

1 AN ACT concerning financial regulation.

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

4 Section 1. Short title. This Act may be cited as the High  
5 Risk Home Loan Act.

6 Section 5. Purpose and construction. The purpose of  
7 this Act is to protect borrowers who enter into high risk  
8 home loans from abuse that occurs in the credit marketplace  
9 when creditors and brokers are not sufficiently regulated in  
10 Illinois. This Act is to be construed as a borrower  
11 protection statute for all purposes. This Act shall be  
12 liberally construed to effectuate its purpose.

13 Section 10. Definitions. As used in this Act:

14 "Approved credit counselor" means a credit counselor  
15 approved by the Director of Financial Institutions.

16 "Borrower" means a natural person who seeks or obtains a  
17 high risk home loan.

18 "Commissioner" means the Commissioner of the Office of  
19 Banks and Real Estate.

20 "Department" means the Department of Financial  
21 Institutions.

22 "Director" means the Director of Financial Institutions.

23 "Good faith" means honesty in fact in the conduct or  
24 transaction concerned.

25 "High risk home loan" means a home equity loan in which  
26 (i) at the time of origination, the annual percentage rate  
27 exceeds by more than 6 percentage points in the case of a  
28 first lien mortgage, or by more than 8 percentage points in  
29 the case of a junior mortgage, the yield on U.S. Treasury  
30 securities having comparable periods of maturity to the loan

1 maturity as of the fifteenth day of the month immediately  
2 preceding the month in which the application for the loan is  
3 received by the lender or (ii) the total points and fees  
4 payable by the consumer at or before closing will exceed the  
5 greater of 5% of the total loan amount or \$800. The \$800  
6 figure shall be adjusted annually on January 1 by the annual  
7 percentage change in the Consumer Price Index for All Urban  
8 Consumers for all items published by the United States  
9 Department of Labor. "High risk home loan" does not include a  
10 loan that is made primarily for a business purpose unrelated  
11 to the residential real property securing the loan or to an  
12 open-end credit plan subject to 12 CFR 226 (2000, no  
13 subsequent amendments or editions are included).

14 "Home equity loan" means any loan secured by the  
15 borrower's primary residence where the proceeds are not used  
16 as purchase money for the residence.

17 "Lender" means a natural or artificial person who  
18 transfers, deals in, offers, or makes a high risk home loan.  
19 "Lender" includes, but is not limited to, creditors and  
20 brokers who transfer, deal in, offer, or make high risk home  
21 loans. "Lender" does not include purchasers, assignees, or  
22 subsequent holders of high risk home loans.

23 "Office" means the Office of Banks and Real Estate.

24 "Points and fees" means all items required to be  
25 disclosed as points and fees under 12 CFR 226.32 (2000, no  
26 subsequent amendments or editions included); the premium of  
27 any single premium credit life, credit disability, credit  
28 unemployment, or any other life or health insurance that is  
29 financed directly or indirectly into the loan; and  
30 compensation paid directly or indirectly to a mortgage  
31 broker, including a broker that originates a loan in its own  
32 name in a table-funded transaction, not otherwise included in  
33 12 CFR 226.4.

34 "Reasonable" means fair, proper, just, or prudent under

1 the circumstances.

2 "Servicer" means any entity chartered under the Illinois  
3 Banking Act, the Savings Bank Act, the Illinois Credit Union  
4 Act, or the Illinois Savings and Loan Act of 1985 and any  
5 person or entity licensed under the Residential Mortgage  
6 License Act of 1987, the Consumer Installment Loan Act, or  
7 the Sales Finance Agency Act who is responsible for the  
8 collection or remittance for, or has the right or obligation  
9 to collect or remit for, any lender, note owner, or note  
10 holder or for a licensee's own account, of payments,  
11 interest, principal, and trust items (such as hazard  
12 insurance and taxes on a residential mortgage loan) in  
13 accordance with the terms of the residential mortgage loan,  
14 including loan payment follow-up, delinquency loan follow-up,  
15 loan analysis, and any notifications to the borrower that are  
16 necessary to enable the borrower to keep the loan current and  
17 in good standing.

18 "Total loan amount" has the same meaning as that term is  
19 given in 12 CFR 226.32 and shall be calculated in accordance  
20 with the Federal Reserve Board's Official Staff Commentary to  
21 that regulation.

22 Section 15. Ability to repay. A creditor or broker shall  
23 not transfer, deal in, offer, or make a high risk home loan  
24 if the creditor or broker does not believe at the time the  
25 loan is consummated that the borrower will be able to make  
26 the scheduled payments to repay the obligation based upon a  
27 consideration of his or her current and expected income,  
28 current obligations, employment status, and other financial  
29 resources (other than the borrower's equity in the dwelling  
30 that secures repayment of the loan). A borrower shall be  
31 presumed to be able to repay the loan if, at the time the  
32 loan is consummated, or at the time of the first rate  
33 adjustment, in the case of a lower introductory interest

1 rate, the borrower's scheduled monthly payments on the loan  
2 (including principal, interest, taxes, insurance, and  
3 assessments), combined with the scheduled payments for all  
4 other disclosed debts, do not exceed 50% of the borrower's  
5 monthly gross income.

6 Section 20. Verification of ability to repay loan. The  
7 lender shall verify the borrower's ability to repay the loan  
8 in the case of a high risk home loan. The verification shall  
9 require, at a minimum, the following:

10 (1) That the borrower prepare and submit to the  
11 lender a personal income and expense statement in a form  
12 prescribed by the Commissioner or the Director, who may  
13 permit the use of other forms such as the URLA (Fannie  
14 Mae Form 1003 (10/92), available from Fannie Mae, 3900  
15 Wisconsin Avenue, NW, Washington, D.C. 20016-2892, and  
16 Freddie Mac Form 85 (10/92), available from Freddie Mac  
17 at 1101 Pennsylvania Avenue, NW, Suite 950, P.O. Box  
18 37347, Washington, D.C. 20077-0001, no subsequent  
19 amendments or editions) and Transmittal Summary (Fannie  
20 Mae Form 1077 (3/97), available from Fannie Mae, 3900  
21 Wisconsin Avenue, NW, Washington, D.C. 20016-2892, and  
22 Freddie Mac Form 1008 (3/97), available from Freddie Mac  
23 at 1101 Pennsylvania Avenue, NW, Suite 950, P.O. Box  
24 37347, Washington, D.C. 20077-0001, no subsequent  
25 amendments or editions).

26 (2) That the borrower's income is verified by means  
27 of tax returns, pay stubs, accounting statements, or  
28 other prudent means.

29 (3) That a credit report is obtained regarding the  
30 borrower.

31 Section 25. Good faith dealings; fraudulent or deceptive  
32 practices. A lender must act in good faith in all relations

1 with a borrower, including but not limited to, transferring,  
2 dealing in, offering, or making a high risk home loan.

3 No lender shall employ fraudulent or deceptive acts or  
4 practices in the making of a high risk home loan, including  
5 deceptive marketing and sales efforts.

6 Section 30. Prepayment penalty. For any loan that is  
7 subject to the provisions of this Act and is not subject to  
8 the provisions of the Home Ownership and Equity Protection  
9 Act of 1994, no lender shall make a high risk home loan that  
10 includes a penalty provision for payment made: (i) after the  
11 expiration of the 36-month period following the date the loan  
12 was made; or (ii) that is more than:

13 (1) 3% of the total loan amount if the prepayment  
14 is made within the first 12-month period following the  
15 date the loan was made;

16 (2) 2% of the total loan amount if the prepayment  
17 is made within the second 12-month period following the  
18 date the loan was made; or

19 (3) 1% of the total loan amount if the prepayment  
20 is made within the third 12-month period following the  
21 date the loan was made.

22 Section 40. Pre-paid insurance products and warranties.  
23 No lender shall transfer, deal in, offer, or make a high risk  
24 home loan that finances a single premium credit life, credit  
25 disability, credit unemployment, or any other life or health  
26 insurance, directly or indirectly. Insurance calculated and  
27 paid on a monthly basis shall not be considered to be  
28 financed by the lender.

29 Section 45. Refinancing prohibited in certain cases. No  
30 lender shall refinance any high risk home loan where such  
31 refinancing charges additional points and fees within a

1 12-month period after the original loan agreement was signed,  
2 unless the refinancing results in a tangible net benefit to  
3 the borrower.

4 Section 55. Financing of points and fees. No lender  
5 shall transfer, deal in, offer, or make a high risk home loan  
6 that finances points and fees in excess of 6% of the total  
7 loan amount.

8 Section 60. Payments to contractors. No lender shall  
9 make a payment of any proceeds of a high risk home loan  
10 directly to a contractor under a home improvement contract  
11 other than:

12 (1) by instrument payable to the borrower or  
13 payable jointly to the borrower and contractor; or

14 (2) at the election of the borrower, by a  
15 third-party escrow agent in accordance with the terms  
16 established in a written agreement that is signed by the  
17 borrower, the lender, and the contractor before the date  
18 of payment.

19 Section 65. Negative amortization. No lender shall  
20 transfer, deal in, offer, or make a high risk home loan,  
21 other than a loan secured only by a reverse mortgage, with  
22 terms under which the outstanding balance will increase at  
23 any time over the course of the loan because the regular  
24 periodic payments do not cover the full amount of the  
25 interest due, unless the negative amortization is the  
26 consequence of a temporary forbearance sought by the  
27 borrower.

28 Section 70. Negative equity. No lender shall transfer,  
29 deal in, offer, or make a high risk home loan where the loan  
30 amount exceeds the value of the property securing the loan.

1           Section 80. Late payment fee. A lender shall not  
2 transfer, deal in, offer, or make a high risk home loan that  
3 provides for a late payment fee, except under the following  
4 conditions:

5           (1) the late payment fee shall not be in excess of  
6 5% of the amount of the payment past due;

7           (2) the late payment fee shall only be assessed for  
8 a payment past due for 15 days or more;

9           (3) the late payment fee shall not be imposed more  
10 than once with respect to a single late payment;

11           (4) a late payment fee that the lender has  
12 collected shall be reimbursed if the borrower presents  
13 proof of having made a timely payment; and

14           (5) a lender shall treat each payment as posted on  
15 the same business day as it was received by the lender,  
16 servicer, or lender's agent or at the address provided to  
17 the borrower by the lender, servicer, or lender's agent  
18 for making payments.

19           Section 85. Payment compounding. No lender shall  
20 transfer, deal in, offer, or make a high risk home loan that  
21 includes terms under which more than 2 periodic payments  
22 required under the loan are consolidated and paid in advance  
23 from the loan proceeds provided to the borrower.

24           Section 90. Call provision. No lender shall transfer,  
25 deal in, offer, or make a high risk home loan that contains a  
26 provision that permits the lender, in its sole discretion, to  
27 accelerate the indebtedness, provided that this provision  
28 does not prohibit acceleration of a loan in good faith due to  
29 a borrower's failure to abide by the material terms of the  
30 loan.

31           Section 95. Disclosure prior to making a high risk home

1 loan. A lender shall not transfer, deal in, offer, or make a  
2 high risk home loan unless the lender has given the following  
3 notice or a substantially similar notice in writing, to the  
4 borrower, acknowledged in writing and signed by the borrower  
5 not later than the time the notice is required under the  
6 notice provision contained in 12 CFR 226.31(c):

7 NOTICE TO BORROWER

8 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN  
9 AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN  
10 RATES AND FEES. LOAN RATES AND CLOSING COSTS AND FEES VARY  
11 BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND  
12 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE  
13 LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL  
14 SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY  
15 BASED ON WHICH LENDER OR BROKER YOU SELECT. IF YOU ACCEPT THE  
16 TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON  
17 YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT  
18 INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE  
19 LOAN. YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND AN APPROVED  
20 CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR  
21 REGARDING THE RATE, FEES, AND PROVISIONS OF THIS LOAN BEFORE  
22 YOU PROCEED. A LIST OF APPROVED CREDIT COUNSELORS IS  
23 AVAILABLE BY CONTACTING EITHER THE ILLINOIS DEPARTMENT OF  
24 FINANCIAL INSTITUTIONS OR THE ILLINOIS OFFICE OF BANKS AND  
25 REAL ESTATE. YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN  
26 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR  
27 HAVE SIGNED A LOAN APPLICATION. ALSO, YOUR PAYMENTS ON  
28 EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD  
29 NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR  
30 EXISTING LENDERS.

31 Section 100. Counseling prior to perfecting foreclosure  
32 proceedings.

33 (a) If a high risk home loan becomes delinquent by more



1 than 30 days, the servicer shall send a notice advising the  
2 borrower that he or she may wish to seek approved credit  
3 counseling.

4 (b) The notice required in subsection (a) shall, at a  
5 minimum, include the following language:

6 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY  
7 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR BEST  
8 INTEREST TO SEEK APPROVED CREDIT COUNSELING. A LIST OF  
9 APPROVED CREDIT COUNSELORS MAY BE OBTAINED FROM EITHER THE  
10 ILLINOIS DEPARTMENT OF FINANCIAL INSTITUTIONS OR THE ILLINOIS  
11 OFFICE OF BANKS AND REAL ESTATE."

12 (c) If, within 15 days after mailing the notice provided  
13 for under subsection (b), a lender, servicer, or lender's  
14 agent is notified in writing by an approved credit counselor  
15 and the approved credit counselor advises the lender,  
16 servicer, or lender's agent that the borrower is seeking  
17 approved credit counseling, then the lender, servicer, or  
18 lender's agent shall not institute legal action under Part 15  
19 of Article XV of the Code of Civil Procedure for 30 days  
20 after the date of that notice. Only one such 30-day period of  
21 forbearance is allowed under this Section per subject loan.

22 (d) If, within the 30-day period provided under  
23 subsection (c), the lender, servicer, or lender's agent, the  
24 approved credit counselor, and the borrower agree to a debt  
25 management plan, then the lender, servicer, or lender's agent  
26 shall not institute legal action under Part 15 of Article XV  
27 of the Code of Civil Procedure for as long as the debt  
28 management plan is complied with by the borrower.

29 The agreed debt management plan must be in writing and  
30 signed by the lender, servicer, or lender's agent, the  
31 approved credit counselor, and the borrower. No modification  
32 of an approved debt management plan can be made without the  
33 mutual agreement of the lender, servicer, or lender's agent,  
34 the approved credit counselor, and the borrower.

1           Upon written notice to the lender, servicer, or lender's  
2 agent, the borrower may change approved credit counselors.

3           (e) If the borrower fails to comply with the agreed debt  
4 management plan, then nothing in this Section shall be  
5 construed to impair the legal right of the lender, servicer,  
6 or lender's agent to enforce the contract.

7           Section 105. Right to cure.

8           (a) Before an action is filed to foreclose or collect  
9 money due pursuant to a high risk home loan or before other  
10 action is taken to seize or transfer ownership of property  
11 subject to a high risk home loan, the lender or lender's  
12 assignee of the loan shall deliver to the borrower a notice  
13 of the right to cure the default, informing the borrower of  
14 all of the following:

15                   (1) The nature of the default.

16                   (2) The borrower's right to cure the default by  
17 paying the sum of money required, provided that a lender  
18 or assignee shall accept any partial payment made or  
19 tendered in response to the notice. If the amount  
20 necessary to cure the default will change within 30 days  
21 of the notice due to the application of a daily interest  
22 rate or the addition of late fees, as allowed by the Act,  
23 the notice shall give sufficient information to enable  
24 the borrower to calculate the amount at any point within  
25 the 30-day period.

26                   (3) The date by which the borrower may cure the  
27 default to avoid a court action, acceleration and  
28 initiation of foreclosure, or other action to seize the  
29 property, which date shall not be less than 30 days after  
30 the date the notice is delivered, and the name, address,  
31 and telephone number of a person to whom the payment or  
32 tender shall be made.

33                   (4) That if the borrower does not cure the default

1 by the date specified, the lender or assignee may file an  
2 action for money due or take steps to terminate the  
3 borrower's ownership in the property by requiring payment  
4 in full of the high risk home loan and commencing a  
5 foreclosure proceeding or other action to seize the  
6 property.

7 (5) The name, address, and telephone number of a  
8 person whom the borrower may contact if the borrower  
9 disagrees with the assertion that a default has occurred  
10 or the correctness of the calculation of the amount  
11 required to cure the default.

12 (b) If a lender or assignee asserts that grounds for  
13 acceleration exist and requires the payment in full of all  
14 sums secured by the high risk home loan, the borrower or  
15 anyone authorized to act on the borrower's behalf may, at any  
16 time before the title is transferred by means of foreclosure,  
17 by judicial proceeding and sale, or other means, cure the  
18 default, and reinstate the high risk home loan. Cure of the  
19 default shall reinstate the borrower to the same position as  
20 if the default had not occurred and shall nullify, as of the  
21 date of the cure, an acceleration of any obligation under the  
22 high risk home loan arising from the default.

23 (c) To cure a default under this Section, a borrower  
24 shall not be required to pay any charge, fee, or penalty  
25 attributable to the exercise of the right to cure a default,  
26 other than the fees specifically allowed by this subsection.  
27 The borrower shall not be liable for any attorney fees  
28 relating to the default that are incurred by the lender or  
29 assignee prior to or during the 30-day period set forth in  
30 subsection (a) of this Section, nor for any such fees in  
31 excess of \$100 that are incurred by the lender or assignee  
32 after the expiration of the 30-day period but before the  
33 lender or assignee files a foreclosure or other judicial  
34 action or takes other action to seize or transfer ownership

1 of the real estate. After the lender or assignee files a  
2 foreclosure or other judicial action or takes other action to  
3 seize or transfer ownership of the real estate, the borrower  
4 shall only be liable for attorney fees that are reasonable  
5 and actually incurred by the lender or assignee, based on a  
6 reasonable hourly rate and a reasonable number of hours.

