



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5740

Introduced 2/9/2010, by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

815 ILCS 5/11

from Ch. 121 1/2, par. 137.11

Amends the Illinois Securities Law of 1953. Provides that the Secretary of State may impose a fine not to exceed \$100,000 (instead of not to exceed \$10,000) for a violation of the Law. Provides that in addition to any other sanction or remedy provided for, the Secretary of State, after finding that any provision of the Law has been violated, shall notify all of the clients of any sanctioned party, by registered mail, that a violation has taken place. Provides that the costs of this notification shall be covered by fines imposed on the sanctioned party. Provides for immunity from liability for the Secretary of State. Effective immediately.

LRB096 16212 DRJ 31584 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

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

4 Section 5. The Illinois Securities Law of 1953 is amended
5 by changing Section 11 as follows:

6 (815 ILCS 5/11) (from Ch. 121 1/2, par. 137.11)

7 Sec. 11. Duties and powers of the Secretary of State.

8 A. (1) The administration of this Act is vested in the
9 Secretary of State, who may from time to time make, amend and
10 rescind such rules and regulations as may be necessary to carry
11 out this Act, including rules and regulations governing
12 procedures of registration, statements, applications and
13 reports for various classes of securities, persons and matters
14 within his or her jurisdiction and defining any terms, whether
15 or not used in this Act, insofar as the definitions are not
16 inconsistent with this Act. The rules and regulations adopted
17 by the Secretary of State under this Act shall be effective in
18 the manner provided for in the Illinois Administrative
19 Procedure Act.

20 (2) Among other things, the Secretary of State shall have
21 authority, for the purposes of this Act, to prescribe the form
22 or forms in which required information shall be set forth,
23 accounting practices, the items or details to be shown in

1 balance sheets and earning statements, and the methods to be
2 followed in the preparation of accounts, in the appraisal or
3 valuation of assets and liabilities, in the determination of
4 depreciation and depletion, in the differentiation of
5 recurring and non-recurring income, in the differentiation of
6 investment and operating income, and in the preparation of
7 consolidated balance sheets or income accounts of any person,
8 directly or indirectly, controlling or controlled by the
9 issuer, or any person under direct or indirect common control
10 with the issuer.

11 (3) No provision of this Act imposing any liability shall
12 apply to any act done or omitted in good faith in conformity
13 with any rule or regulation of the Secretary of State under
14 this Act, notwithstanding that the rule or regulation may,
15 after the act or omission, be amended or rescinded or be
16 determined by judicial or other authority to be invalid for any
17 reason.

18 (4) The Securities Department of the Office of the
19 Secretary of State shall be deemed a criminal justice agency
20 for purposes of all federal and state laws and regulations and,
21 in that capacity, shall be entitled to access to any
22 information available to criminal justice agencies and has the
23 power to appoint special agents to conduct all investigations,
24 searches, seizures, arrests, and other duties imposed under the
25 provisions of any law administered by the Department. The
26 special agents have and may exercise all the powers of peace

1 officers solely for the purpose of enforcing provisions of this
2 Act.

3 The Director must authorize to each special agent employed
4 under this Section a distinct badge that, on its face, (i)
5 clearly states that the badge is authorized by the Department
6 and (ii) contains a unique and identifying number.

7 Special agents shall comply with all training requirements
8 established for law enforcement officers by provisions of the
9 Illinois Police Training Act.

10 (5) The Secretary of State, by rule, may conditionally or
11 unconditionally exempt any person, security, or transaction,
12 or any class or classes of persons, securities, or transactions
13 from any provision of Section 5, 6, 7, 8, 8a, or 9 of this Act
14 or of any rule promulgated under these Sections, to the extent
15 that such exemption is necessary or appropriate in the public
16 interest, and is consistent with the protection of investors.

17 B. The Secretary of State may, anything in this Act to the
18 contrary notwithstanding, require financial statements and
19 reports of the issuer, dealer, salesperson, investment
20 adviser, or investment adviser representative as often as
21 circumstances may warrant. In addition, the Secretary of State
22 may secure information or books and records from or through
23 others and may make or cause to be made investigations
24 respecting the business, affairs, and property of the issuer of
25 securities, any person involved in the sale or offer for sale,
26 purchase or offer to purchase of any mineral investment

1 contract, mineral deferred delivery contract, or security and
2 of dealers, salespersons, investment advisers, and investment
3 adviser representatives that are registered or are the subject
4 of an application for registration under this Act. The costs of
5 an investigation shall be borne by the registrant or the
6 applicant, provided that the registrant or applicant shall not
7 be obligated to pay the costs without his, her or its consent
8 in advance.

