

1 AN ACT concerning business transactions.

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
5 amended by changing Sections 2.1, 8, 11, and 14 as follows:

6 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

7 Sec. 2.1. Security. "Security" means any note, stock,
8 treasury stock, bond, debenture, evidence of indebtedness,
9 certificate of interest or participation in any
10 profit-sharing agreement, collateral-trust certificate,
11 preorganization certificate or subscription, transferable
12 share, investment contract, investment fund share,
13 face-amount certificate, voting-trust certificate,
14 certificate of deposit, certificate of deposit for a
15 security, fractional undivided interest in oil, gas or other
16 mineral lease, right or royalty, any put, call, straddle,
17 option, or privilege on any security, certificate of deposit,
18 or group or index of securities (including any interest
19 therein or based on the value thereof), or any put, call,
20 straddle, option, or privilege entered into, ~~an~~-~~a~~-~~national~~
21 ~~securities-exchange~~ relating to foreign currency, or, in
22 general, any interest or instrument commonly known as a
23 "security", or any certificate of interest or participation
24 in, temporary or interim certificate for, receipt for,
25 guarantee of, or warrant or right to subscribe to or
26 purchase, any of the foregoing. "Security" does not mean a
27 mineral investment contract or a mineral deferred delivery
28 contract; provided, however, the Department shall have the
29 authority to regulate these contracts as hereinafter
30 provided.

31 (Source: P.A. 87-463.)

1 (815 ILCS 5/8) (from Ch. 121 1/2, par. 137.8)

2 Sec. 8. Registration of dealers, limited Canadian
3 dealers, salespersons, investment advisers, and investment
4 adviser representatives.

5 A. Except as otherwise provided in this subsection A,
6 every dealer, limited Canadian dealer, salesperson,
7 investment adviser, and investment adviser representative
8 shall be registered as such with the Secretary of State. No
9 dealer or salesperson need be registered as such when
10 offering or selling securities in transactions ~~believed--in~~
11 ~~good--faith--to-be~~ exempted by subsection A, B, C, D, E, G, H,
12 I, J, K, M, O, P, Q, R or S of Section 4 of this Act,
13 provided that such dealer or salesperson is not regularly
14 engaged in the business of offering or selling securities in
15 reliance upon the exemption set forth in subsection G or M of
16 Section 4 of this Act. No dealer, issuer or controlling
17 person shall employ a salesperson unless such salesperson is
18 registered as such with the Secretary of State or is employed
19 for the purpose of offering or selling securities solely in
20 transactions ~~believed--in--good--faith--to--be~~ exempted by
21 subsection A, B, C, D, E, G, H, I, J, K, L, M, O, P, Q, R or
22 S of Section 4 of this Act; provided that such salesperson
23 need not be registered when effecting transactions in this
24 State limited to those transactions described in Section
25 15(h)(2) of the Federal 1934 Act or engaging in the offer or
26 sale of securities in respect of which he or she has
27 beneficial ownership and is a controlling person. The
28 Secretary of State may, by rule, regulation or order and
29 subject to such terms, conditions, and as fees as may be
30 prescribed in such rule, regulation or order, exempt from the
31 registration requirements of this Section 8 any investment
32 adviser, if the Secretary of State shall find that such
33 registration is not necessary in the public interest by
34 reason of the small number of clients or otherwise limited

1 character of operation of such investment adviser.

2 B. An application for registration as a dealer or
3 limited Canadian dealer, executed, verified, or authenticated
4 by or on behalf of the applicant, shall be filed with the
5 Secretary of State, in such form as the Secretary of State
6 may by rule, regulation or order prescribe, setting forth or
7 accompanied by:

8 (1) The name and address of the applicant, the
9 location of its principal business office and all branch
10 offices, if any, and the date of its organization;

11 (2) A statement of any other Federal or state
12 licenses or registrations which have been granted the
13 applicant and whether any such licenses or registrations
14 have ever been refused, cancelled, suspended, revoked or
15 withdrawn;

16 (3) The assets and all liabilities, including
17 contingent liabilities of the applicant, as of a date not
18 more than 60 days prior to the filing of the application;

19 (4) (a) A brief description of any civil or
20 criminal proceeding of which fraud is an essential
21 element pending against the applicant and whether the
22 applicant has ever been convicted of a felony, or of any
23 misdemeanor of which fraud is an essential element;

24 (b) A list setting forth the name, residence and
25 business address and a 10 year occupational statement of
26 each principal of the applicant and a statement
27 describing briefly any civil or criminal proceedings of
28 which fraud is an essential element pending against any
29 such principal and the facts concerning any conviction of
30 any such principal of a felony, or of any misdemeanor of
31 which fraud is an essential element;

32 (5) If the applicant is a corporation: a list of
33 its officers and directors setting forth the residence
34 and business address of each; a 10-year occupational

1 statement of each such officer or director; and a
2 statement describing briefly any civil or criminal
3 proceedings of which fraud is an essential element
4 pending against each such officer or director and the
5 facts concerning any conviction of any officer or
6 director of a felony, or of any misdemeanor of which
7 fraud is an essential element;

8 (6) If the applicant is a sole proprietorship, a
9 partnership, limited liability company, an unincorporated
10 association or any similar form of business organization:
11 the name, residence and business address of the
12 proprietor or of each partner, member, officer, director,
13 trustee or manager; the limitations, if any, of the
14 liability of each such individual; a 10-year occupational
15 statement of each such individual; a statement describing
16 briefly any civil or criminal proceedings of which fraud
17 is an essential element pending against each such
18 individual and the facts concerning any conviction of any
19 such individual of a felony, or of any misdemeanor of
20 which fraud is an essential element;

21 (7) Such additional information as the Secretary of
22 State may by rule or regulation prescribe as necessary to
23 determine the applicant's financial responsibility,
24 business repute and qualification to act as a dealer.

25 (8) (a) No applicant shall be registered or
26 re-registered as a dealer or limited Canadian dealer
27 under this Section unless and until each principal of the
28 dealer has passed an examination conducted by the
29 Secretary of State or a self-regulatory organization of
30 securities dealers or similar person, which examination
31 has been designated by the Secretary of State by rule,
32 regulation or order to be satisfactory for purposes of
33 determining whether the applicant has sufficient
34 knowledge of the securities business and laws relating

1 thereto to act as a registered dealer. Any dealer who was
2 registered on September 30, 1963, and has continued to be
3 so registered; and any principal of any registered
4 dealer, who was acting in such capacity on and
5 continuously since September 30, 1963; and any individual
6 who has previously passed a securities dealer examination
7 administered by the Secretary of State or any examination
8 designated by the Secretary of State to be satisfactory
9 for purposes of determining whether the applicant has
10 sufficient knowledge of the securities business and laws
11 relating thereto to act as a registered dealer by rule,
12 regulation or order, shall not be required to pass an
13 examination in order to continue to act in such capacity.
14 The Secretary of State may by order waive the examination
15 requirement for any principal of an applicant for
16 registration under this subsection B who has had such
17 experience or education relating to the securities
18 business as may be determined by the Secretary of State
19 to be the equivalent of such examination. Any request
20 for such a waiver shall be filed with the Secretary of
21 State in such form as may be prescribed by rule or
22 regulation.

23 (b) Unless an applicant is a member of the body
24 corporate known as the Securities Investor Protection
25 Corporation established pursuant to the Act of Congress
26 of the United States known as the Securities Investor
27 Protection Act of 1970, as amended, a member of an
28 association of dealers registered as a national
29 securities association pursuant to Section 15A of the
30 Federal 1934 Act, or a member of a self-regulatory
31 organization or stock exchange in Canada which the
32 Secretary of State has designated by rule or order, an
33 applicant shall not be registered or re-registered unless
34 and until there is filed with the Secretary of State

1 evidence that such applicant has in effect insurance or
2 other equivalent protection for each client's cash or
3 securities held by such applicant, and an undertaking
4 that such applicant will continually maintain such
5 insurance or other protection during the period of
6 registration or re-registration. Such insurance or other
7 protection shall be in a form and amount reasonably
8 prescribed by the Secretary of State by rule or
9 regulation.

10 (9) The application for the registration of a
11 dealer or limited Canadian dealer shall be accompanied
12 by a filing fee and a fee for each branch office in this
13 State, in each case in the amount established pursuant to
14 Section 11a of this Act, which fees shall not be
15 returnable in any event.

16 (10) The Secretary of State shall notify the dealer
17 or limited Canadian dealer by written notice (which may
18 be by electronic or facsimile transmission) of the
19 effectiveness of the registration as a dealer in this
20 State.

21 (11) Any change which renders no longer accurate
22 any information contained in any application for
23 registration or re-registration of a dealer or limited
24 Canadian dealer shall be reported to the Secretary of
25 State within 10 business days after the occurrence of
26 such change; but in respect to assets and liabilities
27 only materially adverse changes need be reported.

28 C. Any registered dealer, limited Canadian dealer,
29 issuer, or controlling person desiring to register a
30 salesperson shall file an application with the Secretary of
31 State, in such form as the Secretary of State may by rule or
32 regulation prescribe, which the salesperson is required by
33 this Section to provide to the dealer, issuer, or controlling
34 person, executed, verified, or authenticated by the

1 salesperson setting forth or accompanied by:

2 (1) the name, residence and business address of the
3 salesperson;

4 (2) whether any federal or State license or
5 registration as dealer, limited Canadian dealer, or
6 salesperson has ever been refused the salesperson or
7 cancelled, suspended, revoked, ~~or~~ withdrawn, barred,
8 limited, or otherwise adversely affected in a similar
9 manner or whether the salesperson has ever been censured
10 or expelled;

11 (3) the nature of employment with, and names and
12 addresses of, employers of the salesperson for the 10
13 years immediately preceding the date of application;

14 (4) a brief description of any civil or criminal
15 proceedings of which fraud is an essential element
16 pending against the salesperson, and whether the
17 salesperson has ever been convicted of a felony, or of
18 any misdemeanor of which fraud is an essential element;

19 (5) such additional information as the Secretary of
20 State may by rule, regulation or order prescribe as
21 necessary to determine the salesperson's business repute
22 and qualification to act as a salesperson; and

23 (6) no individual shall be registered or
24 re-registered as a salesperson under this Section unless
25 and until such individual has passed an examination
26 conducted by the Secretary of State or a self-regulatory
27 organization of securities dealers or similar person,
28 which examination has been designated by the Secretary of
29 State by rule, regulation or order to be satisfactory for
30 purposes of determining whether the applicant has
31 sufficient knowledge of the securities business and laws
32 relating thereto to act as a registered salesperson.

33 Any salesperson who was registered prior to
34 September 30, 1963, and has continued to be so

1 registered, and any individual who has passed a
2 securities salesperson examination administered by the
3 Secretary of State or an examination designated by the
4 Secretary of State by rule, regulation or order to be
5 satisfactory for purposes of determining whether the
6 applicant has sufficient knowledge of the securities
7 business and laws relating thereto to act as a registered
8 salesperson, shall not be required to pass an examination
9 in order to continue to act as a salesperson. The
10 Secretary of State may by order waive the examination
11 requirement for any applicant for registration under this
12 subsection C who has had such experience or education
13 relating to the securities business as may be determined
14 by the Secretary of State to be the equivalent of such
15 examination. Any request for such a waiver shall be
16 filed with the Secretary of State in such form as may be
17 prescribed by rule, regulation or order.

18 (7) The application for registration of a
19 salesperson shall be accompanied by a filing fee and a
20 Securities Audit and Enforcement Fund fee, each in the
21 amount established pursuant to Section 11a of this Act,
22 which shall not be returnable in any event.

23 (8) Any change which renders no longer accurate any
24 information contained in any application for registration
25 or re-registration as a salesperson shall be reported to
26 the Secretary of State within 10 business days after the
27 occurrence of such change. If the activities are
28 terminated which rendered an individual a salesperson for
29 the dealer, issuer or controlling person, the dealer,
30 issuer or controlling person, as the case may be, shall
31 notify the Secretary of State, in writing, within 30 days
32 of the salesperson's cessation of activities, using the
33 appropriate termination notice form.

34 (9) A registered salesperson may transfer his or

1 her registration under this Section 8 for the unexpired
2 term thereof from one registered dealer or limited
3 Canadian dealer to another by the giving of notice of the
4 transfer by the new registered dealer or limited Canadian
5 dealer to the Secretary of State in such form and subject
6 to such conditions as the Secretary of State shall by
7 rule or regulation prescribe. The new registered dealer
8 or limited Canadian dealer shall promptly file an
9 application for registration of such salesperson as
10 provided in this subsection C, accompanied by the filing
11 fee prescribed by paragraph (7) of this subsection C.

12 C-5. Except with respect to federal covered investment
13 advisers whose only clients are investment companies as
14 defined in the Federal 1940 Act, other investment advisers,
15 federal covered investment advisers, or any similar person
16 which the Secretary of State may prescribe by rule or order,
17 a federal covered investment adviser shall file with the
18 Secretary of State, prior to acting as a federal covered
19 investment adviser in this State, such documents as have been
20 filed with the Securities and Exchange Commission as the
21 Secretary of State by rule or order may prescribe. The
22 notification of a federal covered investment adviser shall be
23 accompanied by a notification filing fee established pursuant
24 to Section 11a of this Act, which shall not be returnable in
25 any event. Every person acting as a federal covered
26 investment adviser in this State shall file a notification
27 filing and pay an annual notification filing fee established
28 pursuant to Section 11a of this Act, which is not returnable
29 in any event. The failure to file any such notification
30 shall constitute a violation of subsection D of Section 12 of
31 this Act, subject to the penalties enumerated in Section 14
32 of this Act. Until October 10, 1999 or other date as may be
33 legally permissible, a federal covered investment adviser who
34 fails to file the notification or refuses to pay the fees as

1 required by this subsection shall register as an investment
2 adviser with the Secretary of State under Section 8 of this
3 Act. The civil remedies provided for in subsection A of
4 Section 13 of this Act and the civil remedies of rescission
5 and appointment of receiver, conservator, ancillary receiver,
6 or ancillary conservator provided for in subsection F of
7 Section 13 of this Act shall not be available against any
8 person by reason of the failure to file any such notification
9 or to pay the notification fee or on account of the contents
10 of any such notification.

