

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 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  
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 Commissioner of Banks and Real Estate  
20 used to record funds designated to maintain a reasonable Bank  
21 and Trust Company Fund operating balance to meet agency  
22 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, except that beginning on the effective date of this

1 amendatory Act of the 95th General Assembly, all references in  
2 this Act to the Commissioner of Banks and Real Estate are  
3 deemed, in appropriate contexts, to be references to the  
4 Secretary of Financial and Professional Regulation ~~or a person~~  
5 ~~authorized by the Commissioner, the Office of Banks and Real~~  
6 ~~Estate Act, or this Act to act in the Commissioner's stead.~~

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

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

17 "Company" means a corporation, limited liability company,  
18 partnership, business trust, association, or similar  
19 organization and, unless specifically excluded, includes a  
20 "State bank" and a "bank".

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

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

1 "Continuing bank" means a merging bank, the charter of  
2 which becomes the charter of the resulting bank.

3 "Converting bank" means a State bank converting to become a  
4 national bank, or a national bank converting to become a State  
5 bank.

6 "Converting trust company" means a trust company  
7 converting to become a State bank.

8 "Court" means a court of competent jurisdiction.

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

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

1 11(d) (2) (f) of the Federal Deposit Insurance Act.

2 "Fiduciary" means trustee, agent, executor, administrator,  
3 committee, guardian for a minor or for a person under legal  
4 disability, receiver, trustee in bankruptcy, assignee for  
5 creditors, or any holder of similar position of trust.

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

14 "Foundation" means the Illinois Bank Examiners' Education  
15 Foundation.

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

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

25 "In danger of default" means a State or national bank, a  
26 federally chartered insured savings association or an Illinois

1 state chartered insured savings association with respect to  
2 which the Commissioner or the appropriate federal banking  
3 agency has advised the Federal Deposit Insurance Corporation  
4 that:

5 (1) in the opinion of the Commissioner or the  
6 appropriate federal banking agency,

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

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

16 (2) in the opinion of the Commissioner or the  
17 appropriate federal banking agency,

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

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

26 "In default" means, with respect to a State or national

1 bank or an insured savings association, any adjudication or  
2 other official determination by any court of competent  
3 jurisdiction, the Commissioner, the appropriate federal  
4 banking agency, or other public authority pursuant to which a  
5 conservator, receiver, or other legal custodian is appointed  
6 for a State or national bank or an insured savings association.

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

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

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

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

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

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

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

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

26 "Merger" includes consolidation.

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

2 "Merging trust company" means a trust company party to a  
3 merger with a State bank.

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

9 "Municipality" means any municipality, political  
10 subdivision, school district, taxing district, or agency.

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

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

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

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

24 "Public agency" means the State of Illinois, the various  
25 counties, townships, cities, towns, villages, school  
26 districts, educational service regions, special road

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

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

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

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

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

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

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

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

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

26 "State bank" means any banking corporation that has a

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

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

1 (205 ILCS 5/48) (from Ch. 17, par. 359)

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

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

15 (2) (a) The Commissioner, as often as the Commissioner  
16 shall deem necessary or proper, and no less frequently than 18  
17 months following the preceding examination, shall appoint a  
18 suitable person or persons to make an examination of the  
19 affairs of every State bank, except that for every eligible  
20 State bank, as defined by regulation, the Commissioner in lieu  
21 of the examination may accept on an alternating basis the  
22 examination made by the eligible State bank's appropriate  
23 federal banking agency pursuant to Section 111 of the Federal  
24 Deposit Insurance Corporation Improvement Act of 1991,  
25 provided the appropriate federal banking agency has made such

1 an examination. A person so appointed shall not be a  
2 stockholder or officer or employee of any bank which that  
3 person may be directed to examine, and shall have powers to  
4 make a thorough examination into all the affairs of the bank  
5 and in so doing to examine any of the officers or agents or  
6 employees thereof on oath and shall make a full and detailed  
7 report of the condition of the bank to the Commissioner. In  
8 making the examination the examiners shall include an  
9 examination of the affairs of all the affiliates of the bank,  
10 as defined in subsection (b) of Section 35.2 of this Act, or  
11 subsidiaries of the bank as shall be necessary to disclose  
12 fully the conditions of the subsidiaries or affiliates, the  
13 relations between the bank and the subsidiaries or affiliates  
14 and the effect of those relations upon the affairs of the bank,  
15 and in connection therewith shall have power to examine any of  
16 the officers, directors, agents, or employees of the  
17 subsidiaries or affiliates on oath. After May 31, 1997, the  
18 Commissioner may enter into cooperative agreements with state  
19 regulatory authorities of other states to provide for  
20 examination of State bank branches in those states, and the  
21 Commissioner may accept reports of examinations of State bank  
22 branches from those state regulatory authorities. These  
23 cooperative agreements may set forth the manner in which the  
24 other state regulatory authorities may be compensated for  
25 examinations prepared for and submitted to the Commissioner.

26 (b) After May 31, 1997, the Commissioner is authorized to

1 examine, as often as the Commissioner shall deem necessary or  
2 proper, branches of out-of-state banks. The Commissioner may  
3 establish and may assess fees to be paid to the Commissioner  
4 for examinations under this subsection (b). The fees shall be  
5 borne by the out-of-state bank, unless the fees are borne by  
6 the state regulatory authority that chartered the out-of-state  
7 bank, as determined by a cooperative agreement between the  
8 Commissioner and the state regulatory authority that chartered  
9 the out-of-state bank.

10 (2.5) Whenever any State bank, any subsidiary or affiliate  
11 of a State bank, or after May 31, 1997, any branch of an  
12 out-of-state bank causes to be performed, by contract or  
13 otherwise, any bank services for itself, whether on or off its  
14 premises:

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

19 (b) the bank or, after May 31, 1997, branch of the  
20 out-of-state bank shall notify the Commissioner of the  
21 existence of a service relationship. The notification  
22 shall be submitted with the first statement of condition  
23 (as required by Section 47 of this Act) due after the  
24 making of the service contract or the performance of the  
25 service, whichever occurs first. The Commissioner shall be  
26 notified of each subsequent contract in the same manner.

1 For purposes of this subsection (2.5), the term "bank  
2 services" means services such as sorting and posting of checks  
3 and deposits, computation and posting of interest and other  
4 credits and charges, preparation and mailing of checks,  
5 statements, notices, and similar items, or any other clerical,  
6 bookkeeping, accounting, statistical, or similar functions  
7 performed for a State bank, including but not limited to  
8 electronic data processing related to those bank services.