9 C. Whenever it shall appear to the Secretary of State,
10 either upon complaint or otherwise, that this Act, or any rule
11 or regulation prescribed under authority thereof, has been or
12 is about to be violated, he or she may, in his or her
13 discretion, do one or more of the following:

14 (1) require or permit the person to file with the
15 Secretary of State a statement in writing under oath, or
16 otherwise, as to all the facts and circumstances concerning
17 the subject matter which the Secretary of State believes to
18 be in the public interest to investigate, audit, examine,
19 or inspect;

20 (2) conduct an investigation, audit, examination, or
21 inspection as necessary or advisable for the protection of
22 the interests of the public; and

23 (3) appoint investigators to conduct all
24 investigations, searches, seizures, arrests, and other
25 duties imposed under the provisions of any law administered
26 by the Department. The Director must authorize to each

1 investigator employed under this Section a distinct badge
2 that, on its face, (i) clearly states that the badge is
3 authorized by the Department and (ii) contains a unique and
4 identifying number.

5 D. (1) For the purpose of all investigations, audits,
6 examinations, or inspections which in the opinion of the
7 Secretary of State are necessary and proper for the enforcement
8 of this Act, the Secretary of State or a person designated by
9 him or her is empowered to administer oaths and affirmations,
10 subpoena witnesses, take evidence, and require, by subpoena or
11 other lawful means provided by this Act or the rules adopted by
12 the Secretary of State, the production of any books and
13 records, papers, or other documents which the Secretary of
14 State or a person designated by him or her deems relevant or
15 material to the inquiry.

16 (2) The Secretary of State or a person designated by him or
17 her is further empowered to administer oaths and affirmations,
18 subpoena witnesses, take evidence, and require the production
19 of any books and records, papers, or other documents in this
20 State at the request of a securities agency of another state,
21 if the activities constituting the alleged violation for which
22 the information is sought would be in violation of Section 12
23 of this Act if the activities had occurred in this State.

24 (3) The Circuit Court of any County of this State, upon
25 application of the Secretary of State or a person designated by
26 him or her may order the attendance of witnesses, the

1 production of books and records, papers, accounts and documents
2 and the giving of testimony before the Secretary of State or a
3 person designated by him or her; and any failure to obey the
4 order may be punished by the Circuit Court as a contempt
5 thereof.

6 (4) The fees of subpoenaed witnesses under this Act for
7 attendance and travel shall be the same as fees of witnesses
8 before the Circuit Courts of this State, to be paid when the
9 witness is excused from further attendance, provided, the
10 witness is subpoenaed at the instance of the Secretary of
11 State; and payment of the fees shall be made and audited in the
12 same manner as other expenses of the Secretary of State.

13 (5) Whenever a subpoena is issued at the request of a
14 complainant or respondent as the case may be, the Secretary of
15 State may require that the cost of service and the fee of the
16 witness shall be borne by the party at whose instance the
17 witness is summoned.

18 (6) The Secretary of State shall have power at his or her
19 discretion, to require a deposit to cover the cost of the
20 service and witness fees and the payment of the legal witness
21 fee and mileage to the witness served with subpoena.

22 (7) A subpoena issued under this Act shall be served in the
23 same manner as a subpoena issued out of a circuit court.

24 (8) The Secretary of State may in any investigation,
25 audits, examinations, or inspections cause the taking of
26 depositions of persons residing within or without this State in

1 the manner provided in civil actions under the laws of this
2 State.

3 E. Anything in this Act to the contrary notwithstanding:

4 (1) If the Secretary of State shall find that the offer
5 or sale or proposed offer or sale or method of offer or
6 sale of any securities by any person, whether exempt or
7 not, in this State, is fraudulent, or would work or tend to
8 work a fraud or deceit, or is being offered or sold in
9 violation of Section 12, or there has been a failure or
10 refusal to submit any notification filing or fee required
11 under this Act, the Secretary of State may by written order
12 prohibit or suspend the offer or sale of securities by that
13 person or deny or revoke the registration of the securities
14 or the exemption from registration for the securities.