11 D. An application for registration as an investment
12 adviser, executed, verified, or authenticated by or on behalf
13 of the applicant, shall be filed with the Secretary of State,
14 in such form as the Secretary of State may by rule or
15 regulation prescribe, setting forth or accompanied by:

16 (1) The name and form of organization under which
17 the investment adviser engages or intends to engage in
18 business; the state or country and date of its
19 organization; the location of the adviser's principal
20 business office and branch offices, if any; the names and
21 addresses of the adviser's principal, partners, officers,
22 directors, and persons performing similar functions or,
23 if the investment adviser is an individual, of the
24 individual; and the number of the adviser's employees who
25 perform investment advisory functions;

26 (2) The education, the business affiliations for
27 the past 10 years, and the present business affiliations
28 of the investment adviser and of the adviser's principal,
29 partners, officers, directors, and persons performing
30 similar functions and of any person controlling the
31 investment adviser;

32 (3) The nature of the business of the investment
33 adviser, including the manner of giving advice and
34 rendering analyses or reports;

1 (4) The nature and scope of the authority of the
2 investment adviser with respect to clients' funds and
3 accounts;

4 (5) The basis or bases upon which the investment
5 adviser is compensated;

6 (6) Whether the investment adviser or any
7 principal, partner, officer, director, person performing
8 similar functions or person controlling the investment
9 adviser (i) within 10 years of the filing of the
10 application has been convicted of a felony, or of any
11 misdemeanor of which fraud is an essential element, or
12 (ii) is permanently or temporarily enjoined by order or
13 judgment from acting as an investment adviser,
14 underwriter, dealer, principal or salesperson, or from
15 engaging in or continuing any conduct or practice in
16 connection with any such activity or in connection with
17 the purchase or sale of any security, and in each case
18 the facts relating to the conviction, order or judgment;

19 (7) (a) A statement as to whether the investment
20 adviser is engaged or is to engage primarily in the
21 business of rendering investment supervisory services;
22 and

23 (b) A statement that the investment adviser will
24 furnish his, her, or its clients with such information as
25 the Secretary of State deems necessary in the form
26 prescribed by the Secretary of State by rule or
27 regulation;

28 (8) Such additional information as the Secretary of
29 State may, by rule, regulation or order prescribe as
30 necessary to determine the applicant's financial
31 responsibility, business repute and qualification to act
32 as an investment adviser.

33 (9) No applicant shall be registered or
34 re-registered as an investment adviser under this Section

1 unless and until each principal of the applicant who is
2 actively engaged in the conduct and management of the
3 applicant's advisory business in this State has passed an
4 examination or completed an educational program conducted
5 by the Secretary of State or an association of investment
6 advisers or similar person, which examination or
7 educational program has been designated by the Secretary
8 of State by rule, regulation or order to be satisfactory
9 for purposes of determining whether the applicant has
10 sufficient knowledge of the securities business and laws
11 relating thereto to conduct the business of a registered
12 investment adviser.

13 Any person who was a registered investment adviser
14 prior to September 30, 1963, and has continued to be so
15 registered, and any individual who has passed an
16 investment adviser examination administered by the
17 Secretary of State, or passed an examination or completed
18 an educational program designated by the Secretary of
19 State by rule, regulation or order to be satisfactory for
20 purposes of determining whether the applicant has
21 sufficient knowledge of the securities business and laws
22 relating thereto to conduct the business of a registered
23 investment adviser, shall not be required to pass an
24 examination or complete an educational program in order
25 to continue to act as an investment adviser. The
26 Secretary of State may by order waive the examination or
27 educational program requirement for any applicant for
28 registration under this subsection D if the principal of
29 the applicant who is actively engaged in the conduct and
30 management of the applicant's advisory business in this
31 State has had such experience or education relating to
32 the securities business as may be determined by the
33 Secretary of State to be the equivalent of the
34 examination or educational program. Any request for a

1 waiver shall be filed with the Secretary of State in such
2 form as may be prescribed by rule or regulation.

3 (10) No applicant shall be registered or
4 re-registered as an investment adviser under this Section
5 8 unless the application for registration or
6 re-registration is accompanied by an application for
7 registration or re-registration for each person acting as
8 an investment adviser representative on behalf of the
9 adviser and a Securities Audit and Enforcement Fund fee
10 that shall not be returnable in any event is paid with
11 respect to each investment adviser representative.

12 (11) The application for registration of an
13 investment adviser shall be accompanied by a filing fee
14 and a fee for each branch office in this State, in each
15 case in the amount established pursuant to Section 11a of
16 this Act, which fees shall not be returnable in any
17 event.

18 (12) The Secretary of State shall notify the
19 investment adviser by written notice (which may be by
20 electronic or facsimile transmission) of the
21 effectiveness of the registration as an investment
22 adviser in this State.

23 (13) Any change which renders no longer accurate
24 any information contained in any application for
25 registration or re-registration of an investment adviser
26 shall be reported to the Secretary of State within 10
27 business days after the occurrence of the change. In
28 respect to assets and liabilities of an investment
29 adviser that retains custody of clients' cash or
30 securities or accepts pre-payment of fees in excess of
31 \$500 per client and 6 or more months in advance only
32 materially adverse changes need be reported by written
33 notice (which may be by electronic or facsimile
34 transmission) no later than the close of business on the

1 second business day following the discovery thereof.

2 (14) Each application for registration as an
3 investment adviser shall become effective automatically
4 on the 45th day following the filing of the application,
5 required documents or information, and payment of the
6 required fee unless (i) the Secretary of State has
7 registered the investment adviser prior to that date or
8 (ii) an action with respect to the applicant is pending
9 under Section 11 of this Act.

10 D-5. A registered investment adviser or federal covered
11 investment adviser desiring to register an investment
12 adviser representative shall file an application with the
13 Secretary of State, in the form as the Secretary of State may
14 by rule or order prescribe, which the investment adviser
15 representative is required by this Section to provide to the
16 investment adviser, executed, verified, or authenticated by
17 the investment adviser representative and setting forth or
18 accompanied by:

19 (1) The name, residence, and business address of
20 the investment adviser representative;

21 (2) A statement whether any federal or state
22 license or registration as a dealer, salesperson,
23 investment adviser, or investment adviser representative
24 has ever been refused, canceled, suspended, revoked or
25 withdrawn;

26 (3) The nature of employment with, and names and
27 addresses of, employers of the investment adviser
28 representative for the 10 years immediately preceding the
29 date of application;

30 (4) A brief description of any civil or criminal
31 proceedings, of which fraud is an essential element,
32 pending against the investment adviser representative and
33 whether the investment adviser representative has ever
34 been convicted of a felony or of any misdemeanor of which

1 fraud is an essential element;

2 (5) Such additional information as the Secretary of
3 State may by rule or order prescribe as necessary to
4 determine the investment adviser representative's
5 business repute or qualification to act as an investment
6 adviser representative;

7 (6) Documentation that the individual has passed an
8 examination conducted by the Secretary of State, an
9 organization of investment advisers, or similar person,
10 which examination has been designated by the Secretary of
11 State by rule or order to be satisfactory for purposes of
12 determining whether the applicant has sufficient
13 knowledge of the investment advisory or securities
14 business and laws relating to that business to act as a
15 registered investment adviser representative; and

16 (7) A Securities Audit and Enforcement Fund fee
17 established under Section 11a of this Act, which shall
18 not be returnable in any event.

19 The Secretary of State may by order waive the examination
20 requirement for an applicant for registration under this
21 subsection D-5 who has had the experience or education
22 relating to the investment advisory or securities business as
23 may be determined by the Secretary of State to be the
24 equivalent of the examination. A request for a waiver shall
25 be filed with the Secretary of State in the form as may be
26 prescribed by rule or order.

27 A change that renders no longer accurate any information
28 contained in any application for registration or
29 re-registration as an investment adviser representative must
30 be reported to the Secretary of State within 10 business days
31 after the occurrence of the change. If the activities that
32 rendered an individual an investment adviser representative
33 for the investment adviser are terminated, the investment
34 adviser shall notify the Secretary of State in writing (which

1 may be by electronic or facsimile transmission), within 30
2 days of the investment adviser representative's termination,
3 using the appropriate termination notice form as the
4 Secretary of State may prescribe by rule or order.

5 A registered investment adviser representative may
6 transfer his or her registration under this Section 8 for the
7 unexpired term of the registration from one registered
8 investment adviser to another by the giving of notice of the
9 transfer by the new investment adviser to the Secretary of
10 State in the form and subject to the conditions as the
11 Secretary of State shall prescribe. The new registered
12 investment adviser shall promptly file an application for
13 registration of the investment adviser representative as
14 provided in this subsection, accompanied by the Securities
15 Audit and Enforcement Fund fee prescribed by paragraph (7) of
16 this subsection D-5.

17 E. (1) Subject to the provisions of subsection F of
18 Section 11 of this Act, the registration of a dealer, limited
19 Canadian dealer, salesperson, investment adviser, or
20 investment adviser representative may be denied, suspended or
21 revoked if the Secretary of State finds that the dealer,
22 limited Canadian dealer, salesperson, investment adviser, or
23 investment adviser representative or any principal officer,
24 director, partner, member, trustee, manager or any person who
25 performs a similar function of the dealer, limited Canadian
26 dealer, or investment adviser:

27 (a) has been convicted of any felony during the 10
28 year period preceding the date of filing of any
29 application for registration or at any time thereafter,
30 or of any misdemeanor of which fraud is an essential
31 element;

32 (b) has engaged in any unethical practice in the
33 offer or sale of securities or in any fraudulent business
34 practice;

1 (c) has failed to account for any money or
2 property, or has failed to deliver any security, to any
3 person entitled thereto when due or within a reasonable
4 time thereafter;

5 (d) in the case of a dealer, limited Canadian
6 dealer, or investment adviser, is insolvent;

7 (e) in the case of a dealer, limited Canadian
8 dealer, salesperson, or registered principal of a dealer
9 or limited Canadian dealer (i) has failed reasonably to
10 supervise the securities activities of any of its
11 salespersons and the failure has permitted or facilitated
12 a violation of Section 12 of this Act or (ii) is offering
13 or selling or has offered or sold securities in this
14 State through a salesperson other than a registered
15 salesperson, or, in the case of a salesperson, is selling
16 or has sold securities in this State for a dealer,
17 limited Canadian dealer, issuer or controlling person
18 with knowledge that the dealer, limited Canadian dealer,
19 issuer or controlling person has not complied with the
20 provisions of this Act or (iii) has failed reasonably to
21 supervise the implementation of compliance measures
22 following notice by the Secretary of State of
23 noncompliance with the Act or with the regulations
24 promulgated thereunder or both or (iv) has failed to
25 establish, maintain, and enforce written procedures to
26 supervise the types of business in which it engages and
27 to supervise the activities of its salespersons that are
28 reasonably designed to achieve compliance with applicable
29 securities laws and regulations;

30 (f) in the case of an investment adviser, has
31 failed reasonably to supervise the advisory activities of
32 any of its investment adviser representatives or
33 employees and the failure has permitted or facilitated a
34 violation of Section 12 of this Act;

1 (g) has violated any of the provisions of this Act;

2 (h) has made any material misrepresentation to the
3 Secretary of State in connection with any information
4 deemed necessary by the Secretary of State to determine a
5 dealer's, limited Canadian dealer's, or investment
6 adviser's financial responsibility or a dealer's, limited
7 Canadian dealer's, investment adviser's, salesperson's,
8 or investment adviser representative's business repute or
9 qualifications, or has refused to furnish any such
10 information requested by the Secretary of State;

11 (i) has had a license or registration under any
12 Federal or State law regulating the offer or sale of
13 securities or commodity futures contracts, refused,
14 cancelled, suspended, or withdrawn, revoked, or otherwise
15 adversely affected;

16 (j) ~~has been-suspended-or-expelled-from-or--refused~~
17 had membership in or association with ~~or-limited-in-any~~
18 ~~capacity-by~~ any self-regulatory organization registered
19 under the Federal 1934 Act or the Federal 1974 Act
20 suspended, revoked, refused, expelled, cancelled, barred,
21 limited in any capacity, or otherwise adversely affected
22 in a similar manner arising from any fraudulent or
23 deceptive act or a practice in violation of any rule,
24 regulation or standard duly promulgated by the
25 self-regulatory organization;

26 (k) has had any order entered against it after
27 notice and opportunity for hearing by a securities agency
28 of any state, any foreign government or agency thereof,
29 the Securities and Exchange Commission, or the Federal
30 Commodities Futures Trading Commission arising from any
31 fraudulent or deceptive act or a practice in violation of
32 any statute, rule or regulation administered or
33 promulgated by the agency or commission;

34 (l) in the case of a dealer or limited Canadian

1 dealer, fails to maintain a minimum net capital in an
2 amount which the Secretary of State may by rule or
3 regulation require;

4 (m) has conducted a continuing course of dealing of
5 such nature as to demonstrate an inability to properly
6 conduct the business of the dealer, limited Canadian
7 dealer, salesperson, investment adviser, or investment
8 adviser representative;

9 (n) has had, after notice and opportunity for
10 hearing, any injunction or order entered against it or
11 license or registration refused, cancelled, suspended,
12 revoked, withdrawn, or limited, or otherwise adversely
13 affected in a similar manner by any state or federal
14 body, agency or commission regulating banking, insurance,
15 finance or small loan companies, real estate or mortgage
16 brokers or companies, if the action resulted from any act
17 found by the body, agency or commission to be a
18 fraudulent or deceptive act or practice in violation of
19 any statute, rule or regulation administered or
20 promulgated by the body, agency or commission;

