



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2513

Introduced 2/15/2008, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Banking Act, the Illinois Savings and Loan Act of 1985, the Savings Bank Act, the Illinois Credit Union Act, and the Residential Mortgage License Act of 1987. Defines "Secretary" as the Secretary of Financial and Professional Regulation, or a person authorized by the Secretary or by the Acts to act in the Secretary's stead and changes some provisions to reference the Secretary instead of the Commissioner of Banks and Real Estate or the Director of Financial Institutions. Allows the Secretary to adopt emergency and general rules to adjust regulatory rates in some Acts and decreases regulatory fees in other Acts. Provides that (1) the specified sum shall be transferred from the Bank and Trust Company Fund, the Savings and Residential Finance Regulatory Fund, and the Credit Union Fund to the General Revenue Fund on the effective date of the amendatory Act; (2) the Governor may, during any fiscal year through January 10, 2011, from time to time direct the State Treasurer and Comptroller to transfer a specified sum not exceeding 10% of the revenues to be deposited into the Bank and Trust Company Fund during that fiscal year from that Fund to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year; and (3) the total sum transferred during any fiscal year through January 10, 2011, from the Bank and Trust Company Fund to the General Revenue Fund pursuant to the State Finance Act or any other law shall not exceed during any fiscal year 10% of the revenues to be deposited into the Bank and Trust Company Fund during that fiscal year. Makes other changes. Effective immediately.

LRB095 18312 MJR 44396 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Banking Act is amended by changing
5 Sections 2 and 48 and by adding Section 2.7 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 bank.

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

4 "Court" means a court of competent jurisdiction.

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

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

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

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

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

11 "Foundation" means the Illinois Bank Examiners' Education
12 Foundation.

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

18 "Guarantee" means an undertaking or promise to answer for
19 payment of another's debt or performance of another's duty,
20 liability, or obligation whether "payment guaranteed" or
21 "collection guaranteed".

22 "In danger of default" means a State or national bank, a
23 federally chartered insured savings association or an Illinois
24 state chartered insured savings association with respect to
25 which the Secretary ~~Commissioner~~ or the appropriate federal
26 banking agency has advised the Federal Deposit Insurance

1 Corporation that:

2 (1) in the opinion of the Secretary ~~Commissioner~~ or the
3 appropriate federal banking agency,

4 (A) the State or national bank or insured savings
5 association is not likely to be able to meet the
6 demands of the State or national bank's or savings
7 association's obligations in the normal course of
8 business; and

9 (B) there is no reasonable prospect that the State
10 or national bank or insured savings association will be
11 able to meet those demands or pay those obligations
12 without federal assistance; or

13 (2) in the opinion of the Secretary ~~Commissioner~~ or the
14 appropriate federal banking agency,

15 (A) the State or national bank or insured savings
16 association has incurred or is likely to incur losses
17 that will deplete all or substantially all of its
18 capital; and

19 (B) there is no reasonable prospect that the
20 capital of the State or national bank or insured
21 savings association will be replenished without
22 federal assistance.

23 "In default" means, with respect to a State or national
24 bank or an insured savings association, any adjudication or
25 other official determination by any court of competent
26 jurisdiction, the Secretary ~~Commissioner~~, the appropriate

1 federal banking agency, or other public authority pursuant to
2 which a conservator, receiver, or other legal custodian is
3 appointed for a State or national bank or an insured savings
4 association.

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

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

18 "Issuer" means for purposes of Section 33 every person who
19 shall have issued or proposed to issue any security; except
20 that (1) with respect to certificates of deposit, voting trust
21 certificates, collateral-trust certificates, and certificates
22 of interest or shares in an unincorporated investment trust not
23 having a board of directors (or persons performing similar
24 functions), "issuer" means the person or persons performing the
25 acts and assuming the duties of depositor or manager pursuant
26 to the provisions of the trust, agreement, or instrument under

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

11 "Letter of credit" and "customer" shall have the meanings
12 ascribed to those terms in Section 5-102 of the Uniform
13 Commercial Code.

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

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

21 "Merged bank" means a merging bank that is not the
22 continuing, resulting, or surviving bank in a consolidation or
23 merger.

24 "Merger" includes consolidation.

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

26 "Merging trust company" means a trust company party to a

1 merger with a State bank.

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

7 "Municipality" means any municipality, political
8 subdivision, school district, taxing district, or agency.

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

12 "Out-of-state bank" means a bank chartered under the laws
13 of a state other than Illinois, a territory of the United
14 States, or the District of Columbia.

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

19 "Person" means an individual, corporation, limited
20 liability company, partnership, joint venture, trust, estate,
21 or unincorporated association.

22 "Public agency" means the State of Illinois, the various
23 counties, townships, cities, towns, villages, school
24 districts, educational service regions, special road
25 districts, public water supply districts, fire protection
26 districts, drainage districts, levee districts, sewer

1 districts, housing authorities, the Illinois Bank Examiners'
2 Education Foundation, the Chicago Park District, and all other
3 political corporations or subdivisions of the State of
4 Illinois, whether now or hereafter created, whether herein
5 specifically mentioned or not, and shall also include any other
6 state or any political corporation or subdivision of another
7 state.

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

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

26 "Qualified financial contract" means any security

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

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

15 "Resulting bank" means the bank resulting from a merger or
16 conversion.

17 "Secretary" means the Secretary of Financial and
18 Professional Regulation or a person authorized by the Secretary
19 or by this Act to act in the Secretary's stead.

