise to answer for  
4 payment of another's debt or performance of another's duty,  
5 liability, or obligation whether "payment guaranteed" or  
6 "collection guaranteed".

7 "In danger of default" means a State or national bank, a  
8 federally chartered insured savings association or an Illinois  
9 state chartered insured savings association with respect to  
10 which the Commissioner or the appropriate federal banking  
11 agency has advised the Federal Deposit Insurance Corporation  
12 that:

13 (1) in the opinion of the Commissioner or the  
14 appropriate federal banking agency,

15 (A) the State or national bank or insured savings  
16 association is not likely to be able to meet the  
17 demands of the State or national bank's or savings  
18 association's obligations in the normal course of  
19 business; and

20 (B) there is no reasonable prospect that the State  
21 or national bank or insured savings association will be  
22 able to meet those demands or pay those obligations  
23 without federal assistance; or

24 (2) in the opinion of the Commissioner or the  
25 appropriate federal banking agency,

26 (A) the State or national bank or insured savings

1 association has incurred or is likely to incur losses  
2 that will deplete all or substantially all of its  
3 capital; and

4 (B) there is no reasonable prospect that the  
5 capital of the State or national bank or insured  
6 savings association will be replenished without  
7 federal assistance.

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

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

23 "Insured savings association in recovery" means an insured  
24 savings association that is not an eligible depository  
25 institution and that does not meet the minimum capital  
26 requirements applicable with respect to the insured savings



1 association.

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

21 "Letter of credit" and "customer" shall have the meanings  
22 ascribed to those terms in Section 5-102 of the Uniform  
23 Commercial Code.

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

26 "Maker or obligor" means for purposes of Section 33 the

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

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

8 "Merger" includes consolidation.

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

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

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

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

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

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

25 "Parent bank holding company" means a corporation that is a  
26 bank holding company as that term is defined in the Illinois

1 Bank Holding Company Act of 1957 and owns 100% of the issued  
2 and outstanding shares of a mid-tier bank holding company.

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

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

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

1 "Published" means, unless the context requires otherwise,  
2 the publishing of the notice or instrument referred to in some  
3 newspaper of general circulation in the community in which the  
4 bank is located at least once each week for 3 successive weeks.  
5 Publishing shall be accomplished by, and at the expense of, the  
6 bank required to publish. Where publishing is required, the  
7 bank shall submit to the Commissioner that evidence of the  
8 publication as the Commissioner shall deem appropriate.

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

21 "Recorded" means the filing or recording of the notice or  
22 instrument referred to in the office of the Recorder of the  
23 county wherein the bank is located.

24 "Resulting bank" means the bank resulting from a merger or  
25 conversion.

26 "Secretary" means the Secretary of Financial and

1 Professional Regulation, or a person authorized by the  
2 Secretary or by this Act to act in the Secretary's stead.

3 "Securities" means stocks, bonds, debentures, notes, or  
4 other similar obligations.

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

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

10 "State Banking Board" means the State Banking Board of  
11 Illinois.

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

18 "Surplus" means the aggregate of (i) amounts paid in excess  
19 of the par value of capital stock and preferred stock; (ii)  
20 amounts contributed other than for capital stock and preferred  
21 stock and allocated to the surplus account; and (iii) amounts  
22 transferred from undivided profits.

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

1 "Trust company" means a limited liability company or  
2 corporation incorporated in this State for the purpose of  
3 accepting and executing trusts.

4 "Undivided profits" means undistributed earnings less  
5 discretionary transfers to surplus.

6 "Unimpaired capital and unimpaired surplus", for the  
7 purposes of paragraph (21) of Section 5 and Sections 32, 33,  
8 34, 35.1, 35.2, and 47 of this Act means the sum of the state  
9 bank's Tier 1 Capital and Tier 2 Capital plus such other  
10 shareholder equity as may be included by regulation of the  
11 Commissioner. Unimpaired capital and unimpaired surplus shall  
12 be calculated on the basis of the date of the last quarterly  
13 call report filed with the Commissioner preceding the date of  
14 the transaction for which the calculation is made, provided  
15 that: (i) when a material event occurs after the date of the  
16 last quarterly call report filed with the Commissioner that  
17 reduces or increases the bank's unimpaired capital and  
18 unimpaired surplus by 10% or more, then the unimpaired capital  
19 and unimpaired surplus shall be calculated from the date of the  
20 material event for a transaction conducted after the date of  
21 the material event; and (ii) if the Commissioner determines for  
22 safety and soundness reasons that a state bank should calculate  
23 unimpaired capital and unimpaired surplus more frequently than  
24 provided by this paragraph, the Commissioner may by written  
25 notice direct the bank to calculate unimpaired capital and  
26 unimpaired surplus at a more frequent interval. In the case of

1 a state bank newly chartered under Section 13 or a state bank  
2 resulting from a merger, consolidation, or conversion under  
3 Sections 21 through 26 for which no preceding quarterly call  
4 report has been filed with the Commissioner, unimpaired capital  
5 and unimpaired surplus shall be calculated for the first  
6 calendar quarter on the basis of the effective date of the  
7 charter, merger, consolidation, or conversion.

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

9 (205 ILCS 5/48) (from Ch. 17, par. 359)

10 Sec. 48. Secretary's ~~Commissioner's~~ powers; duties. The  
11 Secretary ~~Commissioner~~ shall have the powers and authority, and  
12 is charged with the duties and responsibilities designated in  
13 this Act, and a State bank shall not be subject to any other  
14 visitorial power other than as authorized by this Act, except  
15 those vested in the courts, or upon prior consultation with the  
16 Secretary ~~Commissioner~~, a foreign bank regulator with an  
17 appropriate supervisory interest in the parent or affiliate of  
18 a state bank. In the performance of the Secretary's  
19 ~~Commissioner's~~ duties:

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

23 (2) (a) The Commissioner, as often as the Commissioner  
24 shall deem necessary or proper, and no less frequently than 18  
25 months following the preceding examination, shall appoint a

1 suitable person or persons to make an examination of the  
2 affairs of every State bank, except that for every eligible  
3 State bank, as defined by regulation, the Commissioner in lieu  
4 of the examination may accept on an alternating basis the  
5 examination made by the eligible State bank's appropriate  
6 federal banking agency pursuant to Section 111 of the Federal  
7 Deposit Insurance Corporation Improvement Act of 1991,  
8 provided the appropriate federal banking agency has made such  
9 an examination. A person so appointed shall not be a  
10 stockholder or officer or employee of any bank which that  
11 person may be directed to examine, and shall have powers to  
12 make a thorough examination into all the affairs of the bank  
13 and in so doing to examine any of the officers or agents or  
14 employees thereof on oath and shall make a full and detailed  
15 report of the condition of the bank to the Commissioner. In  
16 making the examination the examiners shall include an  
17 examination of the affairs of all the affiliates of the bank,  
18 as defined in subsection (b) of Section 35.2 of this Act, or  
19 subsidiaries of the bank as shall be necessary to disclose  
20 fully the conditions of the subsidiaries or affiliates, the  
21 relations between the bank and the subsidiaries or affiliates  
22 and the effect of those relations upon the affairs of the bank,  
23 and in connection therewith shall have power to examine any of  
24 the officers, directors, agents, or employees of the  
25 subsidiaries or affiliates on oath. After May 31, 1997, the  
26 Commissioner may enter into cooperative agreements with state



1 regulatory authorities of other states to provide for  
2 examination of State bank branches in those states, and the  
3 Commissioner may accept reports of examinations of State bank  
4 branches from those state regulatory authorities. These  
5 cooperative agreements may set forth the manner in which the  
6 other state regulatory authorities may be compensated for  
7 examinations prepared for and submitted to the Commissioner.

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

18 (2.5) Whenever any State bank, any subsidiary or affiliate  
19 of a State bank, or after May 31, 1997, any branch of an  
20 out-of-state bank causes to be performed, by contract or  
21 otherwise, any bank services for itself, whether on or off its  
22 premises:

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

1 (b) the bank or, after May 31, 1997, branch of the  
2 out-of-state bank shall notify the Commissioner of the  
3 existence of a service relationship. The notification  
4 shall be submitted with the first statement of condition  
5 (as required by Section 47 of this Act) due after the  
6 making of the service contract or the performance of the  
7 service, whichever occurs first. The Commissioner shall be  
8 notified of each subsequent contract in the same manner.