21 (o) has failed to file a return, or to pay the tax,
22 penalty or interest shown in a filed return, or to pay
23 any final assessment of tax, penalty or interest, as
24 required by any tax Act administered by the Illinois
25 Department of Revenue, until such time as the
26 requirements of that tax Act are satisfied;

27 (p) in the case of a natural person who is a
28 dealer, limited Canadian dealer, salesperson, investment
29 adviser, or investment adviser representative, has
30 defaulted on an educational loan guaranteed by the
31 Illinois Student Assistance Commission, until the natural
32 person has established a satisfactory repayment record as
33 determined by the Illinois Student Assistance Commission;

34 (q) has failed to maintain the books and records

1 required under this Act or rules or regulations
2 promulgated under this Act within a reasonable time after
3 receiving notice of any deficiency;

4 (r) has refused to allow or otherwise impeded
5 designees of the Secretary of State from conducting an
6 audit, examination, inspection, or investigation provided
7 for under Section 8 or 11 of this Act;

8 (s) has failed to maintain any minimum net capital
9 or bond requirement set forth in this Act or any rule or
10 regulation promulgated under this Act;

11 (t) has refused the Secretary of State or his or
12 her designee access to any office or location within an
13 office to conduct an investigation, audit, examination,
14 or inspection;

15 (u) has advised or caused a public pension fund or
16 retirement system established under the Illinois Pension
17 Code to make an investment or engage in a transaction not
18 authorized by that Code;

19 (v) if a corporation, limited liability company, or
20 limited liability partnership has been suspended,
21 canceled, revoked, or has failed to register as a foreign
22 corporation with the Secretary of State;

23 (w) is permanently or temporarily enjoined by any
24 court of competent jurisdiction, including any state,
25 federal, or foreign government, from engaging in or
26 continuing any conduct or practice involving any aspect
27 of the securities or commodities business or in any other
28 business where the conduct or practice enjoined involved
29 investments, franchises, insurance, banking, or finance;

30 (2) If the Secretary of State finds that any registrant
31 or applicant for registration is no longer in existence or
32 has ceased to do business as a dealer, limited Canadian
33 dealer, salesperson, investment adviser, or investment
34 adviser representative, or is subject to an adjudication as a

1 person under legal disability or to the control of a
2 guardian, or cannot be located after reasonable search, or
3 has failed after written notice to pay to the Secretary of
4 State any additional fee prescribed by this Section or
5 specified by rule or regulation, or if a natural person, has
6 defaulted on an educational loan guaranteed by the Illinois
7 Student Assistance Commission, the Secretary of State may by
8 order cancel the registration or application.

9 (3) Withdrawal of an application for registration or
10 withdrawal from registration as a dealer, limited Canadian
11 dealer, salesperson, investment adviser, or investment
12 adviser representative becomes effective 30 days after
13 receipt of an application to withdraw or within such shorter
14 period of time as the Secretary of State may determine,
15 unless any proceeding is pending under Section 11 of this Act
16 when the application is filed or a proceeding is instituted
17 within 30 days after the application is filed. If a
18 proceeding is pending or instituted, withdrawal becomes
19 effective at such time and upon such conditions as the
20 Secretary of State by order determines. If no proceeding is
21 pending or instituted and withdrawal automatically becomes
22 effective, the Secretary of State may nevertheless institute
23 a revocation or suspension proceeding within 2 years after
24 withdrawal became effective and enter a revocation or
25 suspension order as of the last date on which registration
26 was effective.

27 F. The Secretary of State shall make available upon
28 request the date that each dealer, investment adviser,
29 salesperson, or investment adviser representative was granted
30 registration, together with the name and address of the
31 dealer, limited Canadian dealer, or issuer on whose behalf
32 the salesperson is registered, and all orders of the
33 Secretary of State denying or abandoning an application, or
34 suspending or revoking registration, or censuring the

1 persons. The Secretary of State may designate by rule,
2 regulation or order the statements, information or reports
3 submitted to or filed with him or her pursuant to this
4 Section 8 which the Secretary of State determines are of a
5 sensitive nature and therefore should be exempt from public
6 disclosure. Any such statement, information or report shall
7 be deemed confidential and shall not be disclosed to the
8 public except upon the consent of the person filing or
9 submitting the statement, information or report or by order
10 of court or in court proceedings.

11 G. The registration or re-registration of a dealer or
12 limited Canadian dealer and of all salespersons registered
13 upon application of the dealer or limited Canadian dealer
14 shall expire on the next succeeding anniversary date of the
15 registration or re-registration of the dealer; and the
16 registration or re-registration of an investment adviser and
17 of all investment adviser representatives registered upon
18 application of the investment adviser shall expire on the
19 next succeeding anniversary date of the registration of the
20 investment adviser; provided, that the Secretary of State may
21 by rule or regulation prescribe an alternate date which any
22 dealer registered under the Federal 1934 Act or a member of
23 any self-regulatory association approved pursuant thereto, a
24 member of a self-regulatory organization or stock exchange in
25 Canada, or any investment adviser may elect as the expiration
26 date of its dealer or limited Canadian dealer and salesperson
27 registrations, or the expiration date of its investment
28 adviser registration, as the case may be. A registration of
29 a salesperson registered upon application of an issuer or
30 controlling person shall expire on the next succeeding
31 anniversary date of the registration, or upon termination or
32 expiration of the registration of the securities, if any,
33 designated in the application for his or her registration or
34 the alternative date as the Secretary may prescribe by rule

1 or regulation. Subject to paragraph (9) of subsection C of
2 this Section 8, a salesperson's registration also shall
3 terminate upon cessation of his or her employment, or
4 termination of his or her appointment or authorization, in
5 each case by the person who applied for the salesperson's
6 registration, provided that the Secretary of State may by
7 rule or regulation prescribe an alternate date for the
8 expiration of the registration.

9 H. Applications for re-registration of dealers, limited
10 Canadian dealers, salespersons, investment advisers, and
11 investment adviser representatives shall be filed with the
12 Secretary of State prior to the expiration of the then
13 current registration and shall contain such information as
14 may be required by the Secretary of State upon initial
15 application with such omission therefrom or addition thereto
16 as the Secretary of State may authorize or prescribe. Each
17 application for re-registration of a dealer, limited Canadian
18 dealer, or investment adviser shall be accompanied by a
19 filing fee, each application for re-registration as a
20 salesperson shall be accompanied by a filing fee and a
21 Securities Audit and Enforcement Fund fee established
22 pursuant to Section 11a of this Act, and each application for
23 re-registration as an investment adviser representative shall
24 be accompanied by a Securities Audit and Enforcement Fund fee
25 established under Section 11a of this Act, which shall not be
26 returnable in any event. Notwithstanding the foregoing,
27 applications for re-registration of dealers, limited Canadian
28 dealers, and investment advisers may be filed within 30 days
29 following the expiration of the registration provided that
30 the applicant pays the annual registration fee together with
31 an additional amount equal to the annual registration fee and
32 files any other information or documents that the Secretary
33 of State may prescribe by rule or regulation or order. Any
34 application filed within 30 days following the expiration of

1 the registration shall be automatically effective as of the
2 time of the earlier expiration provided that the proper fee
3 has been paid to the Secretary of State.

4 Each registered dealer, limited Canadian dealer, or
5 investment adviser shall continue to be registered if the
6 registrant changes his, her, or its form of organization
7 provided that the dealer or investment adviser files an
8 amendment to his, her, or its application not later than 30
9 days following the occurrence of the change and pays the
10 Secretary of State a fee in the amount established under
11 Section 11a of this Act.

12 I. (1) Every registered dealer, limited Canadian dealer,
13 and investment adviser shall make and keep for such periods,
14 such accounts, correspondence, memoranda, papers, books and
15 records as the Secretary of State may by rule or regulation
16 prescribe. All records so required shall be preserved for 3
17 years unless the Secretary of State by rule, regulation or
18 order prescribes otherwise for particular types of records.

19 (2) Every registered dealer, limited Canadian dealer,
20 and investment adviser shall file such financial reports as
21 the Secretary of State may by rule or regulation prescribe.

22 (3) All the books and records referred to in paragraph
23 (1) of this subsection I are subject at any time or from time
24 to time to such reasonable periodic, special or other audits,
25 examinations, or inspections by representatives of the
26 Secretary of State, within or without this State, as the
27 Secretary of State deems necessary or appropriate in the
28 public interest or for the protection of investors.

29 (4) At the time of an audit, examination, or inspection,
30 the Secretary of State, by his or her designees, may conduct
31 an interview of any person employed or appointed by or
32 affiliated with a registered dealer, limited Canadian dealer,
33 or investment advisor, provided that the dealer, limited
34 Canadian dealer, or investment advisor shall be given

1 reasonable notice of the time and place for the interview.
2 At the option of the dealer, limited Canadian dealer, or
3 investment advisor, a representative of the dealer or
4 investment advisor with supervisory responsibility over the
5 individual being interviewed may be present at the interview.

6 J. The Secretary of State may require by rule or
7 regulation the payment of an additional fee for the filing of
8 information or documents required to be filed by this Section
9 which have not been filed in a timely manner. The Secretary
10 of State may also require by rule or regulation the payment
11 of an examination fee for administering any examination which
12 it may conduct pursuant to subsection B, C, D, or D-5 of this
13 Section 8.

14 K. The Secretary of State may declare any application
15 for registration or limited registration under this Section 8
16 abandoned by order if the applicant fails to pay any fee or
17 file any information or document required under this Section
18 8 or by rule or regulation for more than 30 days after the
19 required payment or filing date. The applicant may petition
20 the Secretary of State for a hearing within 15 days after the
21 applicant's receipt of the order of abandonment, provided
22 that the petition sets forth the grounds upon which the
23 applicant seeks a hearing.

24 L. Any document being filed pursuant to this Section 8
25 shall be deemed filed, and any fee being paid pursuant to
26 this Section 8 shall be deemed paid, upon the date of actual
27 receipt thereof by the Secretary of State or his or her
28 designee.

29 M. The Secretary of State shall provide to the Illinois
30 Student Assistance Commission annually or at mutually agreed
31 periodic intervals the names and social security numbers of
32 natural persons registered under subsections B, C, D, and D-5

1 of this Section. The Illinois Student Assistance Commission
2 shall determine if any student loan defaulter is registered
3 as a dealer, limited Canadian dealer, salesperson, or
4 investment adviser under this Act and report its
5 determination to the Secretary of State or his or her
6 designee.

7 (Source: P.A. 90-70, eff. 7-8-97; 90-507, eff. 8-22-97;
8 90-655, eff. 7-30-98; 91-809, eff. 1-1-01.)

9 (815 ILCS 5/11) (from Ch. 121 1/2, par. 137.11)

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

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

23 (2) Among other things, the Secretary of State shall
24 have authority, for the purposes of this Act, to prescribe
25 the form or forms in which required information shall be set
26 forth, accounting practices, the items or details to be shown
27 in balance sheets and earning statements, and the methods to
28 be followed in the preparation of accounts, in the appraisal
29 or valuation of assets and liabilities, in the determination
30 of depreciation and depletion, in the differentiation of
31 recurring and non-recurring income, in the differentiation of
32 investment and operating income, and in the preparation of
33 consolidated balance sheets or income accounts of any person,

1 directly or indirectly, controlling or controlled by the
2 issuer, or any person under direct or indirect common control
3 with the issuer.

4 (3) No provision of this Act imposing any liability
5 shall apply to any act done or omitted in good faith in
6 conformity with any rule or regulation of the Secretary of
7 State under this Act, notwithstanding that the rule or
8 regulation may, after the act or omission, be amended or
9 rescinded or be determined by judicial or other authority to
10 be invalid for any reason.

11 (4) The Securities Department of the Office of the
12 Secretary of State shall be deemed a criminal justice agency
13 for purposes of all federal and state laws and regulations
14 and, in that capacity, shall be entitled to access to any
15 information available to criminal justice agencies.

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

24 B. The Secretary of State may, anything in this Act to
25 the contrary notwithstanding, require financial statements
26 and reports of the issuer, dealer, salesperson, or investment
27 adviser as often as circumstances may warrant. In addition,
28 the Secretary of State may secure information or books and
29 records from or through others and may make or cause to be
30 made investigations respecting the business, affairs, and
31 property of the issuer of securities, any person involved in
32 the sale or offer for sale, purchase or offer to purchase of
33 any mineral investment contract, mineral deferred delivery
34 contract, or security and of dealers, salespersons, and

1 investment advisers that are registered or are the subject of
2 an application for registration under this Act. The costs of
3 an investigation shall be borne by the registrant or the
4 applicant, provided that the registrant or applicant shall
5 not be obligated to pay the costs without his, her or its
6 consent in advance.

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

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

18 (2) conduct an investigation, audit, examination,
19 or inspection as necessary or advisable for the
20 protection of the interests of the public.

21 D. (1) For the purpose of all investigations, audits,
22 examinations, or inspections which in the opinion of the
23 Secretary of State are necessary and proper for the
24 enforcement of this Act, the Secretary of State or a person
25 designated by him or her is empowered to administer oaths and
26 affirmations, subpoena witnesses, take evidence, and require,
27 by subpoena or other lawful means provided by this Act or the
28 rules adopted by the Secretary of State, the production of
29 any books and records, papers, or other documents which the
30 Secretary of State or a person designated by him or her deems
31 relevant or material to the inquiry.

32 (2) The Secretary of State or a person designated by him
33 or her is further empowered to administer oaths and
34 affirmations, subpoena witnesses, take evidence, and require

1 the production of any books and records, papers, or other
2 documents in this State at the request of a securities agency
3 of another state, if the activities constituting the alleged
4 violation for which the information is sought would be in
5 violation of Section 12 of this Act if the activities had
6 occurred in this State.