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

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

25 "State bank" means any banking corporation that has a
26 banking charter issued by the Secretary ~~Commissioner~~ under this

1 Act.

2 "State Banking Board" means the State Banking Board of
3 Illinois.

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

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

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

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

22 "Undivided profits" means undistributed earnings less
23 discretionary transfers to surplus.

24 "Unimpaired capital and unimpaired surplus", for the
25 purposes of paragraph (21) of Section 5 and Sections 32, 33,
26 34, 35.1, 35.2, and 47 of this Act means the sum of the state

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

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

2 (205 ILCS 5/2.7 new)

3 Sec. 2.7. References to Office or Commissioner of Banks and
4 Real Estate. Unless the context requires otherwise:

5 (1) References in this Act to the Office of Banks and
6 Real Estate or "the Office" mean the Department of
7 Financial and Professional Regulation.

8 (2) References in this Act to the Commissioner of Banks
9 and Real Estate or "the Commissioner" mean the Secretary of
10 Financial and Professional Regulation.

11 (205 ILCS 5/48) (from Ch. 17, par. 359)

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

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

1 (2) (a) The Secretary ~~Commissioner~~, as often as the
2 Secretary ~~Commissioner~~ shall deem necessary or proper, and no
3 less frequently than 18 months following the preceding
4 examination, shall appoint a suitable person or persons to make
5 an examination of the affairs of every State bank, except that
6 for every eligible State bank, as defined by regulation, the
7 Secretary ~~Commissioner~~ in lieu of the examination may accept on
8 an alternating basis the examination made by the eligible State
9 bank's appropriate federal banking agency pursuant to Section
10 111 of the Federal Deposit Insurance Corporation Improvement
11 Act of 1991, provided the appropriate federal banking agency
12 has made such an examination. A person so appointed shall not
13 be a stockholder or officer or employee of any bank which that
14 person may be directed to examine, and shall have powers to
15 make a thorough examination into all the affairs of the bank
16 and in so doing to examine any of the officers or agents or
17 employees thereof on oath and shall make a full and detailed
18 report of the condition of the bank to the Secretary
19 ~~Commissioner~~. In making the examination the examiners shall
20 include an examination of the affairs of all the affiliates of
21 the bank, as defined in subsection (b) of Section 35.2 of this
22 Act, or subsidiaries of the bank as shall be necessary to
23 disclose fully the conditions of the subsidiaries or
24 affiliates, the relations between the bank and the subsidiaries
25 or affiliates and the effect of those relations upon the
26 affairs of the bank, and in connection therewith shall have

1 power to examine any of the officers, directors, agents, or
2 employees of the subsidiaries or affiliates on oath. After May
3 31, 1997, the Secretary ~~Commissioner~~ may enter into cooperative
4 agreements with state regulatory authorities of other states to
5 provide for examination of State bank branches in those states,
6 and the Secretary ~~Commissioner~~ may accept reports of
7 examinations of State bank branches from those state regulatory
8 authorities. These cooperative agreements may set forth the
9 manner in which the other state regulatory authorities may be
10 compensated for examinations prepared for and submitted to the
11 Secretary ~~Commissioner~~.

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

23 (2.5) Whenever any State bank, any subsidiary or affiliate
24 of a State bank, or after May 31, 1997, any branch of an
25 out-of-state bank causes to be performed, by contract or
26 otherwise, any bank services for itself, whether on or off its

1 premises:

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

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

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

24 (3) The expense of administering this Act, including the
25 expense of the examinations of State banks as provided in this
26 Act, shall to the extent of the amounts resulting from the fees

1 provided for in paragraphs (a), (a-2), and (b) of this
2 subsection (3) be assessed against and borne by the State
3 banks:

4 (a) Each bank shall pay to the Secretary ~~Commissioner~~ a
5 Call Report Fee which shall be paid in quarterly
6 installments equal to one-fourth of the sum of the annual
7 fixed fee of \$800, plus a variable fee based on the assets
8 shown on the quarterly statement of condition delivered to
9 the Secretary ~~Commissioner~~ in accordance with Section 47
10 for the preceding quarter according to the following
11 schedule: 16¢ per \$1,000 of the first \$5,000,000 of total
12 assets, 15¢ per \$1,000 of the next \$20,000,000 of total
13 assets, 13¢ per \$1,000 of the next \$75,000,000 of total
14 assets, 9¢ per \$1,000 of the next \$400,000,000 of total
15 assets, 7¢ per \$1,000 of the next \$500,000,000 of total
16 assets, and 5¢ per \$1,000 of all assets in excess of
17 \$1,000,000,000, of the State bank. The Call Report Fee
18 shall be calculated by the Secretary ~~Commissioner~~ and
19 billed to the banks for remittance at the time of the
20 quarterly statements of condition provided for in Section
21 47. The Secretary ~~Commissioner~~ may require payment of the
22 fees provided in this Section by an electronic transfer of
23 funds or an automatic debit of an account of each of the
24 State banks. In case more than one examination of any bank
25 is deemed by the Secretary ~~Commissioner~~ to be necessary in
26 any examination frequency cycle specified in subsection

1 2(a) of this Section, and is performed at his direction,
2 the ~~Commissioner~~ may assess a reasonable additional fee to
3 recover the cost of the additional examination; provided,
4 however, that an examination conducted at the request of
5 the State Treasurer pursuant to the Uniform Disposition of
6 Unclaimed Property Act shall not be deemed to be an
7 additional examination under this Section. In lieu of the
8 method and amounts set forth in this paragraph (a) for the
9 calculation of the Call Report Fee, the Secretary
10 ~~Commissioner~~ may specify by rule that the Call Report Fees
11 provided by this Section may be assessed semiannually or
12 some other period and may provide in the rule the formula
13 to be used for calculating and assessing the periodic Call
14 Report Fees to be paid by State banks. For the fiscal year
15 beginning July 1, 2007, and continuing thereafter through
16 January 10, 2011, the Secretary shall adopt rules to adjust
17 regulatory fee rates to an amount that shall not exceed by
18 more than 13.5% the rates in effect prior to the escalation
19 in rates implemented by an amendment to 38 Ill. Adm. Code
20 375 published in 27 Ill. Reg. 16024, Oct. 10, 2003.