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

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

23 (a) Each bank shall pay to the Secretary ~~Commissioner~~ a  
24 Call Report Fee which shall be paid in quarterly  
25 installments equal to one-fourth of the sum of the annual  
26 fixed fee of \$800, plus a variable fee based on the assets

1 shown on the quarterly statement of condition delivered to  
2 the Secretary ~~Commissioner~~ in accordance with Section 47  
3 for the preceding quarter according to the following  
4 schedule: 16¢ per \$1,000 of the first \$5,000,000 of total  
5 assets, 15¢ per \$1,000 of the next \$20,000,000 of total  
6 assets, 13¢ per \$1,000 of the next \$75,000,000 of total  
7 assets, 9¢ per \$1,000 of the next \$400,000,000 of total  
8 assets, 7¢ per \$1,000 of the next \$500,000,000 of total  
9 assets, and 5¢ per \$1,000 of all assets in excess of  
10 \$1,000,000,000, of the State bank. The Call Report Fee  
11 shall be calculated by the Secretary ~~Commissioner~~ and  
12 billed to the banks for remittance at the time of the  
13 quarterly statements of condition provided for in Section  
14 47. The Secretary ~~Commissioner~~ may require payment of the  
15 fees provided in this Section by an electronic transfer of  
16 funds or an automatic debit of an account of each of the  
17 State banks. In case more than one examination of any bank  
18 is deemed by the Secretary ~~Commissioner~~ to be necessary in  
19 any examination frequency cycle specified in subsection  
20 2(a) of this Section, and is performed at his direction,  
21 the Secretary ~~Commissioner~~ may assess a reasonable  
22 additional fee to recover the cost of the additional  
23 examination; provided, however, that an examination  
24 conducted at the request of the State Treasurer pursuant to  
25 the Uniform Disposition of Unclaimed Property Act shall not  
26 be deemed to be an additional examination under this

1 Section. In lieu of the method and amounts set forth in  
2 this paragraph (a) for the calculation of the Call Report  
3 Fee, the Secretary ~~Commissioner~~ may specify by rule that  
4 the Call Report Fees provided by this Section may be  
5 assessed semiannually or some other period and may provide  
6 in the rule the formula to be used for calculating and  
7 assessing the periodic Call Report Fees to be paid by State  
8 banks. For the fiscal year beginning July 1, 2007, and  
9 continuing thereafter through January 10, 2011, the  
10 Secretary shall adopt emergency and general rules to adjust  
11 regulatory fee rates to an amount that shall not exceed by  
12 more than 13.5% the rates in effect prior to the escalation  
13 in rates implemented by an amendment to 38 Ill. Adm. Code  
14 375 published in 27 Ill. Reg. 16024, Oct. 10, 2003. The  
15 adoption of emergency rules authorized by this subsection  
16 (3) shall be deemed necessary for the public interest,  
17 safety, and welfare, in order to provide for the  
18 expeditious and timely implementation of the State's  
19 fiscal year budget through the transfer from the Bank and  
20 Trust Company Fund to the General Revenue Fund authorized  
21 by this amendatory Act of the 95th General Assembly.

22 (a-1) If in the opinion of the Commissioner an  
23 emergency exists or appears likely, the Commissioner may  
24 assign an examiner or examiners to monitor the affairs of a  
25 State bank with whatever frequency he deems appropriate,  
26 including but not limited to a daily basis. The reasonable

1 and necessary expenses of the Commissioner during the  
2 period of the monitoring shall be borne by the subject  
3 bank. The Commissioner shall furnish the State bank a  
4 statement of time and expenses if requested to do so within  
5 30 days of the conclusion of the monitoring period.

6 (a-2) On and after January 1, 1990, the reasonable and  
7 necessary expenses of the Commissioner during examination  
8 of the performance of electronic data processing services  
9 under subsection (2.5) shall be borne by the banks for  
10 which the services are provided. An amount, based upon a  
11 fee structure prescribed by the Commissioner, shall be paid  
12 by the banks or, after May 31, 1997, branches of  
13 out-of-state banks receiving the electronic data  
14 processing services along with the Call Report Fee assessed  
15 under paragraph (a) of this subsection (3).

16 (a-3) After May 31, 1997, the reasonable and necessary  
17 expenses of the Commissioner during examination of the  
18 performance of electronic data processing services under  
19 subsection (2.5) at or on behalf of branches of  
20 out-of-state banks shall be borne by the out-of-state  
21 banks, unless those expenses are borne by the state  
22 regulatory authorities that chartered the out-of-state  
23 banks, as determined by cooperative agreements between the  
24 Commissioner and the state regulatory authorities that  
25 chartered the out-of-state banks.

26 (b) "Fiscal year" for purposes of this Section 48 is

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

1 the contingent fee, and the portion thereof to be assessed  
2 upon each State bank and foreign banking corporation,  
3 respectively, shall be determined by the Commissioner and  
4 shall be paid by each, respectively, within 120 days of the  
5 close of the period for which the contingent fee is  
6 computed and is payable, and the Commissioner shall give 20  
7 days advance notice of the amount of the contingent fee  
8 payable by the State bank and of the date fixed by the  
9 Commissioner for payment of the fee.

10 (c) The "administration expenses" for any fiscal year  
11 shall mean the ordinary and contingent expenses for that  
12 year incident to making the examinations provided for by,  
13 and for otherwise administering, this Act, the Corporate  
14 Fiduciary Act, excluding the expenses paid from the  
15 Corporate Fiduciary Receivership account in the Bank and  
16 Trust Company Fund, the Foreign Banking Office Act, the  
17 Electronic Fund Transfer Act, and the Illinois Bank  
18 Examiners' Education Foundation Act, including all  
19 salaries and other compensation paid for personal services  
20 rendered for the State by officers or employees of the  
21 State, including the Commissioner and the Deputy  
22 Commissioners, all expenditures for telephone and  
23 telegraph charges, postage and postal charges, office  
24 stationery, supplies and services, and office furniture  
25 and equipment, including typewriters and copying and  
26 duplicating machines and filing equipment, surety bond

1 premiums, and travel expenses of those officers and  
2 employees, employees, expenditures or charges for the  
3 acquisition, enlargement or improvement of, or for the use  
4 of, any office space, building, or structure, or  
5 expenditures for the maintenance thereof or for furnishing  
6 heat, light, or power with respect thereto, all to the  
7 extent that those expenditures are directly incidental to  
8 such examinations or administration. The Commissioner  
9 shall not be required by paragraphs (c) or (d-1) of this  
10 subsection (3) to maintain in any fiscal year's budget  
11 appropriated reserves for accrued vacation and accrued  
12 sick leave that is required to be paid to employees of the  
13 Commissioner upon termination of their service with the  
14 Commissioner in an amount that is more than is reasonably  
15 anticipated to be necessary for any anticipated turnover in  
16 employees, whether due to normal attrition or due to  
17 layoffs, terminations, or resignations.

18 (d) The aggregate of all fees collected by the  
19 Secretary ~~Commissioner~~ under this Act, the Corporate  
20 Fiduciary Act, or the Foreign Banking Office Act on and  
21 after July 1, 1979, shall be paid promptly after receipt of  
22 the same, accompanied by a detailed statement thereof, into  
23 the State treasury and shall be set apart in a special fund  
24 to be known as the "Bank and Trust Company Fund", except as  
25 provided in paragraph (c) of subsection (11) of this  
26 Section. All earnings received from investments of funds in



1 the Bank and Trust Company Fund shall be deposited in the  
2 Bank and Trust Company Fund and may be used for the same  
3 purposes as fees deposited in that Fund. The amount from  
4 time to time deposited into the Bank and Trust Company Fund  
5 shall be used: (i) to offset the ordinary administrative  
6 expenses of the ~~Secretary Commissioner of Banks and Real~~  
7 ~~Estate~~ as defined in this Section or (ii) as a credit  
8 against fees under paragraph (d-1) of this subsection (3).

9 Nothing in this amendatory Act of 1979 shall prevent  
10 continuing the practice of paying expenses involving  
11 salaries, retirement, social security, and State-paid  
12 insurance premiums of State officers by appropriations  
13 from the General Revenue Fund. However, the General Revenue  
14 Fund shall be reimbursed for those payments made on and  
15 after July 1, 1979, by an annual transfer of funds from the  
16 Bank and Trust Company Fund. Moneys in the Bank and Trust  
17 Company Fund may be transferred to the Professions Indirect  
18 Cost Fund, as authorized under Section 2105-300 of the  
19 Department of Professional Regulation Law of the Civil  
20 Administrative Code of Illinois. Notwithstanding  
21 provisions in the State Finance Act, as now or hereafter  
22 amended, or any other law to the contrary: (A) the sum of  
23 \$18,788,847 shall be transferred from the Bank and Trust  
24 Company Fund to the General Revenue Fund on the effective  
25 date of this amendatory Act of the 95th General Assembly,  
26 or as soon thereafter as practical; (B) the Governor may,

1       during any fiscal year through January 10, 2011, from time  
2       to time direct the State Treasurer and Comptroller to  
3       transfer a specified sum not exceeding 10% of the revenues  
4       to be deposited into the Bank and Trust Company Fund during  
5       that fiscal year from that Fund to the General Revenue Fund  
6       in order to help defray the State's operating costs for the  
7       fiscal year; and (C) the total sum transferred during any  
8       fiscal year through January 10, 2011, from the Bank and  
9       Trust Company Fund to the General Revenue Fund pursuant to  
10       provision (B) of paragraph (d) of this subsection (3) shall  
11       not exceed during any fiscal year 10% of the revenues to be  
12       deposited into the Bank and Trust Company Fund during that  
13       fiscal year.