7 (3) The Circuit Court of any County of this State, upon
8 application of the Secretary of State or a person designated
9 by him or her may order the attendance of witnesses, the
10 production of books and records, papers, accounts and
11 documents and the giving of testimony before the Secretary of
12 State or a person designated by him or her; and any failure
13 to obey the order may be punished by the Circuit Court as a
14 contempt thereof.

15 (4) The fees of subpoenaed witnesses under this Act for
16 attendance and travel shall be the same as fees of witnesses
17 before the Circuit Courts of this State, to be paid when the
18 witness is excused from further attendance, provided, the
19 witness is subpoenaed at the instance of the Secretary of
20 State; and payment of the fees shall be made and audited in
21 the same manner as other expenses of the Secretary of State.

22 (5) Whenever a subpoena is issued at the request of a
23 complainant or respondent as the case may be, the Secretary
24 of State may require that the cost of service and the fee of
25 the witness shall be borne by the party at whose instance the
26 witness is summoned.

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

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

33 (8) The Secretary of State may in any investigation,
34 audits, examinations, or inspections cause the taking of

1 depositions of persons residing within or without this State
2 in the manner provided in civil actions under the laws of
3 this State.

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

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

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

29 (3) If the Secretary of State shall find that any
30 person is engaging or has engaged in the business of
31 selling or offering for sale securities as a dealer or
32 salesperson or is acting or has acted as an investment
33 adviser, investment adviser representative, or federal
34 covered investment adviser, without prior thereto and at

1 the time thereof having complied with the registration or
2 notice filing requirements of this Act, the Secretary of
3 State may by written order prohibit or suspend the person
4 from engaging in the business of selling or offering for
5 sale securities, or acting as an investment adviser,
6 investment adviser representative, or federal covered
7 investment adviser, in this State.

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

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

1 A failure to appear at the hearing or otherwise respond to
2 the allegations set forth in the notice of hearing shall
3 constitute an admission of any facts alleged therein and
4 shall constitute sufficient basis to enter an order.

5 (2) Anything herein contained to the contrary
6 notwithstanding, the Secretary of State may temporarily
7 prohibit or suspend, for a maximum period of 90 days, by an
8 order effective immediately, the offer or sale or
9 registration of securities, the registration of a dealer,
10 salesperson, investment adviser, or investment adviser
11 representative, or the offer or sale of securities by any
12 person, or the business of rendering investment advice,
13 without the notice and prior hearing in this subsection
14 prescribed, if the Secretary of State shall in his or her
15 opinion, based on credible evidence, deem it necessary to
16 prevent an imminent violation of this Act or to prevent
17 losses to investors which the Secretary of State reasonably
18 believes will occur as a result of a prior violation of this
19 Act. Immediately after taking action without such notice and
20 hearing, the Secretary of State shall deliver a copy of the
21 temporary order to the respondent named therein by personal
22 service or registered mail or certified mail, return receipt
23 requested. The temporary order shall set forth the grounds
24 for the action and shall advise that the respondent may
25 request a hearing ~~as-seen-as-reasonably-practicable~~, that the
26 request for a hearing will not stop the effectiveness of the
27 temporary order and that respondent's failure to request a
28 hearing within 30 days after the date of the entry of the
29 temporary order shall constitute an admission of any facts
30 alleged therein and shall constitute sufficient basis to make
31 the temporary order final. Any provision of this paragraph
32 (2) to the contrary notwithstanding, the Secretary of State
33 may not pursuant to the provisions of this paragraph (2)
34 suspend the registration of a dealer, limited Canadian

1 dealer, salesperson, investment adviser, or investment
2 adviser representative based upon sub-paragraph (n) of
3 paragraph (1) of subsection E of Section 8 of this Act or
4 revoke the registration of securities or revoke the
5 registration of any dealer, salesperson, investment adviser
6 representative, or investment adviser.

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

19 (4) When the Secretary of State finds that an
20 application for registration as a dealer, salesperson or
21 investment adviser should be denied, the Secretary of State
22 may enter an order denying the registration. Immediately
23 after taking such action, the Secretary of State shall
24 deliver a copy of the order to the respondent named therein
25 by personal service or registered mail or certified mail,
26 return receipt requested. The order shall state the grounds
27 for the action and that the matter will be set for hearing
28 upon written request filed with the Secretary of State within
29 30 days after the receipt of the request by the respondent.
30 The respondent's failure to request a hearing within 30 days
31 after receipt of the order shall constitute an admission of
32 any facts alleged therein and shall make the order final. If
33 a hearing is held, the Secretary of State shall affirm,
34 vacate, or modify the order.

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

8 (6) Notwithstanding the foregoing, the Secretary of
9 State, after notice and opportunity for hearing, may at his
10 or her discretion enter into an agreed settlement,
11 stipulation or consent order with a respondent in accordance
12 with the provisions of the Illinois Administrative Procedure
13 Act. The provisions of the agreed settlement, stipulation or
14 consent order shall have the full force and effect of an
15 order issued by the Secretary of State.

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

1 evidence of rehabilitation or change in circumstances
2 justifying the amendment or termination of the Order of
3 Prohibition.

4 G. No administrative action shall be brought by the
5 Secretary of State for relief under this Act or upon or
6 because of any of the matters for which relief is granted by
7 this Act after the earlier to occur of (i) 3 years from the
8 date upon which the Secretary of State had notice of facts
9 which in the exercise of reasonable diligence would lead to
10 actual knowledge of the alleged violation of the Act, or (ii)
11 5 years from the date on which the alleged violation
12 occurred.

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

32 I. Notwithstanding any other provisions of this Act to
33 the contrary, whenever it shall appear to the Secretary of
34 State that any person is engaged or about to engage in any

1 acts or practices which constitute or will constitute a
2 violation of this Act or of any rule or regulation prescribed
3 under authority of this Act, the Secretary of State may at
4 his or her discretion, through the Attorney General:

5 (1) file a complaint and apply for a temporary
6 restraining order without notice, and upon a proper
7 showing the court may enter a temporary restraining order
8 without bond, to enforce this Act; and

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

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

1 as in other civil cases.

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

13 K. No provision of this Act shall be construed to
14 require 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
18 of the investment adviser or federal covered investment
19 adviser, except insofar as the disclosure may be necessary or
20 appropriate in a particular proceeding or investigation
21 having 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
24 or advantage, he or she may certify a record to the State's
25 Attorney of the county in which the act complained of,
26 examined or investigated occurred. The State's Attorney of
27 that county within 90 days after receipt of the record shall
28 file a written statement at the Office of the Secretary of
29 State, which statement shall set forth the action taken upon
30 the record, or if no action has been taken upon the record
31 that fact, together with the reasons therefor, shall be
32 stated.

33 M. The Secretary of State may initiate, take, pursue, or
34 prosecute any action authorized or permitted under Section 6d

1 of the Federal 1974 Act.

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

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

14 (a) establishing or participating in a central
15 depository or depositories for registration under this
16 Act and for documents or records required under this Act;

17 (b) making a joint audit, inspection, examination,
18 or investigation;

19 (c) holding a joint administrative hearing;

20 (d) filing and prosecuting a joint civil or
21 criminal proceeding;

22 (e) sharing and exchanging personnel;

23 (f) sharing and exchanging information and
24 documents; or

25 (g) issuing any joint statement or policy.

26 (Source: P.A. 90-70, eff. 7-8-97; 91-809, eff. 1-1-01.)

27 (815 ILCS 5/14) (from Ch. 121 1/2, par. 137.14)

28 Sec. 14. Sentence.

29 A. Any person who violates any of the provisions of
30 subsection A, B, C, or D of Section 12 or paragraph (3) of
31 subsection K of Section 12 of this Act shall be guilty of a
32 Class 4 felony. ~~A misdemeanor; provided that if such person~~
33 ~~commits such offense with knowledge of the existence, meaning~~

1 or application of the respective subsection as provided in
2 Section 4-3(e) of the Criminal Code of 1961, or, in the case
3 of a failure to comply with the terms of any order of the
4 Secretary of State as provided under subsection D of Section
5 12 of this Act, with knowledge of the existence of such
6 order, such person shall be guilty of a Class 4 felony.

7 B. Any person who violates any of the provisions of
8 subsection E, F, G, H, I, or J, or paragraph (1) or (2) of
9 subsection K of Section 12 of this Act shall be guilty of a
10 Class 3 felony.

11 B-5. A person who violates a provision of subsection E,
12 F, G, H, I, or J or paragraph (1) or (2) of subsection K of
13 Section 12 of this Act by use of a plan, program, or campaign
14 that is conducted using one or more telephones for the
15 purpose of inducing the purchase or sale of securities is
16 guilty of a Class 2 felony.

17 B-10. A person who in the course of violating a
18 provision of subsection E, F, G, H, I, or J or paragraph (1)
19 or (2) of subsection K of Section 12 of this Act induces a
20 person 60 years of age or older to purchase or sell
21 securities is guilty of a Class 2 felony.

22 C. No prosecution for violation of any provision of this
23 Act shall bar or be barred by any prosecution for the
24 violation of any other provision of this Act or of any other
25 statute; but all prosecutions under this Act or based upon
26 any provision of this Act must be commenced within 3 years
27 after the violation upon which such prosecution is based;
28 provided however, that if the accused has intentionally
29 concealed evidence of a violation of subsection E, F, G, H,
30 I, J, or K of Section 12 of this Act, the period of
31 limitation prescribed herein shall be extended up to an
32 additional 2 years after the proper prosecuting officer
33 becomes aware of the offense but in no such event shall the
34 period of limitation so extended be more than 2 years beyond

1 the expiration of the period otherwise applicable.

2 D. For the purposes of this Act all persons who shall
3 sell or offer for sale, or who shall purchase or offer to
4 purchase, securities in violation of the provisions of this
5 Act, or who shall in any manner knowingly authorize, aid or
6 assist in any unlawful sale or offering for sale or unlawful
7 purchase or offer to purchase shall be deemed equally guilty,
8 and may be tried and punished in the county in which said
9 unlawful sale or offering for sale or unlawful purchase or
10 offer to purchase was made, or in the county in which the
11 securities so sold or offered for sale or so purchased or
12 offered to be purchased were delivered or proposed to be
13 delivered to the purchaser thereof or by the seller thereof,
14 as the case may be.

15 E. Any person who shall be convicted of a second or any
16 subsequent offense specified in subsection A, B, C, D, or
17 paragraph (3) of subsection K of Section 12 of this Act shall
18 be guilty of a Class 3 felony, and any person who shall be
19 convicted of a second or any subsequent offense specified in
20 subsection E, F, G, H, I, J, or paragraph (1) or (2) of
21 subsection K of Section 12 of this Act shall be guilty of a
22 Class 2 felony.

23 F. If any person referred to in this Section is not a
24 natural person, it may upon conviction of a first offense be
25 fined up to \$25,000, and if convicted of a second and
26 subsequent offense, may be fined up to \$50,000, in addition
27 to any other sentence authorized by law.

28 G. This Act shall not be construed to repeal or affect
29 any law now in force relating to the organization of
30 corporations in this State or the admission of any foreign
31 corporation to do business in this State.

32 H. For the purposes of this Act, all persons who sell or
33 offer for sale, or who purchase or offer to purchase any
34 mineral investment contract or mineral deferred delivery

1 contract in violation of the provisions of this Act or who,
2 in any manner, knowingly authorize, aid, or assist in any
3 unlawful sale or offer for sale or unlawful purchase or offer
4 to purchase any mineral investment contract or mineral
5 deferred delivery contract shall be deemed equally guilty and
6 may be tried and punished in the county in which the unlawful
7 sale or offer for sale or unlawful purchase or offer to
8 purchase any mineral investment contract or mineral deferred
9 delivery contract was made or in the county in which the
10 mineral investment contract or mineral deferred delivery
11 contract so sold or offered for sale or so purchased or
12 offered to be purchased was delivered or proposed to be
13 delivered to the purchaser thereof or by the seller thereof,
14 as the case may be, or in Sangamon County.

15 (Source: P.A. 90-667, eff. 7-30-98.)

16 Section 10. The Illinois Loan Brokers Act of 1995 is
17 amended by changing Sections 15-5.15, 15-5.20, 15-20, 15-25,
18 15-45, 15-50, 15-85 and by adding Section 15-95 as follows:

19 (815 ILCS 175/15-5.15)

20 Sec. 15-5.15. Loan broker.

21 (a) "Loan Broker" means any person who, in return for a
22 fee, commission, or other compensation from any person,
23 promises to procure a loan for any person or assist any
24 person in procuring a loan from any third party, or who
25 promises to consider whether or not to make a loan to any
26 person.

27 (b) Loan broker does not include any of the following:

28 (1) Any bank, savings bank, trust company, savings
29 and loan association, credit union or any other financial
30 institution regulated by any agency of the United States
31 or authorized to do business in this State.

32 (2) Any person authorized to sell and service loans

1 for the federal National Mortgage Association or the
 2 federal Home Loan Mortgage Corporation, issue securities
 3 backed by the Government National Mortgage Association,
 4 make loans insured by the federal Department of Housing
 5 and Urban Development, make loans guaranteed by the
 6 federal Veterans Administration, or act as a
 7 correspondent of loans insured by the federal Department
 8 of Housing and Urban Development or guaranteed by the
 9 federal Veterans Administration.

10 (3) Any insurance producer or company authorized to
 11 do business in this State.

12 (4) Any person arranging financing for the sale of
 13 the person's product.

14 (5) Any person authorized to conduct business under
 15 the Residential Mortgage License Act of 1987.

16 (6) Any person authorized to do business in this
 17 State and regulated by the Department of Financial
 18 Institutions or the Office of Banks and Real Estate.