7 (d) If a default is cured prior to the initiation of any  
8 action to foreclose or to seize the residence, the lender or  
9 assignee shall not institute a proceeding or other action for  
10 that default. If a default is cured after the initiation of  
11 any action, the lender or assignee shall take such steps as  
12 are necessary to terminate the action.

13 (e) A lender or a lender's assignee of a high risk home  
14 loan that has the legal right to foreclose shall use the  
15 judicial foreclosure procedures provided by law. In such a  
16 proceeding, the borrower may assert the nonexistence of a  
17 default and any other claim or defense to acceleration and  
18 foreclosure, including any claim or defense based on a  
19 violation of the Act, though no such claim or defense shall  
20 be deemed a compulsory counterclaim.

21 Section 110. Mortgage Awareness Program.

22 (a) The Mortgage Awareness Program is a counseling and  
23 educational component that must be provided by the Director  
24 and the Commissioner.

25 (b) The core curriculum of the Mortgage Awareness  
26 Program shall include all of the following:

- 27 (1) Explanation of the amount financed.
- 28 (2) Explanation of the finance charge.
- 29 (3) Explanation of the annual percentage rate.
- 30 (4) Explanation of the total payments.
- 31 (5) Explanation of the loan costs, including  
32 broker's fees, finance charges, points, and origination  
33 fees.

1 (6) Explanation of the right of rescission.

2 (7) Explanation of foreclosure procedures.

3 (8) Explanation of the significant debt ratios,  
4 including total debt to income, loan debt to income, and  
5 loan debt to value of residence.

6 (9) Explanation of adjustable rate mortgage.

7 (10) Explanation of balloon payments.

8 (11) Explanation of credit options.

9 (12) Explanation of each item that appears on a  
10 good faith estimate.

11 (13) Explanation of pre-payment penalties.

12 (c) Counseling session attendees must complete a  
13 personal income and expense statement, as well as a balance  
14 sheet, on forms provided by the Commissioner or the Director.

15 (d) Prior to signing a certificate of completion,  
16 approved credit counselors shall privately discuss with each  
17 attendee that attendee's income and expense statement and  
18 balance sheet, as well as the terms of any loan the attendee  
19 currently has or may be contemplating, and provide a third  
20 party review to establish the affordability of the loan.

21 (e) Counseling session attendees must be given a  
22 brochure that contains information covered by the Mortgage  
23 Awareness Program.

24 (f) Any lender, prior to making a high risk home loan,  
25 shall inform the borrower in writing of the right to  
26 participate in the Mortgage Awareness Program.

27 (g) No lender shall offer less favorable loan terms to a  
28 borrower due to a borrower's participation in the Mortgage  
29 Awareness Program.

30 (h) Except as prohibited elsewhere in this Section, the  
31 borrower may waive participation in the program, provided  
32 that the waiver occurs no less than 2 business days after the  
33 day that the borrower receives the notice required by  
34 subsection (f) of this Section and that the waiver is in

1 writing in a form approved by the Commissioner and the  
2 Director.

3 Section 115. Report of default and foreclosure rates on  
4 conventional loans.

5 (a) On or before October 1 and April 1 of each year,  
6 each servicer of Illinois residential mortgage loans shall  
7 report to the Commissioner or the Director the default and  
8 foreclosure data of conventional loans for the 6-month  
9 periods ending June 30 and December 31, respectively.

10 (b) Each servicer shall report the following  
11 information:

12 (1) The average quarterly dollar amount of  
13 conventional one to 4 family mortgage loans secured by  
14 Illinois real estate.

15 (2) The average quarterly number of conventional  
16 one to 4 family mortgage loans secured by Illinois real  
17 estate.

18 (3) The average quarterly dollar amount of  
19 conventional one to 4 family mortgage loans secured by  
20 Illinois real estate that are in default over 90 days.

21 (4) The average quarterly number of conventional  
22 one to 4 family mortgage loans secured by Illinois real  
23 estate that are in default over 90 days.

24 (5) The dollar amount of foreclosures on one to 4  
25 family conventional loans completed during the reporting  
26 period.

27 (6) The number of foreclosures on one to 4 family  
28 conventional loans completed during the reporting period.

29 (7) Whether any of the loans where a foreclosure  
30 was completed were originated less than 18 months before  
31 the completed foreclosure.

32 (8) Whether any of the loans where a foreclosure  
33 was completed had a note rate greater than 10% for first

1           lien mortgage loans or greater than 12% in the case of a  
2           junior lien.

3           (c) An officer of the servicer shall sign the form.

4           Section 120. Review and analysis.

5           (a) The Commissioner or Director shall review and  
6           analyze the default and foreclosure rate data reports  
7           submitted under Section 115.

8           (b) The reports and their analyses may be used for the  
9           following purposes:

10           (1) In setting the scope of a regularly scheduled  
11           examination.

12           (2) In setting the scope of a special examination.

13           (3) In comparing the reported information of a  
14           servicer.

15           (c) The Commissioner or the Director may correspond with  
16           a servicer to seek clarification of information contained in  
17           its report and to gather additional data concerning loans in  
18           default or loans in foreclosure.

19           Section 125. Third party review of high risk home loans.

20           (a) In the case of any high risk home loan, the borrower  
21           shall be afforded the opportunity to seek independent review  
22           by the Office or the Department of the loan terms, in order  
23           to determine affordability of the loan, when and if the  
24           General Assembly appropriates adequate funding to the Office  
25           or the Department specifically for this Section.

26           (b) The Office or the Department shall inform the  
27           borrower of the amount the borrower has available for a  
28           monthly mortgage payment based upon the borrower's budget.

29           (c) The Office or the Department shall review loan  
30           information pertaining to balloon payments and adjustable  
31           interest rates and other items disclosed by the loan  
32           documents affecting amount of payment and shall inform the

1 borrower of such items.

2 (d) If, based upon the review, the borrower determines  
3 that the loan is not in his or her best economic interest,  
4 the reviewer shall so notify the lender. This determination  
5 shall enable the borrower to withdraw from the contemplated  
6 loan with no financial penalty.

7 Section 130. Circumstances voiding mandatory arbitration  
8 provisions. Without regard to whether a borrower is acting  
9 individually or on behalf of others similarly situated, a  
10 mandatory arbitration provision of a high risk home loan  
11 agreement that is oppressive, unfair, unconscionable, or  
12 substantially in derogation of the rights of the borrower is  
13 void.

14 Section 135. Remedies, enforcement, and limitations of  
15 liability.

16 (a) The remedies provided in this Act are cumulative and  
17 apply to persons or entities subject to this Act.

18 (b) Any knowing violation of this Act constitutes a  
19 violation of the Consumer Fraud and Deceptive Business  
20 Practices Act.

21 (c) If any provision of an agreement for a high risk  
22 home loan violates this Act, then that provision is  
23 unenforceable against the borrower.

24 (d)(1) Any natural or artificial person who purchases or  
25 otherwise is assigned or subsequently holds a high risk home  
26 loan shall be subject to all affirmative claims and defenses  
27 with respect to the loan that the borrower could assert  
28 against the lender or broker of the loan, provided that this  
29 item (d)(1) shall not apply if the purchaser, assignee or  
30 holder demonstrates by a preponderance of the evidence that  
31 it:

32 (A) has in place, at the time of the purchase,



1 assignment or transfer of the loans, policies that  
2 expressly prohibit its purchase, acceptance of assignment  
3 or holding of any high risk home loans;

4 (B) requires by contract that a seller, assignor or  
5 transferor of high risk home loans to the purchaser,  
6 assignee or transferee represents and warrants to the  
7 purchaser, assignee or transferee that either (i) the  
8 seller, assignor or transferor will not sell, assign or  
9 transfer any high risk home loans to the purchaser,  
10 assignee or transferee, or (ii) the seller, assignor or  
11 transferor is a beneficiary of a representation and  
12 warranty from a previous seller, assignor or transferor  
13 to that effect; and

14 (C) exercises reasonable due diligence at the time  
15 of the purchase, assignment or transfer of high risk home  
16 loans, or within a reasonable period of time after the  
17 purchase, assignment or transfer of such home loans,  
18 which is intended by the purchaser, assignee or  
19 transferee to prevent the purchaser, assignee or  
20 transferee from purchasing or taking assignment or  
21 otherwise holding any high risk home loans, provided that  
22 this reasonable due diligence requirement may be met by  
23 sampling and need not require loan-by-loan review.

24 (2) Limited to the amount required to reduce or  
25 extinguish the borrower's liability under the high cost home  
26 loan plus the amount required to recover costs, including  
27 reasonable attorney fees, a borrower acting only in an  
28 individual capacity may assert claims that the borrower could  
29 assert against a lender of the home loan against a subsequent  
30 holder or assignee of the home loan as follows:

31 (A) within 5 years of the closing date of a high  
32 risk home loan, a violation of this Act in connection  
33 with the loan as an original action; and

34 (B) at any time during the term of a high risk home

1 loan, after an action to collect on the home loan or to  
2 foreclose on the collateral securing the home loan has  
3 been initiated, or the debt arising from the home loan  
4 has been accelerated, or the home loan has become 60 days  
5 in default, any defense, claim, counterclaim or action to  
6 enjoin foreclosure or preserve or obtain possession of  
7 the home that secures the loan.

8 (e) In addition to the limitation of liability afforded  
9 to subsequent purchasers, assignees, or holders under  
10 subsection (d) of this Section, a lender and a subsequent  
11 purchaser, assignee, or holder of the high risk home loan is  
12 not liable for a violation of this Act if:

13 (1) within 30 days of the loan closing and prior to  
14 receiving any notice from the borrower of the violation,  
15 the lender has made appropriate restitution to the  
16 borrower and appropriate adjustments are made to the  
17 loan; or

18 (2) the violation was not intentional and resulted  
19 from a bona fide error in fact, notwithstanding the  
20 maintenance of procedures reasonably adopted to avoid  
21 such errors, and within 60 days of the discovery of the  
22 violation and prior to receiving any notice from the  
23 borrower of the violation, the borrower is notified of  
24 the violation, appropriate restitution is made to the  
25 borrower, and appropriate adjustments are made to the  
26 loan.

27 Section 145. Subterfuge prohibited. No lender, with the  
28 intent to avoid the application or provisions of this Act,  
29 shall (i) divide a loan transaction into separate parts or  
30 (ii) perform any other subterfuge.

31 Section 150. Preemption of administrative rules. Any  
32 relevant administrative rule promulgated before the effective

1 date of this Act by the Department or the Office is  
2 preempted.

3 Section 153. Reporting of violations. The Office and the  
4 Department must report to the Attorney General all violations  
5 of this Act of which they become aware.

6 Section 155. Rulemaking. The Office and the Department  
7 may adopt reasonable rules to implement and administer this  
8 Act.

9 Section 160. Judicial review. All final administrative  
10 decisions under this Act are subject to judicial review  
11 pursuant to the provisions of the Administrative Review Law  
12 and any rules adopted pursuant thereto.

13 Section 165. Waiver prohibited. There shall be no waiver  
14 of any provision of this Act, except as explicitly provided  
15 in subsection (h) of Section 110.

16 Section 170. Superiority of Act. To the extent this Act  
17 conflicts with any other Illinois State financial regulation  
18 laws, except the Interest Act, this Act is superior and  
19 supersedes those laws for the purposes of regulating high  
20 risk home loans in Illinois.

21 Section 175. Severability. The provisions of this Act  
22 are severable under Section 1.31 of the Statute on Statutes.

23 Section 800. The Deposit of State Moneys Act is amended  
24 by changing Sections 11 and 11.1 as follows:

25 (15 ILCS 520/11) (from Ch. 130, par. 30)

26 Sec. 11. Protection of public deposits; eligible

1 collateral.

2 (a) For deposits not insured by an agency of the federal  
3 government, the State Treasurer, in his or her discretion,  
4 may accept as collateral any of the following classes of  
5 securities, provided there has been no default in the payment  
6 of principal or interest thereon:

7 (1) Bonds, notes, or other securities constituting  
8 direct and general obligations of the United States, the  
9 bonds, notes, or other securities constituting the direct  
10 and general obligation of any agency or instrumentality  
11 of the United States, the interest and principal of which  
12 is unconditionally guaranteed by the United States, and  
13 bonds, notes, or other securities or evidence of  
14 indebtedness constituting the obligation of a U.S. agency  
15 or instrumentality.

16 (2) Direct and general obligation bonds of the  
17 State of Illinois or of any other state of the United  
18 States.

19 (3) Revenue bonds of this State or any authority,  
20 board, commission, or similar agency thereof.

21 (4) Direct and general obligation bonds of any  
22 city, town, county, school district, or other taxing body  
23 of any state, the debt service of which is payable from  
24 general ad valorem taxes.

25 (5) Revenue bonds of any city, town, county, or  
26 school district of the State of Illinois.

27 (6) Obligations issued, assumed, or guaranteed by  
28 the International Finance Corporation, the principal of  
29 which is not amortized during the life of the obligation,  
30 but no such obligation shall be accepted at more than 90%  
31 of its market value.

32 (7) Illinois Affordable Housing Program Trust Fund  
33 Bonds or Notes as defined in and issued pursuant to the  
34 Illinois Housing Development Act.

1           (8) In an amount equal to at least market value of  
2           that amount of funds deposited exceeding the insurance  
3           limitation provided by the Federal Deposit Insurance  
4           Corporation or the National Credit Union Administration  
5           or other approved share insurer: (i) securities, (ii)  
6           mortgages, (iii) letters of credit issued by a Federal  
7           Home Loan Bank, or (iv) loans covered by a State Guaranty  
8           under the Illinois Farm Development Act.

9           (b) The State Treasurer may establish a system to  
10          aggregate permissible securities received as collateral from  
11          financial institutions in a collateral pool to secure State  
12          deposits of the institutions that have pledged securities to  
13          the pool.

14          (c) The Treasurer may at any time declare any particular  
15          security ineligible to qualify as collateral when, in the  
16          Treasurer's judgment, it is deemed desirable to do so.

17          (d) Notwithstanding any other provision of this Section,  
18          as security the State Treasurer may, in his discretion,  
19          accept a bond, executed by a company authorized to transact  
20          the kinds of business described in clause (g) of Section 4 of  
21          the Illinois Insurance Code, in an amount not less than the  
22          amount of the deposits required by this Section to be  
23          secured, payable to the State Treasurer for the benefit of  
24          the People of the State of Illinois, in a form that is  
25          acceptable to the State Treasurer.

26          (Source: P.A. 87-510; 87-575; 87-895; 88-93.)

27          (15 ILCS 520/11.1) (from Ch. 130, par. 30.1)

28          Sec. 11.1. The State Treasurer may, in his or her  
29          discretion, accept as security for State deposits insured  
30          certificates of deposit or share certificates issued to the  
31          depository institution pledging them as security and may  
32          require security in the amount of 125% of the value of the  
33          State deposit. Such certificate of deposit or share

1 certificate shall:

2 (1) be fully insured by the Federal Deposit Insurance  
3 Corporation, the Federal Savings and Loan Insurance  
4 Corporation or the National Credit Union Share Insurance Fund  
5 or issued by a depository institution which is rated within  
6 the 3 highest classifications established by at least one of  
7 the 2 standard rating services;

8 (2) be issued by a financial institution having assets  
9 of \$15,000,000 ~~\$30,000,000~~ or more; and

10 (3) be issued by either a savings and loan association  
11 having a capital to asset ratio of at least 2%, by a bank  
12 having a capital to asset ratio of at least 6% or by a credit  
13 union having a capital to asset ratio of at least 4%.

14 The depository institution shall effect the assignment of  
15 the certificate of deposit or share certificate to the State  
16 Treasurer and shall agree, that in the event the issuer of  
17 the certificate fails to maintain the capital to asset ratio  
18 required by this Section, such certificate of deposit or  
19 share certificate shall be replaced by additional suitable  
20 security.

21 (Source: P.A. 85-803.)

22 Section 805. The Public Funds Deposit Act is amended by  
23 changing Section 1 as follows:

24 (30 ILCS 225/1) (from Ch. 102, par. 34)

25 Sec. 1. Deposits. Any treasurer or other custodian of  
26 public funds may deposit such funds in a savings and loan  
27 association, savings bank, or State or national bank in this  
28 State. When such deposits become collected funds and are not  
29 needed for immediate disbursement, they shall be invested  
30 within 2 working days at prevailing rates or better. The  
31 treasurer or other custodian of public funds may require such  
32 bank, savings bank, or savings and loan association to

1 deposit with him or her securities guaranteed by agencies and  
2 instrumentalities of the federal government equal in market  
3 value to the amount by which the funds deposited exceed the  
4 federally insured amount. Any treasurer or other custodian of  
5 public funds may accept as security for public funds  
6 deposited in such bank, savings bank, or savings and loan  
7 association any securities or other eligible collateral  
8 authorized by Sections 11 and 11.1 of the Deposit of State  
9 Moneys Act (15 ILCS 520/11 and 11.1) or Section 6 of the  
10 Public Funds Investment Act (30 ILCS 235/6). Such treasurer  
11 or other custodian is authorized to enter into an agreement  
12 with any such bank, savings bank, or savings and loan  
13 association, with any federally insured financial institution  
14 or trust company, or with any agency of the U.S. government  
15 relating to the deposit of such securities. Any such  
16 treasurer or other custodian shall be discharged from  
17 responsibility for any funds for which securities are so  
18 deposited with him or her, and the funds for which securities  
19 are so deposited shall not be subject to any otherwise  
20 applicable limitation as to amount.