14       The State Treasurer and Comptroller shall transfer the  
15       amounts designated under this Section as soon as may be  
16       practicable after receiving the direction to transfer from  
17       the Governor.

18       (d-1) Adequate funds shall be available in the Bank and  
19       Trust Company Fund to permit the timely payment of  
20       administration expenses. In each fiscal year the total  
21       administration expenses shall be deducted from the total  
22       fees collected by the Commissioner and the remainder  
23       transferred into the Cash Flow Reserve Account, unless the  
24       balance of the Cash Flow Reserve Account prior to the  
25       transfer equals or exceeds one-fourth of the total initial  
26       appropriations from the Bank and Trust Company Fund for the

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

25 (e) The Commissioner may upon request certify to any  
26 public record in his keeping and shall have authority to

1           levy a reasonable charge for issuing certifications of any  
2           public record in his keeping.

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

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

14          (5) The nature and condition of the assets in or investment  
15          of any bonus, pension, or profit sharing plan for officers or  
16          employees of every State bank or, after May 31, 1997, branch of  
17          an out-of-state bank shall be deemed to be included in the  
18          affairs of that State bank or branch of an out-of-state bank  
19          subject to examination by the Commissioner under the provisions  
20          of subsection (2) of this Section, and if the Commissioner  
21          shall find from an examination that the condition of or  
22          operation of the investments or assets of the plan is unlawful,  
23          fraudulent, or unsafe, or that any trustee has abused his  
24          trust, the Commissioner shall, if the situation so found by the  
25          Commissioner shall not be corrected to his satisfaction within  
26          60 days after the Commissioner has given notice to the board of

1 directors of the State bank or out-of-state bank of his  
2 findings, report the facts to the Attorney General who shall  
3 thereupon institute proceedings against the State bank or  
4 out-of-state bank, the board of directors thereof, or the  
5 trustees under such plan as the nature of the case may require.

6 (6) The Commissioner shall have the power:

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

9 (a-5) To impose conditions on any approval issued by  
10 the Commissioner if he determines that the conditions are  
11 necessary or appropriate. These conditions shall be  
12 imposed in writing and shall continue in effect for the  
13 period prescribed by the Commissioner.

14 (b) To issue orders against any person, if the  
15 Commissioner has reasonable cause to believe that an unsafe  
16 or unsound banking practice has occurred, is occurring, or  
17 is about to occur, if any person has violated, is  
18 violating, or is about to violate any law, rule, or written  
19 agreement with the Commissioner, or for the purpose of  
20 administering the provisions of this Act and any rule  
21 promulgated in accordance with this Act.

22 (b-1) To enter into agreements with a bank establishing  
23 a program to correct the condition of the bank or its  
24 practices.

25 (c) To appoint hearing officers to execute any of the  
26 powers granted to the Commissioner under this Section for

1 the purpose of administering this Act and any rule  
2 promulgated in accordance with this Act and otherwise to  
3 authorize, in writing, an officer or employee of the Office  
4 of Banks and Real Estate to exercise his powers under this  
5 Act.

6 (d) To subpoena witnesses, to compel their attendance,  
7 to administer an oath, to examine any person under oath,  
8 and to require the production of any relevant books,  
9 papers, accounts, and documents in the course of and  
10 pursuant to any investigation being conducted, or any  
11 action being taken, by the Commissioner in respect of any  
12 matter relating to the duties imposed upon, or the powers  
13 vested in, the Commissioner under the provisions of this  
14 Act or any rule promulgated in accordance with this Act.

15 (e) To conduct hearings.

16 (7) Whenever, in the opinion of the Commissioner, any  
17 director, officer, employee, or agent of a State bank or any  
18 subsidiary or bank holding company of the bank or, after May  
19 31, 1997, of any branch of an out-of-state bank or any  
20 subsidiary or bank holding company of the bank shall have  
21 violated any law, rule, or order relating to that bank or any  
22 subsidiary or bank holding company of the bank, shall have  
23 obstructed or impeded any examination or investigation by the  
24 Commissioner, shall have engaged in an unsafe or unsound  
25 practice in conducting the business of that bank or any  
26 subsidiary or bank holding company of the bank, or shall have

1 violated any law or engaged or participated in any unsafe or  
2 unsound practice in connection with any financial institution  
3 or other business entity such that the character and fitness of  
4 the director, officer, employee, or agent does not assure  
5 reasonable promise of safe and sound operation of the State  
6 bank, the Commissioner may issue an order of removal. If, in  
7 the opinion of the Commissioner, any former director, officer,  
8 employee, or agent of a State bank or any subsidiary or bank  
9 holding company of the bank, prior to the termination of his or  
10 her service with that bank or any subsidiary or bank holding  
11 company of the bank, violated any law, rule, or order relating  
12 to that State bank or any subsidiary or bank holding company of  
13 the bank, obstructed or impeded any examination or  
14 investigation by the Commissioner, engaged in an unsafe or  
15 unsound practice in conducting the business of that bank or any  
16 subsidiary or bank holding company of the bank, or violated any  
17 law or engaged or participated in any unsafe or unsound  
18 practice in connection with any financial institution or other  
19 business entity such that the character and fitness of the  
20 director, officer, employee, or agent would not have assured  
21 reasonable promise of safe and sound operation of the State  
22 bank, the Commissioner may issue an order prohibiting that  
23 person from further service with a bank or any subsidiary or  
24 bank holding company of the bank as a director, officer,  
25 employee, or agent. An order issued pursuant to this subsection  
26 shall be served upon the director, officer, employee, or agent.

1 A copy of the order shall be sent to each director of the bank  
2 affected by registered mail. The person affected by the action  
3 may request a hearing before the State Banking Board within 10  
4 days after receipt of the order. The hearing shall be held by  
5 the Board within 30 days after the request has been received by  
6 the Board. The Board shall make a determination approving,  
7 modifying, or disapproving the order of the Commissioner as its  
8 final administrative decision. If a hearing is held by the  
9 Board, the Board shall make its determination within 60 days  
10 from the conclusion of the hearing. Any person affected by a  
11 decision of the Board under this subsection (7) of Section 48  
12 of this Act may have the decision reviewed only under and in  
13 accordance with the Administrative Review Law and the rules  
14 adopted pursuant thereto. A copy of the order shall also be  
15 served upon the bank of which he is a director, officer,  
16 employee, or agent, whereupon he shall cease to be a director,  
17 officer, employee, or agent of that bank. The Commissioner may  
18 institute a civil action against the director, officer, or  
19 agent of the State bank or, after May 31, 1997, of the branch  
20 of the out-of-state bank against whom any order provided for by  
21 this subsection (7) of this Section 48 has been issued, and  
22 against the State bank or, after May 31, 1997, out-of-state  
23 bank, to enforce compliance with or to enjoin any violation of  
24 the terms of the order. Any person who has been the subject of  
25 an order of removal or an order of prohibition issued by the  
26 Commissioner under this subsection or Section 5-6 of the



1 Corporate Fiduciary Act may not thereafter serve as director,  
2 officer, employee, or agent of any State bank or of any branch  
3 of any out-of-state bank, or of any corporate fiduciary, as  
4 defined in Section 1-5.05 of the Corporate Fiduciary Act, or of  
5 any other entity that is subject to licensure or regulation by  
6 the Commissioner or the Office of Banks and Real Estate unless  
7 the Commissioner has granted prior approval in writing.

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

11 (8) The Commissioner may impose civil penalties of up to  
12 \$10,000 against any person for each violation of any provision  
13 of this Act, any rule promulgated in accordance with this Act,  
14 any order of the Commissioner, or any other action which in the  
15 Commissioner's discretion is an unsafe or unsound banking  
16 practice.

17 (9) The Commissioner may impose civil penalties of up to  
18 \$100 against any person for the first failure to comply with  
19 reporting requirements set forth in the report of examination  
20 of the bank and up to \$200 for the second and subsequent  
21 failures to comply with those reporting requirements.