19 (Source: P.A. 89-209, eff. 1-1-96; 89-508, eff. 7-3-96.)

20 (815 ILCS 175/15-5.20)

21 Sec. 15-5.20. Person. "Person" means an individual, a
 22 corporation, trust, limited liability company, partnership, a
 23 joint stock company, limited liability partnership,
 24 incorporated or unincorporated association, or any other
 25 entity.

26 (Source: P.A. 89-209, eff. 1-1-96.)

27 (815 ILCS 175/15-20)

28 Sec. 15-20. Renewal of registration.

29 (a) A loan broker may not continue engaging in the
 30 business of loan brokering unless the broker's registration
 31 is renewed annually. A loan broker shall renew the
 32 registration by filing with the Secretary of State, at least

1 30 days before the expiration of the registration, an
2 application containing any information the Secretary of State
3 may require by rule or regulation or order to indicate any
4 material change from the information contained in the
5 applicant's original application or any previous application.

6 (b) An application for renewal must be accompanied by a
7 filing fee in the amount specified in subsection (a) of
8 Section 15-25 of this Act. The application and fee is not
9 returnable in any event.

10 (c) Notwithstanding the foregoing, applications for
11 renewal of registration of loan brokers may be filed within
12 30 days following the expiration of the registration
13 provided that the applicant pays the annual registration fee
14 together with an additional amount equal to the annual
15 registration fee and files any other information or
16 documents that the Secretary of State may prescribe by
17 rule or order. Any application filed within 30 days
18 following the expiration of the registration shall be
19 automatically effective as of the time of the earlier
20 expiration provided that the proper fee has been paid to the
21 Secretary of State.

22 (Source: P.A. 89-209, eff. 1-1-96.)

23 (815 ILCS 175/15-25)

24 Sec. 15-25. Fees and funds; accounting and deposit in
25 Securities Audit and Enforcement Fund.

26 (a) the Secretary of State shall by rule or regulation
27 impose and shall collect fees necessary for the
28 administration of this Act including, but not limited to,
29 fees for the following purposes:

30 (1) filing an application pursuant to Section 15-15
31 of this Act;

32 (2) examining an application pursuant to Section
33 15-15 or Section 15-20 of this Act;

1 (3) registering a loan broker pursuant to Section
2 15-15 of this Act;

3 (4) renewing registration of a loan broker pursuant
4 to Section 15-20 of this Act; or

5 (5) failure to file or file timely any document or
6 information required under this Act;

7 (6) acceptance of service of process pursuant to
8 Section 15-95;

9 (7) issuance of certification pursuant to Section
10 15-50; or

11 (8) late registration fee pursuant to Section
12 15-20(c).

13 (b) The Secretary of State may, by rule or regulation,
14 raise or lower any fee imposed by this Act, and which he or
15 she is authorized by law to collect under this Act.

16 (c) All fees and funds accruing for the administration
17 of this Act shall be accounted for by the Secretary of State
18 and shall be deposited with the State Treasurer who shall
19 deposit them in the Securities Audit and Enforcement Fund.

20 (Source: P.A. 89-209, eff. 1-1-96.)

21 (815 ILCS 175/15-45)

22 Sec. 15-45. Powers of Secretary of State; privilege
23 against self-incrimination; admissibility into evidence.

24 (a) The Secretary of State may do the following:

25 (1) Adopt rules and regulations to implement this
26 Act.

27 (2) Make investigations and examinations:

28 (A) in connection with any application for
29 registration of any loan broker or any registration
30 already granted; or

31 (B) whenever it appears to the Secretary of
32 State, upon the basis of a complaint or information,
33 that reasonable grounds exist for the belief that an

1 investigation or examination is necessary or
2 advisable for the more complete protection of the
3 interests of the public.

4 (3) Charge as costs of investigation or examination
5 all reasonable expenses, including a per diem prorated
6 upon the salary of any employee and actual traveling and
7 hotel expenses. All reasonable expenses are to be paid
8 by the party or parties under investigation or
9 examination.

10 (4) Issue notices and orders, including cease and
11 desist notices and orders, after making an investigation
12 or examination under item (2) of subsection (a) of this
13 Section. The Secretary of State may also bring an action
14 to prohibit a person from violating this Act. The
15 Secretary of State shall notify the person that an order
16 or notice has been issued, the reasons for it and that a
17 hearing will be set in accordance with the provisions of
18 the Illinois Administrative Procedure Act after the
19 Secretary of State receives a written request from the
20 person requesting a hearing.

21 (5) Sign all orders, official certifications,
22 documents or papers issued under this Act or delegate the
23 authority to sign any of those items to his or her
24 designee.

25 (6) Hold and conduct hearings.

26 (7) Hear evidence.

27 (8) Conduct inquiries with or without hearings.
28 Inquiries shall include oral and written requests for
29 information. A failure to respond to a written request
30 for information may be deemed a violation of this Act
31 and the Secretary of State may issue notices and orders,
32 including cease and desist notices and orders, against
33 the violators.

34 (9) Receive reports of investigators or other

1 officers or employees of the State of Illinois or any
2 municipal corporation or governmental subdivision within
3 the State.

4 (10) (Blank). ~~Administer oaths or cause them to be~~
5 ~~administered.~~

6 (11) (Blank). ~~Subpoena witnesses and compel them to~~
7 ~~attend and testify.~~

8 (12) (Blank). ~~Compel the production of books,~~
9 ~~records and other documents.~~

10 (13) Order depositions to be taken of any witness
11 residing within or without the State. The depositions
12 shall be taken in the manner prescribed by law for
13 depositions in civil actions and made returnable to the
14 Secretary of State.

15 (14) For the purpose of all investigations, audits,
16 examinations, or inspections that, in the opinion of the
17 Secretary of State are necessary and proper for the
18 enforcement of this Act, the Secretary of State or a
19 person designated by him or her is empowered to
20 administer oaths and affirmations, subpoena witnesses,
21 take evidence, and require by subpoena or other lawful
22 means provided by this Act or the rules adopted by the
23 Secretary of State the production of any books and
24 records, papers, or other documents that the Secretary
25 of State or a person designated by him or her deems
26 relevant or material to the inquiry.

27 (b) If any person refuses to obey a subpoena issued
28 under this Act, the Secretary of State may make application
29 to any court of competent jurisdiction to order the person to
30 appear before the Secretary of State and produce documentary
31 evidence or give evidence as directed in the subpoena. The
32 failure to obey the order of the court shall be subject to
33 punishment by the court as contempt of court.

34 (c) No person shall be excused from complying with a

1 subpoena on the ground that the testimony or evidence
2 required may tend to incriminate the person or subject the
3 person to a penalty or forfeiture. No individual may be
4 prosecuted or subject to any penalty or forfeiture for or on
5 account of any transaction, matter or thing which the
6 individual is compelled to testify or produce evidence, after
7 claiming the privilege against self-incrimination. However,
8 the individual so testifying shall not be exempt from
9 prosecution and punishment for perjury committed in so
10 testifying.

11 (d) In any prosecution, action, suit or proceeding based
12 upon or arising out of this Act, the Secretary of State may
13 sign a certificate showing compliance or non-compliance with
14 this Act by any loan broker. This shall constitute prima
15 facie evidence of compliance or non-compliance with this Act
16 and shall be admissible in evidence in any court.

17 (e) Whenever it shall appear to the Secretary of State
18 that any person is engaged or about to engage in any acts or
19 practices which constitute or will constitute a violation of
20 this Act, or of any rule or regulation prescribed under
21 authority of this Act, the Secretary of State may at his or
22 her discretion, through the Attorney General:

23 (1) File a complaint and apply for a temporary
24 restraining order without notice, and upon a proper
25 showing the court may enter a temporary restraining order
26 without a bond, to enforce this Act.

27 (2) File a complaint and apply for a preliminary or
28 permanent injunction, and, after notice and hearing and
29 upon a proper showing, the court may grant a preliminary
30 or permanent injunction and may order the defendant to
31 make an offer of rescission with respect to any contract
32 for loan brokerage services determined by the court to be
33 unlawful under this Act.

34 (f) The court shall further have jurisdiction and

1 authority, in addition to the penalties and other remedies in
2 this Act provided, to enter an order for the appointment of
3 the court or a person as a receiver, conservator, ancillary
4 receiver or ancillary conservator for the defendant or the
5 defendant's assets located in this State, or to require
6 restitution, damages or disgorgement of profits on behalf of
7 the person or persons injured by the act or practice
8 constituting the subject matter of the action, and may assess
9 costs and attorneys fees against the defendant for the use of
10 the State.

11 (Source: P.A. 90-70, eff. 7-8-97; 91-357, eff. 7-29-99.)

12 (815 ILCS 175/15-50)

13 Sec. 15-50. Evidentiary matters.

14 (a) Certified copies of documents or records admissible
15 in actions or proceedings under this Act. Copies of any
16 statement or document filed with the Secretary of State, and
17 copies of any records of the Secretary of State, certified to
18 by the Secretary of State are admissible in any prosecution,
19 action, suit or proceeding based upon, or arising out of or
20 under, the provisions of this Act to the same effect as the
21 original of the statement, document or record would be if
22 actually produced.

23 (b) In any action, administrative, civil, or criminal, a
24 certificate under the seal of the State of Illinois, signed
25 by the Secretary of State, attesting to the filing of
26 or the absence of the filing of any document or record with
27 the Secretary of State under this Act, shall constitute
28 prima facie evidence of the filing or of the absence of the
29 filing, and shall be admissible in evidence in any
30 administrative, criminal, or civil action.

31 (c) Any certificate pursuant to subsection (a) or (b) of
32 this Section shall be furnished by the Secretary of State
33 upon application therefor in the form and in the manner

1 prescribed by the Secretary of State by rule, and shall be
2 accompanied by payment of a non-refundable certification
3 fee in the amount specified by rule or order of the
4 Secretary of State.

5 (Source: P.A. 89-209, eff. 1-1-96.)

6 (815 ILCS 175/15-85)

7 Sec. 15-85. Fraudulent and prohibited acts.

8 (a) A loan broker shall not, in connection with a
9 contract for the services of a loan broker, either directly
10 or indirectly, do any of the following:

11 (1) (a) Employ any device, scheme or article to
12 defraud.

13 (2) (b) Make any untrue statements of a material
14 fact or omit to state a material fact necessary in order
15 to make the statements made, in the light of
16 circumstances under which they are made, not misleading.

17 (3) (c) Engage in any act, practice or course of
18 business that operates or would operate as a fraud or
19 deceit upon any person.

20 (b) A loan broker shall not either directly or
21 indirectly do any of the following:

22 (1) act as a loan broker without registration under
23 this Act unless exempt under the Act;

24 (2) fail to file with the Secretary of State any
25 application, report, document, or answer required to be
26 filed under the provisions of this Act or any rule made
27 by the Secretary of State pursuant to this Act, or fail
28 to comply with the terms of any order issued pursuant to
29 this Act or any rules made by the Secretary of State;

30 (3) fail to keep or maintain any records as required
31 under the provisions of this Act or any rule made by the
32 Secretary of State pursuant to this Act.

33 (Source: P.A. 89-209, eff. 1-1-96.)

1 (815 ILCS 175/15-95 new)

2 Sec. 15-95. Service of process.

3 (a) A person acting as a loan broker, unless exempt from
4 registration under this Act, shall constitute an appointment
5 of the Secretary of State, or his or her successors in
6 Office, by the person to be the true and lawful attorney for
7 the person upon whom may be served all lawful process in any
8 action or proceeding against the person, arising out of his
9 or her activities as a loan broker.

10 (b) Service of process under this Section shall be made
11 by serving a copy upon the Secretary of State or any employee
12 in his or her Office designated by the Secretary of State to
13 accept such service for him or her, provided notice and a
14 copy of the process are, within 10 days of receipt, sent by
15 registered mail or certified mail, return receipt requested,
16 by the plaintiff to the defendant, at the last known address
17 of the defendant. The filing fee for service of process
18 under this Section is non-refundable and is the amount
19 established in Section 15-25 of this Act. The Secretary of
20 State shall keep a record of all such processes that shall
21 show the day of the service.

22 Section 15. The Illinois Business Brokers Act of 1995 is
23 amended by changing Sections 10-5.20, 10-20, 10-25, 10-40,
24 10-45, 10-50, 10-55, 10-85 and by adding Section 10-125 as
25 follows:

26 (815 ILCS 307/10-5.20)

27 Sec. 10-5.20. Person. "Person" means an individual, a
28 corporation, a partnership, an association, a joint stock
29 company, a limited liability company, a limited liability
30 partnership, a trust, or any unincorporated organization, or
31 any other entity.

32 (Source: P.A. 89-209, eff. 1-1-96.)

1 (815 ILCS 307/10-20)

2 Sec. 10-20. Renewal of registration.

3 (a) A business broker may not continue engaging in the
4 business of business brokering unless the broker's
5 registration is renewed annually. A business broker shall
6 renew the registration by filing with the Secretary of State,
7 at least 30 days before the expiration of the registration,
8 an application containing any information the Secretary of
9 State may require to indicate any material change from the
10 information contained in the applicant's original application
11 or any previous application.

12 (b) An application for renewal must be accompanied by a
13 filing fee in the amount specified in subsection (a) of
14 Section 10-25 of this Act, and shall not be returnable in any
15 event.

16 (c) Notwithstanding the foregoing, applications for
17 renewal of registration of business brokers may be filed
18 within 30 days following the expiration of the
19 registration provided that the applicant pays the annual
20 registration fee together with an additional amount equal to
21 the annual registration fee and files any other
22 information or documents that the Secretary of State may
23 prescribe by rule or order. Any application filed within
24 30 days following the expiration of the registration shall
25 be automatically effective as of the time of the earlier
26 expiration provided that the proper fee has been paid to the
27 Secretary of State.

