

1 AN ACT in relation to banking.

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

4 Section 5. The Illinois Banking Act is amended by
5 changing Section 48 as follows:

6 (205 ILCS 5/48) (from Ch. 17, par. 359)

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

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

19 (2) (a) The Commissioner, as often as the Commissioner
20 shall deem necessary or proper, and no less frequently than
21 18 months following the preceding examination, shall appoint
22 a suitable person or persons to make an examination of the
23 affairs of every State bank, except that for every eligible
24 State bank, as defined by regulation, the Commissioner in
25 lieu of the examination may accept on an alternating basis
26 the examination made by the eligible State bank's appropriate
27 federal banking agency pursuant to Section 111 of the Federal
28 Deposit Insurance Corporation Improvement Act of 1991,
29 provided the appropriate federal banking agency has made such
30 an examination. A person so appointed shall not be a
31 stockholder or officer or employee of any bank which that

1 person may be directed to examine, and shall have powers to
2 make a thorough examination into all the affairs of the bank
3 and in so doing to examine any of the officers or agents or
4 employees thereof on oath and shall make a full and detailed
5 report of the condition of the bank to the Commissioner. In
6 making the examination the examiners shall include an
7 examination of the affairs of all the affiliates of the bank,
8 as defined in subsection (b) of Section 35.2 of this Act, as
9 shall be necessary to disclose fully the conditions of the
10 affiliates, the relations between the bank and the affiliates
11 and the effect of those relations upon the affairs of the
12 bank, and in connection therewith shall have power to examine
13 any of the officers, directors, agents, or employees of the
14 affiliates on oath. After May 31, 1997, the Commissioner may
15 enter into cooperative agreements with state regulatory
16 authorities of other states to provide for examination of
17 State bank branches in those states, and the Commissioner may
18 accept reports of examinations of State bank branches from
19 those state regulatory authorities. These cooperative
20 agreements may set forth the manner in which the other state
21 regulatory authorities may be compensated for examinations
22 prepared for and submitted to the Commissioner.

23 (b) After May 31, 1997, the Commissioner is authorized
24 to examine, as often as the Commissioner shall deem necessary
25 or proper, branches of out-of-state banks. The Commissioner
26 may establish and may assess fees to be paid to the
27 Commissioner for examinations under this subsection (b). The
28 fees shall be borne by the out-of-state bank, unless the fees
29 are borne by the state regulatory authority that chartered
30 the out-of-state bank, as determined by a cooperative
31 agreement between the Commissioner and the state regulatory
32 authority that chartered the out-of-state bank.

33 (2.5) Whenever any State bank, any subsidiary or
34 affiliate of a State bank, or after May 31, 1997, any branch

1 of an out-of-state bank causes to be performed, by contract
2 or otherwise, any bank services for itself, whether on or off
3 its premises:

4 (a) that performance shall be subject to
5 examination by the Commissioner to the same extent as if
6 services were being performed by the bank or, after May
7 31, 1997, branch of the out-of-state bank itself on its
8 own premises; and

9 (b) the bank or, after May 31, 1997, branch of the
10 out-of-state bank shall notify the Commissioner of the
11 existence of a service relationship. The notification
12 shall be submitted with the first statement of condition
13 (as required by Section 47 of this Act) due after the
14 making of the service contract or the performance of the
15 service, whichever occurs first. The Commissioner shall
16 be notified of each subsequent contract in the same
17 manner.

18 For purposes of this subsection (2.5), the term "bank
19 services" means services such as sorting and posting of
20 checks and deposits, computation and posting of interest and
21 other credits and charges, preparation and mailing of checks,
22 statements, notices, and similar items, or any other
23 clerical, bookkeeping, accounting, statistical, or similar
24 functions performed for a State bank, including but not
25 limited to electronic data processing related to those bank
26 services.