9 (3) The expense of administering this Act, including the  
10 expense of the examinations of State banks as provided in this  
11 Act, shall to the extent of the amounts resulting from the fees  
12 provided for in paragraphs (a), (a-2), and (b) of this  
13 subsection (3) be assessed against and borne by the State  
14 banks:

15 (a) Each bank shall pay to the Secretary ~~Commissioner~~ a  
16 Call Report Fee which shall be paid in quarterly  
17 installments equal to one-fourth of the sum of the annual  
18 fixed fee of \$800, plus a variable fee based on the assets  
19 shown on the quarterly statement of condition delivered to  
20 the Secretary ~~Commissioner~~ in accordance with Section 47  
21 for the preceding quarter according to the following  
22 schedule: 16¢ per \$1,000 of the first \$5,000,000 of total  
23 assets, 15¢ per \$1,000 of the next \$20,000,000 of total  
24 assets, 13¢ per \$1,000 of the next \$75,000,000 of total  
25 assets, 9¢ per \$1,000 of the next \$400,000,000 of total  
26 assets, 7¢ per \$1,000 of the next \$500,000,000 of total

1 assets, and 5¢ per \$1,000 of all assets in excess of  
2 \$1,000,000,000, of the State bank. The Call Report Fee  
3 shall be calculated by the Secretary ~~Commissioner~~ and  
4 billed to the banks for remittance at the time of the  
5 quarterly statements of condition provided for in Section  
6 47. The Secretary ~~Commissioner~~ may require payment of the  
7 fees provided in this Section by an electronic transfer of  
8 funds or an automatic debit of an account of each of the  
9 State banks. In case more than one examination of any bank  
10 is deemed by the Secretary ~~Commissioner~~ to be necessary in  
11 any examination frequency cycle specified in subsection  
12 2(a) of this Section, and is performed at his direction,  
13 the Secretary ~~Commissioner~~ may assess a reasonable  
14 additional fee to recover the cost of the additional  
15 examination; provided, however, that an examination  
16 conducted at the request of the State Treasurer pursuant to  
17 the Uniform Disposition of Unclaimed Property Act shall not  
18 be deemed to be an additional examination under this  
19 Section. In lieu of the method and amounts set forth in  
20 this paragraph (a) for the calculation of the Call Report  
21 Fee, the Secretary ~~Commissioner~~ may specify by rule that  
22 the Call Report Fees provided by this Section may be  
23 assessed semiannually or some other period and may provide  
24 in the rule the formula to be used for calculating and  
25 assessing the periodic Call Report Fees to be paid by State  
26 banks. For the fiscal year beginning July 1, 2007, and

1 continuing thereafter through January 10, 2011, the  
2 Secretary shall adopt emergency and general rules to adjust  
3 regulatory fee rates to an amount that shall not exceed by  
4 more than 13.5% the rates in effect prior to the escalation  
5 in rates implemented by an amendment to 38 Ill. Adm. Code  
6 375 published in 27 Ill. Reg. 16024, Oct. 10, 2003. The  
7 adoption of emergency rules authorized by this subsection  
8 (3) shall be deemed necessary for the public interest,  
9 safety, and welfare, in order to provide for the  
10 expeditious and timely implementation of the State's  
11 fiscal year budget through the transfer from the Bank and  
12 Trust Company Fund to the General Revenue Fund authorized  
13 by this amendatory Act of the 95th General Assembly.

14 (a-1) If in the opinion of the Commissioner an  
15 emergency exists or appears likely, the Commissioner may  
16 assign an examiner or examiners to monitor the affairs of a  
17 State bank with whatever frequency he deems appropriate,  
18 including but not limited to a daily basis. The reasonable  
19 and necessary expenses of the Commissioner during the  
20 period of the monitoring shall be borne by the subject  
21 bank. The Commissioner shall furnish the State bank a  
22 statement of time and expenses if requested to do so within  
23 30 days of the conclusion of the monitoring period.

24 (a-2) On and after January 1, 1990, the reasonable and  
25 necessary expenses of the Commissioner during examination  
26 of the performance of electronic data processing services

1 under subsection (2.5) shall be borne by the banks for  
2 which the services are provided. An amount, based upon a  
3 fee structure prescribed by the Commissioner, shall be paid  
4 by the banks or, after May 31, 1997, branches of  
5 out-of-state banks receiving the electronic data  
6 processing services along with the Call Report Fee assessed  
7 under paragraph (a) of this subsection (3).

8 (a-3) After May 31, 1997, the reasonable and necessary  
9 expenses of the Commissioner during examination of the  
10 performance of electronic data processing services under  
11 subsection (2.5) at or on behalf of branches of  
12 out-of-state banks shall be borne by the out-of-state  
13 banks, unless those expenses are borne by the state  
14 regulatory authorities that chartered the out-of-state  
15 banks, as determined by cooperative agreements between the  
16 Commissioner and the state regulatory authorities that  
17 chartered the out-of-state banks.

18 (b) "Fiscal year" for purposes of this Section 48 is  
19 defined as a period beginning July 1 of any year and ending  
20 June 30 of the next year. The Commissioner shall receive  
21 for each fiscal year, commencing with the fiscal year  
22 ending June 30, 1987, a contingent fee equal to the lesser  
23 of the aggregate of the fees paid by all State banks under  
24 paragraph (a) of subsection (3) for that year, or the  
25 amount, if any, whereby the aggregate of the administration  
26 expenses, as defined in paragraph (c), for that fiscal year

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

1 Commissioner for payment of the fee.

2 (c) The "administration expenses" for any fiscal year  
3 shall mean the ordinary and contingent expenses for that  
4 year incident to making the examinations provided for by,  
5 and for otherwise administering, this Act, the Corporate  
6 Fiduciary Act, excluding the expenses paid from the  
7 Corporate Fiduciary Receivership account in the Bank and  
8 Trust Company Fund, the Foreign Banking Office Act, the  
9 Electronic Fund Transfer Act, and the Illinois Bank  
10 Examiners' Education Foundation Act, including all  
11 salaries and other compensation paid for personal services  
12 rendered for the State by officers or employees of the  
13 State, including the Commissioner and the Deputy  
14 Commissioners, all expenditures for telephone and  
15 telegraph charges, postage and postal charges, office  
16 stationery, supplies and services, and office furniture  
17 and equipment, including typewriters and copying and  
18 duplicating machines and filing equipment, surety bond  
19 premiums, and travel expenses of those officers and  
20 employees, employees, expenditures or charges for the  
21 acquisition, enlargement or improvement of, or for the use  
22 of, any office space, building, or structure, or  
23 expenditures for the maintenance thereof or for furnishing  
24 heat, light, or power with respect thereto, all to the  
25 extent that those expenditures are directly incidental to  
26 such examinations or administration. The Commissioner

1 shall not be required by paragraphs (c) or (d-1) of this  
2 subsection (3) to maintain in any fiscal year's budget  
3 appropriated reserves for accrued vacation and accrued  
4 sick leave that is required to be paid to employees of the  
5 Commissioner upon termination of their service with the  
6 Commissioner in an amount that is more than is reasonably  
7 anticipated to be necessary for any anticipated turnover in  
8 employees, whether due to normal attrition or due to  
9 layoffs, terminations, or resignations.

10 (d) The aggregate of all fees collected by the  
11 Secretary ~~Commissioner~~ under this Act, the Corporate  
12 Fiduciary Act, or the Foreign Banking Office Act on and  
13 after July 1, 1979, shall be paid promptly after receipt of  
14 the same, accompanied by a detailed statement thereof, into  
15 the State treasury and shall be set apart in a special fund  
16 to be known as the "Bank and Trust Company Fund", except as  
17 provided in paragraph (c) of subsection (11) of this  
18 Section. All earnings received from investments of funds in  
19 the Bank and Trust Company Fund shall be deposited in the  
20 Bank and Trust Company Fund and may be used for the same  
21 purposes as fees deposited in that Fund. The amount from  
22 time to time deposited into the Bank and Trust Company Fund  
23 shall be used: (i) to offset the ordinary administrative  
24 expenses of the Secretary ~~Commissioner of Banks and Real~~  
25 ~~Estate~~ as defined in this Section or (ii) as a credit  
26 against fees under paragraph (d-1) of this subsection (3).