28 (Source: P.A. 89-209, eff. 1-1-96.)

29 (815 ILCS 307/10-25)

30 Sec. 10-25. Fees and funds. All fees and funds accruing
31 for the administration of this Act shall be accounted for by
32 the Secretary of State and shall be deposited with the State
33 Treasurer who shall deposit them in the Securities Audit and

1 Enforcement Fund.

2 (a) The Secretary of State shall, by rule or regulation,
3 impose and collect fees necessary for the administration of
4 this Act, including but not limited to, fees for the
5 following purposes:

6 (1) filing an application pursuant to Section 10-10
7 of this Act;

8 (2) examining an application pursuant to Sections
9 10-10 and 10-20 of this Act;

10 (3) registering a business broker under Section
11 10-10 of this Act;

12 (4) renewing registration of a business broker
13 pursuant to Section 10-20 of this Act;

14 (5) failure to file or file timely any document or
15 information required under this Act;

16 (6) (Blank);i:-

17 (7) acceptance of service of process pursuant to
18 Section 10-125;

19 (8) issuance of certification pursuant to Section
20 10-50; and

21 (9) late registration fee pursuant to Section
22 10-20(c).

23 (b) The Secretary of State may, by rule or regulation,
24 raise or lower any fee imposed by, and which he or she is
25 authorized by law to collect under, this Act.

26 (Source: P.A. 90-70, eff. 7-8-97; 91-194, eff. 7-20-99;
27 91-534, eff. 1-1-00; 91-809, eff. 1-1-01.)

28 (815 ILCS 307/10-40)

29 Sec. 10-40. Denial, suspension or revocation of
30 registration; orders and hearing.

31 (a) The Secretary of State may deny, suspend or revoke
32 the registration of a business broker if the business broker:

33 (1) Is insolvent.

1 (2) Has violated any provision of this Act.

2 (3) Has filed with the Secretary of State any
3 document or statement containing any false representation
4 of a material fact or omitting to state a material fact.

5 (4) Has been convicted, within 10 years before the
6 date of the application, renewal or review, of any crime
7 involving fraud or deceit.

8 (5) Has been found by any court or agency, within
9 10 years before the date of the application, renewal, or
10 review, to have engaged in any activity involving fraud
11 or deceit.

12 (b) The Secretary of State may not enter a final order
13 denying, suspending, or revoking the registration of a
14 business broker without prior notice to all interested
15 parties, opportunity for a hearing and written findings of
16 fact and conclusions of law. The Secretary of State may by
17 summary order deny, suspend, or revoke a registration pending
18 final determination of any proceeding under this Section.
19 Upon the entry of a summary order, the Secretary of State
20 shall promptly notify all interested parties that it has been
21 entered, of the reasons for the summary order and, that upon
22 receipt by the Secretary of State of a written request from a
23 party, the matter will be set for hearing which shall be
24 conducted in accordance with the provisions of the Illinois
25 Administrative Procedure Act. If no hearing is requested
26 within 30 days of the date of entry of the order and none is
27 ordered by the Secretary of State, the respondent's failure
28 to request a hearing shall constitute an admission of any
29 facts alleged therein and shall constitute a sufficient basis
30 to make the order final and it shall remain remains in effect
31 until it is modified or vacated by the Secretary of State.
32 If a hearing is requested or ordered, the Secretary of State,
33 after notice of the hearing has been given to all interested
34 persons and the hearing has been held, may modify or vacate

1 the order or extend it until final determination.

2 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

3 (815 ILCS 307/10-45)

4 Sec. 10-45. Powers of Secretary of State; privilege
5 against self-incrimination; admissibility into evidence.

6 (a) The Secretary of State may do the following:

7 (1) Adopt rules and regulations to implement this
8 Act.

9 (2) Conduct investigations and examinations:

10 (A) In connection with any application for
11 registration of any business broker or any
12 registration already granted; or

13 (B) Whenever it appears to the Secretary of
14 State, upon the basis of a complaint or information,
15 that reasonable grounds exist for the belief that an
16 investigation or examination is necessary or
17 advisable for the more complete protection of the
18 interests of the public.

19 (3) Charge as costs of investigation or examination
20 all reasonable expenses, including a per diem prorated
21 upon the salary of any employee and actual traveling and
22 hotel expenses. All reasonable expenses are to be paid
23 by the party or parties under investigation or
24 examination.

25 (4) Issue notices and orders, including cease and
26 desist notices and orders, after making an investigation
27 or examination under paragraph (2) of subsection (a) of
28 this Section. The Secretary of State may also bring an
29 action to prohibit a person from violating this Act. The
30 Secretary of State shall notify the person that an order
31 or notice has been issued, the reasons for it and that a
32 hearing will be set in accordance with the provisions of
33 the Illinois Administrative Procedure Act after the

1 Secretary of State receives a written request from the
2 person requesting a hearing.

3 (5) Sign all orders, official certifications,
4 documents or papers issued under this Act or delegate the
5 authority to sign any of those items to his or her
6 designee.

7 (6) Hold and conduct hearings.

8 (7) Hear evidence.

9 (8) Conduct inquiries with or without hearings.

10 (9) Receive reports of investigators or other
11 officers or employees of the State of Illinois or any
12 municipal corporation or governmental subdivision within
13 the State.

14 (10) (Blank). ~~Administer oaths or cause them to be~~
15 ~~administered.~~

16 (11) (Blank). ~~Subpoena witnesses and compel them to~~
17 ~~attend and testify.~~

18 (12) (Blank). ~~Compel the production of books,~~
19 ~~records and other documents.~~

20 (13) Order depositions to be taken of any witness
21 residing within or without the State. The depositions
22 shall be taken in the manner prescribed by law for
23 depositions in civil actions and made returnable to the
24 Secretary of State.

25 (14) For the purposes of all investigations,
26 audits, examinations, or inspections which in the opinion
27 of the Secretary of State are necessary and proper for
28 the enforcement of this Act, the Secretary of State or a
29 person designated by him or her is empowered to
30 administer oaths and affirmations, subpoena witnesses,
31 take evidence, and require by subpoena or other lawful
32 means provided by this law or such rules and regulations
33 adopted by the Secretary of State the production of any
34 books and records, papers, or other documents that the

1 Secretary of State or a person designated by him or her
2 deems relevant or material to the injury.

3 (b) If any person refuses to obey a subpoena issued
4 under this Act, the Secretary of State may make application
5 to any court of competent jurisdiction to order the person to
6 appear before the Secretary of State and produce documentary
7 evidence or give evidence as directed in the subpoena. The
8 failure to obey the order of the court shall be subject to
9 punishment by the court as contempt of court.

10 (c) No person shall be excused from complying with a
11 subpoena on the ground that the testimony or evidence
12 required may tend to incriminate the person or subject the
13 person to a penalty or forfeiture. No individual may be
14 prosecuted or subject to any penalty or forfeiture for or on
15 account of any transaction, matter or thing which the
16 individual is compelled to testify or produce evidence, after
17 claiming the privilege against self-incrimination. However,
18 the individual so testifying shall not be exempt from
19 prosecution and punishment for perjury committed in so
20 testifying.

21 (d) In any prosecution, action, suit or proceeding based
22 upon or arising out of this Act, the Secretary of State may
23 sign a certificate showing compliance or non-compliance with
24 this Act by any business broker. This shall constitute prima
25 facie evidence of compliance or non-compliance with this Act
26 and shall be admissible in evidence in any court to enforce
27 this Act.

28 (e) Whenever it shall appear to the Secretary of State
29 that any person is engaged or about to engage in any acts or
30 practices which constitute or will constitute a violation of
31 this Act, or of any rule or regulation prescribed under
32 authority of this Act, the Secretary of State may at his or
33 her discretion, through the Attorney General:

34 (1) File a complaint and apply for a temporary

1 restraining order without notice, and upon a proper
2 showing the court may enter a temporary restraining order
3 without a bond, to enforce this Act.

4 (2) File a complaint and apply for a preliminary or
5 permanent injunction, and, after notice and hearing and
6 upon a proper showing, the court may grant a preliminary
7 or permanent injunction and may order the defendant to
8 make an offer of rescission with respect to any contract
9 for business brokerage services determined by the court
10 to be unlawful under this Act.

11 (f) The court shall further have jurisdiction and
12 authority, in addition to the penalties and other remedies in
13 this Act provided, to enter an order for the appointment of
14 the court or a person as a receiver, conservator, ancillary
15 receiver or ancillary conservator for the defendant or the
16 defendant's assets located in this State, or to require
17 restitution or damages on behalf of the person or persons
18 injured by the act or practice constituting the subject
19 matter of the action, and may assess costs against the
20 defendant for the use of the State.

21 (g) No provision of this Act imposing liability shall
22 apply to any act done or omitted in good faith in conformity
23 with any rule of the Secretary of State under this Act,
24 notwithstanding that such rule may, after such act or
25 omission, be amended or rescinded or be determined by
26 judicial or other authority to be invalid for any reason.

27 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

28 (815 ILCS 307/10-50)

29 Sec. 10-50. Certified copies of documents or records
30 admissible in actions or proceedings under this Act.

31 (a) Copies of any statement or document filed with the
32 Secretary of State, and copies of any records of the
33 Secretary of State, certified to by the Secretary of State

1 are admissible in any prosecution, action, suit or proceeding
2 based upon, or arising out of or under, the provisions of
3 this Act to the same effect as the original of the statement,
4 document or record would be if actually produced.

5 (b) In any action, administrative, civil, or criminal, a
6 certificate under the seal of the State of Illinois, signed
7 by the Secretary of State, attesting to the filing of or the
8 absence of any filing of any document or record with the
9 Secretary of State under this Act, shall constitute prima
10 facie evidence of such filing or of the absence of the
11 filing, and shall be admissible in evidence in any
12 administrative, criminal, or civil action.

13 (c) Any certificate pursuant to subsection (a) or (b) of
14 this Section shall be furnished by the Secretary of State
15 upon an application therefor in the form and manner
16 prescribed by the Secretary of State by rule, and shall be
17 accompanied by payment of a non-refundable certification fee
18 in the amount specified by rule or by order of the Secretary
19 of State.

20 (Source: P.A. 89-209, eff. 1-1-96.)

21 (815 ILCS 307/10-55)

22 Sec. 10-55. Violations; administrative fines;
23 enforcement.

24 (a) If the Secretary of State determines, after notice
25 and opportunity for a hearing, that a person has violated
26 this Act, the Secretary of State may in addition to all other
27 remedies, impose an administrative fine upon the person in an
28 amount not to exceed \$10,000 for each violation.

29 (b) The Secretary of State may bring an action in the
30 circuit court of Sangamon or Cook county to enforce payment
31 of fines imposed under this Section.

32 (c) If the Secretary of State shall find that any person
33 has violated any provision of this Act, the Secretary of

1 State may, by written order temporarily or permanently
2 prohibit or suspend such person from acting as a business
3 broker.

4 (d) If the Secretary of State shall find, after notice
5 and opportunity for hearing, that any person is acting or has
6 acted as a business broker as defined in Section 10-5.10 of
7 this Act, without prior thereto or at the time thereof having
8 complied with the registration requirements of this Act, the
9 Secretary of State may by written order prohibit or suspend
10 such person from acting as a business broker in this State.

11 (e) Anything herein contained to the contrary
12 notwithstanding, the Secretary of State may temporarily
13 prohibit or suspend, for a maximum period of 90 days, by an
14 order effective immediately, the registration of a business
15 broker or the business of providing business brokerage
16 services, without notice and prior hearing, if the Secretary
17 of State shall in his or her opinion, based upon credible
18 evidence, deem it necessary to prevent an imminent violation
19 of this Act or to prevent losses to clients which the
20 Secretary of State reasonably believes will occur as a result
21 of a prior violation of this Act. Immediately after taking
22 action without such notice and hearing, the Secretary of
23 State shall deliver a copy of the temporary order to the
24 respondent named therein by personal service or registered
25 mail or certified mail, return receipt requested. The
26 temporary order shall set forth the grounds for the action
27 and shall advise that the respondent may request a hearing as
28 ~~seen-as--reasonably--practicable,~~ that the request for a
29 hearing will not stop the effectiveness of the temporary
30 order and that respondent's failure to request a hearing
31 within 30 days after the date of the entry of the temporary
32 order, shall constitute an admission of any facts alleged
33 therein and shall make the temporary order final. A business
34 broker whose registration has been suspended pursuant to this

1 Section may request the Secretary of State permission to
2 continue to receive payment for any executory contracts at
3 the time of any suspension and to continue to perform its
4 obligation thereunder. The decision to grant or deny
5 permission to receive payment for any executory contracts or
6 perform any obligation thereunder shall be at the sole
7 discretion of the Secretary of State and shall not be subject
8 to review under the Administrative Review Law.

9 (f) The Secretary of State may issue a temporary order
10 suspending or delaying the effectiveness of any registration
11 of a business broker under this Act subsequent to and upon
12 the basis of the issuance of any stop, suspension or similar
13 order by any agency of the United States regulating business
14 brokers or any state or federal courts with respect to the
15 person who is the subject of the registration under this Act,
16 and such order shall become effective as of the date and time
17 of effectiveness of the agency or court order and shall be
18 vacated automatically at such time as the order of the agency
19 or court order is no longer in effect.

20 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

21 (815 ILCS 307/10-85)

22 Sec. 10-85. Fraudulent and prohibited acts.

23 (a) A business broker shall not, in connection with a
24 contract for the services of a business broker, either
25 directly or indirectly, do any of the following:

26 (1) Employ any device, scheme or artifice to
27 defraud.

28 (2) Make any untrue statements of a material fact
29 or omit to state a material fact necessary in order to
30 make the statements made, in the light of circumstances
31 under which they are made, not misleading, unless the
32 statement is made in reasonable reliance on information
33 provided by the client.