27 (3) The expense of administering this Act, including the
28 expense of the examinations of State banks as provided in
29 this Act, shall to the extent of the amounts resulting from
30 the fees provided for in paragraphs (a), (a-2), and (b) of
31 this subsection (3) be assessed against and borne by the
32 State banks:

33 (a) Each bank shall pay to the Commissioner a Call
34 Report Fee which shall be paid in quarterly installments

1 equal to one-fourth of the sum of the annual fixed fee of
2 \$800, plus a variable fee based on the assets shown on
3 the quarterly statement of condition delivered to the
4 Commissioner in accordance with Section 47 for the
5 preceding quarter according to the following schedule:
6 16¢ per \$1,000 of the first \$5,000,000 of total assets,
7 15¢ per \$1,000 of the next \$20,000,000 of total assets,
8 13¢ per \$1,000 of the next \$75,000,000 of total assets,
9 9¢ per \$1,000 of the next \$400,000,000 of total assets,
10 7¢ per \$1,000 of the next \$500,000,000 of total assets,
11 and 5¢ per \$1,000 of all assets in excess of
12 \$1,000,000,000, of the State bank. The Call Report Fee
13 shall be calculated by the Commissioner and billed to the
14 banks for remittance at the time of the quarterly
15 statements of condition provided for in Section 47. The
16 Commissioner may require payment of the fees provided in
17 this Section by an electronic transfer of funds or an
18 automatic debit of an account of each of the State banks.
19 In case more than one examination of any bank is deemed
20 by the Commissioner to be necessary in any examination
21 frequency cycle specified in subsection 2(a) of this
22 Section, and is performed at his direction, the
23 Commissioner may assess a reasonable additional fee to
24 recover the cost of the additional examination; provided,
25 however, that an examination conducted at the request of
26 the State Treasurer pursuant to the Uniform Disposition
27 of Unclaimed Property Act shall not be deemed to be an
28 additional examination under this Section. In lieu of the
29 method and amounts set forth in this paragraph (a) for
30 the calculation of the Call Report Fee, the Commissioner
31 may specify by rule that the Call Report Fees provided by
32 this Section may be assessed semiannually or some other
33 period and may provide in the rule the formula to be used
34 for calculating and assessing the periodic Call Report

1 Fees to be paid by State banks.

2 (a-1) If in the opinion of the Commissioner an
3 emergency exists or appears likely, the Commissioner may
4 assign an examiner or examiners to monitor the affairs of
5 a State bank with whatever frequency he deems
6 appropriate, including but not limited to a daily basis.
7 The reasonable and necessary expenses of the Commissioner
8 during the period of the monitoring shall be borne by the
9 subject bank. The Commissioner shall furnish the State
10 bank a statement of time and expenses if requested to do
11 so within 30 days of the conclusion of the monitoring
12 period.

13 (a-2) On and after January 1, 1990, the reasonable
14 and necessary expenses of the Commissioner during
15 examination of the performance of electronic data
16 processing services under subsection (2.5) shall be borne
17 by the banks for which the services are provided. An
18 amount, based upon a fee structure prescribed by the
19 Commissioner, shall be paid by the banks or, after May
20 31, 1997, branches of out-of-state banks receiving the
21 electronic data processing services along with the Call
22 Report Fee assessed under paragraph (a) of this
23 subsection (3).

24 (a-3) After May 31, 1997, the reasonable and
25 necessary expenses of the Commissioner during examination
26 of the performance of electronic data processing services
27 under subsection (2.5) at or on behalf of branches of
28 out-of-state banks shall be borne by the out-of-state
29 banks, unless those expenses are borne by the state
30 regulatory authorities that chartered the out-of-state
31 banks, as determined by cooperative agreements between
32 the Commissioner and the state regulatory authorities
33 that chartered the out-of-state banks.

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

1 is defined as a period beginning July 1 of any year and
2 ending June 30 of the next year. The Commissioner shall
3 receive for each fiscal year, commencing with the fiscal
4 year ending June 30, 1987, a contingent fee equal to the
5 lesser of the aggregate of the fees paid by all State
6 banks under paragraph (a) of subsection (3) for that
7 year, or the amount, if any, whereby the aggregate of the
8 administration expenses, as defined in paragraph (c), for
9 that fiscal year exceeds the sum of the aggregate of the
10 fees payable by all State banks for that year under
11 paragraph (a) of subsection (3), plus any amounts
12 transferred into the Bank and Trust Company Fund from the
13 State Pensions Fund for that year, plus all other amounts
14 collected by the Commissioner for that year under any
15 other provision of this Act, plus the aggregate of all
16 fees collected for that year by the Commissioner under
17 the Corporate Fiduciary Act, excluding the receivership
18 fees provided for in Section 5-10 of the Corporate
19 Fiduciary Act, and the Foreign Banking Office Act. The
20 aggregate amount of the contingent fee thus arrived at
21 for any fiscal year shall be apportioned amongst,
22 assessed upon, and paid by the State banks and foreign
23 banking corporations, respectively, in the same
24 proportion that the fee of each under paragraph (a) of
25 subsection (3), respectively, for that year bears to the
26 aggregate for that year of the fees collected under
27 paragraph (a) of subsection (3). The aggregate amount of
28 the contingent fee, and the portion thereof to be
29 assessed upon each State bank and foreign banking
30 corporation, respectively, shall be determined by the
31 Commissioner and shall be paid by each, respectively,
32 within 120 days of the close of the period for which the
33 contingent fee is computed and is payable, and the
34 Commissioner shall give 20 days advance notice of the

1 amount of the contingent fee payable by the State bank
2 and of the date fixed by the Commissioner for payment of
3 the fee.