1 Nothing in this amendatory Act of 1979 shall prevent  
2 continuing the practice of paying expenses involving  
3 salaries, retirement, social security, and State-paid  
4 insurance premiums of State officers by appropriations  
5 from the General Revenue Fund. However, the General Revenue  
6 Fund shall be reimbursed for those payments made on and  
7 after July 1, 1979, by an annual transfer of funds from the  
8 Bank and Trust Company Fund. Moneys in the Bank and Trust  
9 Company Fund may be transferred to the Professions Indirect  
10 Cost Fund, as authorized under Section 2105-300 of the  
11 Department of Professional Regulation Law of the Civil  
12 Administrative Code of Illinois. Notwithstanding  
13 provisions in the State Finance Act, as now or hereafter  
14 amended, or any other law to the contrary: (A) the sum of  
15 \$18,788,847 shall be transferred from the Bank and Trust  
16 Company Fund to the General Revenue Fund on the effective  
17 date of this amendatory Act of the 95th General Assembly,  
18 or as soon thereafter as practical; (B) the Governor may,  
19 during any fiscal year through January 10, 2011, from time  
20 to time direct the State Treasurer and Comptroller to  
21 transfer a specified sum not exceeding 10% of the revenues  
22 to be deposited into the Bank and Trust Company Fund during  
23 that fiscal year from that Fund to the General Revenue Fund  
24 in order to help defray the State's operating costs for the  
25 fiscal year; and (C) the total sum transferred during any  
26 fiscal year through January 10, 2011, from the Bank and

1 Trust Company Fund to the General Revenue Fund pursuant to  
2 provision (B) of paragraph (d) of this subsection (3) shall  
3 not exceed during any fiscal year 10% of the revenues to be  
4 deposited into the Bank and Trust Company Fund during that  
5 fiscal year.

6 The State Treasurer and Comptroller shall transfer the  
7 amounts designated under this Section as soon as may be  
8 practicable after receiving the direction to transfer from  
9 the Governor.

10 (d-1) Adequate funds shall be available in the Bank and  
11 Trust Company Fund to permit the timely payment of  
12 administration expenses. In each fiscal year the total  
13 administration expenses shall be deducted from the total  
14 fees collected by the Commissioner and the remainder  
15 transferred into the Cash Flow Reserve Account, unless the  
16 balance of the Cash Flow Reserve Account prior to the  
17 transfer equals or exceeds one-fourth of the total initial  
18 appropriations from the Bank and Trust Company Fund for the  
19 subsequent year, in which case the remainder shall be  
20 credited to State banks and foreign banking corporations  
21 and applied against their fees for the subsequent year. The  
22 amount credited to each State bank and foreign banking  
23 corporation shall be in the same proportion as the Call  
24 Report Fees paid by each for the year bear to the total  
25 Call Report Fees collected for the year. If, after a  
26 transfer to the Cash Flow Reserve Account is made or if no

1 remainder is available for transfer, the balance of the  
2 Cash Flow Reserve Account is less than one-fourth of the  
3 total initial appropriations for the subsequent year and  
4 the amount transferred is less than 5% of the total Call  
5 Report Fees for the year, additional amounts needed to make  
6 the transfer equal to 5% of the total Call Report Fees for  
7 the year shall be apportioned amongst, assessed upon, and  
8 paid by the State banks and foreign banking corporations in  
9 the same proportion that the Call Report Fees of each,  
10 respectively, for the year bear to the total Call Report  
11 Fees collected for the year. The additional amounts  
12 assessed shall be transferred into the Cash Flow Reserve  
13 Account. For purposes of this paragraph (d-1), the  
14 calculation of the fees collected by the Commissioner shall  
15 exclude the receivership fees provided for in Section 5-10  
16 of the Corporate Fiduciary Act.

17 (e) The Commissioner may upon request certify to any  
18 public record in his keeping and shall have authority to  
19 levy a reasonable charge for issuing certifications of any  
20 public record in his keeping.

21 (f) In addition to fees authorized elsewhere in this  
22 Act, the Commissioner may, in connection with a review,  
23 approval, or provision of a service, levy a reasonable  
24 charge to recover the cost of the review, approval, or  
25 service.

26 (4) Nothing contained in this Act shall be construed to

1 limit the obligation relative to examinations and reports of  
2 any State bank, deposits in which are to any extent insured by  
3 the United States or any agency thereof, nor to limit in any  
4 way the powers of the Commissioner with reference to  
5 examinations and reports of that bank.

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

24 (6) The Commissioner shall have the power:

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

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

6           (b) To issue orders against any person, if the  
7           Commissioner has reasonable cause to believe that an unsafe  
8           or unsound banking practice has occurred, is occurring, or  
9           is about to occur, if any person has violated, is  
10          violating, or is about to violate any law, rule, or written  
11          agreement with the Commissioner, or for the purpose of  
12          administering the provisions of this Act and any rule  
13          promulgated in accordance with this Act.

14          (b-1) To enter into agreements with a bank establishing  
15          a program to correct the condition of the bank or its  
16          practices.

17          (c) To appoint hearing officers to execute any of the  
18          powers granted to the Commissioner under this Section for  
19          the purpose of administering this Act and any rule  
20          promulgated in accordance with this Act and otherwise to  
21          authorize, in writing, an officer or employee of the Office  
22          of Banks and Real Estate to exercise his powers under this  
23          Act.

24          (d) To subpoena witnesses, to compel their attendance,  
25          to administer an oath, to examine any person under oath,  
26          and to require the production of any relevant books,

1 papers, accounts, and documents in the course of and  
2 pursuant to any investigation being conducted, or any  
3 action being taken, by the Commissioner in respect of any  
4 matter relating to the duties imposed upon, or the powers  
5 vested in, the Commissioner under the provisions of this  
6 Act or any rule promulgated in accordance with this Act.

7 (e) To conduct hearings.