15 (2) If the Secretary of State shall find that any
16 person has violated subsection C, D, E, F, G, H, I, J, or K
17 of Section 12 of this Act, the Secretary of State may by
18 written order temporarily or permanently prohibit or
19 suspend the person from offering or selling any securities,
20 any mineral investment contract, or any mineral deferred
21 delivery contract in this State, provided that any person
22 who is the subject of an order of permanent prohibition may
23 petition the Secretary of State for a hearing to present
24 evidence of rehabilitation or change in circumstances
25 justifying the amendment or termination of the order of
26 permanent prohibition.

1 (3) If the Secretary of State shall find that any
2 person is engaging or has engaged in the business of
3 selling or offering for sale securities as a dealer or
4 salesperson or is acting or has acted as an investment
5 adviser, investment adviser representative, or federal
6 covered investment adviser, without prior thereto and at
7 the time thereof having complied with the registration or
8 notice filing requirements of this Act, the Secretary of
9 State may by written order prohibit or suspend the person
10 from engaging in the business of selling or offering for
11 sale securities, or acting as an investment adviser,
12 investment adviser representative, or federal covered
13 investment adviser, in this State.

14 (4) In addition to any other sanction or remedy
15 contained in this subsection E, the Secretary of State,
16 after finding that any provision of this Act has been
17 violated, may impose a fine as provided by rule, regulation
18 or order not to exceed \$100,000 ~~\$10,000~~ for each violation
19 of this Act, may issue an order of public censure against
20 the violator, and may charge as costs of investigation all
21 reasonable expenses, including attorney's fees and witness
22 fees.

23 (5) In addition to any other sanction or remedy
24 contained in this subsection E, the Secretary of State,
25 after finding that any provision of this Act has been
26 violated, shall notify all of the clients of any sanctioned

1 party, by registered mail to the last known address of each
2 client as carried on the books of the sanctioned party,
3 that a violation has taken place. The costs of this
4 notification shall be covered by fines imposed on the
5 sanctioned party. The Secretary of State, and his or her
6 Office, are protected from liability as a result of any
7 failure to carry out any notification required under this
8 subdivision E(5) as a result of any conduct other than
9 wilful or wanton misconduct.

10 F. (1) The Secretary of State shall not deny, suspend or
11 revoke the registration of securities, suspend or revoke the
12 registration of a dealer, salesperson, investment adviser, or
13 investment adviser representative, prohibit or suspend the
14 offer or sale of any securities, prohibit or suspend any person
15 from offering or selling any securities in this State, prohibit
16 or suspend a dealer or salesperson from engaging in the
17 business of selling or offering for sale securities, prohibit
18 or suspend a person from acting as an investment adviser or
19 federal covered investment adviser, or investment adviser
20 representative, impose any fine for violation of this Act,
21 issue an order of public censure, or enter into an agreed
22 settlement except after an opportunity for hearing upon not
23 less than 10 days notice given by personal service or
24 registered mail or certified mail, return receipt requested, to
25 the person or persons concerned. Such notice shall state the
26 date and time and place of the hearing and shall contain a

1 brief statement of the proposed action of the Secretary of
2 State and the grounds for the proposed action. A failure to
3 appear at the hearing or otherwise respond to the allegations
4 set forth in the notice of hearing shall constitute an
5 admission of any facts alleged therein and shall constitute
6 sufficient basis to enter an order.

7 (2) Anything herein contained to the contrary
8 notwithstanding, the Secretary of State may temporarily
9 prohibit or suspend, for a maximum period of 90 days, by an
10 order effective immediately, the offer or sale or registration
11 of securities, the registration of a dealer, salesperson,
12 investment adviser, or investment adviser representative, or
13 the offer or sale of securities by any person, or the business
14 of rendering investment advice, without the notice and prior
15 hearing in this subsection prescribed, if the Secretary of
16 State shall in his or her opinion, based on credible evidence,
17 deem it necessary to prevent an imminent violation of this Act
18 or to prevent losses to investors which the Secretary of State
19 reasonably believes will occur as a result of a prior violation
20 of this Act. Immediately after taking action without such
21 notice and hearing, the Secretary of State shall deliver a copy
22 of the temporary order to the respondent named therein by
23 personal service or registered mail or certified mail, return
24 receipt requested. The temporary order shall set forth the
25 grounds for the action and shall advise that the respondent may
26 request a hearing, that the request for a hearing will not stop