21 No bank, savings bank, or savings and loan association  
22 shall receive public funds as permitted by this Section,  
23 unless it has complied with the requirements established  
24 pursuant to Section 6 of the Public Funds Investment Act.

25 (Source: P.A. 91-211, eff. 7-20-99.)

26 Section 810. The State Officers and Employees Money  
27 Disposition Act is amended by changing Section 2c as follows:

28 (30 ILCS 230/2c) (from Ch. 127, par. 173a)

29 Sec. 2c. Every such officer, board, commission,  
30 commissioner, department, institution, arm or agency is  
31 authorized to demand and receive a bond and securities in  
32 amount and kind satisfactory to him from any bank or savings

1 and loan association in which moneys held by such officer,  
2 board, commission, commissioner, department, institution, arm  
3 or agency for or on behalf of the State of Illinois, may be  
4 on deposit, such securities to be held by the officer, board,  
5 commission, commissioner, department, institution, arm or  
6 agency for the period that such moneys are so on deposit and  
7 then returned together with interest, dividends and other  
8 accruals to the bank or savings and loan association. The  
9 bond or undertaking and such securities shall be conditioned  
10 for the return of the moneys deposited in conformity with the  
11 terms of the deposit.

12 Whenever funds deposited with a bank or savings and loan  
13 association exceed the amount of federal deposit insurance  
14 coverage, a bond, or pledged securities, or other eligible  
15 collateral shall be obtained. Only the types of securities or  
16 other eligible collateral which the State Treasurer may, in  
17 his or her discretion, accept for amounts not insured by the  
18 Federal Deposit Insurance Corporation or the Federal Savings  
19 and Loan Insurance Corporation under Section 11 of "An Act in  
20 relation to State moneys", approved June 28, 1919, as  
21 amended, may be accepted as pledged securities. The market  
22 value of the bond or pledged securities shall at all times be  
23 equal to or greater than the uninsured portion of the deposit  
24 unless the funds deposited are collateralized pursuant to a  
25 system established by the State Treasurer to aggregate  
26 permissible securities received as collateral from financial  
27 institutions in a collateral pool to secure State deposits of  
28 the institution that have pledged securities to the pool.

29 All securities deposited by a bank or savings and loan  
30 association under the provisions of this Section shall remain  
31 the property of the depository and may be stamped by the  
32 depository so as to indicate that such securities are  
33 deposited as collateral. Should the bank or savings and loan  
34 association fail or refuse to pay over the moneys, or any



1 part thereof, deposited with it, the officer, board,  
2 commission, commissioner, department, institution, arm or  
3 agency may sell such securities upon giving 5 days notice to  
4 the depository of his intention to so sell such securities.  
5 Such sale shall transfer absolute ownership of the securities  
6 so sold to the vendee thereof. The surplus, if any, over the  
7 amount due to the State and the expenses of the sale shall be  
8 paid to the bank or savings and loan association. Actions may  
9 be brought in the name of the People of the State of Illinois  
10 to enforce the claims of the State with respect to any  
11 securities deposited by a bank or savings and loan  
12 association.

13 No bank or savings and loan association shall receive  
14 public funds as permitted by this Section, unless it has  
15 complied with the requirements established pursuant to  
16 Section 6 of "An Act relating to certain investments of  
17 public funds by public agencies", approved July 23, 1943, as  
18 now or hereafter amended.

19 (Source: P.A. 85-257.)

20 Section 815. The Public Funds Investment Act is amended  
21 by changing Section 6 as follows:

22 (30 ILCS 235/6) (from Ch. 85, par. 906)

23 Sec. 6. Report of financial institutions.

24 (a) No bank shall receive any public funds unless it has  
25 furnished the corporate authorities of a public agency  
26 submitting a deposit with copies of the last two sworn  
27 statements of resources and liabilities which the bank is  
28 required to furnish to the Commissioner of Banks and Real  
29 Estate or to the Comptroller of the Currency. Each bank  
30 designated as a depository for public funds shall, while  
31 acting as such depository, furnish the corporate authorities  
32 of a public agency with a copy of all statements of resources

1 and liabilities which it is required to furnish to the  
2 Commissioner of Banks and Real Estate or to the Comptroller  
3 of the Currency; provided, that if such funds or moneys are  
4 deposited in a bank, the amount of all such deposits not  
5 collateralized or insured by an agency of the federal  
6 government shall not exceed 75% of the capital stock and  
7 surplus of such bank, and the corporate authorities of a  
8 public agency submitting a deposit shall not be discharged  
9 from responsibility for any funds or moneys deposited in any  
10 bank in excess of such limitation.

11 (b) No savings bank or savings and loan association  
12 shall receive public funds unless it has furnished the  
13 corporate authorities of a public agency submitting a deposit  
14 with copies of the last 2 sworn statements of resources and  
15 liabilities which the savings bank or savings and loan  
16 association is required to furnish to the Commissioner of  
17 Banks and Real Estate or the Federal Deposit Insurance  
18 Corporation. Each savings bank or savings and loan  
19 association designated as a depository for public funds  
20 shall, while acting as such depository, furnish the corporate  
21 authorities of a public agency with a copy of all statements  
22 of resources and liabilities which it is required to furnish  
23 to the Commissioner of Banks and Real Estate or the Federal  
24 Deposit Insurance Corporation; provided, that if such funds  
25 or moneys are deposited in a savings bank or savings and loan  
26 association, the amount of all such deposits not  
27 collateralized or insured by an agency of the federal  
28 government shall not exceed 75% of the net worth of such  
29 savings bank or savings and loan association as defined by  
30 the Federal Deposit Insurance Corporation, and the corporate  
31 authorities of a public agency submitting a deposit shall not  
32 be discharged from responsibility for any funds or moneys  
33 deposited in any savings bank or savings and loan association  
34 in excess of such limitation.

1           (c) No credit union shall receive public funds unless it  
2 has furnished the corporate authorities of a public agency  
3 submitting a share deposit with copies of the last two  
4 reports of examination prepared by or submitted to the  
5 Illinois Department of Financial Institutions or the National  
6 Credit Union Administration. Each credit union designated as  
7 a depository for public funds shall, while acting as such  
8 depository, furnish the corporate authorities of a public  
9 agency with a copy of all reports of examination prepared by  
10 or furnished to the Illinois Department of Financial  
11 Institutions or the National Credit Union Administration;  
12 provided that if such funds or moneys are invested in a  
13 credit union account, the amount of all such investments not  
14 collateralized or insured by an agency of the federal  
15 government or other approved share insurer shall not exceed  
16 50% of the unimpaired capital and surplus of such credit  
17 union, which shall include shares, reserves and undivided  
18 earnings and the corporate authorities of a public agency  
19 making an investment shall not be discharged from  
20 responsibility for any funds or moneys invested in a credit  
21 union in excess of such limitation.

22           (d) Whenever a public agency deposits any public funds  
23 in a financial institution, the public agency may enter into  
24 an agreement with the financial institution requiring any  
25 funds not insured by the Federal Deposit Insurance  
26 Corporation or the National Credit Union Administration or  
27 other approved share insurer to be collateralized by any of  
28 the following classes of securities, provided there has been  
29 no default in the payment of principal or interest thereon:

30                 (1) Bonds, notes, or other securities constituting  
31 direct and general obligations of the United States, the  
32 bonds, notes, or other securities constituting the direct  
33 and general obligation of any agency or instrumentality  
34 of the United States, the interest and principal of which

1 is unconditionally guaranteed by the United States, and  
2 bonds, notes, or other securities or evidence of  
3 indebtedness constituting the obligation of a U.S. agency  
4 or instrumentality.

5 (2) Direct and general obligation bonds of the  
6 State of Illinois or of any other state of the United  
7 States.

8 (3) Revenue bonds of this State or any authority,  
9 board, commission, or similar agency thereof.

10 (4) Direct and general obligation bonds of any  
11 city, town, county, school district, or other taxing body  
12 of any state, the debt service of which is payable from  
13 general ad valorem taxes.

14 (5) Revenue bonds of any city, town, county, or  
15 school district of the State of Illinois.

16 (6) Obligations issued, assumed, or guaranteed by  
17 the International Finance Corporation, the principal of  
18 which is not amortized during the life of the obligation,  
19 but no such obligation shall be accepted at more than 90%  
20 of its market value.

21 (7) Illinois Affordable Housing Program Trust Fund  
22 Bonds or Notes as defined in and issued pursuant to the  
23 Illinois Housing Development Act.

24 (8) In an amount equal to at least market value of  
25 that amount of funds deposited exceeding the insurance  
26 limitation provided by the Federal Deposit Insurance  
27 Corporation or the National Credit Union Administration  
28 or other approved share insurer: (i) securities, (ii)  
29 mortgages, (iii) letters of credit issued by a Federal  
30 Home Loan Bank, or (iv) loans covered by a State Guaranty  
31 under the Illinois Farm Development Act.

32 (9) Certificates of deposit or share certificates  
33 issued to the depository institution pledging them as  
34 security. The public agency may require security in the

1 amount of 125% of the value of the public agency deposit.

2 Such certificate of deposit or share certificate shall:

3 (i) be fully insured by the Federal Deposit  
4 Insurance Corporation, the Federal Savings and Loan  
5 Insurance Corporation, or the National Credit Union  
6 Share Insurance Fund or issued by a depository  
7 institution which is rated within the 3 highest  
8 classifications established by at least one of the 2  
9 standard rating services;

10 (ii) be issued by a financial institution  
11 having assets of \$15,000,000 or more; and

12 (iii) be issued by either a savings and loan  
13 association having a capital to asset ratio of at  
14 least 2%, by a bank having a capital to asset ratio  
15 of at least 6% or by a credit union having a capital  
16 to asset ratio of at least 4%.

17 The depository institution shall effect the assignment of  
18 the certificate of deposit or share certificate to the public  
19 agency and shall agree that, in the event the issuer of the  
20 certificate fails to maintain the capital to asset ratio  
21 required by this Section, such certificate of deposit or  
22 share certificate shall be replaced by additional suitable  
23 security.

24 (e) The public agency may accept a system established by  
25 the State Treasurer to aggregate permissible securities  
26 received as collateral from financial institutions in a  
27 collateral pool to secure public deposits of the institutions  
28 that have pledged securities to the pool.

29 (f) The public agency may at any time declare any  
30 particular security ineligible to qualify as collateral when,  
31 in the public agency's judgment, it is deemed desirable to do  
32 so.

33 (g) Notwithstanding any other provision of this Section,  
34 as security a public agency may, at its discretion, accept a

1 bond, executed by a company authorized to transact the kinds  
2 of business described in clause (g) of Section 4 of the  
3 Illinois Insurance Code, in an amount not less than the  
4 amount of the deposits required by this Section to be  
5 secured, payable to the public agency for the benefit of the  
6 People of the unit of government, in a form that is  
7 acceptable to the public agency securities,--mortgages,  
8 letters-of-credit-issued-by-a--Federal--Home--Loan--Bank,--or  
9 loans--covered--by--a--State-Guaranty-under-the-Illinois-Farm  
10 Development-Act-in-an-amount-equal-to-at-least--market--value  
11 of--that--amount--of--funds-deposited-exceeding-the-insurance  
12 limitation--provided--by--the---Federal---Deposit---Insurance  
13 Corporation--or--the--National-Credit-Union-Administration-or  
14 other-approved-share-insurer.

15 (h) (e) Paragraphs (a), (b), (c), and (d), (e), (f), and  
16 (g) of this Section do not apply to the University of  
17 Illinois, Southern Illinois University, Chicago State  
18 University, Eastern Illinois University, Governors State  
19 University, Illinois State University, Northeastern Illinois  
20 University, Northern Illinois University, Western Illinois  
21 University, the Cooperative Computer Center and public  
22 community colleges.

23 (Source: P.A. 91-324, eff. 1-1-00; 91-773, eff. 6-9-00.)

24 Section 820. The Illinois Banking Act is amended by  
25 changing Sections 2, 5, and 17 and by adding Section 13.6 as  
26 follows:

27 (205 ILCS 5/2) (from Ch. 17, par. 302)

28 Sec. 2. General definitions. In this Act, unless the  
29 context otherwise requires, the following words and phrases  
30 shall have the following meanings:

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

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

4 "Affiliate facility" of a bank means a main banking  
5 premises or branch of another commonly owned bank. The main  
6 banking premises or any branch of a bank may be an "affiliate  
7 facility" with respect to one or more other commonly owned  
8 banks.

9 "Appropriate federal banking agency" means the Federal  
10 Deposit Insurance Corporation, the Federal Reserve Bank of  
11 Chicago, or the Federal Reserve Bank of St. Louis, as  
12 determined by federal law.

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

15 A "banking house", "branch", "branch bank" or "branch  
16 office" shall mean any place of business of a bank at which  
17 deposits are received, checks paid, or loans made, but shall  
18 not include any place at which only records thereof are made,  
19 posted, or kept. A place of business at which deposits are  
20 received, checks paid, or loans made shall not be deemed to  
21 be a branch, branch bank, or branch office if the place of  
22 business is adjacent to and connected with the main banking  
23 premises, or if it is separated from the main banking  
24 premises by not more than an alley; provided always that (i)  
25 if the place of business is separated by an alley from the  
26 main banking premises there is a connection between the two  
27 by public or private way or by subterranean or overhead  
28 passage, and (ii) if the place of business is in a building  
29 not wholly occupied by the bank, the place of business shall  
30 not be within any office or room in which any other business  
31 or service of any kind or nature other than the business of  
32 the bank is conducted or carried on. A place of business at  
33 which deposits are received, checks paid, or loans made shall  
34 not be deemed to be a branch, branch bank, or branch office

1 (i) of any bank if the place is a terminal established and  
2 maintained in accordance with paragraph (17) of Section 5 of  
3 this Act, or (ii) of a commonly owned bank by virtue of  
4 transactions conducted at that place on behalf of the other  
5 commonly owned bank under paragraph (23) of Section 5 of this  
6 Act if the place is an affiliate facility with respect to the  
7 other bank.

8 "Branch of an out-of-state bank" means a branch  
9 established or maintained in Illinois by an out-of-state bank  
10 as a result of a merger between an Illinois bank and the  
11 out-of-state bank that occurs on or after May 31, 1997, or  
12 any branch established by the out-of-state bank following the  
13 merger.

14 "Bylaws" means the bylaws of a bank that are adopted by  
15 the bank's board of directors or shareholders for the  
16 regulation and management of the bank's affairs. If the bank  
17 operates as a limited liability company, however, "bylaws"  
18 means the operating agreement of the bank.

19 "Call report fee" means the fee to be paid to the  
20 Commissioner by each State bank pursuant to paragraph (a) of  
21 subsection (3) of Section 48 of this Act.

22 "Capital" includes the aggregate of outstanding capital  
23 stock and preferred stock.

24 "Cash flow reserve account" means the account within the  
25 books and records of the Commissioner of Banks and Real  
26 Estate used to record funds designated to maintain a  
27 reasonable Bank and Trust Company Fund operating balance to  
28 meet agency obligations on a timely basis.

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

31 "Commissioner" means the Commissioner of Banks and Real  
32 Estate or a person authorized by the Commissioner, the Office  
33 of Banks and Real Estate Act, or this Act to act in the  
34 Commissioner's stead.



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

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

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

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

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

21 "Continuing bank" means a merging bank, the charter of  
22 which becomes the charter of the resulting bank.

23 "Converting bank" means a State bank converting to become  
24 a national bank, or a national bank converting to become a  
25 State bank.

26 "Converting trust company" means a trust company  
27 converting to become a State bank.

28 "Court" means a court of competent jurisdiction.

29 "Director" means a member of the board of directors of a  
30 bank. In the case of a manager-managed limited liability  
31 company, however, "director" means a manager of the bank and,  
32 in the case of a member-managed limited liability company,  
33 "director" means a member of the bank. The term "director"  
34 does not include an advisory director, honorary director,

1 director emeritus, or similar person, unless the person is  
2 otherwise performing functions similar to those of a member  
3 of the board of directors.

4 "Eligible depository institution" means an insured  
5 savings association that is in default, an insured savings  
6 association that is in danger of default, a State or national  
7 bank that is in default or a State or national bank that is  
8 in danger of default, as those terms are defined in this  
9 Section, or a new bank as that term defined in Section 11(m)  
10 of the Federal Deposit Insurance Act or a bridge bank as that  
11 term is defined in Section 11(n) of the Federal Deposit  
12 Insurance Act or a new federal savings association authorized  
13 under Section 11(d)(2)(f) of the Federal Deposit Insurance  
14 Act.

15 "Fiduciary" means trustee, agent, executor,  
16 administrator, committee, guardian for a minor or for a  
17 person under legal disability, receiver, trustee in  
18 bankruptcy, assignee for creditors, or any holder of similar  
19 position of trust.

20 "Financial institution" means a bank, savings and loan  
21 association, credit union, or any licensee under the Consumer  
22 Installment Loan Act or the Sales Finance Agency Act and, for  
23 purposes of Section 48.3, any proprietary network, funds  
24 transfer corporation, or other entity providing electronic  
25 funds transfer services, or any corporate fiduciary, its  
26 subsidiaries, affiliates, parent company, or contractual  
27 service provider that is examined by the Commissioner.

28 "Foundation" means the Illinois Bank Examiners' Education  
29 Foundation.

30 "General obligation" means a bond, note, debenture,  
31 security, or other instrument evidencing an obligation of the  
32 government entity that is the issuer that is supported by the  
33 full available resources of the issuer, the principal and  
34 interest of which is payable in whole or in part by taxation.

1 "Guarantee" means an undertaking or promise to answer for  
2 payment of another's debt or performance of another's duty,  
3 liability, or obligation whether "payment guaranteed" or  
4 "collection guaranteed".