22 (10) All final administrative decisions of the  
23 Commissioner hereunder shall be subject to judicial review  
24 pursuant to the provisions of the Administrative Review Law.  
25 For matters involving administrative review, venue shall be in  
26 either Sangamon County or Cook County.

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

3           (a) (Blank).

4           (b) The Foundation is empowered to receive voluntary  
5 contributions, gifts, grants, bequests, and donations on  
6 behalf of the Illinois Bank Examiners' Education  
7 Foundation from national banks and other persons for the  
8 purpose of funding the endowment of the Illinois Bank  
9 Examiners' Education Foundation.

10          (c) The aggregate of all special educational fees  
11 collected by the Commissioner and property received by the  
12 Commissioner on behalf of the Illinois Bank Examiners'  
13 Education Foundation under this subsection (11) on or after  
14 June 30, 1986, shall be either (i) promptly paid after  
15 receipt of the same, accompanied by a detailed statement  
16 thereof, into the State Treasury and shall be set apart in  
17 a special fund to be known as "The Illinois Bank Examiners'  
18 Education Fund" to be invested by either the Treasurer of  
19 the State of Illinois in the Public Treasurers' Investment  
20 Pool or in any other investment he is authorized to make or  
21 by the Illinois State Board of Investment as the board of  
22 trustees of the Illinois Bank Examiners' Education  
23 Foundation may direct or (ii) deposited into an account  
24 maintained in a commercial bank or corporate fiduciary in  
25 the name of the Illinois Bank Examiners' Education  
26 Foundation pursuant to the order and direction of the Board

1 of Trustees of the Illinois Bank Examiners' Education  
2 Foundation.

3 (12) (Blank).

4 (Source: P.A. 94-91, eff. 7-1-05.)

5 Section 10. The Illinois Savings and Loan Act of 1985 is  
6 amended by adding Section 1-10.39 and by changing Sections 7-3,  
7 and 7-19.1 as follows:

8 (205 ILCS 105/1-10.39 new)

9 Sec. 1-10.39. Secretary of the Department of Financial and  
10 Professional Regulation. For purposes of this Act, "Secretary"  
11 means the Secretary of the Department of Financial and  
12 Professional Regulation, or a person authorized by the  
13 Secretary or by this Act to act in the Secretary's stead.

14 (205 ILCS 105/7-3) (from Ch. 17, par. 3307-3)

15 Sec. 7-3. Personnel, records, files, actions and duties,  
16 etc.

17 (a) The Secretary ~~Commissioner~~ shall appoint, subject to  
18 applicable provisions of the Personnel Code, a supervisor, such  
19 examiners, employees, experts and special assistants as may be  
20 necessary to carry out effectively this Act. The Secretary  
21 ~~Commissioner~~ shall require each supervisor, examiner, expert  
22 and special assistant employed or appointed by him to give  
23 bond, with security to be approved by the Secretary

1 ~~Commissioner~~, not less in any case than \$15,000, conditioned  
2 for the faithful discharge of his duties. The premium on such  
3 bond shall be paid by the Secretary ~~Commissioner~~ from funds  
4 appropriated for that purpose. The bond, along with  
5 verification of payment of the premium on such bond, shall be  
6 filed in the office of the Secretary of State.

7 (b) The Secretary ~~Commissioner~~ shall have the following  
8 duties and powers:

9 (1) To exercise the rights, powers and duties set forth in  
10 this Act or in any other related Act;

11 (2) To establish such regulations as may be reasonable or  
12 necessary to accomplish the purposes of this Act;

13 (3) To direct and supervise all the administrative and  
14 technical activities of this office and create an Advisory  
15 Committee which upon request will make recommendations to him;

16 (4) To make an annual report regarding the work of his  
17 office as he may consider desirable to the Governor, or as the  
18 Governor may request;

19 (5) To cause a suit to be filed in his name to enforce any  
20 law of this State that applies to an association, subsidiary of  
21 an association, or holding company operating under this Act and  
22 shall include the enforcement of any obligation of the  
23 officers, directors or employees of any association;

24 (6) To prescribe a uniform manner in which the books and  
25 records of every association are to be maintained; and

26 (7) To establish reasonable and rationally based fee

1 structures for each association and holding company operating  
2 under this Act and for their service corporations and  
3 subsidiaries, which fees shall include but not be limited to  
4 annual fees, application fees, regular and special examination  
5 fees, and such other fees as the Secretary ~~Commissioner~~  
6 establishes and demonstrates to be directly resultant from his  
7 responsibilities under this Act and as are directly  
8 attributable to individual entities operating under this Act.  
9 For the fiscal year beginning July 1, 2007, and continuing  
10 thereafter through January 10, 2011, the Secretary shall adopt  
11 emergency and general rules to adjust regulatory fee rates to  
12 an amount that shall not exceed by more than 13.5% the rates in  
13 effect prior to the escalation in rates implemented by an  
14 amendment to 38 Ill. Adm. Code 1000 published in 27 Ill. Reg.  
15 16029, Oct. 10, 2003. The adoption of emergency rules  
16 authorized by this subsection (b) shall be deemed necessary for  
17 the public interest, safety, and welfare, in order to provide  
18 for the expeditious and timely implementation of the State's  
19 fiscal year budget through the transfer from the Savings and  
20 Residential Finance Regulatory Fund to the General Revenue Fund  
21 authorized by this amendatory Act of the 95th General Assembly.

22 (Source: P.A. 85-313.)

23 (205 ILCS 105/7-19.1) (from Ch. 17, par. 3307-19.1)

24 Sec. 7-19.1. Savings and Residential Finance Regulatory  
25 Fund.

1           (a) The aggregate of all fees collected by the Secretary  
2 ~~Commissioner~~ under this Act shall be paid promptly after  
3 receipt of the same, accompanied by a detailed statement  
4 thereof, into the State treasury and shall be set apart in the  
5 Savings and Residential Finance Regulatory Fund, a special fund  
6 hereby created in the State treasury. The amounts deposited  
7 into the Fund shall be used for the ordinary and contingent  
8 expenses of the Department of Financial and Professional  
9 Regulation and the Division of Banking, or their successors, in  
10 administering and enforcing the Illinois Savings and Loan Act  
11 of 1985, the Savings Bank Act, and the Residential Mortgage  
12 License Act of 1987 and other laws, rules, and regulations as  
13 may apply to the administration and enforcement of the  
14 foregoing laws, rules, and regulations as amended from time to  
15 time ~~Office of Banks and Real Estate~~. Nothing in this Act shall  
16 prevent continuing the practice of paying expenses involving  
17 salaries, retirement, social security, and State-paid  
18 insurance of State officers by appropriation from the General  
19 Revenue Fund.

20           (b) Except as otherwise provided in subsection (b-5),  
21 moneys in the Savings and Residential Finance Regulatory Fund  
22 may not be appropriated, assigned, or transferred to another  
23 State fund. The moneys in the Fund shall be for the sole  
24 benefit of the institutions assessed.

25           (b-5) Moneys in the Savings and Residential Finance  
26 Regulatory Fund may be transferred to the Professions Indirect

1 Cost Fund, as authorized under Section 2105-300 of the  
2 Department of Professional Regulation Law of the Civil  
3 Administrative Code of Illinois.

4 (b-10) Notwithstanding provisions in the State Finance  
5 Act, as now or hereafter amended, or any other law to the  
6 contrary: (i) The sum of \$27,481,638 shall be transferred from  
7 the Savings and Residential Finance Regulatory Fund to the  
8 General Revenue Fund on the effective date of this amendatory  
9 Act of the 95th General Assembly, or as soon thereafter as  
10 practical; (ii) the Governor may, during any fiscal year  
11 through January 10, 2011, from time to time direct the State  
12 Treasurer and Comptroller to transfer a specified sum not  
13 exceeding 10% of the revenues to be deposited into the Savings  
14 and Residential Finance Regulatory Fund during that fiscal year  
15 from that Fund to the General Revenue Fund in order to help  
16 defray the State's operating costs for the fiscal year; and  
17 (iii) the total sum transferred during any fiscal year through  
18 January 10, 2011, from the Savings and Residential Finance  
19 Regulatory Fund to the General Revenue Fund pursuant to item  
20 (ii) of this subsection (b-10) shall not exceed during any  
21 fiscal year 10% of the revenues to be deposited into the  
22 Savings and Residential Finance Regulatory Fund during that  
23 fiscal year.