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

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

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

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

1 (b) "Fiscal year" for purposes of this Section 48 is
2 defined as a period beginning July 1 of any year and ending
3 June 30 of the next year. The Secretary ~~Commissioner~~ shall
4 receive for each fiscal year, commencing with the fiscal
5 year ending June 30, 1987, a contingent fee equal to the
6 lesser of the aggregate of the fees paid by all State banks
7 under paragraph (a) of subsection (3) for that year, or the
8 amount, if any, whereby the aggregate of the administration
9 expenses, as defined in paragraph (c), for that fiscal year
10 exceeds the sum of the aggregate of the fees payable by all
11 State banks for that year under paragraph (a) of subsection
12 (3), plus any amounts transferred into the Bank and Trust
13 Company Fund from the State Pensions Fund for that year,
14 plus all other amounts collected by the Secretary
15 ~~Commissioner~~ for that year under any other provision of
16 this Act, plus the aggregate of all fees collected for that
17 year by the Secretary ~~Commissioner~~ under the Corporate
18 Fiduciary Act, excluding the receivership fees provided
19 for in Section 5-10 of the Corporate Fiduciary Act, and the
20 Foreign Banking Office Act. The aggregate amount of the
21 contingent fee thus arrived at for any fiscal year shall be
22 apportioned amongst, assessed upon, and paid by the State
23 banks and foreign banking corporations, respectively, in
24 the same proportion that the fee of each under paragraph
25 (a) of subsection (3), respectively, for that year bears to
26 the aggregate for that year of the fees collected under

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

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

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

21 (d) The aggregate of all fees collected by the
22 Secretary ~~Commissioner~~ under this Act, the Corporate
23 Fiduciary Act, or the Foreign Banking Office Act on and
24 after July 1, 1979, shall be paid promptly after receipt of
25 the same, accompanied by a detailed statement thereof, into
26 the State treasury and shall be set apart in a special fund

1 to be known as the "Bank and Trust Company Fund", except as
2 provided in paragraph (c) of subsection (11) of this
3 Section. All earnings received from investments of funds in
4 the Bank and Trust Company Fund shall be deposited in the
5 Bank and Trust Company Fund and may be used for the same
6 purposes as fees deposited in that Fund. The amount from
7 time to time deposited into the Bank and Trust Company Fund
8 shall be used (i) to offset the ordinary administrative
9 expenses of the Secretary Commissioner of Banks and Real
10 Estate as defined in this Section or (ii) as a credit
11 against fees under paragraph (d-1) of this subsection.
12 Nothing in this amendatory Act of 1979 shall prevent
13 continuing the practice of paying expenses involving
14 salaries, retirement, social security, and State-paid
15 insurance premiums of State officers by appropriations
16 from the General Revenue Fund. However, the General Revenue
17 Fund shall be reimbursed for those payments made on and
18 after July 1, 1979, by an annual transfer of funds from the
19 Bank and Trust Company Fund. Moneys in the Bank and Trust
20 Company Fund may be transferred to the Professions Indirect
21 Cost Fund, as authorized under Section 2105-300 of the
22 Department of Professional Regulation Law of the Civil
23 Administrative Code of Illinois.

24 Notwithstanding provisions in the State Finance Act,
25 or any other law to the contrary: (1) the sum of
26 \$19,000,000 shall be transferred from the Bank and Trust

1 Company Fund to the General Revenue Fund on the effective
2 date of this amendatory Act of the 95th General Assembly,
3 or as soon thereafter as practical; (2) the Governor may,
4 during any fiscal year through January 10, 2011, from time
5 to time direct the State Treasurer and Comptroller to
6 transfer a specified sum not exceeding 10% of the revenues
7 to be deposited into the Bank and Trust Company Fund during
8 that fiscal year from that Fund to the General Revenue Fund
9 in order to help defray the State's operating costs for the
10 fiscal year; and (3) the total sum transferred during any
11 fiscal year through January 10, 2011, from the Bank and
12 Trust Company Fund to the General Revenue Fund pursuant to
13 the State Finance Act or any other law shall not exceed
14 during any fiscal year 10% of the revenues to be deposited
15 into the Bank and Trust Company Fund during that fiscal
16 year. The State Treasurer and Comptroller shall transfer
17 the amounts designated under this Section as soon as may be
18 practicable after receiving the direction to transfer from
19 the Governor.

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

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

1 (e) The Secretary ~~Commissioner~~ may upon request
2 certify to any public record in his keeping and shall have
3 authority to levy a reasonable charge for issuing
4 certifications of any public record in his keeping.