5 "In danger of default" means a State or national bank, a  
6 federally chartered insured savings association or an  
7 Illinois state chartered insured savings association with  
8 respect to which the Commissioner or the appropriate federal  
9 banking agency has advised the Federal Deposit Insurance  
10 Corporation that:

11 (1) in the opinion of the Commissioner or the  
12 appropriate federal banking agency,

13 (A) the State or national bank or insured  
14 savings association is not likely to be able to meet  
15 the demands of the State or national bank's or  
16 savings association's obligations in the normal  
17 course of business; and

18 (B) there is no reasonable prospect that the  
19 State or national bank or insured savings  
20 association will be able to meet those demands or  
21 pay those obligations without federal assistance; or

22 (2) in the opinion of the Commissioner or the  
23 appropriate federal banking agency,

24 (A) the State or national bank or insured  
25 savings association has incurred or is likely to  
26 incur losses that will deplete all or substantially  
27 all of its capital; and

28 (B) there is no reasonable prospect that the  
29 capital of the State or national bank or insured  
30 savings association will be replenished without  
31 federal assistance.

32 "In default" means, with respect to a State or national  
33 bank or an insured savings association, any adjudication or  
34 other official determination by any court of competent

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

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

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

19 "Issuer" means for purposes of Section 33 every person  
20 who shall have issued or proposed to issue any security;  
21 except that (1) with respect to certificates of deposit,  
22 voting trust certificates, collateral-trust certificates, and  
23 certificates of interest or shares in an unincorporated  
24 investment trust not having a board of directors (or persons  
25 performing similar functions), "issuer" means the person or  
26 persons performing the acts and assuming the duties of  
27 depositor or manager pursuant to the provisions of the trust,  
28 agreement, or instrument under which the securities are  
29 issued; (2) with respect to trusts other than those specified  
30 in clause (1) above, where the trustee is a corporation  
31 authorized to accept and execute trusts, "issuer" means the  
32 entrusters, depositors, or creators of the trust and any  
33 manager or committee charged with the general direction of  
34 the affairs of the trust pursuant to the provisions of the

1 agreement or instrument creating the trust; and (3) with  
2 respect to equipment trust certificates or like securities,  
3 "issuer" means the person to whom the equipment or property  
4 is or is to be leased or conditionally sold.

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

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

10 "Maker or obligor" means for purposes of Section 33 the  
11 issuer of a security, the promisor in a debenture or other  
12 debt security, or the mortgagor or grantor of a trust deed or  
13 similar conveyance of a security interest in real or personal  
14 property.

15 "Merged bank" means a merging bank that is not the  
16 continuing, resulting, or surviving bank in a consolidation  
17 or merger.

18 "Merger" includes consolidation.

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

20 "Merging trust company" means a trust company party to a  
21 merger with a State bank.

22 "Mid-tier bank holding company" means a corporation that  
23 (a) owns 100% of the issued and outstanding shares of each  
24 class of stock of a State bank, (b) has no other  
25 subsidiaries, and (c) 100% of the issued and outstanding  
26 shares of the corporation are owned by a parent bank holding  
27 company.

28 "Municipality" means any municipality, political  
29 subdivision, school district, taxing district, or agency.

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

33 "Out-of-state bank" means a bank chartered under the laws  
34 of a state other than Illinois, a territory of the United

1 States, or the District of Columbia.

2 "Parent bank holding company" means a corporation that is  
3 a bank holding company as that term is defined in the  
4 Illinois Bank Holding Company Act of 1957 and owns 100% of  
5 the issued and outstanding shares of a mid-tier bank holding  
6 company.

7 "Person" means an individual, corporation, limited  
8 liability company, partnership, joint venture, trust, estate,  
9 or unincorporated association.

10 "Public agency" means the State of Illinois, the various  
11 counties, townships, cities, towns, villages, school  
12 districts, educational service regions, special road  
13 districts, public water supply districts, fire protection  
14 districts, drainage districts, levee districts, sewer  
15 districts, housing authorities, the Illinois Bank Examiners'  
16 Education Foundation, the Chicago Park District, and all  
17 other political corporations or subdivisions of the State of  
18 Illinois, whether now or hereafter created, whether herein  
19 specifically mentioned or not, and shall also include any  
20 other state or any political corporation or subdivision of  
21 another state.

22 "Public funds" or "public money" means current operating  
23 funds, special funds, interest and sinking funds, and funds  
24 of any kind or character belonging to, in the custody of, or  
25 subject to the control or regulation of the United States or  
26 a public agency. "Public funds" or "public money" shall  
27 include funds held by any of the officers, agents, or  
28 employees of the United States or of a public agency in the  
29 course of their official duties and, with respect to public  
30 money of the United States, shall include Postal Savings  
31 funds.

32 "Published" means, unless the context requires otherwise,  
33 the publishing of the notice or instrument referred to in  
34 some newspaper of general circulation in the community in

1 which the bank is located at least once each week for 3  
2 successive weeks. Publishing shall be accomplished by, and  
3 at the expense of, the bank required to publish. Where  
4 publishing is required, the bank shall submit to the  
5 Commissioner that evidence of the publication as the  
6 Commissioner shall deem appropriate.

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

20 "Recorded" means the filing or recording of the notice or  
21 instrument referred to in the office of the Recorder of the  
22 county wherein the bank is located.

23 "Resulting bank" means the bank resulting from a merger  
24 or conversion.

25 "Securities" means stocks, bonds, debentures, notes, or  
26 other similar obligations.

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

31 "State bank" means any banking corporation that has a  
32 banking charter issued by the Commissioner under this Act.

33 "State Banking Board" means the State Banking Board of  
34 Illinois.

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

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

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

16 "Trust company" means a limited liability company or  
17 corporation incorporated in this State for the purpose of  
18 accepting and executing trusts.

19 "Undivided profits" means undistributed earnings less  
20 discretionary transfers to surplus.

21 "Unimpaired capital and unimpaired surplus", for the  
22 purposes of paragraph (21) of Section 5 and Sections 32, 33,  
23 34, 35.1, 35.2, and 47 of this Act means the sum of the state  
24 bank's Tier 1 Capital and Tier 2 Capital plus such other  
25 shareholder equity as may be included by regulation of the  
26 Commissioner. Unimpaired capital and unimpaired surplus  
27 shall be calculated on the basis of the date of the last  
28 quarterly call report filed with the Commissioner preceding  
29 the date of the transaction for which the calculation is  
30 made, provided that: (i) when a material event occurs after  
31 the date of the last quarterly call report filed with the  
32 Commissioner that reduces or increases the bank's unimpaired  
33 capital and unimpaired surplus by 10% or more, then the  
34 unimpaired capital and unimpaired surplus shall be calculated



1 from the date of the material event for a transaction  
2 conducted after the date of the material event; and (ii) if  
3 the Commissioner determines for safety and soundness reasons  
4 that a state bank should calculate unimpaired capital and  
5 unimpaired surplus more frequently than provided by this  
6 paragraph, the Commissioner may by written notice direct the  
7 bank to calculate unimpaired capital and unimpaired surplus  
8 at a more frequent interval. In the case of a state bank  
9 newly chartered under Section 13 or a state bank resulting  
10 from a merger, consolidation, or conversion under Sections 21  
11 through 26 for which no preceding quarterly call report has  
12 been filed with the Commissioner, unimpaired capital and  
13 unimpaired surplus shall be calculated for the first calendar  
14 quarter on the basis of the effective date of the charter,  
15 merger, consolidation, or conversion.

16 (Source: P.A. 92-483, eff. 8-23-01.)

17 (205 ILCS 5/5) (from Ch. 17, par. 311)

18 Sec. 5. General corporate powers. A bank organized  
19 under this Act or subject hereto shall be a body corporate  
20 and politic and shall, without specific mention thereof in  
21 the charter, have all the powers conferred by this Act and  
22 the following additional general corporate powers:

23 (1) To sue and be sued, complain, and defend in its  
24 corporate name.

25 (2) To have a corporate seal, which may be altered at  
26 pleasure, and to use the same by causing it or a facsimile  
27 thereof to be impressed or affixed or in any manner  
28 reproduced, provided that the affixing of a corporate seal to  
29 an instrument shall not give the instrument additional force  
30 or effect, or change the construction thereof, and the use of  
31 a corporate seal is not mandatory.

32 (3) To make, alter, amend, and repeal bylaws, not  
33 inconsistent with its charter or with law, for the

1 administration of the affairs of the bank. If this Act does  
2 not provide specific guidance in matters of corporate  
3 governance, the provisions of the Business Corporation Act of  
4 1983 may be used if so provided in the bylaws, and if the  
5 bank is a limited liability company, the provisions of the  
6 Limited Liability Company Act shall be used.

7 (4) To elect or appoint and remove officers and agents  
8 of the bank and define their duties and fix their  
9 compensation.

10 (5) To adopt and operate reasonable bonus plans,  
11 profit-sharing plans, stock-bonus plans, stock-option plans,  
12 pension plans and similar incentive plans for its directors,  
13 officers and employees.

14 (5.1) To manage, operate and administer a fund for the  
15 investment of funds by a public agency or agencies, including  
16 any unit of local government or school district, or any  
17 person. The fund for a public agency shall invest in the  
18 same type of investments and be subject to the same  
19 limitations provided for the investment of public funds. The  
20 fund for public agencies shall maintain a separate ledger  
21 showing the amount of investment for each public agency in  
22 the fund. "Public funds" and "public agency" as used in this  
23 Section shall have the meanings ascribed to them in Section 1  
24 of the Public Funds Investment Act.

25 (6) To make reasonable donations for the public welfare  
26 or for charitable, scientific, religious or educational  
27 purposes.

28 (7) To borrow or incur an obligation; and to pledge its  
29 assets:

30 (a) to secure its borrowings, its lease of personal  
31 or real property or its other nondeposit obligations;

32 (b) to enable it to act as agent for the sale of  
33 obligations of the United States;

34 (c) to secure deposits of public money of the

1 United States, whenever required by the laws of the  
2 United States, including without being limited to,  
3 revenues and funds the deposit of which is subject to the  
4 control or regulation of the United States or any of its  
5 officers, agents, or employees and Postal Savings funds;

6 (d) to secure deposits of public money of any state  
7 or of any political corporation or subdivision thereof  
8 including, without being limited to, revenues and funds  
9 the deposit of which is subject to the control or  
10 regulation of any state or of any political corporation  
11 or subdivisions thereof or of any of their officers,  
12 agents, or employees;

13 (e) to secure deposits of money whenever required  
14 by the National Bankruptcy Act;

15 (f) (blank); and

16 (g) to secure trust funds commingled with the  
17 bank's funds, whether deposited by the bank or an  
18 affiliate of the bank, pursuant to Section 2-8 of the  
19 Corporate Fiduciary Act.

20 (8) To own, possess, and carry as assets all or part of  
21 the real estate necessary in or with which to do its banking  
22 business, either directly or indirectly through the ownership  
23 of all or part of the capital stock, shares or interests in  
24 any corporation, association, trust engaged in holding any  
25 part or parts or all of the bank premises, engaged in such  
26 business and in conducting a safe deposit business in the  
27 premises or part of them, or engaged in any activity that the  
28 bank is permitted to conduct in a subsidiary pursuant to  
29 paragraph (12) of this Section 5.

30 (9) To own, possess, and carry as assets other real  
31 estate to which it may obtain title in the collection of its  
32 debts or that was formerly used as a part of the bank  
33 premises, but title to any real estate except as herein  
34 permitted shall not be retained by the bank, either directly

1 or by or through a subsidiary, as permitted by subsection  
2 (12) of this Section for a total period of more than 10 years  
3 after acquiring title, either directly or indirectly.

4 (10) To do any act, including the acquisition of stock,  
5 necessary to obtain insurance of its deposits, or part  
6 thereof, and any act necessary to obtain a guaranty, in whole  
7 or in part, of any of its loans or investments by the United  
8 States or any agency thereof, and any act necessary to sell  
9 or otherwise dispose of any of its loans or investments to  
10 the United States or any agency thereof, and to acquire and  
11 hold membership in the Federal Reserve System.

12 (11) Notwithstanding any other provisions of this Act or  
13 any other law, to do any act and to own, possess, and carry  
14 as assets property of the character, including stock, that is  
15 at the time authorized or permitted to national banks by an  
16 Act of Congress, but subject always to the same limitations  
17 and restrictions as are applicable to national banks by the  
18 pertinent federal law and subject to applicable provisions of  
19 the Financial Institutions Insurance Sales Law.

20 (12) To own, possess, and carry as assets stock of one  
21 or more corporations that is, or are, engaged in one or more  
22 of the following businesses:

23 (a) holding title to and administering assets  
24 acquired as a result of the collection or liquidating of  
25 loans, investments, or discounts; or

26 (b) holding title to and administering personal  
27 property acquired by the bank, directly or indirectly  
28 through a subsidiary, for the purpose of leasing to  
29 others, provided the lease or leases and the investment  
30 of the bank, directly or through a subsidiary, in that  
31 personal property otherwise comply with Section 35.1 of  
32 this Act; or

33 (c) carrying on or administering any of the  
34 activities excepting the receipt of deposits or the

1 payment of checks or other orders for the payment of  
2 money in which a bank may engage in carrying on its  
3 general banking business; provided, however, that nothing  
4 contained in this paragraph (c) shall be deemed to permit  
5 a bank organized under this Act or subject hereto to do,  
6 either directly or indirectly through any subsidiary, any  
7 act, including the making of any loan or investment, or  
8 to own, possess, or carry as assets any property that if  
9 done by or owned, possessed, or carried by the State bank  
10 would be in violation of or prohibited by any provision  
11 of this Act.

12 The provisions of this subsection (12) shall not apply to  
13 and shall not be deemed to limit the powers of a State bank  
14 with respect to the ownership, possession, and carrying of  
15 stock that a State bank is permitted to own, possess, or  
16 carry under this Act.

17 Any bank intending to establish a subsidiary under this  
18 subsection (12) shall give written notice to the Commissioner  
19 60 days prior to the subsidiary's commencing of business or,  
20 as the case may be, prior to acquiring stock in a corporation  
21 that has already commenced business. After receiving the  
22 notice, the Commissioner may waive or reduce the balance of  
23 the 60 day notice period. The Commissioner may specify the  
24 form of the notice and may promulgate rules and regulations  
25 to administer this subsection (12).

26 (13) To accept for payment at a future date not  
27 exceeding one year from the date of acceptance, drafts drawn  
28 upon it by its customers; and to issue, advise, or confirm  
29 letters of credit authorizing the holders thereof to draw  
30 drafts upon it or its correspondents.

31 (14) To own and lease personal property acquired by the  
32 bank at the request of a prospective lessee and upon the  
33 agreement of that person to lease the personal property  
34 provided that the lease, the agreement with respect thereto,

1 and the amount of the investment of the bank in the property  
2 comply with Section 35.1 of this Act.

3 (15) (a) To establish and maintain, in addition to the  
4 main banking premises, branches offering any banking  
5 services permitted at the main banking premises of a  
6 State bank.

7 (b) To establish and maintain, after May 31, 1997,  
8 branches in another state that may conduct any activity  
9 in that state that is authorized or permitted for any  
10 bank that has a banking charter issued by that state,  
11 subject to the same limitations and restrictions that are  
12 applicable to banks chartered by that state.

13 (16) (Blank).

14 (17) To establish and maintain terminals, as authorized  
15 by the Electronic Fund Transfer Act.

16 (18) To establish and maintain temporary service booths  
17 at any International Fair held in this State which is  
18 approved by the United States Department of Commerce, for the  
19 duration of the international fair for the sole purpose of  
20 providing a convenient place for foreign trade customers at  
21 the fair to exchange their home countries' currency into  
22 United States currency or the converse. This power shall not  
23 be construed as establishing a new place or change of  
24 location for the bank providing the service booth.

25 (19) To indemnify its officers, directors, employees,  
26 and agents, as authorized for corporations under Section 8.75  
27 of the Business Corporation Act of 1983.

28 (20) To own, possess, and carry as assets stock of, or  
29 be or become a member of, any corporation, mutual company,  
30 association, trust, or other entity formed exclusively for  
31 the purpose of providing directors' and officers' liability  
32 and bankers' blanket bond insurance or reinsurance to and for  
33 the benefit of the stockholders, members, or beneficiaries,  
34 or their assets or businesses, or their officers, directors,

1 employees, or agents, and not to or for the benefit of any  
2 other person or entity or the public generally.

3 (21) To make debt or equity investments in corporations  
4 or projects, whether for profit or not for profit, designed  
5 to promote the development of the community and its welfare,  
6 provided that the aggregate investment in all of these  
7 corporations and in all of these projects does not exceed 10%  
8 of the unimpaired capital and unimpaired surplus of the bank  
9 and provided that this limitation shall not apply to  
10 creditworthy loans by the bank to those corporations or  
11 projects. Upon written application to the Commissioner, a  
12 bank may make an investment that would, when aggregated with  
13 all other such investments, exceed 10% of the unimpaired  
14 capital and unimpaired surplus of the bank. The Commissioner  
15 may approve the investment if he is of the opinion and finds  
16 that the proposed investment will not have a material adverse  
17 effect on the safety and soundness of the bank.

18 (22) To own, possess, and carry as assets the stock of a  
19 corporation engaged in the ownership or operation of a travel  
20 agency or to operate a travel agency as a part of its  
21 business.

22 (23) With respect to affiliate facilities:

23 (a) to conduct at affiliate facilities for and on  
24 behalf of another commonly owned bank, if so authorized  
25 by the other bank, all transactions that the other bank  
26 is authorized or permitted to perform; and

27 (b) to authorize a commonly owned bank to conduct  
28 for and on behalf of it any of the transactions it is  
29 authorized or permitted to perform at one or more  
30 affiliate facilities.