24 The State Treasurer and Comptroller shall transfer the  
25 amounts designated under this Section as soon as may be  
26 practicable after receiving the direction to transfer from the

1 Governor.

2 (c) All earnings received from investments of funds in the  
3 Savings and Residential Finance Regulatory Fund shall be  
4 deposited into the Savings and Residential Finance Regulatory  
5 Fund and may be used for the same purposes as fees deposited  
6 into that Fund.

7 (d) When the balance in the Savings and Residential Finance  
8 Regulatory Fund at the end of a fiscal year apportioned to the  
9 fees collected under the Illinois Savings and Loan Act of 1985  
10 and the Savings Bank Act exceeds 25% of the total actual  
11 administrative and operational expenses incurred by the State  
12 for that fiscal year in administering and enforcing the  
13 Illinois Savings and Loan Act of 1985 and the Savings Bank Act  
14 and such other laws, rules, and regulations as may apply to the  
15 administration and enforcement of the foregoing laws, rules,  
16 and regulations, the excess shall be credited to the  
17 appropriate institutions and entities and applied against  
18 their regulatory fees for the subsequent fiscal year. The  
19 amount credited to each institution or entity shall be in the  
20 same proportion that the regulatory fees paid by the  
21 institution or entity for the fiscal year in which the excess  
22 is produced bear to the aggregate amount of all fees collected  
23 by the Secretary under the Illinois Savings and Loan Act of  
24 1985 and the Savings Bank Act for the same fiscal year. For the  
25 purpose of this Section, "fiscal year" means the period  
26 beginning July 1 of any year and ending June 30 of the next



1 calendar year.

2 (Source: P.A. 94-91, eff. 7-1-05.)

3 Section 15. The Savings Bank Act is amended by adding  
4 Section 1007.135 and by changing Section 9002 as follows:

5 (205 ILCS 205/1007.135 new)

6 Sec. 1007.135. Secretary of the Department of Financial and  
7 Professional Regulation. "Secretary" means the Secretary of  
8 the Department of Financial and Professional Regulation, or a  
9 person authorized by the Secretary or by this Act to act in the  
10 Secretary's stead.

11 (205 ILCS 205/9002) (from Ch. 17, par. 7309-2)

12 Sec. 9002. Powers of Secretary ~~Commissioner~~. The Secretary  
13 ~~Commissioner~~ shall have the following powers and duties:

14 (1) To exercise the rights, powers, and duties set forth in  
15 this Act or in any related Act.

16 (2) To establish regulations as may be reasonable or  
17 necessary to accomplish the purposes of this Act.

18 (3) To make an annual report regarding the work of his  
19 office under this Act as he may consider desirable to the  
20 Governor, or as the Governor may request.

21 (4) To cause a suit to be filed in his name to enforce any  
22 law of this State that applies to savings banks, their service  
23 corporations, subsidiaries, affiliates, or holding companies

1 operating under this Act, including the enforcement of any  
2 obligation of the officers, directors, agents, or employees of  
3 any savings bank.

4 (5) To prescribe a uniform manner in which the books and  
5 records of every savings bank are to be maintained.

6 (6) To establish a reasonable fee structure for savings  
7 banks and holding companies operating under this Act and for  
8 their service corporations and subsidiaries. The fees shall  
9 include, but not be limited to, annual fees, application fees,  
10 regular and special examination fees, and other fees as the  
11 Secretary ~~Commissioner~~ establishes and demonstrates to be  
12 directly resultant from the Secretary's ~~Commissioner's~~  
13 responsibilities under this Act and as are directly  
14 attributable to individual entities operating under this Act.  
15 The aggregate of all fees collected by the Secretary  
16 ~~Commissioner~~ on and after the effective date of this Act shall  
17 be paid promptly after receipt of the same, accompanied by a  
18 detailed statement thereof, into the Savings and Residential  
19 Finance Regulatory Fund subject to the provisions of Section  
20 7-19.1 of the Illinois Savings and Loan Act of 1985 including  
21 without limitation the provision for credits against  
22 regulatory fees. The amounts deposited into the Fund shall be  
23 used for the ordinary and contingent expenses of the Office of  
24 Banks and Real Estate. Nothing in this Act shall prevent  
25 continuing the practice of paying expenses involving salaries,  
26 retirement, social security, and State-paid insurance of State

1 officers by appropriation from the General Revenue Fund. For  
2 the fiscal year beginning July 1, 2007, and continuing  
3 thereafter through January 10, 2011, the Secretary shall adopt  
4 emergency and general rules to adjust regulatory fee rates to  
5 an amount that shall not exceed by more than 13.5% the rates in  
6 effect prior to the escalation in rates implemented by an  
7 amendment to 38 Ill. Adm. Code 1075 published in 27 Ill. Reg.  
8 16043, Oct. 10, 2003. The adoption of emergency rules  
9 authorized by this subsection (6) shall be deemed necessary for  
10 the public interest, safety, and welfare in order to provide  
11 for the expeditious and timely implementation of the State's  
12 fiscal year budget through the transfer from the Savings and  
13 Residential Finance Regulatory Fund to the General Revenue Fund  
14 authorized by this amendatory Act of the 95th General Assembly.

15 (Source: P.A. 89-508, eff. 7-3-96.)

16 Section 20. The Illinois Credit Union Act is amended by  
17 changing Sections 1.1 and 12 as follows:

18 (205 ILCS 305/1.1) (from Ch. 17, par. 4402)

19 Sec. 1.1. Definitions.

20 Credit Union - The term "credit union" means a cooperative,  
21 non-profit association, incorporated under this Act, under the  
22 laws of the United States of America or under the laws of  
23 another state, for the purposes of encouraging thrift among its  
24 members, creating a source of credit at a reasonable rate of

1 interest, and providing an opportunity for its members to use  
2 and control their own money in order to improve their economic  
3 and social conditions. The membership of a credit union shall  
4 consist of a group or groups each having a common bond as set  
5 forth in this Act.

6 Common Bond - The term "common bond" refers to groups of  
7 people who meet one of the following qualifications:

8 (1) Persons belonging to a specific association, group  
9 or organization, such as a church, labor union, club or  
10 society and members of their immediate families which shall  
11 include any relative by blood or marriage or foster and  
12 adopted children.

13 (2) Persons who reside in a reasonably compact and well  
14 defined neighborhood or community, and members of their  
15 immediate families which shall include any relative by  
16 blood or marriage or foster and adopted children.

17 (3) Persons who have a common employer or who are  
18 members of an organized labor union or an organized  
19 occupational or professional group within a defined  
20 geographical area, and members of their immediate families  
21 which shall include any relative by blood or marriage or  
22 foster and adopted children.

23 Shares - The term "shares" or "share accounts" means any  
24 form of shares issued by a credit union and established by a  
25 member in accordance with standards specified by a credit  
26 union, including but not limited to common shares, share draft

1 accounts, classes of shares, share certificates, special  
2 purpose share accounts, shares issued in trust, custodial  
3 accounts, and individual retirement accounts or other plans  
4 established pursuant to Section 401(d) or (f) or Section 408(a)  
5 of the Internal Revenue Code, as now or hereafter amended, or  
6 similar provisions of any tax laws of the United States that  
7 may hereafter exist.

8 Credit Union Organization - The term "credit union  
9 organization" means any organization established to serve the  
10 needs of credit unions, the business of which relates to the  
11 daily operations of credit unions.

12 Department - The term "Department" means the Illinois  
13 Department of Financial Institutions.

14 Director - The term "Director" means the Director of the  
15 Illinois Department of Financial Institutions, except that  
16 beginning on the effective date of this amendatory Act of the  
17 95th General Assembly, all references in this Act to the  
18 Director of the Department of Financial Institutions are  
19 deemed, in appropriate contexts, to be references to the  
20 Secretary of Financial and Professional Regulation.

21 NCUA - The term "NCUA" means the National Credit Union  
22 Administration, an agency of the United States Government  
23 charged with the supervision of credit unions chartered under  
24 the laws of the United States of America.

25 Central Credit Union - The term "central credit union"  
26 means a credit union incorporated primarily to receive shares

1 from and make loans to credit unions and Directors, Officers,  
2 committee members and employees of credit unions. A central  
3 credit union may also accept as members persons who were  
4 members of credit unions which were liquidated and persons from  
5 occupational groups not otherwise served by another credit  
6 union.

7 Corporate Credit Union - The term "corporate credit union"  
8 means a credit union which is a cooperative, non-profit  
9 association, the membership of which is limited primarily to  
10 other credit unions.

11 Insolvent - "Insolvent" means the condition that results  
12 when the total of all liabilities and shares exceeds net assets  
13 of the credit union.