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

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

16 (5) The nature and condition of the assets in or investment
17 of any bonus, pension, or profit sharing plan for officers or
18 employees of every State bank or, after May 31, 1997, branch of
19 an out-of-state bank shall be deemed to be included in the
20 affairs of that State bank or branch of an out-of-state bank
21 subject to examination by the Secretary ~~Commissioner~~ under the
22 provisions of subsection (2) of this Section, and if the
23 Secretary ~~Commissioner~~ shall find from an examination that the
24 condition of or operation of the investments or assets of the
25 plan is unlawful, fraudulent, or unsafe, or that any trustee
26 has abused his trust, the Secretary ~~Commissioner~~ shall, if the

1 situation so found by the Secretary ~~Commissioner~~ shall not be
2 corrected to his satisfaction within 60 days after the
3 Secretary ~~Commissioner~~ has given notice to the board of
4 directors of the State bank or out-of-state bank of his
5 findings, report the facts to the Attorney General who shall
6 thereupon institute proceedings against the State bank or
7 out-of-state bank, the board of directors thereof, or the
8 trustees under such plan as the nature of the case may require.

9 (6) The Secretary ~~Commissioner~~ shall have the power:

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

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

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

26 (b-1) To enter into agreements with a bank establishing

1 a program to correct the condition of the bank or its
2 practices.

3 (c) To appoint hearing officers to execute any of the
4 powers granted to the Secretary ~~Commissioner~~ under this
5 Section for the purpose of administering this Act and any
6 rule promulgated in accordance with this Act and otherwise
7 to authorize, in writing, an officer or employee of the
8 Department of Financial and Professional Regulation ~~Office~~
9 ~~of Banks and Real Estate~~ to exercise his powers under this
10 Act.

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

21 (e) To conduct hearings.

22 (7) Whenever, in the opinion of the Secretary ~~Commissioner~~,
23 any director, officer, employee, or agent of a State bank or
24 any subsidiary or bank holding company of the bank or, after
25 May 31, 1997, of any branch of an out-of-state bank or any
26 subsidiary or bank holding company of the bank shall have

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

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

1 1997, of the branch of the out-of-state bank against whom any
2 order provided for by this subsection (7) of this Section 48
3 has been issued, and against the State bank or, after May 31,
4 1997, out-of-state bank, to enforce compliance with or to
5 enjoin any violation of the terms of the order. Any person who
6 has been the subject of an order of removal or an order of
7 prohibition issued by the Secretary ~~Commissioner~~ under this
8 subsection or Section 5-6 of the Corporate Fiduciary Act may
9 not thereafter serve as director, officer, employee, or agent
10 of any State bank or of any branch of any out-of-state bank, or
11 of any corporate fiduciary, as defined in Section 1-5.05 of the
12 Corporate Fiduciary Act, or of any other entity that is subject
13 to licensure or regulation by the Secretary ~~Commissioner~~ or the
14 Department of Financial and Professional Regulation ~~Office of~~
15 ~~Banks and Real Estate~~ unless the Secretary ~~Commissioner~~ has
16 granted prior approval in writing.

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

20 (8) The Secretary ~~Commissioner~~ may impose civil penalties
21 of up to \$10,000 against any person for each violation of any
22 provision of this Act, any rule promulgated in accordance with
23 this Act, any order of the Secretary ~~Commissioner~~, or any other
24 action which in the Secretary's ~~Commissioner's~~ discretion is an
25 unsafe or unsound banking practice.

26 (9) The Secretary ~~Commissioner~~ may impose civil penalties

1 of up to \$100 against any person for the first failure to
2 comply with reporting requirements set forth in the report of
3 examination of the bank and up to \$200 for the second and
4 subsequent failures to comply with those reporting
5 requirements.

6 (10) All final administrative decisions of the Secretary
7 ~~Commissioner~~ hereunder shall be subject to judicial review
8 pursuant to the provisions of the Administrative Review Law.
9 For matters involving administrative review, venue shall be in
10 either Sangamon County or Cook County.

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

13 (a) (Blank).

14 (b) The Foundation is empowered to receive voluntary
15 contributions, gifts, grants, bequests, and donations on
16 behalf of the Illinois Bank Examiners' Education
17 Foundation from national banks and other persons for the
18 purpose of funding the endowment of the Illinois Bank
19 Examiners' Education Foundation.

20 (c) The aggregate of all special educational fees
21 collected by the Secretary ~~Commissioner~~ and property
22 received by the Secretary ~~Commissioner~~ on behalf of the
23 Illinois Bank Examiners' Education Foundation under this
24 subsection (11) on or after June 30, 1986, shall be either
25 (i) promptly paid after receipt of the same, accompanied by
26 a detailed statement thereof, into the State Treasury and

1 shall be set apart in a special fund to be known as "The
2 Illinois Bank Examiners' Education Fund" to be invested by
3 either the Treasurer of the State of Illinois in the Public
4 Treasurers' Investment Pool or in any other investment he
5 is authorized to make or by the Illinois State Board of
6 Investment as the board of trustees of the Illinois Bank
7 Examiners' Education Foundation may direct or (ii)
8 deposited into an account maintained in a commercial bank
9 or corporate fiduciary in the name of the Illinois Bank
10 Examiners' Education Foundation pursuant to the order and
11 direction of the Board of Trustees of the Illinois Bank
12 Examiners' Education Foundation.

13 (12) (Blank).

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

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

18 (205 ILCS 105/1-10.39 new)

19 Sec. 1-10.39. Secretary. "Secretary" means the Secretary
20 of Financial and Professional Regulation or a person authorized
21 by the Secretary or by this Act to act in the Secretary's
22 stead.