1 the effectiveness of the temporary order and that respondent's
2 failure to request a hearing within 30 days after the date of
3 the entry of the temporary order shall constitute an admission
4 of any facts alleged therein and shall constitute sufficient
5 basis to make the temporary order final. Any provision of this
6 paragraph (2) to the contrary notwithstanding, the Secretary of
7 State may not pursuant to the provisions of this paragraph (2)
8 suspend the registration of a dealer, limited Canadian dealer,
9 salesperson, investment adviser, or investment adviser
10 representative based upon sub-paragraph (n) of paragraph (1) of
11 subsection E of Section 8 of this Act or revoke the
12 registration of securities or revoke the registration of any
13 dealer, salesperson, investment adviser representative, or
14 investment adviser.

15 (3) The Secretary of State may issue a temporary order
16 suspending or delaying the effectiveness of any registration of
17 securities under subsection A or B of Section 5, 6 or 7 of this
18 Act subsequent to and upon the basis of the issuance of any
19 stop, suspension or similar order by the Securities and
20 Exchange Commission with respect to the securities which are
21 the subject of the registration under subsection A or B of
22 Section 5, 6 or 7 of this Act, and the order shall become
23 effective as of the date and time of effectiveness of the
24 Securities and Exchange Commission order and shall be vacated
25 automatically at such time as the order of the Securities and
26 Exchange Commission is no longer in effect.

1 (4) When the Secretary of State finds that an application
2 for registration as a dealer, salesperson, investment adviser,
3 or investment adviser representative should be denied, the
4 Secretary of State may enter an order denying the registration.
5 Immediately after taking such action, the Secretary of State
6 shall deliver a copy of the order to the respondent named
7 therein by personal service or registered mail or certified
8 mail, return receipt requested. The order shall state the
9 grounds for the action and that the matter will be set for
10 hearing upon written request filed with the Secretary of State
11 within 30 days after the receipt of the request by the
12 respondent. The respondent's failure to request a hearing
13 within 30 days after receipt of the order shall constitute an
14 admission of any facts alleged therein and shall make the order
15 final. If a hearing is held, the Secretary of State shall
16 affirm, vacate, or modify the order.

17 (5) The findings and decision of the Secretary of State
18 upon the conclusion of each final hearing held pursuant to this
19 subsection shall be set forth in a written order signed on
20 behalf of the Secretary of State by his or her designee and
21 shall be filed as a public record. All hearings shall be held
22 before a person designated by the Secretary of State, and
23 appropriate records thereof shall be kept.

24 (6) Notwithstanding the foregoing, the Secretary of State,
25 after notice and opportunity for hearing, may at his or her
26 discretion enter into an agreed settlement, stipulation or

1 consent order with a respondent in accordance with the
2 provisions of the Illinois Administrative Procedure Act. The
3 provisions of the agreed settlement, stipulation or consent
4 order shall have the full force and effect of an order issued
5 by the Secretary of State.

6 (7) Anything in this Act to the contrary notwithstanding,
7 whenever the Secretary of State finds that a person is
8 currently expelled from, refused membership in or association
9 with, or limited in any material capacity by a self-regulatory
10 organization registered under the Federal 1934 Act or the
11 Federal 1974 Act because of a fraudulent or deceptive act or a
12 practice in violation of a rule, regulation, or standard duly
13 promulgated by the self-regulatory organization, the Secretary
14 of State may, at his or her discretion, enter a Summary Order
15 of Prohibition, which shall prohibit the offer or sale of any
16 securities, mineral investment contract, or mineral deferred
17 delivery contract by the person in this State. The order shall
18 take effect immediately upon its entry. Immediately after
19 taking the action the Secretary of State shall deliver a copy
20 of the order to the named Respondent by personal service or
21 registered mail or certified mail, return receipt requested. A
22 person who is the subject of an Order of Prohibition may
23 petition the Secretary of State for a hearing to present
24 evidence of rehabilitation or change in circumstances
25 justifying the amendment or termination of the Order of
26 Prohibition.