14 Danger of insolvency - For purposes of Section 61, a credit  
15 union is in "danger of insolvency" if its net worth to asset  
16 ratio falls below 2%. In calculating the danger of insolvency  
17 ratio, secondary capital shall be excluded. For purposes of  
18 Section 61, a credit union is also in "danger of insolvency" if  
19 the Department is unable to ascertain, upon examination, the  
20 true financial condition of the credit union.

21 Net Worth - "Net worth" means the retained earnings balance  
22 of the credit union, as determined under generally accepted  
23 accounting principles, and forms of secondary capital approved  
24 by the Director pursuant to rulemaking.

25 Secretary - The term "Secretary" means the Secretary of the  
26 Department of Financial and Professional Regulation, or a

1 person authorized by the Secretary or this Act to act in the  
2 Secretary's stead.

3 (Source: P.A. 92-608, eff. 7-1-02.)

4 (205 ILCS 305/12) (from Ch. 17, par. 4413)  
5 Sec. 12. Regulatory fees.

6 (1) For the fiscal year beginning July 1, 2007, a ~~A~~ credit  
7 union regulated by the Department shall pay a regulatory fee to  
8 the Department based upon its total assets as shown by its  
9 Year-end Call Report at the following rates or at a lesser rate  
10 established by the Secretary in a manner proportionately  
11 consistent with the following rates and sufficient to fund the  
12 actual administrative and operational expenses of the Credit  
13 Union Section pursuant to subsection (4) of this Section:

TOTAL ASSETS	REGULATORY FEE
\$25,000 or less .....	\$100
Over \$25,000 and not over	
\$100,000 .....	\$100 plus \$4 per
	\$1,000 of assets in excess of
	\$25,000
Over \$100,000 and not over	
\$200,000 .....	\$400 plus \$3 per
	\$1,000 of assets in excess of
	\$100,000
Over \$200,000 and not over	
\$500,000 .....	\$700 plus \$2 per

1 \$1,000 of assets in excess of  
2 \$200,000  
3 Over \$500,000 and not over  
4 \$1,000,000 ..... \$1,300 plus \$1.40  
5 per \$1,000 of assets in excess  
6 of \$500,000  
7 Over \$1,000,000 and not  
8 over \$5,000,000 ..... \$2,000 plus \$0.50  
9 per \$1,000 of assets in  
10 excess of \$1,000,000  
11 Over \$5,000,000 and not  
12 over \$30,000,000 ..... \$4,540 ~~\$5,080~~ plus \$0.397 ~~\$0.44~~  
13 per \$1,000 assets  
14 in excess of \$5,000,000  
15 Over \$30,000,000 and not over  
16 \$100,000,000 ..... \$14,471 ~~\$16,192~~ plus \$0.34  
17 ~~\$0.38~~ per \$1,000 of assets  
18 in excess of \$30,000,000  
19  
20 Over \$100,000,000 and not  
21 over \$500,000,000 ..... \$38,306 ~~\$42,862~~ plus \$0.17  
22 ~~\$0.19~~ per \$1,000 of assets  
23 in excess of \$100,000,000  
24 Over \$500,000,000 ..... \$106,406 ~~\$140,625~~ plus \$0.056  
25 ~~\$0.075~~ per \$1,000 of assets  
26 in excess of \$500,000,000



1           (2) The Secretary ~~Director~~ shall review the regulatory fee  
2 schedule in subsection (1) and the projected earnings on those  
3 fees on an annual basis and adjust the fee schedule no more  
4 than 5% annually if necessary to defray the estimated  
5 administrative and operational expenses of the Credit Union  
6 Section of the Department as defined in subsection (5).  
7 However, the fee schedule shall not be increased if the amount  
8 remaining in the Credit Union Fund at the end of any fiscal  
9 year is greater than 25% of the total actual and operational  
10 expenses incurred by the State in administering and enforcing  
11 the Illinois Credit Union Act and other laws, rules, and  
12 regulations as may apply to the administration and enforcement  
13 of the foregoing laws, rules, and regulations as amended from  
14 time to time for the preceding fiscal year. The regulatory fee  
15 for the next fiscal year shall be calculated by the Secretary  
16 based on the credit union's total assets as of December 31 of  
17 the preceding calendar year. The Secretary ~~Director~~ shall  
18 provide credit unions with written notice of any adjustment  
19 made in the regulatory fee schedule.

20           (3) Beginning with the calendar quarter commencing on  
21 January 1, 2009 ~~Not later than March 1 of each calendar year,~~ a  
22 credit union shall pay to the Department a regulatory fee in  
23 quarterly installments equal to one-fourth of the regulatory  
24 fee due ~~for that calendar year~~ in accordance with the  
25 regulatory fee schedule in subsection (1), on the basis of  
26 assets as of the Year-end Call Report of the preceding calendar

1 year. The total annual regulatory fee shall not be less than  
2 \$100 or more than \$141,875 ~~\$187,500~~, provided that the  
3 regulatory fee cap of \$141,875 ~~\$187,500~~ shall be adjusted to  
4 incorporate the same percentage increase as the Secretary  
5 ~~Director~~ makes in the regulatory fee schedule from time to time  
6 under subsection (2). No regulatory fee shall be collected from  
7 a credit union until it has been in operation for one year. The  
8 regulatory fee shall be billed to credit unions on a quarterly  
9 basis commencing with the quarter ending March 31, 2009, and it  
10 shall be payable by credit unions on the due date for the Call  
11 Report for the subject quarter.

12 (4) The aggregate of all fees collected by the Department  
13 under this Act shall be paid promptly after they are received,  
14 accompanied by a detailed statement thereof, into the State  
15 Treasury and shall be set apart in the Credit Union Fund, a  
16 special fund hereby created in the State treasury. The amount  
17 from time to time deposited in the Credit Union Fund and shall  
18 be used to offset the ordinary administrative and operational  
19 expenses of the Credit Union Section of the Department under  
20 this Act. All earnings received from investments of funds in  
21 the Credit Union Fund shall be deposited into the Credit Union  
22 Fund and may be used for the same purposes as fees deposited  
23 into that Fund. Moneys deposited in the Credit Union Fund may  
24 be transferred to the Professions Indirect Cost Fund, as  
25 authorized under Section 2105-300 of the Department of  
26 Professional Regulation Law of the Civil Administrative Code of

1 Illinois. Notwithstanding provisions in the State Finance Act,  
2 as now or hereafter amended, or any other law to the contrary:  
3 (i) the sum of \$4,404,515 shall be transferred from the Credit  
4 Union Fund to the General Revenue Fund as of the effective date  
5 of this amendatory Act of the 95th General Assembly, or as soon  
6 thereafter as practical; (ii) the Governor may, during any  
7 fiscal year through January 10, 2011, from time to time direct  
8 the State Treasurer and Comptroller to transfer a specified sum  
9 not exceeding 10% of the revenues to be deposited into the  
10 Credit Union Fund during that fiscal year from that Fund to the  
11 General Revenue Fund in order to help defray the State's  
12 operating costs for the fiscal year; and (iii) the total sum  
13 transferred from the Credit Union Fund to the General Revenue  
14 Fund pursuant to item (ii) of this subsection (4) shall not  
15 exceed during any fiscal year 10% of the revenues to be  
16 deposited into the Credit Union Fund during that fiscal year.

17 The State Treasurer and Comptroller shall transfer the  
18 amounts designated under this Section as soon as may be  
19 practicable after receiving the direction to transfer from the  
20 Governor.

21 (5) The administrative and operational expenses for any  
22 fiscal ~~calendar~~ year shall mean the ordinary and contingent  
23 expenses for that year incidental to making the examinations  
24 provided for by, and for administering, this Act, including all  
25 salaries and other compensation paid for personal services  
26 rendered for the State by officers or employees of the State to

1 enforce this Act; all expenditures for telephone and telegraph  
2 charges, postage and postal charges, office supplies and  
3 services, furniture and equipment, office space and  
4 maintenance thereof, travel expenses and other necessary  
5 expenses; all to the extent that such expenditures are directly  
6 incidental to such examination or administration.

7 (6) When the balance in the Credit Union Fund at the end of  
8 a fiscal year exceeds 25% aggregate of all fees collected by  
9 the Department under this Act and all earnings thereon for any  
10 calendar year exceeds 150% of the total administrative and  
11 operational expenses incurred by the State in administering and  
12 enforcing the Illinois Credit Union Act and other laws, rules,  
13 and regulations as may apply to the administration and  
14 enforcement of the foregoing laws, rules, and regulations as  
15 amended from time to time under this Act for that fiscal year,  
16 such excess shall be credited to credit unions and applied  
17 against their regulatory fees for the subsequent fiscal year.  
18 The amount credited to each a credit union shall be in the same  
19 proportion as the regulatory fee paid by such credit union for  
20 the fiscal ~~calendar~~ year in which the excess is produced bears  
21 to the aggregate amount of all ~~the~~ fees collected by the  
22 Department under this Act for the same fiscal year.