1 (3) Engage in any act, practice or course of
2 business that operates or would operate as a fraud or
3 deceit upon any person.

4 (b) A business broker shall not either directly or
5 indirectly do the following:

6 (1) Engage in the business of acting as a business
7 broker without registration under this Act unless exempt
8 under the Act.

9 (2) Fail to file with the Secretary of State any
10 application, report, document, or answer required to be
11 filed under the provisions of this Act or any rule made
12 by the Secretary of State pursuant to this Act or fail to
13 comply with the terms of any order issued pursuant to
14 this Act or rule or made by the Secretary of State.

15 (3) Fail to maintain any records as required under
16 the provisions of this Act or any rule made by Secretary
17 of State pursuant to this Act.

18 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

19 (815 ILCS 307/10-125 new)

20 Sec. 10-125. Service of process.

21 (a) An person acting as a business broker, unless exempt
22 from registration under this Act, shall constitute an
23 appointment of the Secretary of State, or his or her
24 successors in Office, by the person to be the true and
25 lawful attorney for the person upon whom may be served all
26 lawful process in any action or proceeding against the
27 person, arising out of his or her activities as a business
28 broker.

29 (b) Service of process under this Section shall be made
30 by serving a copy upon the Secretary of State or any employee
31 in his or her Office designated by the Secretary of State to
32 accept such service for him or her, provided notice of such
33 and a copy of the process are, within 10 days of receipt,

1 sent by registered mail or certified mail, return receipt
 2 requested, by the plaintiff to the defendant, at the last
 3 known address of the defendant. The filing fee for service
 4 of process under this Section is non-refundable and is the
 5 amount established in Section 10-25 of this Act. The
 6 Secretary of State shall keep a record of all such processes
 7 that shall show the day of the service.

8 Section 20. The Business Opportunity Sales Law of 1995
 9 is amended by changing Sections 5-5.05, 5-5.10, 5-5.15,
 10 5-5.30, 5-20, 5-30, 5-35, 5-60, 5-65, 5-95, and by adding
 11 Section 5-145 as follows:

12 (815 ILCS 602/5-5.05)

13 Sec. 5-5.05. Advertising. "Advertising" means any
 14 circular, prospectus, advertisement or other material or any
 15 electronic communication including, but not limited to, by
 16 radio, television, pictures or similar means used in
 17 connection with an offer or sale of any business opportunity.
 18 (Source: P.A. 89-209, eff. 1-1-96.)

19 (815 ILCS 602/5-5.10)

20 Sec. 5-5.10. Business opportunity.

21 (a) "Business opportunity" means a contract or
 22 agreement, between a seller and purchaser, express or
 23 implied, orally or in writing, wherein it is agreed that the
 24 seller or a person recommended by the seller shall provide to
 25 the purchaser any product, equipment, supplies or services
 26 enabling the purchaser to start a business when the purchaser
 27 is required to make a payment to the seller or a person
 28 recommended by the seller and the seller represents directly
 29 or indirectly, orally or in writing, any of the following,
 30 that:

31 (1) the seller or a person recommended by the

1 seller will provide or assist the purchaser in finding
2 locations for the use or operation of vending machines,
3 racks, display cases or other similar devices, on
4 premises neither owned nor leased by the purchaser or
5 seller;

6 (2) the seller or a person recommended by the
7 seller will provide or assist the purchaser in finding
8 outlets or accounts for the purchaser's products or
9 services;

10 (3) the seller or a person specified by the seller
11 will purchase any or all products made, produced,
12 fabricated, grown, bred or modified by the purchaser;

13 (4) the seller guarantees that the purchaser will
14 derive income from the business which exceeds the price
15 paid to the seller;

16 (5) the seller will refund all or part of the price
17 paid to the seller, or repurchase any of the products,
18 equipment or supplies provided by the seller or a person
19 recommended by the seller, if the purchaser is
20 dissatisfied with the business; or

21 (6) the seller will provide a marketing plan,
22 provided that this Law shall not apply to the sale of a
23 marketing plan made in conjunction with the licensing of
24 a federally registered trademark or federally registered
25 service mark.

26 (b) "Business opportunity" does not include:

27 (1) any offer or sale of an ongoing business
28 operated by the seller and to be sold in its entirety;

29 (2) any offer or sale of a business opportunity to
30 an ongoing business where the seller will provide
31 products, equipment, supplies or services which are
32 substantially similar to the products, equipment,
33 supplies or services sold by the purchaser in connection
34 with the purchaser's ongoing business;

1 (3) any offer or sale of a business opportunity
2 which is a franchise as defined by the Franchise
3 Disclosure Act of 1987;

4 (4) any offer or sale of a business opportunity
5 which is registered pursuant to the Illinois Securities
6 Law of 1953;

7 (5) (blank);

8 (6) any offer or sale of a business opportunity by
9 an executor, administrator, sheriff, marshal, receiver,
10 trustee in bankruptcy, guardian or conservator or a
11 judicial offer or sale, of a business opportunity; or

12 (7) cash payments made by a purchaser not exceeding
13 \$500 and the payment is made for the not-for-profit sale
14 of sales demonstration equipment, material or samples, or
15 the payment is made for product inventory sold to the
16 purchaser at a bona fide wholesale price.

17 (Source: P.A. 90-70, eff. 7-8-97; 91-357, eff. 7-29-99;
18 91-809, eff. 1-1-01.)

19 (815 ILCS 602/5-5.15)

20 Sec. 5-5.15. Marketing plan. "Marketing plan" means
21 advice or training, provided to the purchaser by the seller
22 or a person recommended by the seller, pertaining
23 specifically to the sale of any enterprise, product,
24 equipment, supplies or services and the advice or training
25 includes, without limitation ~~but-is-not-limited-to~~, preparing
26 or providing:

27 (1) Promotional literature, brochures, pamphlets, or
28 advertising materials;

29 (2) Training, regarding the promotion, operation or
30 management of the business opportunity; or

31 (3) Operational, managerial, ~~technical~~ or financial
32 guidelines or assistance or continuing technical support.

33 (Source: P.A. 89-209, eff. 1-1-96.)

1 (815 ILCS 602/5-5.30)

2 Sec. 5-5.30. Person. "Person" means an individual,
3 corporation, trust, partnership, a joint stock company,
4 limited liability partnership, limited liability company,
5 incorporated or unincorporated association or any other
6 entity.

7 (Source: P.A. 89-209, eff. 1-1-96.)

8 (815 ILCS 602/5-20)

9 Sec. 5-20. Burden of proof and evidentiary matters.

10 (a) In any administrative, civil, or criminal proceeding
11 related to this Law, the burden of proving an exemption, an
12 exception from a definition or an exclusion from this Law is
13 upon the person claiming it.

14 (b) In any action, administrative, civil, or criminal, a
15 certificate under the seal of the State of Illinois, signed
16 by the Secretary of State, attesting to the filing of or the
17 absence of any filing of any document or record with the
18 Secretary of State under this Act, shall constitute prima
19 facie evidence of such filing or of the absence of the
20 filing, and shall be admissible in evidence in any
21 administrative, criminal, or civil action.

22 (c) In any administrative, civil, or criminal action,
23 the Secretary of State may issue a certificate under the
24 seal of the State of Illinois, signed by the Secretary of
25 State, showing that any document or record is a true and
26 exact copy, photocopy or otherwise, of the record or document
27 on file with the Secretary of State under this Act; and such
28 certified document or record shall be admissible in evidence
29 with the same effect as the original document or record would
30 have if actually produced.

31 (d) Any certificate pursuant to subsection (b) or (c) of
32 this Section shall be furnished by the Secretary of State
33 upon an application therefor in the form and manner

1 prescribed by the Secretary of State by rule, and shall be
2 accompanied by payment of a non-refundable certification fee
3 in the amount specified by rule or by order of the Secretary
4 of State.

5 (Source: P.A. 89-209, eff. 1-1-96.)

6 (815 ILCS 602/5-30)

7 Sec. 5-30. Registration.

8 (a) In order to register a business opportunity, the
9 seller shall file with the Secretary of State one of the
10 following disclosure documents with the appropriate cover
11 sheet as required by subsection (b) of Section 5-35 of this
12 Law, a consent to service of process as specified in
13 subsection (b) of this Section, and the appropriate fee as
14 required by subsection (c) of this Section which is not
15 returnable in any event:

16 (1) The Franchise Offering Circular which the
17 Secretary of State may prescribe by rule or regulation;
18 or

19 (2) A disclosure document prepared pursuant to the
20 Federal Trade Commission rule entitled Disclosure
21 Requirements and Prohibitions Concerning Franchising and
22 Business Opportunity Venture, 16 C.F.R. Sec. 436 (1979).
23 The Secretary of State may by rule or regulation adopt
24 any amendment to the disclosure document prepared
25 pursuant to 16 C.F.R. Sec. 436 (1979), that has been
26 adopted by the Federal Trade Commission; or

27 (3) A disclosure document prepared pursuant to
28 subsection (b) of Section 5-35 of this Law.

29 (b) Every seller shall file, in the form as the
30 Secretary of State may prescribe, an irrevocable consent
31 appointing the Secretary of State or the successor in office
32 to be the seller's attorney to receive service of any lawful
33 process in any noncriminal suit, action or proceeding against

1 the seller or the seller's successor, executor or
2 administrator which arises under this Law after the consent
3 has been filed, with the same force and validity as if served
4 personally on the person filing the consent. Service may be
5 made by delivering a copy of the process in the office of the
6 Secretary of State, but is not effective unless the
7 plaintiff or petitioner in a suit, action or proceeding,
8 forthwith sends notice of the service and a copy of the
9 process by registered or certified mail, return receipt
10 requested, to the defendant's or respondent's most current
11 address on file with the Secretary of State, and the
12 plaintiff's affidavit of compliance with this subsection is
13 filed in the case on or before the return date of the
14 process, if any, or within such further time as the court
15 allows.

16 (c)(1) The Secretary of State shall by rule or
17 regulation impose and shall collect fees necessary for
18 the administration of this Law including, but not limited
19 to, fees for the following purposes:

20 (A) filing a disclosure document and renewal
21 fee;

22 (B) interpretive opinion fee;

23 (C) acceptance of service of process pursuant
24 to subsection (b) of Section 5-145;

25 (D) issuance of certification pursuant to
26 Section 5-20; or

27 (E) late registration fee pursuant to Section
28 5-30(g).

29 (2) The Secretary of State may, by rule or
30 regulation, raise or lower any fee imposed by, and which
31 he or she is authorized by law to collect under this Law.

32 (d) A registration automatically becomes effective upon
33 the expiration of the 10th full business day after a complete
34 filing, provided that no order has been issued or proceeding

1 pending under Section 5-45 of this Law. The Secretary of
2 State may by order waive or reduce the time period prior to
3 effectiveness, provided that a complete filing has been made.
4 The Secretary of State may by order defer the effective date
5 until the expiration of the 10th full business day after the
6 filing of any amendment.

7 (e) The registration is effective for one year
8 commencing on the date of effectiveness and may be renewed
9 annually upon the filing of a current disclosure document
10 accompanied by any documents or information that the
11 Secretary of State may by rule or regulation or order
12 require. The annual renewal fee shall be in the same amount
13 as the initial registration fee as established under
14 subsection (c) of Section 5-30 of this Law which shall not be
15 returnable in any event. Failure to renew upon the close of
16 the one year period of effectiveness will result in
17 expiration of the registration. The Secretary of State may by
18 rule or regulation or order require the filing of a sales
19 report.

20 (f) The Secretary of State may by rule or regulation or
21 order require the filing of all proposed literature or
22 advertising prior to its use.

23 (g) Notwithstanding the foregoing, applications for
24 renewal of registration of business opportunities may be
25 filed within 30 days following the expiration of the
26 registration provided that the applicant pays the annual
27 registration fee together with an additional amount equal to
28 the annual registration fee and files any other information
29 or documents that the Secretary of State may prescribe by
30 rule or order. Any application filed within 30 days
31 following the expiration of the registration shall be
32 automatically effective as of the time of the earlier
33 expiration provided that the proper fee has been paid to the
34 Secretary of State.

1 (Source: P.A. 89-209, eff. 1-1-96.)

2 (815 ILCS 602/5-35)

3 Sec. 5-35. Disclosure requirements.

4 (a) It shall be unlawful for any person to offer or,
5 sell any business opportunity required to be registered under
6 this Law unless a written disclosure document as filed under
7 subsection (a) of Section 5-30 of this Law is delivered to
8 each purchaser at least 10 business days prior to the
9 execution by a purchaser of any contract or agreement
10 imposing a binding legal obligation on the purchaser or the
11 payment by a purchaser of any consideration in connection
12 with the offer or sale of the business opportunity.

13 (b) The disclosure document shall have a cover sheet
14 which is entitled, in at least 10-point bold type,
15 "DISCLOSURE REQUIRED BY THE STATE OF ILLINOIS." Under the
16 title shall appear the statement in at least 10-point bold
17 type that "THE REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES
18 NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE
19 STATE OF ILLINOIS. THE INFORMATION CONTAINED IN THIS
20 DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF
21 YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT,
22 SEEK PROFESSIONAL ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE
23 ANY PAYMENT. YOU ARE TO BE PROVIDED 10 BUSINESS DAYS TO
24 REVIEW THIS DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT
25 OR MAKING ANY PAYMENT TO THE SELLER OR THE SELLER'S
26 REPRESENTATIVE". The seller's name and principal business
27 address, along with the date of the disclosure document shall
28 also be provided on the cover sheet. No other information
29 shall appear on the cover sheet. The disclosure document
30 shall contain the following information unless the seller
31 uses a disclosure document as provided in paragraph (1) or
32 (2) of subsection (a) of Section 5-30 of this Law:

33 (1) The names and residential addresses of those

1 salespersons who will engage in the offer or sale of the
2 business opportunity in this State.