23 (205 ILCS 105/7-3) (from Ch. 17, par. 3307-3)

1 Sec. 7-3. Personnel, records, files, actions and duties,
2 etc.

3 (a) The Secretary ~~Commissioner~~ shall appoint, subject to
4 applicable provisions of the Personnel Code, a supervisor, such
5 examiners, employees, experts and special assistants as may be
6 necessary to carry out effectively this Act. The Secretary
7 ~~Commissioner~~ shall require each supervisor, examiner, expert
8 and special assistant employed or appointed by him to give
9 bond, with security to be approved by the Secretary
10 ~~Commissioner~~, not less in any case than \$15,000, conditioned
11 for the faithful discharge of his duties. The premium on such
12 bond shall be paid by the Secretary ~~Commissioner~~ from funds
13 appropriated for that purpose. The bond, along with
14 verification of payment of the premium on such bond, shall be
15 filed in the office of the Secretary of State.

16 (b) The Secretary ~~Commissioner~~ shall have the following
17 duties and powers:

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

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

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

25 (4) To make an annual report regarding the work of his
26 office as he may consider desirable to the Governor, or as the

1 Governor may request;

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

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

9 (7) To establish reasonable and rationally based fee
10 structures for each association and holding company operating
11 under this Act and for their service corporations and
12 subsidiaries, which fees shall include but not be limited to
13 annual fees, application fees, regular and special examination
14 fees, and such other fees as the Secretary ~~Commissioner~~
15 establishes and demonstrates to be directly resultant from his
16 responsibilities under this Act and as are directly
17 attributable to individual entities operating under this Act.
18 For the fiscal year beginning July 1, 2007, and continuing
19 thereafter through January 10, 2011, the Secretary shall adopt
20 rules to adjust regulatory fee rates to an amount that shall
21 not exceed by more than 13.5% the rates in effect prior to the
22 escalation in rates implemented by an amendment to 38 Ill. Adm.
23 Code 1000 published in 27 Ill. Reg. 16029, Oct. 10, 2003.

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

25 (205 ILCS 105/7-19.1) (from Ch. 17, par. 3307-19.1)

1 Sec. 7-19.1. Savings and Residential Finance Regulatory
2 Fund.

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

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

1 (b-5) Moneys in the Savings and Residential Finance
2 Regulatory Fund may be transferred to the Professions Indirect
3 Cost Fund, as authorized under Section 2105-300 of the
4 Department of Professional Regulation Law of the Civil
5 Administrative Code of Illinois.

6 (b-10) Notwithstanding provisions in the State Finance
7 Act, or any other law to the contrary: (1) the sum of
8 \$27,500,000 shall be transferred from the Savings and
9 Residential Finance Regulatory Fund to the General Revenue Fund
10 on the effective date of this amendatory Act of the 95th
11 General Assembly, or as soon thereafter as practical; (2) the
12 Governor may, during any fiscal year through January 10, 2011,
13 from time to time direct the State Treasurer and Comptroller to
14 transfer a specified sum not exceeding 10% of the revenues to
15 be deposited into the Savings and Residential Finance
16 Regulatory Fund during that fiscal year from that Fund to the
17 General Revenue Fund in order to help defray the State's
18 operating costs for the fiscal year; and (3) the total sum
19 transferred during any fiscal year through January 10, 2011,
20 from the Savings and Residential Finance Regulatory Fund to the
21 General Revenue Fund pursuant to the State Finance Act or any
22 other law shall not exceed during any fiscal year 10% of the
23 revenues to be deposited into the Savings and Residential
24 Finance Regulatory Fund during that fiscal year. The State
25 Treasurer and Comptroller shall transfer the amounts
26 designated under this Section as soon as may be practicable

1 after receiving the direction to transfer from the Governor.

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

7 (d) When the aggregate of all fees collected under the
8 Illinois Savings and Loan Act of 1985 and the Savings Bank Act
9 and all earnings thereon for any fiscal year exceeds the total
10 actual administrative and operational expenses incurred by the
11 Secretary for that fiscal year in administering and enforcing
12 the Illinois Savings and Loan Act of 1985 and the Savings Bank
13 Act and such other laws, rules, and regulations as may apply to
14 the administration and enforcement of the foregoing laws,
15 rules, and regulations, as amended from time, by 25%, the
16 excess must be credited to the appropriate institutions and
17 entities and applied against their regulatory fees for the
18 subsequent fiscal year. The amount credited to the institution
19 or entity must be in the same proportion that the fees paid by
20 the institution or entity for the fiscal year in which the
21 excess is produced bear to the aggregate of the fees collected
22 by the Secretary under the Illinois Savings and Loan Act of
23 1985 and the Savings Bank Act for the same fiscal year.

24 For the purpose of this Section, "fiscal year" means the
25 period beginning July 1 of any year and ending June 30 of the
26 next calendar year.

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

2 (205 ILCS 105/1-10.04 rep.)

3 Section 15. The Illinois Savings and Loan Act of 1985 is
4 amended by repealing Section 1-10.04.

5 Section 20. The Savings Bank Act is amended by adding
6 Section 1007.135 and by changing Section 9002 as follows:

7 (205 ILCS 205/1007.135 new)

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

12 (205 ILCS 205/9002) (from Ch. 17, par. 7309-2)

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

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

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

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

22 (4) To cause a suit to be filed in his name to enforce any

1 law of this State that applies to savings banks, their service
2 corporations, subsidiaries, affiliates, or holding companies
3 operating under this Act, including the enforcement of any
4 obligation of the officers, directors, agents, or employees of
5 any savings bank.