23 (7) (Blank). ~~Examination fees for the year 2000 statutory~~  
24 ~~examinations paid pursuant to the examination fee schedule in~~  
25 ~~effect at that time shall be credited toward the regulatory fee~~  
26 ~~to be assessed the credit union in calendar year 2001.~~

1           (8) Nothing in this Act shall prohibit the General Assembly  
2 from appropriating funds to the Department from the General  
3 Revenue Fund for the purpose of administering this Act.

4           (9) For purposes of this Section, "fiscal year" means a  
5 period beginning on July 1 of any calendar year and ending on  
6 June 30 of the next calendar year.

7           (Source: P.A. 93-32, eff. 7-1-03; 93-652, eff. 1-8-04; 94-91,  
8 eff. 7-1-05.)

9           Section 25. The Residential Mortgage License Act of 1987 is  
10 amended by changing Sections 1-4, 2-2, 2-6, and 4-11 as  
11 follows:

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

13           Sec. 1-4. Definitions.

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

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

1 residential mortgage loan.

2 (c) "Soliciting, processing, placing, or negotiating a  
3 residential mortgage loan" shall mean for compensation or gain,  
4 either directly or indirectly, accepting or offering to accept  
5 an application for a residential mortgage loan, assisting or  
6 offering to assist in the processing of an application for a  
7 residential mortgage loan on behalf of a borrower, or  
8 negotiating or offering to negotiate the terms or conditions of  
9 a residential mortgage loan with a lender on behalf of a  
10 borrower including, but not limited to, the submission of  
11 credit packages for the approval of lenders, the preparation of  
12 residential mortgage loan closing documents, including a  
13 closing in the name of a broker.

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

15 (1) (i) Any banking organization or foreign banking  
16 corporation licensed by the Illinois Commissioner of Banks  
17 and Real Estate or the United States Comptroller of the  
18 Currency to transact business in this State; (ii) any  
19 national bank, federally chartered savings and loan  
20 association, federal savings bank, federal credit union;  
21 (iii) any pension trust, bank trust, or bank trust company;  
22 (iv) any bank, savings and loan association, savings bank,  
23 or credit union organized under the laws of this or any  
24 other state; (v) any Illinois Consumer Installment Loan Act  
25 licensee; (vi) any insurance company authorized to  
26 transact business in this State; (vii) any entity engaged

1 solely in commercial mortgage lending; (viii) any service  
2 corporation of a savings and loan association or savings  
3 bank organized under the laws of this State or the service  
4 corporation of a federally chartered savings and loan  
5 association or savings bank having its principal place of  
6 business in this State, other than a service corporation  
7 licensed or entitled to reciprocity under the Real Estate  
8 License Act of 2000; or (ix) any first tier subsidiary of a  
9 bank, the charter of which is issued under the Illinois  
10 Banking Act by the Illinois Commissioner of Banks and Real  
11 Estate, or the first tier subsidiary of a bank chartered by  
12 the United States Comptroller of the Currency and that has  
13 its principal place of business in this State, provided  
14 that the first tier subsidiary is regularly examined by the  
15 Illinois Commissioner of Banks and Real Estate or the  
16 Comptroller of the Currency, or a consumer compliance  
17 examination is regularly conducted by the Federal Reserve  
18 Board.

19 (1.5) Any employee of a person or entity mentioned in  
20 item (1) of this subsection.

21 (2) Any person or entity that does not originate  
22 mortgage loans in the ordinary course of business making or  
23 acquiring residential mortgage loans with his or her or its  
24 own funds for his or her or its own investment without  
25 intent to make, acquire, or resell more than 10 residential  
26 mortgage loans in any one calendar year.

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

4           (4) Any person licensed pursuant to the Real Estate  
5 License Act of 2000, who engages only in the taking of  
6 applications and credit and appraisal information to  
7 forward to a licensee or an exempt entity under this Act  
8 and who is compensated by either a licensee or an exempt  
9 entity under this Act, but is not compensated by either the  
10 buyer (applicant) or the seller.

11           (5) Any individual, corporation, partnership, or other  
12 entity that originates, services, or brokers residential  
13 mortgage loans, as these activities are defined in this  
14 Act, and who or which receives no compensation for those  
15 activities, subject to the Commissioner's regulations with  
16 regard to the nature and amount of compensation.

17           (6) A person who prepares supporting documentation for  
18 a residential mortgage loan application taken by a licensee  
19 and performs ministerial functions pursuant to specific  
20 instructions of the licensee who neither requires nor  
21 permits the preparer to exercise his or her discretion or  
22 judgment; provided that this activity is engaged in  
23 pursuant to a binding, written agreement between the  
24 licensee and the preparer that:

25                   (A) holds the licensee fully accountable for the  
26 preparer's action; and



1           (B) otherwise meets the requirements of this  
2           Section and this Act, does not undermine the purposes  
3           of this Act, and is approved by the Commissioner.

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

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

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

20          (h) "Ultimate equitable owner" shall mean a person who,  
21          directly or indirectly, owns or controls an ownership interest  
22          in a corporation, foreign corporation, alien business  
23          organization, trust, or any other form of business organization  
24          regardless of whether the person owns or controls the ownership  
25          interest through one or more persons or one or more proxies,  
26          powers of attorney, nominees, corporations, associations,

1 partnerships, trusts, joint stock companies, or other entities  
2 or devices, or any combination thereof.

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

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

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

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

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

19 (n) "Commissioner" shall mean the Commissioner of Banks and  
20 Real Estate, except that beginning on the effective date of  
21 this amendatory Act of the 95th General Assembly, all  
22 references in this Act to the Commissioner of Banks of and Real  
23 Estate are deemed, in appropriate contexts, to be references to  
24 the Secretary of Financial and Professional Regulation ~~or a~~  
25 ~~person authorized by the Commissioner, the Office of Banks and~~  
26 ~~Real Estate Act, or this Act to act in the Commissioner's~~

1 ~~stead.~~

2 (o) "Loan brokering", "brokering", or "brokerage service"  
3 shall mean the act of helping to obtain from another entity,  
4 for a borrower, a loan secured by residential real estate  
5 situated in Illinois or assisting a borrower in obtaining a  
6 loan secured by residential real estate situated in Illinois in  
7 return for consideration to be paid by either the borrower or  
8 the lender including, but not limited to, contracting for the  
9 delivery of residential mortgage loans to a third party lender  
10 and soliciting, processing, placing, or negotiating  
11 residential mortgage loans.

12 (p) "Loan broker" or "broker" shall mean a person,  
13 partnership, association, corporation, or limited liability  
14 company, other than those persons, partnerships, associations,  
15 corporations, or limited liability companies exempted from  
16 licensing pursuant to Section 1-4, subsection (d), of this Act,  
17 who performs the activities described in subsections (c) and  
18 (o) of this Section.

19 (q) "Servicing" shall mean the collection or remittance for  
20 or the right or obligation to collect or remit for any lender,  
21 noteowner, noteholder, or for a licensee's own account, of  
22 payments, interests, principal, and trust items such as hazard  
23 insurance and taxes on a residential mortgage loan in  
24 accordance with the terms of the residential mortgage loan; and  
25 includes loan payment follow-up, delinquency loan follow-up,  
26 loan analysis and any notifications to the borrower that are

1 necessary to enable the borrower to keep the loan current and  
2 in good standing.

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

18 (s) "Purchasing" shall mean the purchase of conventional or  
19 government-insured mortgage loans secured by residential real  
20 estate situated in Illinois from either the lender or from the  
21 secondary market.

22 (t) "Borrower" shall mean the person or persons who seek  
23 the services of a loan broker, originator, or lender.

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

26 (v) "Loan brokerage agreement" shall mean a written

1 agreement in which a broker or loan broker agrees to do either  
2 of the following:

3 (1) obtain a residential mortgage loan for the borrower  
4 or assist the borrower in obtaining a residential mortgage  
5 loan; or

6 (2) consider making a residential mortgage loan to the  
7 borrower.

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

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

16 (y) "Government-insured mortgage loan" shall mean any  
17 mortgage loan made on the security of residential real estate  
18 insured by the Department of Housing and Urban Development or  
19 Farmers Home Loan Administration, or guaranteed by the Veterans  
20 Administration.

21 (z) "Annual audit" shall mean a certified audit of the  
22 licensee's books and records and systems of internal control  
23 performed by a certified public accountant in accordance with  
24 generally accepted accounting principles and generally  
25 accepted auditing standards.