31 Any bank intending to conduct or to authorize a commonly  
32 owned bank to conduct at an affiliate facility any of the  
33 transactions specified in this paragraph (23) shall give  
34 written notice to the Commissioner at least 30 days before

1 any such transaction is conducted at the affiliate facility.

2 (24) To act as the agent for any fire, life, or other  
3 insurance company authorized by the State of Illinois, by  
4 soliciting and selling insurance and collecting premiums on  
5 policies issued by such company; and to receive for services  
6 so rendered such fees or commissions as may be agreed upon  
7 between the bank and the insurance company for which it may  
8 act as agent; provided, however, that no such bank shall in  
9 any case assume or guarantee the payment of any premium on  
10 insurance policies issued through its agency by its  
11 principal; and provided further, that the bank shall not  
12 guarantee the truth of any statement made by an assured in  
13 filing his application for insurance.

14 (25) Notwithstanding any other provisions of this Act or  
15 any other law, to offer any product or service that is at the  
16 time authorized or permitted to any insured savings  
17 association or out-of-state bank by applicable law, provided  
18 that powers conferred only by this subsection (25):

19 (a) shall always be subject to the same limitations  
20 and restrictions that are applicable to the insured  
21 savings association or out-of-state bank for the product  
22 or service by such applicable law;

23 (b) shall be subject to applicable provisions of  
24 the Financial Institutions Insurance Sales Law;

25 (c) shall not include the right to own or conduct a  
26 real estate brokerage business for which a license would  
27 be required under the laws of this State; and

28 (d) shall not be construed to include the  
29 establishment or maintenance of a branch, nor shall they  
30 be construed to limit the establishment or maintenance of  
31 a branch pursuant to subsection (11).

32 Not less than 30 days before engaging in any activity  
33 under the authority of this subsection, a bank shall provide  
34 written notice to the Commissioner of its intent to engage in



1 the activity. The notice shall indicate the specific federal  
2 or state law, rule, regulation, or interpretation the bank  
3 intends to use as authority to engage in the activity.

4 (Source: P.A. 91-330, eff. 7-29-99; 91-849, eff. 6-22-00;  
5 92-483, eff. 8-23-01; 92-811, eff. 8-21-02.)

6 (205 ILCS 5/13.6 new)

7 Sec. 13.6. Banks as limited liability companies.

8 (a) A bank may be organized as a limited liability  
9 company, may convert to a limited liability company, or may  
10 merge with and into a limited liability company under the  
11 applicable laws of this State and of the United States,  
12 including any rules promulgated thereunder. A bank organized  
13 as a limited liability company shall be subject to the  
14 provisions of the Limited Liability Company Act in addition  
15 to this Act, provided that if a provision of the Limited  
16 Liability Company Act conflicts with a provision of this Act  
17 or with any rule of the Commissioner, the provision of this  
18 Act or the rule of the Commissioner shall apply.

19 (b) Any filing required to be made under the Limited  
20 Liability Company Act shall be made exclusively with the  
21 Commissioner, and the Commissioner shall possess the  
22 exclusive authority to regulate the bank as provided in this  
23 Act.

24 (c) Any organization as, conversion to, and merger with  
25 or into a limited liability company shall be subject to the  
26 prior approval of the Commissioner.

27 (d) A bank that is a limited liability company shall be  
28 subject to all of the provisions of this Act in the same  
29 manner as a bank that is organized in stock form.

30 (e) The Commissioner may promulgate rules to ensure that  
31 a bank that is a limited liability company (i) is operating  
32 in a safe and sound manner and (ii) is subject to the  
33 Commissioner's authority in the same manner as a bank that is

1 organized in stock form.

2 (205 ILCS 5/17) (from Ch. 17, par. 324)

3 Sec. 17. Changes in charter.

4 (a) By compliance with the provisions of this Act a  
5 State bank may:

6 (1) (blank);

7 (2) increase, decrease or change its capital stock,  
8 whether issued or unissued, provided that in no case  
9 shall the capital be diminished to the prejudice of its  
10 creditors;

11 (3) provide for authorized but unissued capital  
12 stock reserved for issuance for one or more of the  
13 purposes provided for in subsection (5) of Section 14  
14 hereof;

15 (4) authorize preferred stock, or increase,  
16 decrease or change the preferences, qualifications,  
17 limitations, restrictions or special or relative rights  
18 of its preferred stock, whether issued or unissued, or  
19 delegate authority to its board of directors as provided  
20 in subsection (d), provided that in no case shall the  
21 capital be diminished to the prejudice of its creditors;

22 (5) increase, decrease or change the par value of  
23 its shares of its capital stock or preferred stock,  
24 whether issued or unissued, or delegate authority to its  
25 board of directors as provided in subsection (d);

26 (6) (blank);

27 (7) eliminate cumulative voting rights under all or  
28 specified circumstances, or eliminate voting rights  
29 entirely, as to any class or classes or series of stock  
30 of the bank pursuant to paragraph (3) of Section 15,  
31 provided that one class of shares or series thereof shall  
32 always have voting in respect to all matters in the bank,  
33 and provided further that the proposal to eliminate such

1 voting rights receives the approval of the holders of 70%  
2 of the outstanding shares of stock entitled to vote as  
3 provided in paragraph (7) of subsection (b) of this  
4 Section 17;

5 (8) increase, decrease, or change its capital stock  
6 or preferred stock, whether issued or unissued, for the  
7 purpose of eliminating fractional shares or avoiding the  
8 issuance of fractional shares, provided that in no case  
9 shall the capital be diminished to the prejudice of its  
10 creditors; or

11 (9) make such other change in its charter as may be  
12 authorized in this Act.

13 (b) To effect a change or changes in a State bank's  
14 charter as provided for in this Section 17:

15 (1) The board of directors shall adopt a resolution  
16 setting forth the proposed amendment and directing that  
17 it be submitted to a vote at a meeting of stockholders,  
18 which may be either an annual or special meeting.

19 (2) If the meeting is a special meeting, written or  
20 printed notice setting forth the proposed amendment or  
21 summary thereof shall be given to each stockholder of  
22 record entitled to vote at such meeting at least 30 days  
23 before such meeting and in the manner provided in this  
24 Act for the giving of notice of meetings of stockholders.

25 (3) At such special meeting, a vote of the  
26 stockholders entitled to vote shall be taken on the  
27 proposed amendment. Except as provided in paragraph (7)  
28 of this subsection (b), the proposed amendment shall be  
29 adopted upon receiving the affirmative vote of the  
30 holders of at least two-thirds of the outstanding shares  
31 of stock entitled to vote at such meeting, unless holders  
32 of preferred stock are entitled to vote as a class in  
33 respect thereof, in which event the proposed amendment  
34 shall be adopted upon receiving the affirmative vote of

1 the holders of at least two-thirds of the outstanding  
2 shares of each class of shares entitled to vote as a  
3 class in respect thereof and of the total outstanding  
4 shares entitled to vote at such meeting. Any number of  
5 amendments may be submitted to the stockholders and voted  
6 upon by them at one meeting. A certificate of the  
7 amendment, or amendments, verified by the president, or a  
8 vice-president, or the cashier, shall be filed  
9 immediately in the office of the Commissioner.

10 (4) At any annual meeting without a resolution of  
11 the board of directors and without a notice and prior  
12 publication, as hereinabove provided, a proposition for a  
13 change in the bank's charter as provided for in this  
14 Section 17 may be submitted to a vote of the stockholders  
15 entitled to vote at the annual meeting, except that no  
16 proposition for authorized but unissued capital stock  
17 reserved for issuance for one or more of the purposes  
18 provided for in subsection (5) of Section 14 hereof shall  
19 be submitted without complying with the provisions of  
20 said subsection. The proposed amendment shall be adopted  
21 upon receiving the affirmative vote of the holders of at  
22 least two-thirds of the outstanding shares of stock  
23 entitled to vote at such meeting, unless holders of  
24 preferred stock are entitled to vote as a class in  
25 respect thereof, in which event the proposed amendment  
26 shall be adopted upon receiving the affirmative vote of  
27 the holders of at least two-thirds of the outstanding  
28 shares of each class of shares entitled to vote as a  
29 class in respect thereof and the total outstanding shares  
30 entitled to vote at such meeting. A certificate of the  
31 amendment, or amendments, verified by the president, or a  
32 vice-president or cashier, shall be filed immediately in  
33 the office of the Commissioner.

34 (5) If an amendment or amendments shall be approved

1 in writing by the Commissioner, the amendment or  
2 amendments so adopted and so approved shall be  
3 accomplished in accordance with the vote of the  
4 stockholders. The Commissioner may impose such terms and  
5 conditions on the approval of the amendment or amendments  
6 as he deems necessary or appropriate. The Commissioner  
7 shall revoke such approval in the event such amendment or  
8 amendments are not effected within one year from the date  
9 of the issuance of the Commissioner's certificate and  
10 written approval except for transactions permitted under  
11 subsection (5) of Section 14 of this Act.

12 (6) No amendment or amendments shall affect suits  
13 in which the bank is a party, nor affect causes of  
14 action, nor affect rights of persons in any particular,  
15 nor shall actions brought against such bank by its former  
16 name be abated by a change of name.

17 (7) A proposal to amend the charter to eliminate  
18 cumulative voting rights under all or specified  
19 circumstances, or to eliminate voting rights entirely, as  
20 to any class or classes or series or stock of a bank,  
21 pursuant to paragraph (3) of Section 15 and paragraph (7)  
22 of subsection (a) of this Section 17, shall be adopted  
23 only upon such proposal receiving the approval of the  
24 holders of 70% of the outstanding shares of stock  
25 entitled to vote at the meeting where the proposal is  
26 presented for approval, unless holders of preferred stock  
27 are entitled to vote as a class in respect thereof, in  
28 which event the proposed amendment shall be adopted upon  
29 receiving the approval of the holders of 70% of the  
30 outstanding shares of each class of shares entitled to  
31 vote as a class in respect thereof and of the total  
32 outstanding shares entitled to vote at the meeting where  
33 the proposal is presented for approval. The proposal to  
34 amend the charter pursuant to this paragraph (7) may be

1 voted upon at the annual meeting or a special meeting.

2 (8) Written or printed notice of a stockholders'  
3 meeting to vote on a proposal to increase, decrease or  
4 change the capital stock or preferred stock pursuant to  
5 paragraph (8) of subsection (a) of this Section 17 and to  
6 eliminate fractional shares or avoid the issuance of  
7 fractional shares shall be given to each stockholder of  
8 record entitled to vote at the meeting at least 30 days  
9 before the meeting and in the manner provided in this Act  
10 for the giving of notice of meetings of stockholders, and  
11 shall include all of the following information:

12 (A) A statement of the purpose of the proposed  
13 reverse stock split.

14 (B) A statement of the amount of consideration  
15 being offered for the bank's stock.

16 (C) A statement that the bank considers the  
17 transaction fair to the stockholders, and a  
18 statement of the material facts upon which this  
19 belief is based.

20 (D) A statement that the bank has secured an  
21 opinion from a third party with respect to the  
22 fairness, from a financial point of view, of the  
23 consideration to be paid, the identity and  
24 qualifications of the third party, how the third  
25 party was selected, and any material relationship  
26 between the third party and the bank.

27 (E) A summary of the opinion including the  
28 basis for and the methods of arriving at the  
29 findings and any limitation imposed by the bank in  
30 arriving at fair value and a statement making the  
31 opinion available for reviewing or copying by any  
32 stockholder.

33 (F) A statement that objecting stockholders  
34 will be entitled to the fair value of those shares

1           that are voted against the charter amendment, if a  
2           proper demand is made on the bank and the  
3           requirements are satisfied as specified in this  
4           Section.

5    If a stockholder shall file with the bank, prior to or at the  
6    meeting of stockholders at which the proposed charter  
7    amendment is submitted to a vote, a written objection to the  
8    proposed charter amendment and shall not vote in favor  
9    thereof, and if the stockholder, within 20 days after  
10   receiving written notice of the date the charter amendment  
11   was accomplished pursuant to paragraph (5) of subsection (a)  
12   of this Section 17, shall make written demand on the bank for  
13   payment of the fair value of the stockholder's shares as of  
14   the day prior to the date on which the vote was taken  
15   approving the charter amendment, the bank shall pay to the  
16   stockholder, upon surrender of the certificate or  
17   certificates representing the stock, the fair value thereof.  
18   The demand shall state the number of shares owned by the  
19   objecting stockholder. The bank shall provide written notice  
20   of the date on which the charter amendment was accomplished  
21   to all stockholders who have filed written objections in  
22   order that the objecting stockholders may know when they must  
23   file written demand if they choose to do so. Any stockholder  
24   failing to make demand within the 20-day period shall be  
25   conclusively presumed to have consented to the charter  
26   amendment and shall be bound by the terms thereof. If within  
27   30 days after the date on which a charter amendment was  
28   accomplished the value of the shares is agreed upon between  
29   the objecting stockholders and the bank, payment therefor  
30   shall be made within 90 days after the date on which the  
31   charter amendment was accomplished, upon the surrender of the  
32   stockholder's certificate or certificates representing the  
33   shares. Upon payment of the agreed value the objecting  
34   stockholder shall cease to have any interest in the shares or

1 in the bank. If within such period of 30 days the  
2 stockholder and the bank do not so agree, then the objecting  
3 stockholder may, within 60 days after the expiration of the  
4 30-day period, file a complaint in the circuit court asking  
5 for a finding and determination of the fair value of the  
6 shares, and shall be entitled to judgment against the bank  
7 for the amount of the fair value as of the day prior to the  
8 date on which the vote was taken approving the charter  
9 amendment with interest thereon to the date of the judgment.  
10 The practice, procedure and judgment shall be governed by the  
11 Civil Practice Law. The judgment shall be payable only upon  
12 and simultaneously with the surrender to the bank of the  
13 certificate or certificates representing the shares. Upon  
14 payment of the judgment, the objecting stockholder shall  
15 cease to have any interest in the shares or the bank. The  
16 shares may be held and disposed of by the bank. Unless the  
17 objecting stockholder shall file such complaint within the  
18 time herein limited, the stockholder and all persons claiming  
19 under the stockholder shall be conclusively presumed to have  
20 approved and ratified the charter amendment, and shall be  
21 bound by the terms thereof. The right of an objecting  
22 stockholder to be paid the fair value of the stockholder's  
23 shares of stock as herein provided shall cease if and when  
24 the bank shall abandon the charter amendment.

25 (c) The purchase and holding and later resale of  
26 treasury stock of a state bank pursuant to the provisions of  
27 subsection (6) of Section 14 may be accomplished without a  
28 change in its charter reflecting any decrease or increase in  
29 capital stock.

30 (d) A State bank may amend its charter for the purpose  
31 of authorizing its board of directors to issue preferred  
32 stock; to increase, decrease, or change the par value of  
33 shares of its preferred stock, whether issued or unissued; or  
34 to increase, decrease, or change the preferences,



1 qualifications, limitations, restrictions, or special or  
2 relative rights of its preferred stock, whether issued or  
3 unissued; provided that in no case shall the capital be  
4 diminished to the prejudice of the bank's creditors. An  
5 amendment to the bank's charter granting such authority shall  
6 establish ranges, limits, or restrictions that must be  
7 observed when the board exercises the discretion authorized  
8 by the amendment.

9 Once such an amendment is adopted and approved as  
10 provided in this subsection, and without further action by  
11 the bank's stockholders, the board may exercise its delegated  
12 authority by adopting a resolution specifying the actions  
13 that it is taking with respect to the preferred stock. The  
14 board may fully exercise its delegated authority through one  
15 resolution or it may exercise its delegated authority through  
16 a series of resolutions, provided that the board's actions  
17 remain at all times within the ranges, limitations, and  
18 restrictions specified in the amendment to the bank's  
19 charter.

20 A resolution adopted by the board under this authority  
21 shall be submitted to the Commissioner for approval. The  
22 Commissioner shall approve the resolution, or state any  
23 objections to the resolution, within 30 days after the  
24 receipt of the resolution adopted by the board. If no  
25 objections are specified by the Commissioner within that time  
26 frame, the resolution will be deemed to be approved by the  
27 Commissioner. Once approved, the resolution shall be  
28 incorporated as an addendum to the bank's charter and the  
29 board may proceed to effect the changes set forth in the  
30 resolution.

31 (Source: P.A. 91-322, eff. 1-1-00; 92-483, eff. 8-23-01.)

32 Section 825. The Savings Bank Act is amended by changing  
33 Sections 1007.55 and 1008 and by adding Section 1007.125 as

1 follows:

2 (205 ILCS 205/1007.55) (from Ch. 17, par. 7301-7.55)

3 Sec. 1007.55. "Director" means any director, trustee, or  
 4 other person performing similar functions with respect to any  
 5 organization whether incorporated or unincorporated. In the  
 6 case of a manager-managed limited liability company, however,  
 7 "director" means a manager of the savings bank, and in the  
 8 case of a member-managed limited liability company,  
 9 "director" means a member of the savings bank. The term  
 10 "director" does not include an advisory director, honorary  
 11 director, director emeritus, or similar person, unless the  
 12 person is otherwise performing functions similar to those of  
 13 a director.

14 (205 ILCS 205/1007.125 new)

15 Sec. 1007.125. "Bylaws" means the bylaws of a savings  
 16 bank that are adopted by the savings bank's board of  
 17 directors or shareholders for the regulation and management  
 18 of the savings bank's affairs. If the savings bank operates  
 19 as a limited liability company, however, "bylaws" means the  
 20 operating agreement of the savings bank.

