



Adopted in House Comm. on May 19, 2004

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LRB093 18470 AMC 51270 a

1 AMENDMENT TO SENATE BILL 2908

2 AMENDMENT NO. _____. Amend Senate Bill 2908 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Sections 1-3, 1-4, 1-5, 2-2, 2-6, 3-2, 3-4,
6 4-1, 4-2, 4-5, and 6-2 and by adding Section 4-8.3 as follows:

7 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

8 Sec. 1-3. Necessity for License; Scope of Act.

9 (a) No person, partnership, association, corporation or
10 other entity shall engage in the business of brokering,
11 funding, originating, servicing or purchasing of residential
12 mortgage loans without first obtaining a license from the
13 Commissioner in accordance with the licensing procedure
14 provided in this Article I and such regulations as may be
15 promulgated by the Commissioner. The licensing provisions of
16 this Section shall not apply to any entity engaged solely in
17 commercial mortgage lending or to any person, partnership
18 association, corporation or other entity exempted pursuant to
19 Section 1-4, subsection (d), of this Act or in accordance with
20 regulations promulgated by the Commissioner hereunder.

21 (b) No person, partnership, association, corporation, or
22 other entity except a licensee under this Act or an entity
23 exempt from licensing pursuant to Section 1-4, subsection (d),
24 of this Act shall do any business under any name or title, or

1 circulate or use any advertising or make any representation or
2 give any information to any person, which indicates or
3 reasonably implies activity within the scope of this Act.

4 (c) The Commissioner may, through the Attorney General,
5 request the circuit court of either Cook or Sangamon County to
6 issue an injunction to restrain any person from violating or
7 continuing to violate any of the foregoing provisions of this
8 Section.

9 (d) When the Commissioner has reasonable cause to believe
10 that any entity which has not submitted an application for
11 licensure is conducting any of the activities described in
12 subsection (a) hereof, the Commissioner shall have the power to
13 examine all books and records of the entity and any additional
14 documentation necessary in order to determine whether such
15 entity should become licensed under this Act.

16 (d-1) The Commissioner may issue orders against any person
17 if the Commissioner has reasonable cause to believe that an
18 unsafe, unsound, or unlawful practice has occurred, is
19 occurring, or is about to occur, if any person has violated, is
20 violating, or is about to violate any law, rule, or written
21 agreement with the Commissioner, or for the purposes of
22 administering the provisions of this Act and any rule adopted
23 in accordance with this Act.

24 (e) Any person, partnership, association, corporation or
25 other entity who violates any provision of this Section commits
26 a business offense and shall be fined an amount not to exceed
27 \$25,000 ~~\$5,000~~.

28 (f) Each person, partnership, association, corporation or
29 other entity conducting activities regulated by this Act shall
30 be issued one license. Each office, place of business or
31 location at which a residential mortgage licensee conducts any
32 part of his or her business must be recorded with the
33 Commissioner pursuant to Section 2-8 of this Act.

34 (g) Licensees under this Act shall solicit, broker, fund,

1 originate, service and purchase residential mortgage loans
2 only in conformity with the provisions of this Act and such
3 rules and regulations as may be promulgated by the
4 Commissioner.

5 (h) This Act applies to all entities doing business in
6 Illinois as residential mortgage bankers, as defined by "An Act
7 to provide for the regulation of mortgage bankers", approved
8 September 15, 1977, as amended, regardless of whether licensed
9 under that or any prior Act. Any existing residential mortgage
10 lender or residential mortgage broker in Illinois whether or
11 not previously licensed, must operate in accordance with this
12 Act.

13 (i) This Act is a successor Act to and a continuance of the
14 regulation of residential mortgage bankers provided in, "An Act
15 to provide for the regulation of mortgage bankers", approved
16 September 15, 1977, as amended.

17 Entities and persons subject to the predecessor Act shall
18 be subject to this Act from and after its effective date.

19 (Source: P.A. 86-137; 87-642.)

20 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

21 Sec. 1-4. Definitions.

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

29 (b) "Making a residential mortgage loan" or "funding a
30 residential mortgage loan" shall mean for compensation or gain,
31 either directly or indirectly, advancing funds or making a
32 commitment to advance funds to a loan applicant for a
33 residential mortgage loan.

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

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

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

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

10 (1.5) Any employee of a person or entity mentioned in
11 item (1) of this subsection.

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

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

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

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

34 (6) A person who prepares supporting documentation for

1 a residential mortgage loan application taken by a licensee
2 and performs ministerial functions pursuant to specific
3 instructions of the licensee who neither requires nor
4 permits the preparer to exercise his or her discretion or
5 judgment; provided that this activity is engaged in
6 pursuant to a binding, written agreement between the
7 licensee and the preparer that:

8 (A) holds the licensee fully accountable for the
9 preparer's action; and

10 (B) otherwise meets the requirements of this
11 Section and this Act, does not undermine the purposes
12 of this Act, and is approved by the Commissioner.