26 (aa) "Financial institution" shall mean a savings and loan

1 association, savings bank, credit union, or a bank organized  
2 under the laws of Illinois or a savings and loan association,  
3 savings bank, credit union or a bank organized under the laws  
4 of the United States and headquartered in Illinois.

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

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

12 (dd) "Affiliate" shall mean:

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

17 (2) any entity:

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

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

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

5           The Commissioner may define by rule and regulation any  
6           terms used in this Act for the efficient and clear  
7           administration of this Act.

8           (ee) "First tier subsidiary" shall be defined by regulation  
9           incorporating the comparable definitions used by the Office of  
10          the Comptroller of the Currency and the Illinois Commissioner  
11          of Banks and Real Estate.

12          (ff) "Gross delinquency rate" means the quotient  
13          determined by dividing (1) the sum of (i) the number of  
14          government-insured residential mortgage loans funded or  
15          purchased by a licensee in the preceding calendar year that are  
16          delinquent and (ii) the number of conventional residential  
17          mortgage loans funded or purchased by the licensee in the  
18          preceding calendar year that are delinquent by (2) the sum of  
19          (i) the number of government-insured residential mortgage  
20          loans funded or purchased by the licensee in the preceding  
21          calendar year and (ii) the number of conventional residential  
22          mortgage loans funded or purchased by the licensee in the  
23          preceding calendar year.

24          (gg) "Delinquency rate factor" means the factor set by rule  
25          of the Commissioner that is multiplied by the average gross  
26          delinquency rate of licensees, determined annually for the

1 immediately preceding calendar year, for the purpose of  
2 determining which licensees shall be examined by the  
3 Commissioner pursuant to subsection (b) of Section 4-8 of this  
4 Act.

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

9 (ii) "Confidential supervisory information" means any  
10 report of examination, visitation, or investigation prepared  
11 by the Commissioner under this Act, any report of examination  
12 visitation, or investigation prepared by the state regulatory  
13 authority of another state that examines a licensee, any  
14 document or record prepared or obtained in connection with or  
15 relating to any examination, visitation, or investigation, and  
16 any record prepared or obtained by the Commissioner to the  
17 extent that the record summarizes or contains information  
18 derived from any report, document, or record described in this  
19 subsection. "Confidential supervisory information" does not  
20 include any information or record routinely prepared by a  
21 licensee and maintained in the ordinary course of business or  
22 any information or record that is required to be made publicly  
23 available pursuant to State or federal law or rule.

24 (jj) "Secretary" means the Secretary of the Department of  
25 Financial and Professional Regulation, or a person authorized  
26 by the Secretary or by this Act to act in the Secretary's



1 stead.

2 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

3 (205 ILCS 635/2-2) (from Ch. 17, par. 2322-2)

4 Sec. 2-2. Application process; investigation; fee.

5 (a) The Secretary ~~Commissioner~~ shall issue a license upon  
6 completion of all of the following:

7 (1) The filing of an application for license.

8 (2) The filing with the Secretary ~~Commissioner~~ of a  
9 listing of judgments entered against, and bankruptcy  
10 petitions by, the license applicant for the preceding 10  
11 years.

12 (3) The payment, in certified funds, of investigation  
13 and application fees, the total of which shall be in an  
14 amount equal to \$2,043 ~~\$2,700~~ annually, ~~however, the~~  
15 ~~Commissioner may increase the investigation and~~  
16 ~~application fees by rule as provided in Section 4-11.~~

17 (4) Except for a broker applying to renew a license,  
18 the filing of an audited balance sheet including all  
19 footnotes prepared by a certified public accountant in  
20 accordance with generally accepted accounting principles  
21 and generally accepted auditing principles which evidences  
22 that the applicant meets the net worth requirements of  
23 Section 3-5.

24 (5) The filing of proof satisfactory to the  
25 Commissioner that the applicant, the members thereof if the

1 applicant is a partnership or association, the members or  
2 managers thereof that retain any authority or  
3 responsibility under the operating agreement if the  
4 applicant is a limited liability company, or the officers  
5 thereof if the applicant is a corporation have 3 years  
6 experience preceding application in real estate finance.  
7 Instead of this requirement, the applicant and the  
8 applicant's officers or members, as applicable, may  
9 satisfactorily complete a program of education in real  
10 estate finance and fair lending, as approved by the  
11 Commissioner, prior to receiving the initial license. The  
12 Commissioner shall promulgate rules regarding proof of  
13 experience requirements and educational requirements and  
14 the satisfactory completion of those requirements. The  
15 Commissioner may establish by rule a list of duly licensed  
16 professionals and others who may be exempt from this  
17 requirement.

18 (6) An investigation of the averments required by  
19 Section 2-4, which investigation must allow the  
20 Commissioner to issue positive findings stating that the  
21 financial responsibility, experience, character, and  
22 general fitness of the license applicant and of the members  
23 thereof if the license applicant is a partnership or  
24 association, of the officers and directors thereof if the  
25 license applicant is a corporation, and of the managers and  
26 members that retain any authority or responsibility under

1 the operating agreement if the license applicant is a  
2 limited liability company are such as to command the  
3 confidence of the community and to warrant belief that the  
4 business will be operated honestly, fairly and efficiently  
5 within the purpose of this Act. If the Commissioner shall  
6 not so find, he or she shall not issue such license, and he  
7 or she shall notify the license applicant of the denial.

8 The Commissioner may impose conditions on a license if the  
9 Commissioner determines that the conditions are necessary or  
10 appropriate. These conditions shall be imposed in writing and  
11 shall continue in effect for the period prescribed by the  
12 Commissioner.

13 (b) All licenses shall be issued in duplicate with one copy  
14 being transmitted to the license applicant and the second being  
15 retained with the Commissioner.

16 Upon receipt of such license, a residential mortgage  
17 licensee shall be authorized to engage in the business  
18 regulated by this Act. Such license shall remain in full force  
19 and effect until it expires without renewal, is surrendered by  
20 the licensee or revoked or suspended as hereinafter provided.

21 (Source: P.A. 93-32, eff. 7-1-03; 93-1018, eff. 1-1-05.)

22 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

24 (a) Beginning July 1, 2003, licenses shall be renewed every  
25 year on the anniversary of the date of issuance of the original

1 license. Properly completed renewal application forms and  
2 filing fees must be received by the Secretary ~~Commissioner~~ 60  
3 days prior to the renewal date.

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

12 (1) A fee of \$567.50 ~~\$750~~ will be assessed to the  
13 licensee 30 days after the proper renewal date and \$1,135  
14 ~~\$1,500~~ each month thereafter, until the license is either  
15 renewed or expires pursuant to Section 2-6, subsections (c)  
16 and (d), of this Act.

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

22 (c) A license which is not renewed by the date required in  
23 this Section shall automatically become inactive. No activity  
24 regulated by this Act shall be conducted by the licensee when a  
25 license becomes inactive. The Commissioner may require the  
26 licensee to provide a plan for the disposition of any

1 residential mortgage loans not closed or funded when the  
2 license becomes inactive. The Commissioner may allow a licensee  
3 with an inactive license to conduct activities regulated by  
4 this Act for the sole purpose of assisting borrowers in the  
5 closing or funding of loans for which the loan application was  
6 taken from a borrower while the license was active. An inactive  
7 license may be reactivated by the Commissioner upon payment of  
8 the renewal fee, and payment of a reactivation fee equal to the  
9 renewal fee.

10 (d) A license which is not renewed within one year of  
11 becoming inactive shall expire.

12 (e) A licensee ceasing an activity or activities regulated  
13 by this Act and desiring to no longer be licensed shall so  
14 inform the Commissioner in writing and, at the same time,  
15 convey the license and all other symbols or indicia of  
16 licensure. The licensee shall include a plan for the withdrawal  
17 from regulated business, including a timetable for the  
18 disposition of the business. Upon receipt of such written  
19 notice, the Commissioner shall issue a certified statement  
20 canceling the license.

21 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018,  
22 eff. 1-1-05.)

23 (205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)

24 Sec. 4-11. Costs of Supervision; Examination and  
25 Investigative Fees. The expenses of administering this Act,

1 including investigations and examinations provided for in this  
2 Act shall be borne by and assessed against entities regulated  
3 by this Act. Subject to the limitations set forth in Section  
4 2-2 of this Act, the Secretary ~~The Commissioner~~ shall establish  
5 fees by regulation in at least the following categories:

6 (1) application fees;

7 (2) investigation of license applicant fees;

8 (3) examination fees;

9 (4) contingent fees;

10 and such other categories as may be required to administer this  
11 Act.

12 (Source: P.A. 85-735.)

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