21 (Source: P.A. 86-1213.)

22 (205 ILCS 205/1008) (from Ch. 17, par. 7301-8)

23 Sec. 1008. General corporate powers.

24 (a) A savings bank operating under this Act shall be a  
 25 body corporate and politic and shall have all of the powers  
 26 conferred by this Act including, but not limited to, the  
 27 following powers:

28 (1) To sue and be sued, complain, and defend in its  
 29 corporate name and to have a common seal, which it may  
 30 alter or renew at pleasure.

31 (2) To obtain and maintain insurance by a deposit

1 insurance corporation as defined in this Act.

2 (3) To act as a fiscal agent for the United States,  
3 the State of Illinois or any department, branch, arm, or  
4 agency of the State or any unit of local government or  
5 school district in the State, when duly designated for  
6 that purpose, and as agent to perform reasonable  
7 functions as may be required of it.

8 (4) To become a member of or deal with any  
9 corporation or agency of the United States or the State  
10 of Illinois, to the extent that the agency assists in  
11 furthering or facilitating its purposes or powers and to  
12 that end to purchase stock or securities thereof or  
13 deposit money therewith, and to comply with any other  
14 conditions of membership or credit.

15 (5) To make donations in reasonable amounts for the  
16 public welfare or for charitable, scientific, religious,  
17 or educational purposes.

18 (6) To adopt and operate reasonable insurance,  
19 bonus, profit sharing, and retirement plans for officers  
20 and employees and for directors including, but not  
21 limited to, advisory, honorary, and emeritus directors,  
22 who are not officers or employees.

23 (7) To reject any application for membership; to  
24 retire deposit accounts by enforced retirement as  
25 provided in this Act and the bylaws; and to limit the  
26 issuance of, or payments on, deposit accounts, subject,  
27 however, to contractual obligations.

28 (8) To purchase stock in service corporations and  
29 to invest in any form of indebtedness of any service  
30 corporation as defined in this Act, subject to  
31 regulations of the Commissioner.

32 (9) To purchase stock of a corporation whose  
33 principal purpose is to operate a safe deposit company or  
34 escrow service company.

1           (10) To exercise all the powers necessary to  
2 qualify as a trustee or custodian under federal or State  
3 law, provided that the authority to accept and execute  
4 trusts is subject to the provisions of the Corporate  
5 Fiduciary Act and to the supervision of those activities  
6 by the Commissioner.

7           (11) (Blank).

8           (12) To establish, maintain, and operate terminals  
9 as authorized by the Electronic Fund Transfer Act.

10          (13) To pledge its assets:

11           (A) to enable it to act as agent for the sale  
12 of obligations of the United States;

13           (B) to secure deposits;

14           (C) to secure deposits of money whenever  
15 required by the National Bankruptcy Act;

16           (D) (blank); and

17           (E) to secure trust funds commingled with the  
18 savings bank's funds, whether deposited by the  
19 savings bank or an affiliate of the savings bank, as  
20 required under Section 2-8 of the Corporate  
21 Fiduciary Act.

22          (14) To accept for payment at a future date not to  
23 exceed one year from the date of acceptance, drafts drawn  
24 upon it by its customers; and to issue, advise, or  
25 confirm letters of credit authorizing holders thereof to  
26 draw drafts upon it or its correspondents.

27          (15) Subject to the regulations of the  
28 Commissioner, to own and lease personal property acquired  
29 by the savings bank at the request of a prospective  
30 lessee and, upon the agreement of that person, to lease  
31 the personal property.

32          (16) To establish temporary service booths at any  
33 International Fair in this State that is approved by the  
34 United States Department of Commerce for the duration of

1 the international fair for the purpose of providing a  
2 convenient place for foreign trade customers to exchange  
3 their home countries' currency into United States  
4 currency or the converse. To provide temporary periodic  
5 service to persons residing in a bona fide nursing home,  
6 senior citizens' retirement home, or long-term care  
7 facility. These powers shall not be construed as  
8 establishing a new place or change of location for the  
9 savings bank providing the service booth.

10 (17) To indemnify its officers, directors,  
11 employees, and agents, as authorized for corporations  
12 under Section 8.75 of the Business Corporations Act of  
13 1983.

14 (18) To provide data processing services to others  
15 on a for-profit basis.

16 (19) To utilize any electronic technology to  
17 provide customers with home banking services.

18 (20) Subject to the regulations of the  
19 Commissioner, to enter into an agreement to act as a  
20 surety.

21 (21) Subject to the regulations of the  
22 Commissioner, to issue credit cards, extend credit  
23 therewith, and otherwise engage in or participate in  
24 credit card operations.

25 (22) To purchase for its own account shares of  
26 stock of a bankers' bank, described in Section 13(b)(1)  
27 of the Illinois Banking Act, on the same terms and  
28 conditions as a bank may purchase such shares. In no  
29 event shall the total amount of such stock held by a  
30 savings bank in such bankers' bank exceed 10% of its  
31 capital and surplus (including undivided profits) and in  
32 no event shall a savings bank acquire more than 5% of any  
33 class of voting securities of such bankers' bank.

34 (23) With respect to affiliate facilities:

1           (A) to conduct at affiliate facilities any of  
2           the following transactions for and on behalf of any  
3           affiliated depository institution, if so authorized  
4           by the affiliate or affiliates: receiving deposits;  
5           renewing deposits; cashing and issuing checks,  
6           drafts, money orders, travelers checks, or similar  
7           instruments; changing money; receiving payments on  
8           existing indebtedness; and conducting ministerial  
9           functions with respect to loan applications,  
10          servicing loans, and providing loan account  
11          information; and

12          (B) to authorize an affiliated depository  
13          institution to conduct for and on behalf of it, any  
14          of the transactions listed in this subsection at one  
15          or more affiliate facilities.

16          A savings bank intending to conduct or to authorize  
17          an affiliated depository institution to conduct at an  
18          affiliate facility any of the transactions specified in  
19          this subsection shall give written notice to the  
20          Commissioner at least 30 days before any such transaction  
21          is conducted at an affiliate facility. All conduct under  
22          this subsection shall be on terms consistent with safe  
23          and sound banking practices and applicable law.

24          (24) Subject to Article XLIV of the Illinois  
25          Insurance Code, to act as the agent for any fire, life,  
26          or other insurance company authorized by the State of  
27          Illinois, by soliciting and selling insurance and  
28          collecting premiums on policies issued by such company;  
29          and may receive for services so rendered such fees or  
30          commissions as may be agreed upon between the said  
31          savings bank and the insurance company for which it may  
32          act as agent; provided, however, that no such savings  
33          bank shall in any case assume or guarantee the payment of  
34          any premium on insurance policies issued through its

1 agency by its principal; and provided further, that the  
2 savings bank shall not guarantee the truth of any  
3 statement made by an assured in filing his application  
4 for insurance.

5 (25) To become a member of the Federal Home Loan  
6 Bank and to have the powers granted to a savings  
7 association organized under the Illinois Savings and Loan  
8 Act of 1985 or the laws of the United States, subject to  
9 regulations of the Commissioner.

10 (26) To offer any product or service that is at the  
11 time authorized or permitted to a bank by applicable law,  
12 but subject always to the same limitations and  
13 restrictions that are applicable to the bank for the  
14 product or service by such applicable law and subject to  
15 the applicable provisions of the Financial Institutions  
16 Insurance Sales Law and rules of the Commissioner.

17 (b) If this Act or the regulations adopted under this  
18 Act fail to provide specific guidance in matters of corporate  
19 governance, the provisions of the Business Corporation Act of  
20 1983 may be used, or if the savings bank is a limited  
21 liability company, the provisions of the Limited Liability  
22 Company shall be used.

23 (c) A savings bank may be organized as a limited  
24 liability company, may convert to a limited liability  
25 company, or may merge with and into a limited liability  
26 company, under the applicable laws of this State and of the  
27 United States, including any rules promulgated thereunder. A  
28 savings bank organized as a limited liability company shall  
29 be subject to the provisions of the Limited Liability Company  
30 Act in addition to this Act, provided that if a provision of  
31 the Limited Liability Company Act conflicts with a provision  
32 of this Act or with any rule of the Commissioner, the  
33 provision of this Act or the rule of the Commissioner shall  
34 apply.

1       Any filing required to be made under the Limited  
2       Liability Company Act shall be made exclusively with the  
3       Commissioner, and the Commissioner shall possess the  
4       exclusive authority to regulate the savings bank as provided  
5       in this Act.

6       Any organization as, conversion to, and merger with or  
7       into a limited liability company shall be subject to the  
8       prior approval of the Commissioner.

9       A savings bank that is a limited liability company shall  
10       be subject to all of the provisions of this Act in the same  
11       manner as a savings bank that is organized in stock form.

12       The Commissioner may promulgate rules to ensure that a  
13       savings bank that is a limited liability company (i) is  
14       operating in a safe and sound manner and (ii) is subject to  
15       the Commissioner's authority in the same manner as a savings  
16       bank that is organized in stock form.

17       (Source: P.A. 91-97, eff. 7-9-99; 91-357, eff. 7-29-99;  
18       92-483, eff. 8-23-01.)

19       Section 830. The Residential Mortgage License Act of  
20       1987 is amended by changing Sections 1-4, 2-4, 2-6, 3-2, 3-5,  
21       and 4-5 and by adding Sections 4-8.1, 4-8.2, and Article 7 as  
22       follows:

23       (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

24       Sec. 1-4. Definitions.

25       (a) "Residential real property" or "residential real  
26       estate" shall mean real property located in this State  
27       improved by a one-to-four family dwelling used or occupied,  
28       wholly or partly, as the home or residence of one or more  
29       persons and may refer, subject to regulations of the  
30       Commissioner, to unimproved real property upon which those  
31       kinds dwellings are to be constructed.

32       (b) "Making a residential mortgage loan" or "funding a



1 residential mortgage loan" shall mean for compensation or  
2 gain, either directly or indirectly, advancing funds or  
3 making a commitment to advance funds to a loan applicant for  
4 a residential mortgage loan.

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

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

18 (1) (i) Any banking organization or foreign banking  
19 corporation licensed by the Illinois Commissioner of  
20 Banks and Real Estate or the United States Comptroller of  
21 the Currency to transact business in this State; (ii) any  
22 national bank, federally chartered savings and loan  
23 association, federal savings bank, federal credit union;  
24 (iii) any pension trust, bank trust, or bank trust  
25 company; (iv) any savings and loan association, savings  
26 bank, or credit union organized under the laws of this or  
27 any other state; (v) any Illinois Consumer Installment  
28 Loan Act licensee; (vi) any insurance company authorized  
29 to transact business in this State; (vii) any entity  
30 engaged solely in commercial mortgage lending; (viii) any  
31 service corporation of a savings and loan association or  
32 savings bank organized under the laws of this State or  
33 the service corporation of a federally chartered savings  
34 and loan association or savings bank having its principal

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

14 (1.5) Any employee of a person or entity mentioned  
15 in item (1) of this subsection.

16 (2) Any person or entity that ~~either-(i)-has-a~~  
17 ~~physical-presence-in-Illinois-or-(ii)~~ does not originate  
18 mortgage loans in the ordinary course of business making  
19 or acquiring residential mortgage loans with his or her  
20 or its own funds for his or her or its own investment  
21 without intent to make, acquire, or resell more than 10  
22 residential mortgage loans in any one calendar year.

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

26 (4) Any person licensed pursuant to the Real Estate  
27 License Act of 2000, who engages only in the taking of  
28 applications and credit and appraisal information to  
29 forward to a licensee or an exempt entity under this Act  
30 and who is compensated by either a licensee or an exempt  
31 entity under this Act, but is not compensated by either  
32 the buyer (applicant) or the seller.

33 (5) Any individual, corporation, partnership, or  
34 other entity that originates, services, or brokers

1 residential mortgage loans, as these activities are  
2 defined in this Act, and who or which receives no  
3 compensation for those activities, subject to the  
4 Commissioner's regulations with regard to the nature and  
5 amount of compensation.

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

14 (A) holds the licensee fully accountable for  
15 the preparer's action; and

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

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

24 (f) "Mortgage loan" "residential mortgage loan" or "home  
25 mortgage loan" shall mean a loan to or for the benefit of any  
26 natural person made primarily for personal, family, or  
27 household use, primarily secured by either a mortgage on  
28 residential real property or certificates of stock or other  
29 evidence of ownership interests in and proprietary leases  
30 from, corporations, partnerships, or limited liability  
31 companies formed for the purpose of cooperative ownership of  
32 residential real property, all located in Illinois.

33 (g) "Lender" shall mean any person, partnership,  
34 association, corporation, or any other entity who either

1 lends or invests money in residential mortgage loans.

2 (h) "Ultimate equitable owner" shall mean a person who,  
3 directly or indirectly, owns or controls an ownership  
4 interest in a corporation, foreign corporation, alien  
5 business organization, trust, or any other form of business  
6 organization regardless of whether the person owns or  
7 controls the ownership interest through one or more persons  
8 or one or more proxies, powers of attorney, nominees,  
9 corporations, associations, partnerships, trusts, joint stock  
10 companies, or other entities or devices, or any combination  
11 thereof.

12 (i) "Residential mortgage financing transaction" shall  
13 mean the negotiation, acquisition, sale, or arrangement for  
14 or the offer to negotiate, acquire, sell, or arrange for, a  
15 residential mortgage loan or residential mortgage loan  
16 commitment.

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

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

21 (l) "Party to a residential mortgage financing  
22 transaction" shall mean a borrower, lender, or loan broker in  
23 a residential mortgage financing transaction.

24 (m) "Payments" shall mean payment of all or any of the  
25 following: principal, interest and escrow reserves for taxes,  
26 insurance and other related reserves, and reimbursement for  
27 lender advances.

28 (n) "Commissioner" shall mean the Commissioner of Banks  
29 and Real Estate or a person authorized by the Commissioner,  
30 the Office of Banks and Real Estate Act, or this Act to act  
31 in the Commissioner's stead.

32 (o) "Loan brokering", "brokering", or "brokerage  
33 service" shall mean the act of helping to obtain from another  
34 entity, for a borrower, a loan secured by residential real

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

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

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

25 (r) "Full service office" shall mean office and staff in  
26 Illinois reasonably adequate to handle efficiently  
27 communications, questions, and other matters relating to any  
28 application for, or an existing home mortgage secured by  
29 residential real estate situated in Illinois with respect to  
30 which the licensee is brokering, funding originating,  
31 purchasing, or servicing. The management and operation of  
32 each full service office must include observance of good  
33 business practices such as adequate, organized, and accurate  
34 books and records; ample phone lines, hours of business,

1 staff training and supervision, and provision for a mechanism  
2 to resolve consumer inquiries, complaints, and problems. The  
3 Commissioner shall issue regulations with regard to these  
4 requirements and shall include an evaluation of compliance  
5 with this Section in his or her periodic examination of each  
6 licensee.

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

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

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

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

18 (1) obtain a residential mortgage loan for the  
19 borrower or assist the borrower in obtaining a  
20 residential mortgage loan; or

21 (2) consider making a residential mortgage loan to  
22 the borrower.

23 (w) "Advertisement" shall mean the attempt by  
24 publication, dissemination, or circulation to induce,  
25 directly or indirectly, any person to enter into a  
26 residential mortgage loan agreement or residential mortgage  
27 loan brokerage agreement relative to a mortgage secured by  
28 residential real estate situated in Illinois.

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

32 (y) "Government-insured mortgage loan" shall mean any  
33 mortgage loan made on the security of residential real estate  
34 insured by the Department of Housing and Urban Development or

1 Farmers Home Loan Administration, or guaranteed by the  
2 Veterans Administration.

3 (z) "Annual audit" shall mean a certified audit of the  
4 licensee's books and records and systems of internal control  
5 performed by a certified public accountant in accordance with  
6 generally accepted accounting principles and generally  
7 accepted auditing standards.

8 (aa) "Financial institution" shall mean a savings and  
9 loan association, savings bank, credit union, or a bank  
10 organized under the laws of Illinois or a savings and loan  
11 association, savings bank, credit union or a bank organized  
12 under the laws of the United States and headquartered in  
13 Illinois.

14 (bb) "Escrow agent" shall mean a third party, individual  
15 or entity charged with the fiduciary obligation for holding  
16 escrow funds on a residential mortgage loan pending final  
17 payout of those funds in accordance with the terms of the  
18 residential mortgage loan.

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

21 (dd) "Affiliate" shall mean:

22 (1) any entity that directly controls or is  
23 controlled by the licensee and any other company that is  
24 directly affecting activities regulated by this Act that  
25 is controlled by the company that controls the licensee;

26 (2) any entity:

27 (A) that is controlled, directly or  
28 indirectly, by a trust or otherwise, by or for the  
29 benefit of shareholders who beneficially or  
30 otherwise control, directly or indirectly, by trust  
31 or otherwise, the licensee or any company that  
32 controls the licensee; or

33 (B) a majority of the directors or trustees of  
34 which constitute a majority of the persons holding

1           any such office with the licensee or any company  
2           that controls the licensee;

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

7           The Commissioner may define by rule and regulation any  
8           terms used in this Act for the efficient and clear  
9           administration of this Act.

10          (ee) "First tier subsidiary" shall be defined by  
11          regulation incorporating the comparable definitions used by  
12          the Office of the Comptroller of the Currency and the  
13          Illinois Commissioner of Banks and Real Estate.

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

26          (gg) "Delinquency rate factor" means the factor set by  
27          rule of the Commissioner that is multiplied by the average  
28          gross delinquency rate of licensees, determined annually for  
29          the immediately preceding calendar year, for the purpose of  
30          determining which licensees shall be examined by the  
31          Commissioner pursuant to subsection (b) of Section 4-8 of  
32          this Act.