1 G. No administrative action shall be brought by the
2 Secretary of State for relief under this Act or upon or because
3 of any of the matters for which relief is granted by this Act
4 after the earlier to occur of (i) 3 years from the date upon
5 which the Secretary of State had notice of facts which in the
6 exercise of reasonable diligence would lead to actual knowledge
7 of the alleged violation of the Act, or (ii) 5 years from the
8 date on which the alleged violation occurred.

9 H. The action of the Secretary of State in denying,
10 suspending, or revoking the registration of a dealer, limited
11 Canadian dealer, salesperson, investment adviser, or
12 investment adviser representative, in prohibiting any person
13 from engaging in the business of offering or selling securities
14 as a dealer, limited Canadian dealer, or salesperson, in
15 prohibiting or suspending the offer or sale of securities by
16 any person, in prohibiting a person from acting as an
17 investment adviser, federal covered investment adviser, or
18 investment adviser representative, in denying, suspending, or
19 revoking the registration of securities, in prohibiting or
20 suspending the offer or sale or proposed offer or sale of
21 securities, in imposing any fine for violation of this Act, or
22 in issuing any order shall be subject to judicial review in the
23 Circuit Courts of Cook or Sangamon Counties in this State. The
24 Administrative Review Law shall apply to and govern every
25 action for the judicial review of final actions or decisions of
26 the Secretary of State under this Act.

1 I. Notwithstanding any other provisions of this Act to the
2 contrary, whenever it shall appear to the Secretary of State
3 that any person is engaged or about to engage in any acts or
4 practices which constitute or will constitute a violation of
5 this Act or of any rule or regulation prescribed under
6 authority of this Act, the Secretary of State may at his or her
7 discretion, through the Attorney General take any of the
8 following actions:

9 (1) File a complaint and apply for a temporary
10 restraining order without notice, and upon a proper showing
11 the court may enter a temporary restraining order without
12 bond, to enforce this Act.

13 (2) File a complaint and apply for a preliminary or
14 permanent injunction, and, after notice and a hearing and
15 upon a proper showing, the court may grant a preliminary or
16 permanent injunction and may order the defendant to make an
17 offer of rescission with respect to any sales or purchases
18 of securities, mineral investment contracts, or mineral
19 deferred delivery contracts determined by the court to be
20 unlawful under this Act.

21 (3) Seek the seizure of assets when probable cause
22 exists that the assets were obtained by a defendant through
23 conduct in violation of Section 12, paragraph F, G, I, J,
24 K, or L of this Act, and thereby subject to a judicial
25 forfeiture hearing as required under this Act.

26 (a) In the event that such probable cause exists

1 that the subject of an investigation who is alleged to
2 have committed one of the relevant violations of this
3 Act has in his possession assets obtained as a result
4 of the conduct giving rise to the violation, the
5 Secretary of State may seek a seizure warrant in any
6 circuit court in Illinois.

7 (b) In seeking a seizure warrant, the Secretary of
8 State, or his or her designee, shall submit to the
9 court a sworn affidavit detailing the probable cause
10 evidence for the seizure, the location of the assets to
11 be seized, the relevant violation under Section 12 of
12 this Act, and a statement detailing any known owners or
13 interest holders in the assets.

14 (c) Seizure of the assets shall be made by any
15 peace officer upon process of the seizure warrant
16 issued by the court. Following the seizure of assets
17 under this Act and pursuant to a seizure warrant,
18 notice of seizure, including a description of the
19 seized assets, shall immediately be returned to the
20 issuing court. Seized assets shall be maintained
21 pending a judicial forfeiture hearing in accordance
22 with the instructions of the court.

23 (d) In the event that management of seized assets
24 becomes necessary to prevent the devaluation,
25 dissipation, or otherwise to preserve the property,
26 the court shall have jurisdiction to appoint a

1 receiver, conservator, ancillary receiver, or
2 ancillary conservator for that purpose, as provided in
3 item (2) of this subsection.

4 (4) Seek the forfeiture of assets obtained through
5 conduct in violation of Section 12, paragraph F, G, H, I,
6 J, K, or L when authorized by law. A forfeiture must be
7 ordered by a circuit court or an action brought by the
8 Secretary of State as provided for in this Act, under a
9 verified complaint for forfeiture.