4 (c) The "administration expenses" for any fiscal
5 year shall mean the ordinary and contingent expenses for
6 that year incident to making the examinations provided
7 for by, and for otherwise administering, this Act, the
8 Corporate Fiduciary Act, excluding the expenses paid from
9 the Corporate Fiduciary Receivership account in the Bank
10 and Trust Company Fund, the Foreign Banking Office Act,
11 the Electronic Fund Transfer Act, and the Illinois Bank
12 Examiners' Education Foundation Act, including all
13 salaries and other compensation paid for personal
14 services rendered for the State by officers or employees
15 of the State, including the Commissioner and the Deputy
16 Commissioners, all expenditures for telephone and
17 telegraph charges, postage and postal charges, office
18 stationery, supplies and services, and office furniture
19 and equipment, including typewriters and copying and
20 duplicating machines and filing equipment, surety bond
21 premiums, and travel expenses of those officers and
22 employees, employees, expenditures or charges for the
23 acquisition, enlargement or improvement of, or for the
24 use of, any office space, building, or structure, or
25 expenditures for the maintenance thereof or for
26 furnishing heat, light, or power with respect thereto,
27 all to the extent that those expenditures are directly
28 incidental to such examinations or administration. The
29 Commissioner shall not be required by paragraphs (c) or
30 (d-1) of this subsection (3) to maintain in any fiscal
31 year's budget appropriated reserves for accrued vacation
32 and accrued sick leave that is required to be paid to
33 employees of the Commissioner upon termination of their
34 service with the Commissioner in an amount that is more

1 than is reasonably anticipated to be necessary for any
 2 anticipated turnover in employees, whether due to normal
 3 attrition or due to layoffs, terminations, or
 4 resignations.

5 (d) The aggregate of all fees collected by the
 6 Commissioner under this Act, the Corporate Fiduciary Act,
 7 or the Foreign Banking Office Act on and after July 1,
 8 1979, shall be paid promptly after receipt of the same,
 9 accompanied by a detailed statement thereof, into the
 10 State treasury and shall be set apart in a special fund
 11 to be known as the "Bank and Trust Company Fund", except
 12 as provided in paragraph (c) of subsection (11) of this
 13 Section. All earnings received from investments of funds
 14 in the Bank and Trust Company Fund shall be deposited in
 15 the Bank and Trust Company Fund and may be used for the
 16 same purposes as fees deposited in that Fund. The amount
 17 from time to time deposited into the Bank and Trust
 18 Company Fund shall be used to offset the ordinary
 19 administrative expenses of the Commissioner of Banks and
 20 Real Estate as defined in this Section. Nothing in this
 21 amendatory Act of 1979 shall prevent continuing the
 22 practice of paying expenses involving salaries,
 23 retirement, social security, and State-paid insurance
 24 premiums of State officers by appropriations from the
 25 General Revenue Fund. However, the General Revenue Fund
 26 shall be reimbursed for those payments made on and after
 27 July 1, 1979, by an annual transfer of funds from the
 28 Bank and Trust Company Fund.

29 (d-1) Adequate funds shall be available in the Bank
 30 and Trust Company Fund to permit the timely payment of
 31 administration expenses. In each fiscal year the total
 32 administration expenses shall be deducted from the total
 33 fees collected by the Commissioner and the remainder
 34 transferred into the Cash Flow Reserve Account, unless

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

29 (e) The Commissioner may upon request certify to
30 any public record in his keeping and shall have authority
31 to levy a reasonable charge for issuing certifications of
32 any public record in his keeping.

33 (f) In addition to fees authorized elsewhere in
34 this Act, the Commissioner may, in connection with a

1 review, approval, or provision of a service, levy a
2 reasonable charge to recover the cost of the review,
3 approval, or service.

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

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

29 (6) The Commissioner shall have the power:

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

32 (b) To issue orders for the purpose of
33 administering the provisions of this Act and any rule
34 promulgated in accordance with this Act.