8 (7) Whenever, in the opinion of the Commissioner, any  
9 director, officer, employee, or agent of a State bank or any  
10 subsidiary or bank holding company of the bank or, after May  
11 31, 1997, of any branch of an out-of-state bank or any  
12 subsidiary or bank holding company of the bank shall have  
13 violated any law, rule, or order relating to that bank or any  
14 subsidiary or bank holding company of the bank, shall have  
15 obstructed or impeded any examination or investigation by the  
16 Commissioner, shall have engaged in an unsafe or unsound  
17 practice in conducting the business of that bank or any  
18 subsidiary or bank holding company of the bank, or shall have  
19 violated any law or engaged or participated in any unsafe or  
20 unsound practice in connection with any financial institution  
21 or other business entity such that the character and fitness of  
22 the director, officer, employee, or agent does not assure  
23 reasonable promise of safe and sound operation of the State  
24 bank, the Commissioner may issue an order of removal. If, in  
25 the opinion of the Commissioner, any former director, officer,  
26 employee, or agent of a State bank or any subsidiary or bank

1 holding company of the bank, prior to the termination of his or  
2 her service with that bank or any subsidiary or bank holding  
3 company of the bank, violated any law, rule, or order relating  
4 to that State bank or any subsidiary or bank holding company of  
5 the bank, obstructed or impeded any examination or  
6 investigation by the Commissioner, engaged in an unsafe or  
7 unsound practice in conducting the business of that bank or any  
8 subsidiary or bank holding company of the bank, or violated any  
9 law or engaged or participated in any unsafe or unsound  
10 practice in connection with any financial institution or other  
11 business entity such that the character and fitness of the  
12 director, officer, employee, or agent would not have assured  
13 reasonable promise of safe and sound operation of the State  
14 bank, the Commissioner may issue an order prohibiting that  
15 person from further service with a bank or any subsidiary or  
16 bank holding company of the bank as a director, officer,  
17 employee, or agent. An order issued pursuant to this subsection  
18 shall be served upon the director, officer, employee, or agent.  
19 A copy of the order shall be sent to each director of the bank  
20 affected by registered mail. The person affected by the action  
21 may request a hearing before the State Banking Board within 10  
22 days after receipt of the order. The hearing shall be held by  
23 the Board within 30 days after the request has been received by  
24 the Board. The Board shall make a determination approving,  
25 modifying, or disapproving the order of the Commissioner as its  
26 final administrative decision. If a hearing is held by the

1 Board, the Board shall make its determination within 60 days  
2 from the conclusion of the hearing. Any person affected by a  
3 decision of the Board under this subsection (7) of Section 48  
4 of this Act may have the decision reviewed only under and in  
5 accordance with the Administrative Review Law and the rules  
6 adopted pursuant thereto. A copy of the order shall also be  
7 served upon the bank of which he is a director, officer,  
8 employee, or agent, whereupon he shall cease to be a director,  
9 officer, employee, or agent of that bank. The Commissioner may  
10 institute a civil action against the director, officer, or  
11 agent of the State bank or, after May 31, 1997, of the branch  
12 of the out-of-state bank against whom any order provided for by  
13 this subsection (7) of this Section 48 has been issued, and  
14 against the State bank or, after May 31, 1997, out-of-state  
15 bank, to enforce compliance with or to enjoin any violation of  
16 the terms of the order. Any person who has been the subject of  
17 an order of removal or an order of prohibition issued by the  
18 Commissioner under this subsection or Section 5-6 of the  
19 Corporate Fiduciary Act may not thereafter serve as director,  
20 officer, employee, or agent of any State bank or of any branch  
21 of any out-of-state bank, or of any corporate fiduciary, as  
22 defined in Section 1-5.05 of the Corporate Fiduciary Act, or of  
23 any other entity that is subject to licensure or regulation by  
24 the Commissioner or the Office of Banks and Real Estate unless  
25 the Commissioner has granted prior approval in writing.

26 For purposes of this paragraph (7), "bank holding company"

1 has the meaning prescribed in Section 2 of the Illinois Bank  
2 Holding Company Act of 1957.

3 (8) The Commissioner may impose civil penalties of up to  
4 \$10,000 against any person for each violation of any provision  
5 of this Act, any rule promulgated in accordance with this Act,  
6 any order of the Commissioner, or any other action which in the  
7 Commissioner's discretion is an unsafe or unsound banking  
8 practice.

9 (9) The Commissioner may impose civil penalties of up to  
10 \$100 against any person for the first failure to comply with  
11 reporting requirements set forth in the report of examination  
12 of the bank and up to \$200 for the second and subsequent  
13 failures to comply with those reporting requirements.

14 (10) All final administrative decisions of the  
15 Commissioner hereunder shall be subject to judicial review  
16 pursuant to the provisions of the Administrative Review Law.  
17 For matters involving administrative review, venue shall be in  
18 either Sangamon County or Cook County.

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

21 (a) (Blank).

22 (b) The Foundation is empowered to receive voluntary  
23 contributions, gifts, grants, bequests, and donations on  
24 behalf of the Illinois Bank Examiners' Education  
25 Foundation from national banks and other persons for the  
26 purpose of funding the endowment of the Illinois Bank

1 Examiners' Education Foundation.

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

21 (12) (Blank).

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

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

1 (205 ILCS 105/1-10.39 new)

2 Sec. 1-10.39. Secretary of the Department of Financial and  
3 Professional Regulation. For purposes of this Act, "Secretary"  
4 means the Secretary of the Department of Financial and  
5 Professional Regulation, or a person authorized by the  
6 Secretary or by this Act to act in the Secretary's stead.

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

8 Sec. 7-3. Personnel, records, files, actions and duties,  
9 etc.

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

23 (b) The Secretary ~~Commissioner~~ shall have the following  
24 duties and powers:

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

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

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

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

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

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

18           (7) To establish reasonable and rationally based fee  
19 structures for each association and holding company operating  
20 under this Act and for their service corporations and  
21 subsidiaries, which fees shall include but not be limited to  
22 annual fees, application fees, regular and special examination  
23 fees, and such other fees as the Secretary ~~Commissioner~~  
24 establishes and demonstrates to be directly resultant from his  
25 responsibilities under this Act and as are directly  
26 attributable to individual entities operating under this Act.

1 For the fiscal year beginning July 1, 2007, and continuing  
2 thereafter through January 10, 2011, the Secretary shall adopt  
3 emergency and general rules to adjust regulatory fee rates to  
4 an amount that shall not exceed by more than 13.5% the rates in  
5 effect prior to the escalation in rates implemented by an  
6 amendment to 38 Ill. Adm. Code 1000 published in 27 Ill. Reg.  
7 16029, Oct. 10, 2003. The adoption of emergency rules  
8 authorized by this subsection (b) shall be deemed necessary for  
9 the public interest, safety, and welfare, in order to provide  
10 for the expeditious and timely implementation of the State's  
11 fiscal year budget through the transfer from the Savings and  
12 Residential Finance Regulatory Fund to the General Revenue Fund  
13 authorized by this amendatory Act of the 95th General Assembly.

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

15 (205 ILCS 105/7-19.1) (from Ch. 17, par. 3307-19.1)

16 Sec. 7-19.1. Savings and Residential Finance Regulatory  
17 Fund.

18 (a) The aggregate of all fees collected by the Secretary  
19 ~~Commissioner~~ under this Act shall be paid promptly after  
20 receipt of the same, accompanied by a detailed statement  
21 thereof, into the State treasury and shall be set apart in the  
22 Savings and Residential Finance Regulatory Fund, a special fund  
23 hereby created in the State treasury. The amounts deposited  
24 into the Fund shall be used for the ordinary and contingent  
25 expenses of the Department of Financial and Professional

1 Regulation and the Division of Banking, or their successors, in  
2 administering and enforcing the Illinois Savings and Loan Act  
3 of 1985, the Savings Bank Act, and the Residential Mortgage  
4 License Act of 1987 and other laws, rules, and regulations as  
5 may apply to the administration and enforcement of the  
6 foregoing laws, rules, and regulations as amended from time to  
7 time ~~Office of Banks and Real Estate~~. Nothing in this Act shall  
8 prevent continuing the practice of paying expenses involving  
9 salaries, retirement, social security, and State-paid  
10 insurance of State officers by appropriation from the General  
11 Revenue Fund.