33          (hh) "Loan originator" means any natural person who, for  
34          compensation or in the expectation of compensation, either



1 directly or indirectly makes, offers to make, solicits,  
2 places, or negotiates a residential mortgage loan.

3 (Source: P.A. 90-772, eff. 1-1-99; 91-245, eff. 12-31-99.)

4 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

5 Sec. 2-4. Averments of Licensee. Each application for  
6 license or for the renewal of a license shall be accompanied  
7 by the following averments stating that the applicant:

8 (a) Will maintain at least one full service office  
9 within the State of Illinois pursuant to Section 3-4 of this  
10 Act;

11 (b) Will maintain staff reasonably adequate to meet the  
12 requirements of Section 3-4 of this Act;

13 (c) Will keep and maintain for 36 months the same  
14 written records as required by the federal Equal Credit  
15 Opportunity Act, and any other information required by  
16 regulations of the Commissioner regarding any home mortgage  
17 in the course of the conduct of its residential mortgage  
18 business;

19 (d) Will file with the Commissioner, when due, any  
20 report or reports which it is required to file under any of  
21 the provisions of this Act;

22 (e) Will not engage, whether as principal or agent, in  
23 the practice of rejecting residential mortgage applications  
24 without reasonable cause, or varying terms or application  
25 procedures without reasonable cause, for home mortgages on  
26 real estate within any specific geographic area from the  
27 terms or procedures generally provided by the licensee within  
28 other geographic areas of the State;

29 (f) Will not engage in fraudulent home mortgage  
30 underwriting practices;

31 (g) Will not make payment, whether directly or  
32 indirectly, of any kind to any in house or fee appraiser of  
33 any government or private money lending agency with which an

1 application for a home mortgage has been filed for the  
2 purpose of influencing the independent judgment of the  
3 appraiser with respect to the value of any real estate which  
4 is to be covered by such home mortgage;

5 (h) Has filed tax returns (State and Federal) for the  
6 past 3 years or filed with the Commissioner an accountant's  
7 or attorney's statement as to why no return was filed;

8 (i) Will not engage in any discrimination or redlining  
9 activities prohibited by Section 3-8 of this Act;

10 (j) Will not knowingly make any false promises likely to  
11 influence or persuade, or pursue a course of  
12 misrepresentation and false promises through agents,  
13 solicitors, advertising or otherwise;

14 (k) Will not knowingly misrepresent, circumvent or  
15 conceal, through whatever subterfuge or device, any of the  
16 material particulars or the nature thereof, regarding a  
17 transaction to which it is a party to the injury of another  
18 party thereto;

19 (l) Will disburse funds in accordance with its  
20 agreements;

21 (m) Has not committed a crime against the law of this  
22 State, any other state or of the United States, involving  
23 moral turpitude, fraudulent or dishonest dealing, and that no  
24 final judgment has been entered against it in a civil action  
25 upon grounds of fraud, misrepresentation or deceit which has  
26 not been previously reported to the Commissioner;

27 (n) Will account or deliver to any person any personal  
28 property such as money, fund, deposit, check, draft,  
29 mortgage, other document or thing of value, which has come  
30 into its possession, and which is not its property, or which  
31 it is not in law or equity entitled to retain under the  
32 circumstances, at the time which has been agreed upon or is  
33 required by law, or, in the absence of a fixed time, upon  
34 demand of the person entitled to such accounting and

1 delivery;

2 (o) Has not engaged in any conduct which would be cause  
3 for denial of a license;

4 (p) Has not become insolvent;

5 (q) Has not submitted an application for a license under  
6 this Act which contains a material misstatement;

7 (r) Has not demonstrated by course of conduct,  
8 negligence or incompetence in performing any act for which it  
9 is required to hold a license under this Act;

10 (s) Will advise the Commissioner in writing of any  
11 changes to the information submitted on the most recent  
12 application for license within 30 days of said change. The  
13 written notice must be signed in the same form as the  
14 application for license being amended;

15 (t) Will comply with the provisions of this Act, or with  
16 any lawful order, rule or regulation made or issued under the  
17 provisions of this Act;

18 (u) Will submit to periodic examination by the  
19 Commissioner as required by this Act;

20 (v) Will advise the Commissioner in writing of judgments  
21 entered against, and bankruptcy petitions by, the license  
22 applicant within 5 days of occurrence;

23 (w) Will advise the Commissioner in writing within 30  
24 days when the license applicant requests a licensee under  
25 this Act to repurchase a loan, and the circumstances  
26 therefor; and

27 (x) Will advise the Commissioner in writing within 30  
28 days when the license applicant is requested by another  
29 entity to repurchase a loan, and the circumstances therefor.

30 (y) Will at all times act in a manner consistent with  
31 subsections (a) and (b) of Section 1-2 of this Act.

32 (x) Will not knowingly hire or employ a loan originator  
33 who is not registered with the Commissioner as required under  
34 Section 7-1 of this Act.

1        A licensee who fails to fulfill obligations of an  
2        averment, to comply with averments made, or otherwise  
3        violates any of the averments made under this Section shall  
4        be subject to the penalties in Section 4-5 of this Act.

5        (Source: P.A. 90-301, eff. 8-1-97.)

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

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

8            (a) Beginning May 1, 1992, licenses issued before  
9        January 1, 1988, shall be renewed every 2 years on May 1.  
10        Beginning May 1, 1992, licenses issued on or after January 1,  
11        1988, shall be renewed every 2 years on the anniversary of  
12        the date of the issuance of the original license. Licenses  
13        issued for first time applicants on or after May 1, 1992,  
14        shall be renewed on the first anniversary of their issuance  
15        and every 2 years thereafter. Properly completed renewal  
16        application forms and filing fees must be received by the  
17        Commissioner 60 45 days prior to the renewal date.

18            (b) It shall be the responsibility of each licensee to  
19        accomplish renewal of its license; failure of the licensee to  
20        receive renewal forms absent a request sent by certified mail  
21        for such forms will not waive said responsibility. Failure by  
22        a licensee to submit a properly completed renewal application  
23        form and fees in a timely fashion, absent a written extension  
24        from the Commissioner, will result in the assessment of  
25        additional fees, as follows:

26            (1) A fee of \$500 will be assessed to the licensee  
27        30 days after the proper renewal date and \$1,000 each  
28        month thereafter, until the license is either renewed or  
29        expires pursuant to Section 2-6, subsections (c) and (d),  
30        of this Act.

31            (2) Such fee will be assessed without prior notice  
32        to the licensee, but will be assessed only in cases  
33        wherein the Commissioner has in his or her possession

1 documentation of the licensee's continuing activity for  
2 which the unrenewed license was issued.

3 (c) A license which is not renewed by the date required  
4 in this Section shall automatically become inactive. No  
5 activity regulated by this Act shall be conducted by the  
6 licensee when a license becomes inactive. An inactive  
7 license may be reactivated by filing a completed reactivation  
8 application with the Commissioner, payment of the renewal  
9 fee, and payment of a reactivation fee equal to the renewal  
10 fee.

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

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

22 (Source: P.A. 90-301, eff. 8-1-97.)

23 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

24 Sec. 3-2. Annual audit.

25 (a) At the licensee's fiscal year-end, but in no case  
26 more than 12 months after the last audit conducted pursuant  
27 to this Section, except as otherwise provided in this  
28 Section, it shall be mandatory for each residential mortgage  
29 licensee to cause its books and accounts to be audited by a  
30 certified public accountant not connected with such licensee.  
31 The books and records of all licensees under this Act shall  
32 be maintained on an accrual basis. The audit must be  
33 sufficiently comprehensive in scope to permit the expression

1 of an opinion on the financial statements, which must be  
2 prepared in accordance with generally accepted accounting  
3 principles, and must be performed in accordance with  
4 generally accepted auditing standards. Notwithstanding the  
5 requirements of this subsection, a licensee that is a first  
6 tier subsidiary may submit audited consolidated financial  
7 statements of its parent as long as the consolidated  
8 statements are supported by consolidating statements. The  
9 licensee's chief financial officer shall attest to the  
10 licensee's financial statements disclosed in the  
11 consolidating statements.

12 (b) As used herein, the term "expression of opinion"  
13 includes either (1) an unqualified opinion, (2) a qualified  
14 opinion, (3) a disclaimer of opinion, or (4) an adverse  
15 opinion.

16 (c) If a qualified or adverse opinion is expressed or if  
17 an opinion is disclaimed, the reasons therefore must be fully  
18 explained. An opinion, qualified as to a scope limitation,  
19 shall not be acceptable.

20 (d) The most recent audit report shall be filed with the  
21 Commissioner within 90 days after the end of the licensee's  
22 fiscal year at--the--time--of--the--annual--license--renewal  
23 payment. The report filed with the Commissioner shall be  
24 certified by the certified public accountant conducting the  
25 audit. The Commissioner may promulgate rules regarding late  
26 audit reports.

27 (e) If any licensee required to make an audit shall fail  
28 to cause an audit to be made, the Commissioner shall cause  
29 the same to be made by a certified public accountant at the  
30 licensee's expense. The Commissioner shall select such  
31 certified public accountant by advertising for bids or by  
32 such other fair and impartial means as he or she establishes  
33 by regulation.

34 (f) In lieu of the audit required by this Section, the

1 Commissioner may accept any audit made in conformance with  
2 the audit requirements of the U.S. Department of Housing and  
3 Urban Development.

4 (g) With respect to licensees who solely broker  
5 residential mortgage loans as defined in subsection (o) of  
6 Section 1-4, instead of the audit required by this Section,  
7 the Commissioner may accept compilation financial statements  
8 prepared at least every 12 months, and the compilation  
9 financial statement must be prepared by an independent  
10 certified public accountant licensed under the Illinois  
11 Public Accounting Act with full disclosure in accordance with  
12 generally accepted accounting principals and must shall be  
13 submitted within 90 days after the end of the licensee's  
14 fiscal year at--the--time--of--the--annual--license--renewal  
15 payment. If a licensee under this Section fails to file a  
16 compilation as required, the Commissioner shall cause an  
17 audit of the licensee's books and accounts to be made by a  
18 certified public accountant at the licensee's expense. The  
19 Commissioner shall select the certified public accountant by  
20 advertising for bids or by such other fair and impartial  
21 means as he or she establishes by rule. A licensee who files  
22 false or misleading compilation financial statements is  
23 guilty of a business offense and shall be fined not less than  
24 \$5,000.

25 (h) The workpapers of the certified public accountants  
26 employed by each licensee for purposes of this Section are to  
27 be made available to the Commissioner or the Commissioner's  
28 designee upon request and may be reproduced by the  
29 Commissioner or the Commissioner's designee to enable to the  
30 Commissioner to carry out the purposes of this Act.

31 (i) Notwithstanding any other provision of this Section,  
32 if a licensee relying on subsection (g) of this Section  
33 causes its books to be audited at any other time or causes  
34 its financial statements to be reviewed, a complete copy of

1 the audited or reviewed financial statements shall be  
2 delivered to the Commissioner at the time of the annual  
3 license renewal payment following receipt by the licensee of  
4 the audited or reviewed financial statements. All workpapers  
5 shall be made available to the Commissioner upon request.  
6 The financial statements and workpapers may be reproduced by  
7 the Commissioner or the Commissioner's designee to carry out  
8 the purposes of this Act.

9 (Source: P.A. 89-74, eff. 6-30-95; 89-355, eff. 8-17-95;  
10 90-772, eff. 1-1-99.)

11 (205 ILCS 635/3-5) (from Ch. 17, par. 2323-5)

12 Sec. 3-5. Net worth requirement. A licensee that holds a  
13 license on the effective date of this amendatory Act of the  
14 93rd General Assembly Every-lic licensee shall have and maintain  
15 a net worth of not less than \$100,000; however, no later than  
16 2 years after the effective date of this amendatory Act of  
17 the 93rd General Assembly, the licensee must maintain a net  
18 worth of not less than \$150,000. A licensee that first  
19 obtains a license after the effective date of this amendatory  
20 Act of the 93rd General Assembly must have and maintain a net  
21 worth of not less than \$150,000. Notwithstanding other  
22 requirements of this Section, the net worth requirement for a  
23 residential mortgage lic licensee licensees whose only licensable  
24 activity is that of brokering residential mortgage loans and  
25 that holds a license on the effective date of this amendatory  
26 Act of the 93rd General Assembly shall be \$35,000; however,  
27 no later than 2 years after the effective date of this  
28 amendatory Act of the 93rd General Assembly, the licensee  
29 must maintain a net worth of not less than \$50,000. Such a  
30 licensee that first obtains a license after the effective  
31 date of this amendatory Act of the 93rd General Assembly must  
32 have and maintain a net worth of not less than \$50,000. Net  
33 worth shall be evidenced by a balance sheet prepared by a



1 certified public accountant in accordance with generally  
2 accepted accounting principles and generally accepted  
3 auditing standards or by the compilation financial statements  
4 authorized under subsection (g) of Section 3-2. The  
5 Commissioner may promulgate rules with respect to net worth  
6 definitions and requirements for residential mortgage  
7 licensees as necessary to accomplish the purposes of this  
8 Act. In lieu of the net worth requirement established by  
9 this Section, the Commissioner may accept evidence of  
10 conformance by the licensee with the net worth requirements  
11 of the United States Department of Housing and Urban  
12 Development.

13 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

14 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

15 Sec. 4-5. Suspension, revocation of licenses; fines.

16 (a) Upon written notice to a licensee, the Commissioner  
17 may suspend or revoke any license issued pursuant to this Act  
18 if he or she shall make a finding of one or more of the  
19 following in the notice that:

20 (1) Through separate acts or an act or a course of  
21 conduct, the licensee has violated any provisions of this  
22 Act, any rule or regulation promulgated by the  
23 Commissioner or of any other law, rule or regulation of  
24 this State or the United States.

25 (2) Any fact or condition exists which, if it had  
26 existed at the time of the original application for such  
27 license would have warranted the Commissioner in refusing  
28 originally to issue such license.

29 (3) If a licensee is other than an individual, any  
30 ultimate equitable owner, officer, director, or member of  
31 the licensed partnership, association, corporation, or  
32 other entity has so acted or failed to act as would be  
33 cause for suspending or revoking a license to that party

1 as an individual.

2 (b) No license shall be suspended or revoked, except as  
3 provided in this Section, nor shall any licensee be fined  
4 without notice of his or her right to a hearing as provided  
5 in Section 4-12 of this Act.

6 (c) The Commissioner, on good cause shown that an  
7 emergency exists, may suspend any license for a period not  
8 exceeding 180 days, pending investigation. Upon a showing  
9 that a licensee has failed to meet the experience or  
10 educational requirements of Section 2-2 or the requirements  
11 of subsection (g) of Section 3-2, the Commissioner shall  
12 suspend, prior to hearing as provided in Section 4-12, the  
13 license until those requirements have been met.

14 (d) The provisions of subsection (e) of Section 2-6 of  
15 this Act shall not affect a licensee's civil or criminal  
16 liability for acts committed prior to surrender of a license.

17 (e) No revocation, suspension or surrender of any  
18 license shall impair or affect the obligation of any  
19 pre-existing lawful contract between the licensee and any  
20 person.

21 (f) Every license issued under this Act shall remain in  
22 force and effect until the same shall have expired without  
23 renewal, have been surrendered, revoked or suspended in  
24 accordance with the provisions of this Act, but the  
25 Commissioner shall have authority to reinstate a suspended  
26 license or to issue a new license to a licensee whose license  
27 shall have been revoked if no fact or condition then exists  
28 which would have warranted the Commissioner in refusing  
29 originally to issue such license under this Act.

30 (g) Whenever the Commissioner shall revoke or suspend a  
31 license issued pursuant to this Act or fine a licensee under  
32 this Act, he or she shall forthwith execute in duplicate a  
33 written order to that effect. The Commissioner shall publish  
34 notice of such order in the Illinois Register and a newspaper

1 of general circulation in the county in which the license is  
2 located and shall forthwith serve a copy of such order upon  
3 the licensee. Any such order may be reviewed in the manner  
4 provided by Section 4-12 of this Act.

5 (h) When the Commissioner finds any person in violation  
6 of the grounds set forth in subsection (i), he or she may  
7 enter an order imposing one or more of the following  
8 penalties:

9 (1) Revocation of license;

10 (2) Suspension of a license subject to  
11 reinstatement upon satisfying all reasonable conditions  
12 the Commissioner may specify;

13 (3) Placement of the licensee or applicant on  
14 probation for a period of time and subject to all  
15 reasonable conditions as the Commissioner may specify;

16 (4) Issuance of a reprimand;

17 (5) Imposition of a fine not to exceed \$25,000  
18 ~~\$10,000~~ for each count of separate offense; and

19 (6) Denial of a license.