10 (a) In the event assets have been seized pursuant
11 to this Act, forfeiture proceedings shall be
12 instituted by the Attorney General within 45 days of
13 seizure.

14 (b) Service of the complaint filed under the
15 provisions of this Act shall be made in the manner as
16 provided in civil actions in this State.

17 (c) Only an owner of or interest holder in the
18 property may file an answer asserting a claim against
19 the property. For purposes of this Section, the owner
20 or interest holder shall be referred to as claimant.

21 (d) The answer must be signed by the owner or
22 interest holder under penalty of perjury and must set
23 forth:

24 (i) the caption of the proceedings as set forth
25 on the notice of pending forfeiture and the name of
26 the claimant;

1 (ii) the address at which the claimant will
2 accept mail;

3 (iii) the nature and extent of the claimant's
4 interest in the property;

5 (iv) the date, identity of the transferor, and
6 circumstances of the claimant's acquisition of the
7 interest in the property;

8 (v) the name and address of all other persons
9 known to have an interest in the property;

10 (vi) the specific provisions of this Act
11 relied on in asserting that the property is not
12 subject to forfeiture;

13 (vii) all essential facts supporting each
14 assertion; and

15 (viii) the precise relief sought.

16 (e) The answer must be filed with the court within
17 45 days after service of the complaint.

18 (f) A property interest is exempt from forfeiture
19 under this Act if its owner or interest holder
20 establishes by a preponderance of evidence that the
21 owner or interest holder:

22 (i) is not legally accountable for the conduct
23 giving rise to the forfeiture, did not acquiesce in
24 it, and did not know and could not reasonably have
25 known of the conduct or that the conduct was likely
26 to occur;

1 (ii) with respect to conveyances, did not hold
2 the property jointly or in common with a person
3 whose conduct gave rise to the forfeiture;

4 (iii) does not hold the property for the
5 benefit of or as a nominee for any person whose
6 conduct gave rise to its forfeiture and the owner
7 or interest holder acquires it as a bona fide
8 purchaser for value without knowingly taking part
9 in the conduct giving rise to the forfeiture; or

10 (iv) acquired the interest after the
11 commencement of the conduct giving rise to its
12 forfeiture and the owner or interest holder
13 acquired the interest as a mortgagee, secured
14 creditor, lienholder, or bona fide purchaser for
15 value without knowledge of the conduct that gave
16 rise to the forfeiture.

17 (g) The hearing must be held within 60 days after
18 the answer is filed unless continued for good cause.

19 (h) During the probable cause portion of the
20 judicial in rem proceeding wherein the Secretary of
21 State presents its case-in-chief, the court must
22 receive and consider, among other things, any relevant
23 hearsay evidence and information. The laws of evidence
24 relating to civil actions shall apply to all other
25 portions of the judicial in rem proceeding.

26 (i) The Secretary of State shall show the existence

1 of probable cause for forfeiture of the property. If
2 the Secretary of State shows probable cause, the
3 claimant has the burden of showing by a preponderance
4 of the evidence that the claimant's interest in the
5 property is not subject to forfeiture.

6 (j) If the Secretary of State does not show the
7 existence of probable cause or a claimant has an
8 interest that is exempt under subdivision I (4) (d) of
9 this Section, the court shall order the interest in the
10 property returned or conveyed to the claimant and shall
11 order all other property forfeited to the Secretary of
12 State pursuant to all provisions of this Act. If the
13 Secretary of State does show the existence of probable
14 cause and the claimant does not establish by a
15 preponderance of the evidence that the claimant has an
16 interest that is exempt under subsection D herein, the
17 court shall order all the property forfeited to the
18 Secretary of State pursuant to the provisions of the
19 Section.

20 (k) A defendant convicted in any criminal
21 proceeding is precluded from later denying the
22 essential allegations of the criminal offense of which
23 the defendant was convicted in any proceeding for
24 violations of the Act giving rise to forfeiture of
25 property herein regardless of the pendency of an appeal
26 from that conviction. However, evidence of the

1 pendency of an appeal is admissible.