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

8 (6) To establish a reasonable fee structure for savings
9 banks and holding companies operating under this Act and for
10 their service corporations and subsidiaries. The fees shall
11 include, but not be limited to, annual fees, application fees,
12 regular and special examination fees, and other fees as the
13 Secretary ~~Commissioner~~ establishes and demonstrates to be
14 directly resultant from the Secretary's ~~Commissioner's~~
15 responsibilities under this Act and as are directly
16 attributable to individual entities operating under this Act.
17 The aggregate of all fees collected by the Commissioner on and
18 after the effective date of this Act shall be paid promptly
19 after receipt of the same, accompanied by a detailed statement
20 thereof, into the Savings and Residential Finance Regulatory
21 Fund subject to the provisions of Section 7-10.1 of the
22 Illinois Savings and Loan Act of 1985, including without
23 limitation the provision of credits against regulatory fees.
24 The amounts deposited into the Fund shall be used for the
25 ordinary and contingent expenses of the Office of Banks and
26 Real Estate. Nothing in this Act shall prevent continuing the

1 practice of paying expenses involving salaries, retirement,
2 social security, and State-paid insurance of State officers by
3 appropriation from the General Revenue Fund. For the fiscal
4 year beginning July 1, 2007, and continuing thereafter through
5 January 10, 2011, the Secretary shall adopt rules to adjust
6 regulatory fee rates to an amount that shall not exceed by more
7 than 13.5% the rates in effect prior to the escalation in rates
8 implemented by an amendment to 38 Ill. Adm. Code 1075 published
9 in 27 Ill. Reg. 16043, Oct. 10, 2003.

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

11 Section 25. The Illinois Credit Union Act is amended by
12 changing Sections 1.1 and 12 and by adding Section 1.2 as
13 follows:

14 (205 ILCS 305/1.1) (from Ch. 17, par. 4402)

15 Sec. 1.1. Definitions.

16 Credit Union - The term "credit union" means a cooperative,
17 non-profit association, incorporated under this Act, under the
18 laws of the United States of America or under the laws of
19 another state, for the purposes of encouraging thrift among its
20 members, creating a source of credit at a reasonable rate of
21 interest, and providing an opportunity for its members to use
22 and control their own money in order to improve their economic
23 and social conditions. The membership of a credit union shall
24 consist of a group or groups each having a common bond as set

1 forth in this Act.

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

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

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

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

19 Shares - The term "shares" or "share accounts" means any
20 form of shares issued by a credit union and established by a
21 member in accordance with standards specified by a credit
22 union, including but not limited to common shares, share draft
23 accounts, classes of shares, share certificates, special
24 purpose share accounts, shares issued in trust, custodial
25 accounts, and individual retirement accounts or other plans
26 established pursuant to Section 401(d) or (f) or Section 408(a)

1 of the Internal Revenue Code, as now or hereafter amended, or
2 similar provisions of any tax laws of the United States that
3 may hereafter exist.

4 Credit Union Organization - The term "credit union
5 organization" means any organization established to serve the
6 needs of credit unions, the business of which relates to the
7 daily operations of credit unions.

8 Department - The term "Department" means the ~~Illinois~~
9 Department of Financial and Professional Regulation
10 ~~Institutions~~.

11 Secretary - The term "Secretary" means the Secretary of
12 Financial and Professional Regulation or a person authorized by
13 the Secretary or by this Act to act in the Secretary's stead.

14 ~~Director~~ - ~~The term "Director" means the Director of the~~
15 ~~Illinois Department of Financial Institutions.~~

16 NCUA - The term "NCUA" means the National Credit Union
17 Administration, an agency of the United States Government
18 charged with the supervision of credit unions chartered under
19 the laws of the United States of America.

20 Central Credit Union - The term "central credit union"
21 means a credit union incorporated primarily to receive shares
22 from and make loans to credit unions and Directors, Officers,
23 committee members and employees of credit unions. A central
24 credit union may also accept as members persons who were
25 members of credit unions which were liquidated and persons from
26 occupational groups not otherwise served by another credit

1 union.

2 Corporate Credit Union - The term "corporate credit union"
3 means a credit union which is a cooperative, non-profit
4 association, the membership of which is limited primarily to
5 other credit unions.

6 Insolvent - "Insolvent" means the condition that results
7 when the total of all liabilities and shares exceeds net assets
8 of the credit union.

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

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

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

21 (205 ILCS 305/1.2 new)

22 Sec. 1.2. References to Department or Director of Financial
23 Institutions. Unless the context requires otherwise:

24 (1) References in this Act to the Department of
25 Financial Institutions or "the Department" mean the

1 Department of Financial and Professional Regulation.

2 (2) References in this Act to the Director of Financial
3 Institutions or "the Director" mean the Secretary of
4 Financial and Professional Regulation.

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

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

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

1 \$500,000 \$700 plus \$2 per
2 \$1,000 of assets in excess of
3 \$200,000
4 Over \$500,000 and not over
5 \$1,000,000 \$1,300 plus \$1.40
6 per \$1,000 of assets in excess
7 of \$500,000
8 Over \$1,000,000 and not
9 over \$5,000,000 \$2,000 plus \$0.50
10 per \$1,000 of assets in
11 excess of \$1,000,000
12 Over \$5,000,000 and not
13 over \$30,000,000 \$4,540 ~~\$5,080~~ plus
14 \$0.397 ~~\$0.44~~
15 per \$1,000 assets
16 in excess of \$5,000,000
17 Over \$30,000,000 and not
18 over \$100,000,000 \$14,471 ~~\$16,192~~ plus
19 \$0.34 ~~\$0.38~~
20 per \$1,000 of assets in
21 excess of \$30,000,000
22 Over \$100,000,000 and not
23 over \$500,000,000 \$38,306 ~~\$42,862~~ plus
24 \$0.17 ~~\$0.19~~ per
25 \$1,000 of assets in
26 excess of \$100,000,000