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

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

22 (b-10) Notwithstanding provisions in the State Finance  
23 Act, as now or hereafter amended, or any other law to the  
24 contrary: (i) The sum of \$27,481,638 shall be transferred from  
25 the Savings and Residential Finance Regulatory Fund to the  
26 General Revenue Fund on the effective date of this amendatory

1 Act of the 95th General Assembly, or as soon thereafter as  
2 practical; (ii) the Governor may, during any fiscal year  
3 through January 10, 2011, from time to time direct the State  
4 Treasurer and Comptroller to transfer a specified sum not  
5 exceeding 10% of the revenues to be deposited into the Savings  
6 and Residential Finance Regulatory Fund during that fiscal year  
7 from that Fund to the General Revenue Fund in order to help  
8 defray the State's operating costs for the fiscal year; and  
9 (iii) the total sum transferred during any fiscal year through  
10 January 10, 2011, from the Savings and Residential Finance  
11 Regulatory Fund to the General Revenue Fund pursuant to item  
12 (ii) of this subsection (b-10) shall not exceed during any  
13 fiscal year 10% of the revenues to be deposited into the  
14 Savings and Residential Finance Regulatory Fund during that  
15 fiscal year.

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

20 (c) All earnings received from investments of funds in the  
21 Savings and Residential Finance Regulatory Fund shall be  
22 deposited into the Savings and Residential Finance Regulatory  
23 Fund and may be used for the same purposes as fees deposited  
24 into that Fund.

25 (d) When the balance in the Savings and Residential Finance  
26 Regulatory Fund at the end of a fiscal year apportioned to the

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

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

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

23 (205 ILCS 205/1007.135 new)

24 Sec. 1007.135. Secretary of the Department of Financial and

1 Professional Regulation. "Secretary" means the Secretary of  
2 the Department of Financial and Professional Regulation, or a  
3 person authorized by the Secretary or by this Act to act in the  
4 Secretary's stead.

5 (205 ILCS 205/9002) (from Ch. 17, par. 7309-2)

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

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

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

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

15 (4) To cause a suit to be filed in his name to enforce any  
16 law of this State that applies to savings banks, their service  
17 corporations, subsidiaries, affiliates, or holding companies  
18 operating under this Act, including the enforcement of any  
19 obligation of the officers, directors, agents, or employees of  
20 any savings bank.

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

23 (6) To establish a reasonable fee structure for savings  
24 banks and holding companies operating under this Act and for  
25 their service corporations and subsidiaries. The fees shall

1 include, but not be limited to, annual fees, application fees,  
2 regular and special examination fees, and other fees as the  
3 Secretary ~~Commissioner~~ establishes and demonstrates to be  
4 directly resultant from the Secretary's ~~Commissioner's~~  
5 responsibilities under this Act and as are directly  
6 attributable to individual entities operating under this Act.  
7 The aggregate of all fees collected by the Secretary  
8 ~~Commissioner~~ on and after the effective date of this Act shall  
9 be paid promptly after receipt of the same, accompanied by a  
10 detailed statement thereof, into the Savings and Residential  
11 Finance Regulatory Fund subject to the provisions of Section  
12 7-19.1 of the Illinois Savings and Loan Act of 1985 including  
13 without limitation the provision for credits against  
14 regulatory fees. The amounts deposited into the Fund shall be  
15 used for the ordinary and contingent expenses of the Office of  
16 Banks and Real Estate. Nothing in this Act shall prevent  
17 continuing the practice of paying expenses involving salaries,  
18 retirement, social security, and State-paid insurance of State  
19 officers by appropriation from the General Revenue Fund. For  
20 the fiscal year beginning July 1, 2007, and continuing  
21 thereafter through January 10, 2011, the Secretary shall adopt  
22 emergency and general rules to adjust regulatory fee rates to  
23 an amount that shall not exceed by more than 13.5% the rates in  
24 effect prior to the escalation in rates implemented by an  
25 amendment to 38 Ill. Adm. Code 1075 published in 27 Ill. Reg.  
26 16043, Oct. 10, 2003. The adoption of emergency rules

1 authorized by this subsection (6) shall be deemed necessary for  
2 the public interest, safety, and welfare in order to provide  
3 for the expeditious and timely implementation of the State's  
4 fiscal year budget through the transfer from the Savings and  
5 Residential Finance Regulatory Fund to the General Revenue Fund  
6 authorized by this amendatory Act of the 95th General Assembly.

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

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

10 (205 ILCS 305/1.1) (from Ch. 17, par. 4402)

11 Sec. 1.1. Definitions.

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

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

24 (1) Persons belonging to a specific association, group

1 or organization, such as a church, labor union, club or  
2 society and members of their immediate families which shall  
3 include any relative by blood or marriage or foster and  
4 adopted children.

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

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

15 Shares - The term "shares" or "share accounts" means any  
16 form of shares issued by a credit union and established by a  
17 member in accordance with standards specified by a credit  
18 union, including but not limited to common shares, share draft  
19 accounts, classes of shares, share certificates, special  
20 purpose share accounts, shares issued in trust, custodial  
21 accounts, and individual retirement accounts or other plans  
22 established pursuant to Section 401(d) or (f) or Section 408(a)  
23 of the Internal Revenue Code, as now or hereafter amended, or  
24 similar provisions of any tax laws of the United States that  
25 may hereafter exist.

26 Credit Union Organization - The term "credit union

1 organization" means any organization established to serve the  
2 needs of credit unions, the business of which relates to the  
3 daily operations of credit unions.

4 Department - The term "Department" means the Illinois  
5 Department of Financial Institutions.

6 Director - The term "Director" means the Director of the  
7 Illinois Department of Financial Institutions, except that  
8 beginning on the effective date of this amendatory Act of the  
9 95th General Assembly, all references in this Act to the  
10 Director of the Department of Financial Institutions are  
11 deemed, in appropriate contexts, to be references to the  
12 Secretary of Financial and Professional Regulation.

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

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

25 Corporate Credit Union - The term "corporate credit union"  
26 means a credit union which is a cooperative, non-profit

1 association, the membership of which is limited primarily to  
2 other credit unions.

3 Insolvent - "Insolvent" means the condition that results  
4 when the total of all liabilities and shares exceeds net assets  
5 of the credit union.