2 (l) An acquittal or dismissal in a criminal
3 proceeding for violations of the Act giving rise to the
4 forfeiture of property herein shall not preclude civil
5 proceedings under this provision; however, for good
6 cause shown, on a motion by the Secretary of State, the
7 court may stay civil forfeiture proceedings during the
8 criminal trial for a related criminal indictment or
9 information alleging violation of the provisions of
10 Section 12 of the Illinois Securities Law of 1953.
11 Property subject to forfeiture under this Section
12 shall not be subject to return or release by a court
13 exercising jurisdiction over a criminal case involving
14 the seizure of the property unless the return or
15 release is consented to by the Secretary of State.

16 (m) All property declared forfeited under this Act
17 vests in the State on the commission of the conduct
18 giving rise to forfeiture together with the proceeds of
19 the property after that time. Any such property or
20 proceeds subsequently transferred to any person remain
21 subject to forfeiture and thereafter shall be ordered
22 forfeited unless the transferee claims and establishes
23 in a hearing under the provisions of this Act that the
24 transferee's interest is exempt under the Act. Any
25 assets forfeited to the State shall be disposed of in
26 following manner:

1 (i) all forfeited property and assets shall be
2 liquidated by the Secretary of State in accordance
3 with all laws and rules governing the disposition
4 of such property;

5 (ii) the Secretary of State shall provide the
6 court at the time the property and assets are
7 declared forfeited a verified statement of
8 investors subject to the conduct giving rise to the
9 forfeiture;

10 (iii) after payment of any costs of sale,
11 receivership, storage, or expenses for
12 preservation of the property seized, other costs
13 to the State, and payment to claimants for any
14 amount deemed exempt from forfeiture, the proceeds
15 from liquidation shall be distributed pro rata to
16 investors subject to the conduct giving rise to the
17 forfeiture; and

18 (iv) any proceeds remaining after all verified
19 investors have been made whole shall be
20 distributed 25% to the Securities Investors
21 Education Fund, 25% to the Securities Audit and
22 Enforcement Fund, 25% to the Attorney General or
23 any State's Attorney bringing criminal charges for
24 the conduct giving rise to the forfeiture, and 25%
25 to other law enforcement agencies participating in
26 the investigation of the criminal charges for the

1 conduct giving rise to the forfeiture. In the event
2 that no other law enforcement agencies are
3 involved in the investigation of the conduct
4 giving rise to the forfeiture, then the portion to
5 other law enforcement agencies shall be
6 distributed to the Securities Investors Education
7 Fund.

8 (n) The Secretary of State shall notify by
9 certified mail, return receipt requested, all known
10 investors in the matter giving rise to the forfeiture
11 of the forfeiture proceeding and sale of assets
12 forfeited arising from the violations of this Act, and
13 shall further publish notice in a paper of general
14 circulation in the district in which the violations
15 were prosecuted. The notice to investors shall
16 identify the name, address, and other identifying
17 information about any defendant prosecuted for
18 violations of this Act that resulted in forfeiture and
19 sale of property, the offense for which the defendant
20 was convicted, and that the court has ordered
21 forfeiture and sale of property for claims of investors
22 who incurred losses or damages as a result of the
23 violations. Investors may then file a claim in a form
24 prescribed by the Secretary of State in order to share
25 in disbursement of the proceeds from sale of the
26 forfeited property. Investor claims must be filed with

1 the Secretary of State within 30 days after receipt of
2 the certified mail return receipt, or within 30 days
3 after the last date of publication of the general
4 notice in a paper of general circulation in the
5 district in which the violations were prosecuted,
6 whichever occurs last.

7 (o) A civil action under this subsection must be
8 commenced within 5 years after the last conduct giving
9 rise to the forfeiture became known or should have
10 become known or 5 years after the forfeitable property
11 is discovered, whichever is later, excluding time
12 during which either the property or claimant is out of
13 this State or in confinement or during which criminal
14 proceedings relating to the same conduct are in
15 progress.

16 (p) If property is seized for evidence and for
17 forfeiture, the time periods for instituting judicial
18 forfeiture proceedings shall not begin until the
19 property is no longer necessary for evidence.

20 (q) Notwithstanding other provisions of this Act,
21 the Secretary of State and a claimant of forfeitable
22 property may enter into an agreed-upon settlement
23 concerning the forfeitable property in such an amount
24 and upon such terms as are set out in writing in a
25 settlement agreement.