1

2 Over \$500,000,000 \$106,406 ~~\$140,625~~ plus

3 \$0.056 ~~\$0.075~~ per

4 \$1,000 of assets in

5 excess of \$500,000,000

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

21 (3) Beginning on January 1, 2008 ~~Not later than March 1 of~~
22 ~~each calendar year~~, a credit union shall pay to the Department
23 a regulatory fee in quarterly installments equal to one-fourth
24 of the regulatory fee due for that calendar year in accordance
25 with the regulatory fee schedule in subsection (1), on the
26 basis of assets as of the Year-end Call Report of the preceding

1 calendar year. The total annual regulatory fee shall not be
2 less than \$100 or more than \$141,875 ~~\$187,500~~, provided that
3 the regulatory fee cap of \$141,875 ~~\$187,500~~ shall be adjusted
4 to incorporate the same percentage increase as the Secretary
5 ~~Director~~ makes in the regulatory fee schedule from time to time
6 under subsection (2). No regulatory fee shall be collected from
7 a credit union until it has been in operation for one year. The
8 regulatory fee shall be billed to credit unions on a quarterly
9 basis commencing with the quarter ending March 31, 2008 and
10 shall be payable by credit unions on the due date for the Call
11 Report for the subject quarter.

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

1 Illinois. Notwithstanding provisions in the State Finance Act,
2 or any other law to the contrary: (1) the sum of \$6,500,000
3 shall be transferred from the Credit Union Fund to the General
4 Revenue Fund on the effective date of this amendatory Act of
5 the 95th General Assembly, or as soon thereafter as practical;
6 (2) the Governor may, during any fiscal year through January
7 10, 2011, from time to time direct the State Treasurer and
8 Comptroller to transfer a specified sum not exceeding 10% of
9 the revenues to be deposited into the Credit Union Fund during
10 that fiscal year from that Fund to the General Revenue Fund in
11 order to help defray the State's operating costs for the fiscal
12 year; and (3) the total sum transferred during any fiscal year
13 through January 10, 2011, from the Credit Union Fund to the
14 General Revenue Fund pursuant to the State Finance Act or any
15 other law shall not exceed during any fiscal year 10% of the
16 revenues to be deposited into the Credit Union Fund during that
17 fiscal year. The State Treasurer and Comptroller shall transfer
18 the amounts designated under this Section as soon as may be
19 practicable after receiving the direction to transfer from the
20 Governor.

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

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

7 (6) When the balance in the Credit Union Fund at the end of
8 a fiscal year exceeds 25% ~~aggregate of all fees collected by~~
9 ~~the Department under this Act and all earnings thereon for any~~
10 ~~calendar year exceeds 150%~~ of the total administrative and
11 operational expenses under this Act for that fiscal year, such
12 excess shall be credited to credit unions and applied against
13 their regulatory fees for the subsequent fiscal year. The
14 amount credited to a credit union shall be in the same
15 proportion as the fee paid by such credit union for the fiscal
16 ~~calendar~~ year in which the excess is produced bears to the
17 aggregate of the fees collected by the Department under this
18 Act for the same fiscal year.

19 (7) To the extent regulatory fees previously paid by a
20 credit union for calendar year 2007 ~~Examination fees for the~~
21 ~~year 2000 statutory examinations paid~~ pursuant to the
22 regulatory examination ~~examination~~ fee schedule in effect at that time
23 exceed the fee to be paid pursuant to the regulatory fee
24 schedule set forth in subsection (1), the excess shall be
25 credited toward the regulatory fee to be assessed the credit
26 union beginning March 31, 2008 ~~in calendar year 2001~~.

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

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

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

9 Section 30. The Residential Mortgage License Act of 1987 is
10 amended by changing Sections 1-4, 2-2, 2-6, and 4-11 and by
11 adding Section 1-4.1 as follows:

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

13 Sec. 1-4. Definitions.

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

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

1 residential mortgage loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (n) "Secretary" means the Secretary of Financial and
20 Professional Regulation or a person authorized by the Secretary
21 or by this Act to act in the Secretary's stead. "Commissioner"
22 ~~shall mean the Commissioner of Banks and Real Estate or a~~
23 ~~person authorized by the Commissioner, the Office of Banks and~~
24 ~~Real Estate Act, or this Act to act in the Commissioner's~~
25 ~~stead.~~

26 (o) "Loan brokering", "brokering", or "brokerage service"

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

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

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

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

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

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

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

24 (v) "Loan brokerage agreement" shall mean a written
25 agreement in which a broker or loan broker agrees to do either
26 of the following:

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

4 (2) consider making a residential mortgage loan to the
5 borrower.

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

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

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

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

24 (aa) "Financial institution" shall mean a savings and loan
25 association, savings bank, credit union, or a bank organized
26 under the laws of Illinois or a savings and loan association,

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

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

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

10 (dd) "Affiliate" shall mean:

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

15 (2) any entity:

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

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

25 (3) any company, including a real estate investment
26 trust, that is sponsored and advised on a contractual basis

1 by the licensee or any subsidiary or affiliate of the
2 licensee.