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

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

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

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

22 (205 ILCS 305/12) (from Ch. 17, par. 4413)

23 Sec. 12. Regulatory fees.

24 (1) For the fiscal year beginning July 1, 2007, a ~~A~~ credit  
25 union regulated by the Department shall pay a regulatory fee to

1 the Department based upon its total assets as shown by its  
 2 Year-end Call Report at the following rates or at a lesser rate  
 3 established by the Secretary in a manner proportionately  
 4 consistent with the following rates and sufficient to fund the  
 5 actual administrative and operational expenses of the Credit  
 6 Union Section pursuant to subsection (4) of this Section:

7 TOTAL ASSETS	REGULATORY FEE
8 \$25,000 or less .....	\$100
9 Over \$25,000 and not over	
10 \$100,000 .....	\$100 plus \$4 per
	\$1,000 of assets in excess of
	\$25,000
13 Over \$100,000 and not over	
14 \$200,000 .....	\$400 plus \$3 per
	\$1,000 of assets in excess of
	\$100,000
17 Over \$200,000 and not over	
18 \$500,000 .....	\$700 plus \$2 per
	\$1,000 of assets in excess of
	\$200,000
21 Over \$500,000 and not over	
22 \$1,000,000 .....	\$1,300 plus \$1.40
	per \$1,000 of assets in excess
	of \$500,000
25 Over \$1,000,000 and not	
26 over \$5,000,000 .....	\$2,000 plus \$0.50

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

19 (2) The Secretary ~~Director~~ shall review the regulatory fee  
 20 schedule in subsection (1) and the projected earnings on those  
 21 fees on an annual basis and adjust the fee schedule no more  
 22 than 5% annually if necessary to defray the estimated  
 23 administrative and operational expenses of the Credit Union  
 24 Section of the Department as defined in subsection (5).  
 25 However, the fee schedule shall not be increased if the amount  
 26 remaining in the Credit Union Fund at the end of any fiscal

1 year is greater than 25% of the total actual and operational  
2 expenses incurred by the State in administering and enforcing  
3 the Illinois Credit Union Act and other laws, rules, and  
4 regulations as may apply to the administration and enforcement  
5 of the foregoing laws, rules, and regulations as amended from  
6 time to time for the preceding fiscal year. The regulatory fee  
7 for the next fiscal year shall be calculated by the Secretary  
8 based on the credit union's total assets as of December 31 of  
9 the preceding calendar year. The Secretary ~~Director~~ shall  
10 provide credit unions with written notice of any adjustment  
11 made in the regulatory fee schedule.

12 (3) Beginning with the calendar quarter commencing on  
13 January 1, 2009 ~~Not later than March 1 of each calendar year,~~ a  
14 credit union shall pay to the Department a regulatory fee in  
15 quarterly installments equal to one-fourth of the regulatory  
16 fee due ~~for that calendar year~~ in accordance with the  
17 regulatory fee schedule in subsection (1), on the basis of  
18 assets as of the Year-end Call Report of the preceding calendar  
19 year. The total annual regulatory fee shall not be less than  
20 \$100 or more than \$141,875 ~~\$187,500~~, provided that the  
21 regulatory fee cap of \$141,875 ~~\$187,500~~ shall be adjusted to  
22 incorporate the same percentage increase as the Secretary  
23 ~~Director~~ makes in the regulatory fee schedule from time to time  
24 under subsection (2). No regulatory fee shall be collected from  
25 a credit union until it has been in operation for one year. The  
26 regulatory fee shall be billed to credit unions on a quarterly

1 basis commencing with the quarter ending March 31, 2009, and it  
2 shall be payable by credit unions on the due date for the Call  
3 Report for the subject quarter.

4 (4) The aggregate of all fees collected by the Department  
5 under this Act shall be paid promptly after they are received,  
6 accompanied by a detailed statement thereof, into the State  
7 Treasury and shall be set apart in the Credit Union Fund, a  
8 special fund hereby created in the State treasury. The amount  
9 from time to time deposited in the Credit Union Fund and shall  
10 be used to offset the ordinary administrative and operational  
11 expenses of the Credit Union Section of the Department under  
12 this Act. All earnings received from investments of funds in  
13 the Credit Union Fund shall be deposited into the Credit Union  
14 Fund and may be used for the same purposes as fees deposited  
15 into that Fund. Moneys deposited in the Credit Union Fund may  
16 be transferred to the Professions Indirect Cost Fund, as  
17 authorized under Section 2105-300 of the Department of  
18 Professional Regulation Law of the Civil Administrative Code of  
19 Illinois. Notwithstanding provisions in the State Finance Act,  
20 as now or hereafter amended, or any other law to the contrary:  
21 (i) the sum of \$4,404,515 shall be transferred from the Credit  
22 Union Fund to the General Revenue Fund as of the effective date  
23 of this amendatory Act of the 95th General Assembly, or as soon  
24 thereafter as practical; (ii) the Governor may, during any  
25 fiscal year through January 10, 2011, from time to time direct  
26 the State Treasurer and Comptroller to transfer a specified sum

1 not exceeding 10% of the revenues to be deposited into the  
2 Credit Union Fund during that fiscal year from that Fund to the  
3 General Revenue Fund in order to help defray the State's  
4 operating costs for the fiscal year; and (iii) the total sum  
5 transferred from the Credit Union Fund to the General Revenue  
6 Fund pursuant to item (ii) of this subsection (4) shall not  
7 exceed during any fiscal year 10% of the revenues to be  
8 deposited into the Credit Union Fund during that fiscal year.

9 The State Treasurer and Comptroller shall transfer the  
10 amounts designated under this Section as soon as may be  
11 practicable after receiving the direction to transfer from the  
12 Governor.

13 (5) The administrative and operational expenses for any  
14 fiscal ~~calendar~~ year shall mean the ordinary and contingent  
15 expenses for that year incidental to making the examinations  
16 provided for by, and for administering, this Act, including all  
17 salaries and other compensation paid for personal services  
18 rendered for the State by officers or employees of the State to  
19 enforce this Act; all expenditures for telephone and telegraph  
20 charges, postage and postal charges, office supplies and  
21 services, furniture and equipment, office space and  
22 maintenance thereof, travel expenses and other necessary  
23 expenses; all to the extent that such expenditures are directly  
24 incidental to such examination or administration.

25 (6) When the balance in the Credit Union Fund at the end of  
26 a fiscal year exceeds 25% ~~aggregate of all fees collected by~~

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

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

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

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

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

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

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

5           Sec. 1-4. Definitions.

6           (a) "Residential real property" or "residential real  
7 estate" shall mean real property located in this State improved  
8 by a one-to-four family dwelling used or occupied, wholly or  
9 partly, as the home or residence of one or more persons and may  
10 refer, subject to regulations of the Commissioner, to  
11 unimproved real property upon which those kinds dwellings are  
12 to be constructed.

13           (b) "Making a residential mortgage loan" or "funding a  
14 residential mortgage loan" shall mean for compensation or gain,  
15 either directly or indirectly, advancing funds or making a  
16 commitment to advance funds to a loan applicant for a  
17 residential mortgage loan.

18           (c) "Soliciting, processing, placing, or negotiating a  
19 residential mortgage loan" shall mean for compensation or gain,  
20 either directly or indirectly, accepting or offering to accept  
21 an application for a residential mortgage loan, assisting or  
22 offering to assist in the processing of an application for a  
23 residential mortgage loan on behalf of a borrower, or  
24 negotiating or offering to negotiate the terms or conditions of

1 a residential mortgage loan with a lender on behalf of a  
2 borrower including, but not limited to, the submission of  
3 credit packages for the approval of lenders, the preparation of  
4 residential mortgage loan closing documents, including a  
5 closing in the name of a broker.