20 (i) The following acts shall constitute grounds for  
21 which the disciplinary actions specified in subsection (h)  
22 above may be taken:

23 (1) Being convicted or found guilty, regardless of  
24 pendency of an appeal, of a crime in any jurisdiction  
25 which involves fraud, dishonest dealing, or any other act  
26 of moral turpitude;

27 (2) Fraud, misrepresentation, deceit or negligence  
28 in any mortgage financing transaction;

29 (3) A material or intentional misstatement of fact  
30 on an initial or renewal application;

31 (4) Failure to follow the Commissioner's  
32 regulations with respect to placement of funds in escrow  
33 accounts;

34 (5) Insolvency or filing under any provision of the

1 Bankruptcy Code as a debtor;

2 (6) Failure to account or deliver to any person any  
3 property such as any money, fund, deposit, check, draft,  
4 mortgage, or other document or thing of value, which has  
5 come into his or her hands and which is not his or her  
6 property or which he or she is not in law or equity  
7 entitled to retain, under the circumstances and at the  
8 time which has been agreed upon or is required by law or,  
9 in the absence of a fixed time, upon demand of the person  
10 entitled to such accounting and delivery;

11 (7) Failure to disburse funds in accordance with  
12 agreements;

13 (8) Any misuse, misapplication, or misappropriation  
14 of trust funds or escrow funds;

15 (9) Having a license, or the equivalent, to  
16 practice any profession or occupation revoked, suspended,  
17 or otherwise acted against, including the denial of  
18 licensure by a licensing authority of this State or  
19 another state, territory or country for fraud, dishonest  
20 dealing or any other act of moral turpitude;

21 (10) Failure to issue a satisfaction of mortgage  
22 when the residential mortgage has been executed and  
23 proceeds were not disbursed to the benefit of the  
24 mortgagor and when the mortgagor has fully paid  
25 licensee's costs and commission;

26 (11) Failure to comply with any order of the  
27 Commissioner or rule made or issued under the provisions  
28 of this Act;

29 (12) Engaging in activities regulated by this Act  
30 without a current, active license unless specifically  
31 exempted by this Act;

32 (13) Failure to pay in a timely manner any fee,  
33 charge or fine under this Act;

34 (14) Failure to maintain, preserve, and keep

1 available for examination, all books, accounts or other  
2 documents required by the provisions of this Act and the  
3 rules of the Commissioner;

4 (15) Refusal to permit an investigation or  
5 examination of the licensee's or its affiliates' books  
6 and records or refusal to comply with the Commissioner's  
7 subpoena or subpoena duces tecum;

8 (16) A pattern of substantially underestimating the  
9 maximum closing costs;

10 (17) Failure to comply with or violation of any  
11 provision of this Act.

12 (j) A licensee shall be subject to the disciplinary  
13 actions specified in this Act for violations of subsection  
14 (i) by any officer, director, shareholder, joint venture,  
15 partner, ultimate equitable owner, or employee of the  
16 licensee.

17 (k) Such licensee shall be subject to suspension or  
18 revocation for employee actions only if there is a pattern of  
19 repeated violations by employees or the licensee has  
20 knowledge of the violations.

21 (l) Procedure for surrender of license:

22 (1) The Commissioner may, after 10 days notice by  
23 certified mail to the licensee at the address set forth  
24 on the license, stating the contemplated action and in  
25 general the grounds therefor and the date, time and place  
26 of a hearing thereon, and after providing the licensee  
27 with a reasonable opportunity to be heard prior to such  
28 action, fine such licensee an amount not exceeding  
29 \$10,000 per violation, or revoke or suspend any license  
30 issued hereunder if he or she finds that:

31 (i) The licensee has failed to comply with any  
32 provision of this Act or any order, decision,  
33 finding, rule, regulation or direction of the  
34 Commissioner lawfully made pursuant to the authority

1 of this Act; or

2 (ii) Any fact or condition exists which, if it  
3 had existed at the time of the original application  
4 for the license, clearly would have warranted the  
5 Commissioner in refusing to issue the license.

6 (2) Any licensee may surrender a license by  
7 delivering to the Commissioner written notice that he or  
8 she thereby surrenders such license, but surrender shall  
9 not affect the licensee's civil or criminal liability for  
10 acts committed prior to surrender or entitle the licensee  
11 to a return of any part of the license fee.

12 (Source: P.A. 89-355, eff. 8-17-95.)

13 (205 ILCS 635/4-8.1 new)

14 Sec. 4-8.1. Confidential information. In hearings  
15 conducted under this Act, information presented into evidence  
16 that was acquired by the licensee when serving any individual  
17 in connection with a residential mortgage, including all  
18 financial information of the individual, shall be deemed  
19 strictly confidential and shall be made available only as  
20 part of the record of a hearing under this Act or otherwise  
21 (i) when the record is required, in its entirety, for  
22 purposes of judicial review or (ii) upon the express written  
23 consent of the individual served, or in the case of his or  
24 her death or disability, the consent of his or her personal  
25 representative.

26 (205 ILCS 635/4-8.2 new)

27 Sec. 4-8.2. Reports of violations. Any person licensed  
28 under this Act or any other person may report to the  
29 Commissioner any information to show that a person subject to  
30 this Act is or may be in violation of this Act.

31 (205 ILCS 635/Art. VII heading new)

1           ARTICLE VII. REGISTRATION OF LOAN ORIGINATORS

2           (205 ILCS 635/7-1 new)

3           Sec. 7-1. Registration required; rules and regulations.  
4           Beginning 6 months after the effective date of this  
5           amendatory Act of the 93rd General Assembly, it is unlawful  
6           for any natural person to act or assume to act as a loan  
7           originator, as defined in subsection (hh) of Section 1-4,  
8           without being registered with the Commissioner unless the  
9           natural person is exempt under items (1) and (1.5) of  
10           subsection (d) of Section 1-4 of this Act. The Commissioner  
11           shall promulgate rules prescribing the criteria for the  
12           registration and regulation of loan originators, including  
13           but not limited to, qualifications, fees, examination,  
14           education, supervision, and enforcement.

15           Section 835. The Limited Liability Company Act is  
16           amended by changing Sections 1-25, 5-5, 5-55, 37-5, and 37-35  
17           as follows:

18           (805 ILCS 180/1-25)

19           Sec. 1-25. Nature of business. A limited liability  
20           company may be formed for any lawful purpose or business  
21           except:

22           (1) (Blank) banking,--exclusive---of---fiduciaries  
23           organized--for--the--purpose--of--accepting-and-executing  
24           trusts;

25           (2) insurance unless, for the purpose of carrying  
26           on business as a member of a group including incorporated  
27           and individual unincorporated underwriters, the Director  
28           of Insurance finds that the group meets the requirements  
29           of subsection (3) of Section 86 of the Illinois Insurance  
30           Code and the limited liability company, if insolvent, is  
31           subject to liquidation by the Director of Insurance under

1 Article XIII of the Illinois Insurance Code;

2 (3) the practice of dentistry unless all the  
3 members and managers are licensed as dentists under the  
4 Illinois Dental Practice Act; or

5 (4) the practice of medicine unless all the  
6 managers, if any, are licensed to practice medicine under  
7 the Medical Practice Act of 1987 and any of the following  
8 conditions apply:

9 (A) the member or members are licensed to  
10 practice medicine under the Medical Practice Act of  
11 1987; or

12 (B) the member or members are a registered  
13 medical corporation or corporations organized  
14 pursuant to the Medical Corporation Act; or

15 (C) the member or members are a professional  
16 corporation organized pursuant to the Professional  
17 Service Corporation Act of physicians licensed to  
18 practice medicine in all its branches; or

19 (D) the member or members are a medical  
20 limited liability company or companies.

21 (Source: P.A. 91-593, eff. 8-14-99; 92-144, eff. 7-24-01.)

22 (805 ILCS 180/5-5)

23 Sec. 5-5. Articles of organization.

24 (a) The articles of organization shall set forth all of  
25 the following:

26 (1) The name of the limited liability company and  
27 the address of its principal place of business which may,  
28 but need not be a place of business in this State.

29 (2) The purposes for which the limited liability  
30 company is organized, which may be stated to be, or to  
31 include, the transaction of any or all lawful businesses  
32 for which limited liability companies may be organized  
33 under this Act.



1           (3) The name of its registered agent and the  
2 address of its registered office.

3           (4) If the limited liability company is to be  
4 managed by a manager or managers, the names and business  
5 addresses of the initial manager or managers.

6           (5) If management of the limited liability company  
7 is to be vested in the members under Section 15-1, then  
8 the names and addresses of the initial member or members.

9           (6) The latest date, if any, upon which the limited  
10 liability company is to dissolve and other events of  
11 dissolution, if any, that may be agreed upon by the  
12 members under Section 35-1 hereof.

13           (7) The name and address of each organizer.

14           (8) Any other provision, not inconsistent with law,  
15 that the members elect to set out in the articles of  
16 organization for the regulation of the internal affairs  
17 of the limited liability company, including any  
18 provisions that, under this Act, are required or  
19 permitted to be set out in the operating agreement of the  
20 limited liability company.

21           (b) A limited liability company is organized at the time  
22 articles of organization are filed by the Secretary of State  
23 or at any later time, not more than 60 days after the filing  
24 of the articles of organization, specified in the articles of  
25 organization.

26           (c) Articles of organization for the organization of a  
27 limited liability company for the purpose of accepting and  
28 executing trusts shall not be filed by the Secretary of State  
29 until there is delivered to him or her a statement executed  
30 by the Commissioner of the Office of Banks and Real Estate  
31 that the organizers of the limited liability company have  
32 made arrangements with the Commissioner of the Office of  
33 Banks and Real Estate to comply with the Corporate Fiduciary  
34 Act.

1       (d) Articles of organization for the organization of a  
2       limited liability company as a bank or a savings bank must be  
3       filed with the Commissioner of Banks and Real Estate or, if  
4       the bank or savings bank will be organized under federal law,  
5       with the appropriate federal banking regulator.

6       (Source: P.A. 90-424, eff. 1-1-98.)

7       (805 ILCS 180/5-55)

8       Sec. 5-55. Filing in Office of Secretary of State.

9       (a) Whenever any provision of this Act requires a  
10       limited liability company to file any document with the  
11       Office of the Secretary of State, the requirement means that:

12               (1) the original document, executed as described in  
13       Section 5-45, and, if required by this Act to be filed in  
14       duplicate, one copy (which may be a signed carbon or  
15       photocopy) shall be delivered to the Office of the  
16       Secretary of State;

17               (2) all fees and charges authorized by law to be  
18       collected by the Secretary of State in connection with  
19       the filing of the document shall be tendered to the  
20       Secretary of State; and

21               (3) unless the Secretary of State finds that the  
22       document does not conform to law, he or she shall, when  
23       all fees have been paid:

24                       (A) endorse on the original and on the copy  
25       the word "Filed" and the month, day, and year of the  
26       filing thereof;

27                       (B) file in his or her office the original of  
28       the document; and

29                       (C) return the copy to the person who filed it  
30       or to that person's representative.

31       (b) If another Section of this Act specifically  
32       prescribes a manner of filing or signing a specified document  
33       that differs from the corresponding provisions of this

1 Section, then the provisions of the other Section shall  
2 govern.

3 (c) Whenever any provision of this Act requires a limited  
4 liability company that is a bank or a savings bank to file  
5 any document, that requirement means that the filing shall be  
6 made exclusively with the Commissioner of Banks and Real  
7 Estate or, if the bank or savings bank is organized under  
8 federal law, with the appropriate federal banking regulator  
9 at such times and in such manner as required by the  
10 Commissioner or federal regulator.

11 (Source: P.A. 92-33, eff. 7-1-01.)

12 (805 ILCS 180/37-5)

13 Sec. 37-5. Definitions. In this Article:

14 "Corporation" means (i) a corporation under the Business  
15 Corporation Act of 1983, a predecessor law, or comparable law  
16 of another jurisdiction or (ii) a bank or savings bank.

17 "General partner" means a partner in a partnership and a  
18 general partner in a limited partnership.

19 "Limited partner" means a limited partner in a limited  
20 partnership.

21 "Limited partnership" means a limited partnership created  
22 under the Revised Uniform Limited Partnership Act, a  
23 predecessor law, or comparable law of another jurisdiction.

24 "Partner" includes a general partner and a limited  
25 partner.

26 "Partnership" means a general partnership under the  
27 Uniform Partnership Act, a predecessor law, or comparable law  
28 of another jurisdiction.

29 "Partnership agreement" means an agreement among the  
30 partners concerning the partnership or limited partnership.

31 "Shareholder" means a shareholder in a corporation.

32 (Source: P.A. 90-424, eff. 1-1-98.)

1 (805 ILCS 180/37-35)

2 Sec. 37-35. Article not exclusive. This Article does not  
3 preclude an entity from being converted or merged under other  
4 law. A bank or savings bank that converts to or merges with  
5 and into a limited liability company shall be subject to the  
6 provisions of this Article or to other applicable law to the  
7 extent that those provisions do not conflict with the State  
8 or federal law pursuant to which the conversion or merger of  
9 the bank or savings bank is authorized.

10 (Source: P.A. 90-424, eff. 1-1-98.)

11 Section 840. The Illinois Fairness in Lending Act is  
12 amended by changing Sections 2, 3, and 5 as follows:

13 (815 ILCS 120/2) (from Ch. 17, par. 852)

14 Sec. 2. As used in this Act:

15 (a) "Financial Institution" means any bank, credit  
16 union, insurance company, mortgage banking company, savings  
17 bank, or savings and loan association, or other residential  
18 mortgage lender which operates or has a place of business in  
19 this State.

20 (b) "Person" means any natural person.

21 (c) "Varying the terms of a loan" includes, but is not  
22 limited to the following practices:

23 (1) Requiring a greater than average down payment than  
24 is usual for the particular type of a loan involved.

25 (2) Requiring a shorter period of amortization than is  
26 usual for the particular type of loan involved.

27 (3) Charging a higher interest rate than is usual for  
28 the particular type of loan involved.

29 (4) An underappraisal of real estate or other item of  
30 property offered as security.

31 (d) "Equity stripping" means to assist a person in  
32 obtaining a loan secured by the person's principal residence

1 for the primary purpose of receiving fees related to the  
2 financing when (i) the loan decreased the person's equity in  
3 the principal residence and (ii) at the time the loan is  
4 made, the financial institution does not reasonably believe  
5 that the person will be able to make the scheduled payments  
6 to repay the loan. "Equity stripping" does not include  
7 reverse mortgages as defined in Section 5a of the Illinois  
8 Banking Act, Section 1-6a of the Illinois Savings and Loan  
9 Act of 1985, or subsection (3) of Section 46 of the Illinois  
10 Credit Union Act.

11 (e) "Loan flipping" means to assist a person in  
12 refinancing a loan secured by the person's principal  
13 residence for the primary purpose of receiving fees related  
14 to the refinancing when (i) the refinancing of the loan  
15 results in no tangible benefit to the person and (ii) at the  
16 time the loan is made, the financial institution does not  
17 reasonably believe that the refinancing of the loan will  
18 result in a tangible benefit to the person.

19 (f) "Principal residence" means a person's primary  
20 residence that is a dwelling consisting of 4 or fewer family  
21 units or that is in a dwelling consisting of condominium or  
22 cooperative units.

23 (Source: P.A. 81-1391.)

24 (815 ILCS 120/3) (from Ch. 17, par. 853)

25 Sec. 3. No financial institution, in connection with or  
26 in contemplation of any loan to any person, may:

27 (a) Deny or vary the terms of a loan on the basis that a  
28 specific parcel of real estate offered as security is located  
29 in a specific geographical area.

30 (b) Deny or vary the terms of a loan without having  
31 considered all of the regular and dependable income of each  
32 person who would be liable for repayment of the loan.

33 (c) Deny or vary the terms of a loan on the sole basis

1 of the childbearing capacity of an applicant or an  
2 applicant's spouse.

3 (d) Utilize lending standards that have no economic  
4 basis and which are discriminatory in effect.

5 (e) Engage in equity stripping or loan flipping.

6 (Source: P.A. 81-1391.)

7 (815 ILCS 120/5) (from Ch. 17, par. 855)

8 Sec. 5. (a) Subject to the limitation imposed by  
9 subsection (b), any person who has been aggrieved as a result  
10 of a violation of this Act may bring an individual action in  
11 the circuit court of the county in which the particular  
12 financial institution involved is located or doing business.

13 Upon a finding that a financial institution has committed  
14 a violation of this Act, the court may award actual damages,  
15 and may in its discretion award court costs.

16 (b) If the same events or circumstances would constitute  
17 the basis for an action under this Act or an action under any  
18 other Act, the aggrieved person may elect between the  
19 remedies proposed by the two Acts but may not bring actions,  
20 either administrative or judicial, under more than one of the  
21 two Acts in relation to those same events or circumstances.

22 (c) An action to enjoin any person subject to this Act  
23 from engaging in activity in violation of this Act may be  
24 maintained in the name of the people of the State of Illinois  
25 by the Attorney General or by the State's Attorney of the  
26 county in which the action is brought. This remedy shall be  
27 in addition to other remedies provided for any violation of  
28 this Act.

29 (Source: P.A. 81-1391.)

30 Section 845. The Consumer Fraud and Deceptive Business  
31 Practices Act is amended by changing Section 2Z as follows:

1 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)  
2 Sec. 2Z. Violations of other Acts. Any person who  
3 knowingly violates the Automotive Repair Act, the Home Repair  
4 and Remodeling Act, the Dance Studio Act, the Physical  
5 Fitness Services Act, the Hearing Instrument Consumer  
6 Protection Act, the Illinois Union Label Act, the Job  
7 Referral and Job Listing Services Consumer Protection Act,  
8 the Travel Promotion Consumer Protection Act, the Credit  
9 Services Organizations Act, the Automatic Telephone Dialers  
10 Act, the Pay-Per-Call Services Consumer Protection Act, the  
11 Telephone Solicitations Act, the Illinois Funeral or Burial  
12 Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed  
13 Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan  
14 Act, subsection (a) or (b) of Section 3-10 of the Cigarette  
15 Tax Act, subsection (a) or (b) of Section 3-10 of the  
16 Cigarette Use Tax Act, the Electronic Mail Act, or paragraph  
17 (6) of subsection (k) of Section 6-305 of the Illinois  
18 Vehicle Code commits an unlawful practice within the meaning  
19 of this Act.  
20 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;  
21 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.  
22 1-1-02.)

23 Section 900. Severability. The provisions of this Act are  
24 severable under Section 1.31 of the Statute on Statutes.