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

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

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

22 (gg) "Delinquency rate factor" means the factor set by rule
23 of the Commissioner that is multiplied by the average gross
24 delinquency rate of licensees, determined annually for the
25 immediately preceding calendar year, for the purpose of
26 determining which licensees shall be examined by the

1 Commissioner pursuant to subsection (b) of Section 4-8 of this
2 Act.

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

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

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

23 (205 ILCS 635/1-4.1 new)

24 Sec. 1-4.1. References to Office or Commissioner of Banks
25 and Real Estate. Unless the context requires otherwise:

1 (1) References in this Act to the Office of Banks and
2 Real Estate or "the Office" mean the Department of
3 Financial and Professional Regulation.

4 (2) References in this Act to the Commissioner of Banks
5 and Real Estate or "the Commissioner" mean the Secretary of
6 Financial and Professional Regulation.

7 (205 ILCS 635/2-2) (from Ch. 17, par. 2322-2)

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

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

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

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

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

21 (4) Except for a broker applying to renew a license,
22 the filing of an audited balance sheet including all
23 footnotes prepared by a certified public accountant in
24 accordance with generally accepted accounting principles
25 and generally accepted auditing principles which evidences

1 that the applicant meets the net worth requirements of
2 Section 3-5.

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

22 (6) An investigation of the averments required by
23 Section 2-4, which investigation must allow the Secretary
24 ~~Commissioner~~ to issue positive findings stating that the
25 financial responsibility, experience, character, and
26 general fitness of the license applicant and of the members

1 thereof if the license applicant is a partnership or
2 association, of the officers and directors thereof if the
3 license applicant is a corporation, and of the managers and
4 members that retain any authority or responsibility under
5 the operating agreement if the license applicant is a
6 limited liability company are such as to command the
7 confidence of the community and to warrant belief that the
8 business will be operated honestly, fairly and efficiently
9 within the purpose of this Act. If the Secretary
10 ~~Commissioner~~ shall not so find, he or she shall not issue
11 such license, and he or she shall notify the license
12 applicant of the denial.

13 The Secretary ~~Commissioner~~ may impose conditions on a
14 license if the Secretary ~~Commissioner~~ determines that the
15 conditions are necessary or appropriate. These conditions
16 shall be imposed in writing and shall continue in effect for
17 the period prescribed by the Secretary ~~Commissioner~~.

18 (b) All licenses shall be issued in duplicate with one copy
19 being transmitted to the license applicant and the second being
20 retained with the Secretary ~~Commissioner~~.

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

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

1 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

3 (a) Beginning July 1, 2003, licenses shall be renewed every
4 year on the anniversary of the date of issuance of the original
5 license. Properly completed renewal application forms and
6 filing fees must be received by the Secretary ~~Commissioner~~ 60
7 days prior to the renewal date.

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

16 (1) A fee of \$567.50 ~~\$750~~ will be assessed to the
17 licensee 30 days after the proper renewal date and \$1,135
18 ~~\$1,500~~ each month thereafter, until the license is either
19 renewed or expires pursuant to Section 2-6, subsections (c)
20 and (d), of this Act.

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

1 (c) A license which is not renewed by the date required in
2 this Section shall automatically become inactive. No activity
3 regulated by this Act shall be conducted by the licensee when a
4 license becomes inactive. The Secretary ~~Commissioner~~ may
5 require the licensee to provide a plan for the disposition of
6 any residential mortgage loans not closed or funded when the
7 license becomes inactive. The Secretary ~~Commissioner~~ may allow
8 a licensee with an inactive license to conduct activities
9 regulated by this Act for the sole purpose of assisting
10 borrowers in the closing or funding of loans for which the loan
11 application was taken from a borrower while the license was
12 active. An inactive license may be reactivated by the Secretary
13 ~~Commissioner~~ upon payment of the renewal fee, and payment of a
14 reactivation fee equal to the renewal fee.

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

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

26 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018,

1 eff. 1-1-05.)

2 (205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)

3 Sec. 4-11. Costs of Supervision; Examination and
4 Investigative Fees. The expenses of administering this Act,
5 including investigations and examinations provided for in this
6 Act shall be borne by and assessed against entities regulated
7 by this Act. Subject to the limitations set forth in Section
8 2-2, the Secretary ~~The Commissioner~~ shall establish fees by
9 regulation in at least the following categories:

- 10 (1) application fees;
11 (2) investigation of license applicant fees;
12 (3) examination fees;
13 (4) contingent fees;

14 and such other categories as may be required to administer this
15 Act.

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

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.

1		INDEX
2		Statutes amended in order of appearance
3	205 ILCS 5/2	from Ch. 17, par. 302
4	205 ILCS 5/2.7 new	
5	205 ILCS 5/48	from Ch. 17, par. 359
6	205 ILCS 105/1-10.39 new	
7	205 ILCS 105/7-3	from Ch. 17, par. 3307-3
8	205 ILCS 105/7-19.1	from Ch. 17, par. 3307-19.1
9	205 ILCS 105/1-10.04 rep.	
10	205 ILCS 205/1007.135 new	
11	205 ILCS 205/9002	from Ch. 17, par. 7309-2
12	205 ILCS 305/1.1	from Ch. 17, par. 4402
13	205 ILCS 305/1.2 new	
14	205 ILCS 305/12	from Ch. 17, par. 4413
15	205 ILCS 635/1-4	from Ch. 17, par. 2321-4
16	205 ILCS 635/1-4.1 new	
17	205 ILCS 635/2-2	from Ch. 17, par. 2322-2
18	205 ILCS 635/2-6	from Ch. 17, par. 2322-6
19	205 ILCS 635/4-11	from Ch. 17, par. 2324-11