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

7 (1) (i) Any banking organization or foreign banking  
8 corporation licensed by the Illinois Commissioner of Banks  
9 and Real Estate or the United States Comptroller of the  
10 Currency to transact business in this State; (ii) any  
11 national bank, federally chartered savings and loan  
12 association, federal savings bank, federal credit union;  
13 (iii) any pension trust, bank trust, or bank trust company;  
14 (iv) any bank, savings and loan association, savings bank,  
15 or credit union organized under the laws of this or any  
16 other state; (v) any Illinois Consumer Installment Loan Act  
17 licensee; (vi) any insurance company authorized to  
18 transact business in this State; (vii) any entity engaged  
19 solely in commercial mortgage lending; (viii) any service  
20 corporation of a savings and loan association or savings  
21 bank organized under the laws of this State or the service  
22 corporation of a federally chartered savings and loan  
23 association or savings bank having its principal place of  
24 business in this State, other than a service corporation  
25 licensed or entitled to reciprocity under the Real Estate  
26 License Act of 2000; or (ix) any first tier subsidiary of a

1 bank, the charter of which is issued under the Illinois  
2 Banking Act by the Illinois Commissioner of Banks and Real  
3 Estate, or the first tier subsidiary of a bank chartered by  
4 the United States Comptroller of the Currency and that has  
5 its principal place of business in this State, provided  
6 that the first tier subsidiary is regularly examined by the  
7 Illinois Commissioner of Banks and Real Estate or the  
8 Comptroller of the Currency, or a consumer compliance  
9 examination is regularly conducted by the Federal Reserve  
10 Board.

11 (1.5) Any employee of a person or entity mentioned in  
12 item (1) of this subsection.

13 (2) Any person or entity that does not originate  
14 mortgage loans in the ordinary course of business making or  
15 acquiring residential mortgage loans with his or her or its  
16 own funds for his or her or its own investment without  
17 intent to make, acquire, or resell more than 10 residential  
18 mortgage loans in any one calendar year.

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

22 (4) Any person licensed pursuant to the Real Estate  
23 License Act of 2000, who engages only in the taking of  
24 applications and credit and appraisal information to  
25 forward to a licensee or an exempt entity under this Act  
26 and who is compensated by either a licensee or an exempt

1           entity under this Act, but is not compensated by either the  
2           buyer (applicant) or the seller.

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

9           (6) A person who prepares supporting documentation for  
10          a residential mortgage loan application taken by a licensee  
11          and performs ministerial functions pursuant to specific  
12          instructions of the licensee who neither requires nor  
13          permits the preparer to exercise his or her discretion or  
14          judgment; provided that this activity is engaged in  
15          pursuant to a binding, written agreement between the  
16          licensee and the preparer that:

17                (A) holds the licensee fully accountable for the  
18                preparer's action; and

19                (B) otherwise meets the requirements of this  
20                Section and this Act, does not undermine the purposes  
21                of this Act, and is approved by the Commissioner.

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

26          (f) "Mortgage loan" "residential mortgage loan" or "home

1 mortgage loan" shall mean a loan to or for the benefit of any  
2 natural person made primarily for personal, family, or  
3 household use, primarily secured by either a mortgage on  
4 residential real property or certificates of stock or other  
5 evidence of ownership interests in and proprietary leases from,  
6 corporations, partnerships, or limited liability companies  
7 formed for the purpose of cooperative ownership of residential  
8 real property, all located in Illinois.

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

12 (h) "Ultimate equitable owner" shall mean a person who,  
13 directly or indirectly, owns or controls an ownership interest  
14 in a corporation, foreign corporation, alien business  
15 organization, trust, or any other form of business organization  
16 regardless of whether the person owns or controls the ownership  
17 interest through one or more persons or one or more proxies,  
18 powers of attorney, nominees, corporations, associations,  
19 partnerships, trusts, joint stock companies, or other entities  
20 or devices, or any combination thereof.

21 (i) "Residential mortgage financing transaction" shall  
22 mean the negotiation, acquisition, sale, or arrangement for or  
23 the offer to negotiate, acquire, sell, or arrange for, a  
24 residential mortgage loan or residential mortgage loan  
25 commitment.

26 (j) "Personal residence address" shall mean a street

1 address and shall not include a post office box number.

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

4 (l) "Party to a residential mortgage financing  
5 transaction" shall mean a borrower, lender, or loan broker in a  
6 residential mortgage financing transaction.

7 (m) "Payments" shall mean payment of all or any of the  
8 following: principal, interest and escrow reserves for taxes,  
9 insurance and other related reserves, and reimbursement for  
10 lender advances.

11 (n) "Commissioner" shall mean the Commissioner of Banks and  
12 Real Estate, except that beginning on the effective date of  
13 this amendatory Act of the 95th General Assembly, all  
14 references in this Act to the Commissioner of Banks and Real  
15 Estate are deemed, in appropriate contexts, to be references to  
16 the Secretary of Financial and Professional Regulation ~~or a~~  
17 ~~person authorized by the Commissioner, the Office of Banks and~~  
18 ~~Real Estate Act, or this Act to act in the Commissioner's~~  
19 ~~stead.~~

20 (o) "Loan brokering", "brokering", or "brokerage service"  
21 shall mean the act of helping to obtain from another entity,  
22 for a borrower, a loan secured by residential real estate  
23 situated in Illinois or assisting a borrower in obtaining a  
24 loan secured by residential real estate situated in Illinois in  
25 return for consideration to be paid by either the borrower or  
26 the lender including, but not limited to, contracting for the

1 delivery of residential mortgage loans to a third party lender  
2 and soliciting, processing, placing, or negotiating  
3 residential mortgage loans.

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

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

21 (r) "Full service office" shall mean office and staff in  
22 Illinois reasonably adequate to handle efficiently  
23 communications, questions, and other matters relating to any  
24 application for, or an existing home mortgage secured by  
25 residential real estate situated in Illinois with respect to  
26 which the licensee is brokering, funding originating,

1 purchasing, or servicing. The management and operation of each  
2 full service office must include observance of good business  
3 practices such as adequate, organized, and accurate books and  
4 records; ample phone lines, hours of business, staff training  
5 and supervision, and provision for a mechanism to resolve  
6 consumer inquiries, complaints, and problems. The Commissioner  
7 shall issue regulations with regard to these requirements and  
8 shall include an evaluation of compliance with this Section in  
9 his or her periodic examination of each licensee.

10 (s) "Purchasing" shall mean the purchase of conventional or  
11 government-insured mortgage loans secured by residential real  
12 estate situated in Illinois from either the lender or from the  
13 secondary market.

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

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

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

21 (1) obtain a residential mortgage loan for the borrower  
22 or assist the borrower in obtaining a residential mortgage  
23 loan; or

24 (2) consider making a residential mortgage loan to the  
25 borrower.

26 (w) "Advertisement" shall mean the attempt by publication,

1 dissemination, or circulation to induce, directly or  
2 indirectly, any person to enter into a residential mortgage  
3 loan agreement or residential mortgage loan brokerage  
4 agreement relative to a mortgage secured by residential real  
5 estate situated in Illinois.

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

8 (y) "Government-insured mortgage loan" shall mean any  
9 mortgage loan made on the security of residential real estate  
10 insured by the Department of Housing and Urban Development or  
11 Farmers Home Loan Administration, or guaranteed by the Veterans  
12 Administration.

13 (z) "Annual audit" shall mean a certified audit of the  
14 licensee's books and records and systems of internal control  
15 performed by a certified public accountant in accordance with  
16 generally accepted accounting principles and generally  
17 accepted auditing standards.