1 (c) To appoint hearing officers to execute any of
2 the powers granted to the Commissioner under this Section
3 for the purpose of administering this Act and any rule
4 promulgated in accordance with this Act.

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

14 (e) To conduct hearings.

15 (7) Whenever, in the opinion of the Commissioner, any
16 director, officer, employee, or agent of a State bank or,
17 after May 31, 1997, of any branch of an out-of-state bank
18 shall have violated any law, rule, or order relating to that
19 bank or shall have engaged in an unsafe or unsound practice
20 in conducting the business of that bank or shall have
21 violated any law or engaged or participated in any unsafe or
22 unsound practice in connection with any financial institution
23 or other business entity such that the character and fitness
24 of the director, officer, employee, or agent does not assure
25 reasonable promise of safe and sound operation of the State
26 bank, the Commissioner may issue an order of removal. If, in
27 the opinion of the Commissioner, any former director,
28 officer, employee, or agent of a State bank, prior to the
29 termination of his or her service with that bank, violated
30 any law, rule, or order relating to that State bank or
31 engaged in an unsafe or unsound practice in conducting the
32 business of that bank or violated any law or engaged or
33 participated in any unsafe or unsound practice in connection
34 with any financial institution or other business entity such

1 that the character and fitness of the director, officer,
2 employee, or agent would not have assured reasonable promise
3 of safe and sound operation of the State bank, the
4 Commissioner may issue an order prohibiting that person from
5 further service with a bank as a director, officer, employee,
6 or agent. An order issued pursuant to this subsection shall
7 be served upon the director, officer, employee, or agent. A
8 copy of the order shall be sent to each director of the bank
9 affected by registered mail. The person affected by the
10 action may request a hearing before the State Banking Board
11 within 10 days after receipt of the order of removal. The
12 hearing shall be held by the Board within 30 days after the
13 request has been received by the Board. The Board shall make
14 a determination approving, modifying, or disapproving the
15 order of the Commissioner as its final administrative
16 decision. If a hearing is held by the Board, the Board shall
17 make its determination within 60 days from the conclusion of
18 the hearing. Any person affected by a decision of the Board
19 under this subsection (7) of Section 48 of this Act may have
20 the decision reviewed only under and in accordance with the
21 Administrative Review Law and the rules adopted pursuant
22 thereto. A copy of the order shall also be served upon the
23 bank of which he is a director, officer, employee, or agent,
24 whereupon he shall cease to be a director, officer, employee,
25 or agent of that bank. The Commissioner may institute a
26 civil action against the director, officer, or agent of the
27 State bank or, after May 31, 1997, of the branch of the
28 out-of-state bank against whom any order provided for by this
29 subsection (7) of this Section 48 has been issued, and
30 against the State bank or, after May 31, 1997, out-of-state
31 bank, to enforce compliance with or to enjoin any violation
32 of the terms of the order. Any person who has been the
33 subject of an order of removal or an order of prohibition
34 issued by the Commissioner under this subsection or Section

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

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

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

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

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

27 (a) (Blank).

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

34 (c) The aggregate of all special educational fees

1 collected by the Commissioner and property received by
 2 the Commissioner on behalf of the Illinois Bank
 3 Examiners' Education Foundation under this subsection
 4 (11) on or after June 30, 1986, shall be either (i)
 5 promptly paid after receipt of the same, accompanied by a
 6 detailed statement thereof, into the State Treasury and
 7 shall be set apart in a special fund to be known as "The
 8 Illinois Bank Examiners' Education Fund" to be invested
 9 by either the Treasurer of the State of Illinois in the
 10 Public Treasurers' Investment Pool or in any other
 11 investment he is authorized to make or by the Illinois
 12 State Board of Investment as the board of trustees of the
 13 Illinois Bank Examiners' Education Foundation may direct
 14 or (ii) deposited into an account maintained in a
 15 commercial bank or corporate fiduciary in the name of the
 16 Illinois Bank Examiners' Education Foundation pursuant to
 17 the order and direction of the Board of Trustees of the
 18 Illinois Bank Examiners' Education Foundation.

19 (12) (Blank).

20 (Source: P.A. 90-14, eff. 7-1-97; 90-301, eff. 8-1-97;
 21 90-665, eff. 7-30-98; 91-16, eff. 7-1-99.)

22 Section 99. Effective date. This Act takes effect July
 23 1, 2001.