26 (r) Nothing in this Act shall apply to property

1 that constitutes reasonable bona fide attorney's fees
2 paid to an attorney for services rendered or to be
3 rendered in the forfeiture proceeding or criminal
4 proceeding relating directly thereto when the property
5 was paid before its seizure and before the issuance of
6 any seizure warrant or court order prohibiting
7 transfer of the property and when the attorney, at the
8 time he or she received the property, did not know that
9 it was property subject to forfeiture under this Act.

10 The court shall further have jurisdiction and authority, in
11 addition to the penalties and other remedies in this Act
12 provided, to enter an order for the appointment of the court or
13 a person as a receiver, conservator, ancillary receiver or
14 ancillary conservator for the defendant or the defendant's
15 assets located in this State, or to require restitution,
16 damages or disgorgement of profits on behalf of the person or
17 persons injured by the act or practice constituting the subject
18 matter of the action, and may assess costs against the
19 defendant for the use of the State; provided, however, that the
20 civil remedies of rescission and appointment of a receiver,
21 conservator, ancillary receiver or ancillary conservator shall
22 not be available against any person by reason of the failure to
23 file with the Secretary of State, or on account of the contents
24 of, any report of sale provided for in subsection G or P of
25 Section 4, paragraph (2) of subsection D of Sections 5 and 6,
26 or paragraph (2) of subsection F of Section 7 of this Act.

1 Appeals may be taken as in other civil cases.

2 J. In no case shall the Secretary of State, or any of his
3 or her employees or agents, in the administration of this Act,
4 incur any official or personal liability by instituting an
5 injunction or other proceeding or by denying, suspending or
6 revoking the registration of a dealer or salesperson, or by
7 denying, suspending or revoking the registration of securities
8 or prohibiting the offer or sale of securities, or by
9 suspending or prohibiting any person from acting as a dealer,
10 limited Canadian dealer, salesperson, investment adviser, or
11 investment adviser representative or from offering or selling
12 securities.

13 K. No provision of this Act shall be construed to require
14 or to authorize the Secretary of State to require any
15 investment adviser or federal covered investment adviser
16 engaged in rendering investment supervisory services to
17 disclose the identity, investments, or affairs of any client of
18 the investment adviser or federal covered investment adviser,
19 except insofar as the disclosure may be necessary or
20 appropriate in a particular proceeding or investigation having
21 as its object the enforcement of this Act.

22 L. Whenever, after an examination, investigation or
23 hearing, the Secretary of State deems it of public interest or
24 advantage, he or she may certify a record to the State's
25 Attorney of the county in which the act complained of, examined
26 or investigated occurred. The State's Attorney of that county

1 within 90 days after receipt of the record shall file a written
2 statement at the Office of the Secretary of State, which
3 statement shall set forth the action taken upon the record, or
4 if no action has been taken upon the record that fact, together
5 with the reasons therefor, shall be stated.

6 M. The Secretary of State may initiate, take, pursue, or
7 prosecute any action authorized or permitted under Section 6d
8 of the Federal 1974 Act.

9 N. (1) Notwithstanding any provision of this Act to the
10 contrary, to encourage uniform interpretation, administration,
11 and enforcement of the provisions of this Act, the Secretary of
12 State may cooperate with the securities agencies or
13 administrators of one or more states, Canadian provinces or
14 territories, or another country, the Securities and Exchange
15 Commission, the Commodity Futures Trading Commission, the
16 Securities Investor Protection Corporation, any
17 self-regulatory organization, and any governmental law
18 enforcement or regulatory agency.

19 (2) The cooperation authorized by paragraph (1) of this
20 subsection includes, but is not limited to, the following:

21 (a) establishing or participating in a central
22 depository or depositories for registration under this Act
23 and for documents or records required under this Act;

24 (b) making a joint audit, inspection, examination, or
25 investigation;

26 (c) holding a joint administrative hearing;

1 (d) filing and prosecuting a joint civil or criminal
2 proceeding;

3 (e) sharing and exchanging personnel;

4 (f) sharing and exchanging information and documents;

5 or

6 (g) issuing any joint statement or policy.

7 (Source: P.A. 92-308, eff. 1-1-02; 93-580, eff. 8-21-03.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.