18 (aa) "Financial institution" shall mean a savings and loan  
19 association, savings bank, credit union, or a bank organized  
20 under the laws of Illinois or a savings and loan association,  
21 savings bank, credit union or a bank organized under the laws  
22 of the United States and headquartered in Illinois.

23 (bb) "Escrow agent" shall mean a third party, individual or  
24 entity charged with the fiduciary obligation for holding escrow  
25 funds on a residential mortgage loan pending final payout of  
26 those funds in accordance with the terms of the residential

1 mortgage loan.

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

4 (dd) "Affiliate" shall mean:

5 (1) any entity that directly controls or is controlled  
6 by the licensee and any other company that is directly  
7 affecting activities regulated by this Act that is  
8 controlled by the company that controls the licensee;

9 (2) any entity:

10 (A) that is controlled, directly or indirectly, by  
11 a trust or otherwise, by or for the benefit of  
12 shareholders who beneficially or otherwise control,  
13 directly or indirectly, by trust or otherwise, the  
14 licensee or any company that controls the licensee; or

15 (B) a majority of the directors or trustees of  
16 which constitute a majority of the persons holding any  
17 such office with the licensee or any company that  
18 controls the licensee;

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

23 The Commissioner may define by rule and regulation any  
24 terms used in this Act for the efficient and clear  
25 administration of this Act.

26 (ee) "First tier subsidiary" shall be defined by regulation

1 incorporating the comparable definitions used by the Office of  
2 the Comptroller of the Currency and the Illinois Commissioner  
3 of Banks and Real Estate.

4 (ff) "Gross delinquency rate" means the quotient  
5 determined by dividing (1) the sum of (i) the number of  
6 government-insured residential mortgage loans funded or  
7 purchased by a licensee in the preceding calendar year that are  
8 delinquent and (ii) the number of conventional residential  
9 mortgage loans funded or purchased by the licensee in the  
10 preceding calendar year that are delinquent by (2) the sum of  
11 (i) the number of government-insured residential mortgage  
12 loans funded or purchased by the licensee in the preceding  
13 calendar year and (ii) the number of conventional residential  
14 mortgage loans funded or purchased by the licensee in the  
15 preceding calendar year.

16 (gg) "Delinquency rate factor" means the factor set by rule  
17 of the Commissioner that is multiplied by the average gross  
18 delinquency rate of licensees, determined annually for the  
19 immediately preceding calendar year, for the purpose of  
20 determining which licensees shall be examined by the  
21 Commissioner pursuant to subsection (b) of Section 4-8 of this  
22 Act.

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

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

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

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

21 (205 ILCS 635/2-2) (from Ch. 17, par. 2322-2)

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

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

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

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

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

10          (4) Except for a broker applying to renew a license,  
11 the filing of an audited balance sheet including all  
12 footnotes prepared by a certified public accountant in  
13 accordance with generally accepted accounting principles  
14 and generally accepted auditing principles which evidences  
15 that the applicant meets the net worth requirements of  
16 Section 3-5.

17          (5) The filing of proof satisfactory to the  
18 Commissioner that the applicant, the members thereof if the  
19 applicant is a partnership or association, the members or  
20 managers thereof that retain any authority or  
21 responsibility under the operating agreement if the  
22 applicant is a limited liability company, or the officers  
23 thereof if the applicant is a corporation have 3 years  
24 experience preceding application in real estate finance.  
25 Instead of this requirement, the applicant and the  
26 applicant's officers or members, as applicable, may

1           satisfactorily complete a program of education in real  
2           estate finance and fair lending, as approved by the  
3           Commissioner, prior to receiving the initial license. The  
4           Commissioner shall promulgate rules regarding proof of  
5           experience requirements and educational requirements and  
6           the satisfactory completion of those requirements. The  
7           Commissioner may establish by rule a list of duly licensed  
8           professionals and others who may be exempt from this  
9           requirement.

10           (6) An investigation of the averments required by  
11           Section 2-4, which investigation must allow the  
12           Commissioner to issue positive findings stating that the  
13           financial responsibility, experience, character, and  
14           general fitness of the license applicant and of the members  
15           thereof if the license applicant is a partnership or  
16           association, of the officers and directors thereof if the  
17           license applicant is a corporation, and of the managers and  
18           members that retain any authority or responsibility under  
19           the operating agreement if the license applicant is a  
20           limited liability company are such as to command the  
21           confidence of the community and to warrant belief that the  
22           business will be operated honestly, fairly and efficiently  
23           within the purpose of this Act. If the Commissioner shall  
24           not so find, he or she shall not issue such license, and he  
25           or she shall notify the license applicant of the denial.  
26           The Commissioner may impose conditions on a license if the

1 Commissioner determines that the conditions are necessary or  
2 appropriate. These conditions shall be imposed in writing and  
3 shall continue in effect for the period prescribed by the  
4 Commissioner.

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

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

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

14 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

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

21 (b) It shall be the responsibility of each licensee to  
22 accomplish renewal of its license; failure of the licensee to  
23 receive renewal forms absent a request sent by certified mail  
24 for such forms will not waive said responsibility. Failure by a  
25 licensee to submit a properly completed renewal application

1 form and fees in a timely fashion, absent a written extension  
2 from the Secretary ~~Commissioner~~, will result in the assessment  
3 of additional fees, as follows:

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

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

14 (c) A license which is not renewed by the date required in  
15 this Section shall automatically become inactive. No activity  
16 regulated by this Act shall be conducted by the licensee when a  
17 license becomes inactive. The Commissioner may require the  
18 licensee to provide a plan for the disposition of any  
19 residential mortgage loans not closed or funded when the  
20 license becomes inactive. The Commissioner may allow a licensee  
21 with an inactive license to conduct activities regulated by  
22 this Act for the sole purpose of assisting borrowers in the  
23 closing or funding of loans for which the loan application was  
24 taken from a borrower while the license was active. An inactive  
25 license may be reactivated by the Commissioner upon payment of  
26 the renewal fee, and payment of a reactivation fee equal to the

1 renewal fee.

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

4 (e) A licensee ceasing an activity or activities regulated  
5 by this Act and desiring to no longer be licensed shall so  
6 inform the Commissioner in writing and, at the same time,  
7 convey the license and all other symbols or indicia of  
8 licensure. The licensee shall include a plan for the withdrawal  
9 from regulated business, including a timetable for the  
10 disposition of the business. Upon receipt of such written  
11 notice, the Commissioner shall issue a certified statement  
12 canceling the license.

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

15 (205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)

16 Sec. 4-11. Costs of Supervision; Examination and  
17 Investigative Fees. The expenses of administering this Act,  
18 including investigations and examinations provided for in this  
19 Act shall be borne by and assessed against entities regulated  
20 by this Act. Subject to the limitations set forth in Section  
21 2-2 of this Act, the Secretary ~~The Commissioner~~ shall establish  
22 fees by regulation in at least the following categories:

- 23 (1) application fees;  
24 (2) investigation of license applicant fees;  
25 (3) examination fees;

1           (4) contingent fees;  
2           and such other categories as may be required to administer this  
3           Act.  
4           (Source: P.A. 85-735.)

5           Section 99. Effective date. This Act takes effect upon  
6           becoming law.