3 (2) The name of the seller, whether the seller is
4 doing business as an individual, partnership or
5 corporation; the names under which the seller has
6 conducted, is conducting or intends to conduct business;
7 and the name of any parent or affiliated company that
8 will engage in business transactions with purchasers or
9 which will take responsibility for statements made by the
10 seller.

11 (3) The names, addresses and titles of the seller's
12 officers, directors, trustees, general managers,
13 principal executives, agents, and any other persons
14 charged with responsibility for the seller's business
15 activities relating to the sale of the business
16 opportunity.

17 (4) Prior business experience of the seller
18 relating to business opportunities including:

19 (A) The name, address, and a description of
20 any business opportunity previously offered by the
21 seller;

22 (B) The length of time the seller has offered
23 each such business opportunity; and

24 (C) The length of time the seller has
25 conducted the business opportunity currently being
26 offered to the purchaser.

27 (5) With respect to persons identified in item (3)
28 of this subsection:

29 (A) A description of the persons' business
30 experience for the 10 year period preceding the
31 filing date of this disclosure document. The
32 description of business experience shall list
33 principal occupations and employers; and

34 (B) A listing of the persons' educational and

1 professional backgrounds including, the names of
2 schools attended and degrees received, and any other
3 information that will demonstrate sufficient
4 knowledge and experience to perform the services
5 proposed.

6 (6) Whether the seller or any person identified in
7 item (3) of this subsection:

8 (A) Has been convicted of any felony, or
9 pleaded nolo contendere to a felony charge, or has
10 been the subject of any criminal, civil or
11 administrative proceedings alleging the violation of
12 any business opportunity law, securities law,
13 commodities law, franchise law, fraud or deceit,
14 embezzlement, fraudulent conversion, restraint of
15 trade, unfair or deceptive practices,
16 misappropriation of property or comparable
17 allegations;

18 (B) Has filed in bankruptcy, been adjudged
19 bankrupt, been reorganized due to insolvency, or was
20 an owner, principal officer or general partner or
21 any other person that has so filed or was so
22 adjudged or reorganized during or within the last 7
23 years.

24 (7) The name of the person identified in item (6)
25 of this subsection, nature of and parties to the action
26 or proceeding, court or other forum, date of the
27 institution of the action, docket references to the
28 action, current status of the action or proceeding, terms
29 and conditions or any order or decree, the penalties or
30 damages assessed and terms of settlement.

31 (8) The initial payment required, or when the exact
32 amount cannot be determined, a detailed estimate of the
33 amount of the initial payment to be made to the seller.

34 (9) A detailed description of the actual services

1 the seller agrees to perform for the purchaser.

2 (10) A detailed description of any training the
3 seller agrees to provide for the purchaser.

4 (11) A detailed description of services the seller
5 agrees to perform in connection with the placement of
6 equipment, products or supplies at a location, as well as
7 any agreement necessary in order to locate or operate
8 equipment, products or supplies on a premises neither
9 owned nor leased by the purchaser or seller.

10 (12) A detailed description of any license or
11 permit that will be necessary in order for the purchaser
12 to engage in or operate the business opportunity.

13 (13) The business opportunity seller that is
14 required to secure a bond under Section 5-50 of this Law,
15 shall state in the disclosure document "As required by
16 the State of Illinois, the seller has secured a bond
17 issued by (insert name and address of surety company), a
18 surety company, authorized to do business in this State.
19 Before signing a contract or agreement to purchase this
20 business opportunity, you should check with the surety
21 company to determine the bond's current status.".

22 (14) Any representations made by the seller to the
23 purchaser concerning sales or earnings that may be made
24 from this business opportunity, including, but not
25 limited to:

26 (A) The bases or assumptions for any actual,
27 average, projected or forecasted sales, profits,
28 income or earnings;

29 (B) The total number of purchasers who, within
30 a period of 3 years of the date of the disclosure
31 document, purchased a business opportunity involving
32 the product, equipment, supplies or services being
33 offered to the purchaser; and

34 (C) The total number of purchasers who, within

1 3 years of the date of the disclosure document,
2 purchased a business opportunity involving the
3 product, equipment, supplies or services being
4 offered to the purchaser who, to the seller's
5 knowledge, have actually received earnings in the
6 amount or range specified.

7 (15) Any seller who makes a guarantee to a
8 purchaser shall give a detailed description of the
9 elements of the guarantee. Such description shall
10 include, but shall not be limited to, the duration,
11 terms, scope, conditions and limitations of the
12 guarantee.

13 (16) A statement of:

14 (A) The total number of business opportunities
15 that are the same or similar in nature to those that
16 have been sold or organized by the seller;

17 (B) The names and addresses of purchasers who
18 have requested a refund or rescission from the
19 seller within the last 12 months and the number of
20 those who have received the refund or rescission;
21 and

22 (C) The total number of business opportunities
23 the seller intends to sell in this State within the
24 next 12 months.

25 (17) A statement describing any contractual
26 restrictions, prohibitions or limitations on the
27 purchaser's conduct. Attach a copy of all business
28 opportunity and other contracts or agreements proposed
29 for use or in use in this State including, without
30 limitation, all lease agreements, option agreements, and
31 purchase agreements.

32 (18) The rights and obligations of the seller and
33 the purchaser regarding termination of the business
34 opportunity contract or agreement.

1 (19) A statement accurately describing the grounds
2 upon which the purchaser may initiate legal action to
3 terminate the business opportunity contract or agreement.

4 (20) A copy of the most recent audited financial
5 statement of the seller, prepared within 13 months of the
6 first offer in this State, together with a statement of
7 any material changes in the financial condition of the
8 seller from that date. The Secretary of State may accept
9 the filing of a reviewed financial statement in lieu of
10 an audited financial statement ~~allow-the-seller-to-submit~~
11 ~~a--limited-review-in-order-to-satisfy-the-requirements-of~~
12 ~~this-subsection.~~

13 (21) A list of the states in which this business
14 opportunity is registered.

15 (22) A list of the states in which this disclosure
16 document is on file.

17 (23) A list of the states which have denied,
18 suspended or revoked the registration of this business
19 opportunity.

20 (24) A section entitled "Risk Factors" containing a
21 series of short concise statements summarizing the
22 principal factors which make this business opportunity a
23 high risk or one of a speculative nature. Each statement
24 shall include a cross-reference to the page on which
25 further information regarding that risk factor can be
26 found in the disclosure document.

27 (25) Any additional information as the Secretary of
28 State may require by rule, regulation, or order.

29 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

30 (815 ILCS 602/5-60)

31 Sec. 5-60. Investigations and subpoenas.

32 (a) The Secretary of State:

33 (1) may make such public or private investigations

1 within or outside of this State as the Secretary of State
2 deems necessary to determine whether any person has
3 violated or is about to violate any provision of this Law
4 or any rule, regulation, or order under this Law, or to
5 aid in the enforcement of this Law or in the prescribing
6 of rules and forms under this Law;

7 (2) may require or permit any person to file a
8 statement, under oath or otherwise as the Secretary of
9 State determines, as to all the facts and circumstances
10 concerning the matter to be investigated; and

11 (3) may publish information concerning any
12 violation of this Law or any rule, regulation, or order
13 under this Law.

14 (b) For the purpose of any investigation or proceeding
15 under this Law, the Secretary of State or his or her designee
16 may administer oaths and affirmations, subpoena witnesses,
17 compel their attendance, take evidence and require, by
18 subpoena or other lawful means provided by this Act or the
19 rules adopted by the Secretary of State, the production of
20 any books, papers, correspondence, memoranda, agreements, or
21 other documents or records which the Secretary of State deems
22 relevant or material to the inquiry.

23 (c) In case of contumacy by, or refusal to obey a
24 subpoena issued to any person, through the Office of the
25 Attorney General may bring an appropriate action in any
26 circuit court of the State of Illinois for the purpose of
27 enforcing the subpoena.

28 (d) It shall be a violation of the provisions of this
29 Law for any person to fail to file with the Secretary of
30 State any report, document, or statement required to be filed
31 under the provisions of this Section or to fail to comply
32 with the terms of any order of the Secretary of State issued
33 pursuant to this Law.

34 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

1 (815 ILCS 602/5-65)

2 Sec. 5-65. Remedies. Whenever it appears to the Secretary
3 of State that any person has engaged in or is about to engage
4 in any act or practice constituting a violation of any
5 provision of this Law or any rule, regulation, or order under
6 this Law, the Secretary of State may:

7 (1) Issue an order, anything contained in this Law
8 to the contrary notwithstanding, directing the person to
9 cease and desist from continuing the act or practice. Any
10 person named in a cease and desist order issued by the
11 Secretary of State may, within 30 days after the date of
12 the entry of the order, file a written request for a
13 hearing with the Secretary of State. If the Secretary of
14 State does not receive a written request for a hearing
15 within the time specified, the cease and desist order
16 will be permanent and the person named in the order will
17 be deemed to have waived all rights to a hearing. If a
18 hearing is requested, the order will remain in force
19 until it is modified, vacated, rescinded or expunged by
20 the Secretary of State.

21 (1.5) Prohibit or suspend the offer or sale of any
22 business opportunity, prohibit or suspend any person
23 from offering or selling any business opportunities,
24 impose any fine for violation of this Law, issue an order
25 of public censure, or enter into an agreed settlement or
26 stipulation. No such order may be entered without
27 appropriate prior notice to all interested parties,
28 opportunity for hearing, and written findings of fact and
29 conclusions of law.

30 (2) Bring an action in the circuit court of any
31 county to enjoin the acts or practices and to enforce
32 compliance with this Law or any rule, regulation, or
33 order under this Law. Upon a proper showing a permanent
34 or temporary injunction, restraining order, or writ of

1 mandamus shall be granted and a receiver or conservator
2 may be appointed for the defendant or the defendant's
3 assets or the court may order rescission, which shall
4 include restitution plus the legal interest rate, for any
5 sales of business opportunities determined to be unlawful
6 under this Law or any rule, regulation, or order under
7 this Law. The court shall not require the Secretary of
8 State to post a bond.

9 (3) The Secretary of State may refer such evidence
10 as may be available concerning violations of this Law or
11 any rule, regulation, or order under this Law to the
12 Attorney General or the appropriate State's Attorney, who
13 may, with or without such a reference, institute the
14 appropriate proceedings under this Section.

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

24 (5) Notwithstanding the foregoing, the Secretary of
25 State, after notice and opportunity for hearing, may at
26 his or her discretion enter into an agreed settlement,
27 stipulation, or consent order with a respondent in
28 accordance with the provisions of the Illinois
29 Administrative Procedure Act. The provisions of the
30 agreed settlement, stipulation, or consent order shall
31 have the full force and effect of an order issued by the
32 Secretary of State.

33 (6) The action of the Secretary of State in
34 denying, suspending, or revoking the registration of a

1 business opportunity, in prohibiting or suspending a
 2 person from offering or selling business opportunities,
 3 in prohibiting or suspending the offer or sale of
 4 business opportunities, in imposing any fine for
 5 violation of this Law, or in issuing any order shall be
 6 subject to judicial review under the Administrative
 7 Review Law which shall apply to and govern every action
 8 for the judicial review of final actions or decisions of
 9 the Secretary of State under this Law.

10 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

11 (815 ILCS 602/5-95)

12 Sec. 5-95. Fraudulent and prohibited practices.

13 (a) It is unlawful for any person, in connection with
 14 the offer or sale of any business opportunity in this State
 15 or any offer or sale pursuant to the exemptions granted under
 16 subdivisions 5-10(a), (c), (d), or (h), directly or
 17 indirectly:

18 (1) To employ any device, scheme or artifice to
 19 defraud;

20 (2) To make any untrue statement of a material fact
 21 or to omit to state a material fact necessary in order to
 22 make the statements made, in the light of the
 23 circumstances under which they are made, not misleading;
 24 or

25 (3) To engage in any act, practice or course of
 26 business which operates or would operate as a fraud or
 27 deceit upon any person.

28 (b) No person shall, either directly or indirectly, do
 29 any of the following:

30 (1) offer or sell any business opportunity without
 31 registration under this Act unless the person offering or
 32 selling the opportunity is exempt under the Act;

33 (2) fail to file with the Secretary of State any

1 application, report, document, or answer required to be
2 filed under the provisions of this Act or any rule made
3 by the Secretary of State pursuant to this Act or fail to
4 comply with the terms of any order issued pursuant to
5 this Act or any rules adopted by the Secretary of State;
6 or

7 (3) fail to keep or maintain any records as is
8 required under the provisions of this Act or any rule
9 adopted by the Secretary of State pursuant to this Act.

10 (Source: P.A. 89-209, eff. 1-1-96; 90-70, eff. 7-8-97.)

11 (815 ILCS 602/5-145 new)

12 Sec. 5-145. Service of process.

13 (a) The offer or sale of business opportunities in this
14 State by any person, unless exempt from registration under
15 this Act, shall constitute an appointment of the Secretary of
16 State, or his or her successors in office, by the person to
17 be the true and lawful attorney for the person upon whom may
18 be served all lawful process in any action or proceeding
19 against the person, arising out of the offer or sale of the
20 securities.

21 (b) Service of process under this Section shall be made
22 by serving a copy upon the Secretary of State or any employee
23 in his or her office designated by the Secretary of State to
24 accept such service for him or her, provided notice and a
25 copy of the process are, within 10 days after receiving the
26 notice and process, sent by registered mail or certified
27 mail, return receipt requested, by the plaintiff to the
28 defendant, at the last known address of the defendant. The
29 filing fee for service of process under this Section shall be
30 as established pursuant to Section 5-30 of this Act, and
31 shall not be returnable in any event. The Secretary of State
32 shall keep a record of all processes each of which shall show
33 the day of the service.

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