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

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

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

29 (h) "Ultimate equitable owner" shall mean a person who,
30 directly or indirectly, owns or controls an ownership interest
31 in a corporation, foreign corporation, alien business
32 organization, trust, or any other form of business organization
33 regardless of whether the person owns or controls the ownership
34 interest through one or more persons or one or more proxies,

1 powers of attorney, nominees, corporations, associations,
2 partnerships, trusts, joint stock companies, or other entities
3 or devices, or any combination thereof.

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

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

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

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

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

20 (n) "Commissioner" shall mean the Commissioner of Banks and
21 Real Estate or a person authorized by the Commissioner, the
22 Office of Banks and Real Estate Act, or this Act to act in the
23 Commissioner's stead.

24 (o) "Loan brokering", "brokering", or "brokerage service"
25 shall mean the act of helping to obtain from another entity,
26 for a borrower, a loan secured by residential real estate
27 situated in Illinois or assisting a borrower in obtaining a
28 loan secured by residential real estate situated in Illinois in
29 return for consideration to be paid by either the borrower or
30 the lender including, but not limited to, contracting for the
31 delivery of residential mortgage loans to a third party lender
32 and soliciting, processing, placing, or negotiating
33 residential mortgage loans.

34 (p) "Loan broker" or "broker" shall mean a person,

1 partnership, association, corporation, or limited liability
2 company, other than those persons, partnerships, associations,
3 corporations, or limited liability companies exempted from
4 licensing pursuant to Section 1-4, subsection (d), of this Act,
5 who performs the activities described in subsections (c) and
6 (o) of this Section.

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

17 (r) "Full service office" shall mean office and staff in
18 Illinois reasonably adequate to handle efficiently
19 communications, questions, and other matters relating to any
20 application for, or an existing home mortgage secured by
21 residential real estate situated in Illinois with respect to
22 which the licensee is brokering, funding originating,
23 purchasing, or servicing. The management and operation of each
24 full service office must include observance of good business
25 practices such as adequate, organized, and accurate books and
26 records; ample phone lines, hours of business, staff training
27 and supervision, and provision for a mechanism to resolve
28 consumer inquiries, complaints, and problems. The Commissioner
29 shall issue regulations with regard to these requirements and
30 shall include an evaluation of compliance with this Section in
31 his or her periodic examination of each licensee.

32 (s) "Purchasing" shall mean the purchase of conventional or
33 government-insured mortgage loans secured by residential real
34 estate situated in Illinois from either the lender or from the

1 secondary market.

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

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

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

9 (1) obtain a residential mortgage loan for the borrower
10 or assist the borrower in obtaining a residential mortgage
11 loan; or

12 (2) consider making a residential mortgage loan to the
13 borrower.

14 (w) "Advertisement" shall mean the attempt by publication,
15 dissemination, or circulation to induce, directly or
16 indirectly, any person to enter into a residential mortgage
17 loan agreement or residential mortgage loan brokerage
18 agreement relative to a mortgage secured by residential real
19 estate situated in Illinois.

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

22 (y) "Government-insured mortgage loan" shall mean any
23 mortgage loan made on the security of residential real estate
24 insured by the Department of Housing and Urban Development or
25 Farmers Home Loan Administration, or guaranteed by the Veterans
26 Administration.

27 (z) "Annual audit" shall mean a certified audit of the
28 licensee's books and records and systems of internal control
29 performed by a certified public accountant in accordance with
30 generally accepted accounting principles and generally
31 accepted auditing standards.

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

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

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

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

10 (dd) "Affiliate" shall mean:

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

15 (2) any entity:

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

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

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

29 The Commissioner may define by rule and regulation any
30 terms used in this Act for the efficient and clear
31 administration of this Act.

32 (ee) "First tier subsidiary" shall be defined by regulation
33 incorporating the comparable definitions used by the Office of
34 the Comptroller of the Currency and the Illinois Commissioner

1 of Banks and Real Estate.

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

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

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

25 (ii) "Confidential supervisory information" means any
26 report of examination, visitation, or investigation prepared
27 by the Commissioner under this Act, any report of examination
28 visitation, or investigation prepared by the state regulatory
29 authority of another state that examines a licensee, any
30 document or record prepared or obtained in connection with or
31 relating to any examination, visitation, or investigation, and
32 any record prepared or obtained by the Commissioner to the
33 extent that the record summarizes or contains information
34 derived from any report, document, or record described in this

1 subsection. "Confidential supervisory information" does not
2 include any information or record routinely prepared by a
3 licensee and maintained in the ordinary course of business or
4 any information or record that is required to be made publicly
5 available pursuant to State or federal law or rule.

6 (Source: P.A. 93-561, eff. 1-1-04.)

7 (205 ILCS 635/1-5) (from Ch. 17, par. 2321-5)

8 Sec. 1-5. Residential Mortgage Board.

9 (a) Board composition, compensation. There is created the
10 Residential Mortgage Board composed of 5 members appointed by
11 the Commissioner of Banks and Real Estate. The majority of
12 persons on the Board shall have no financial interest in any
13 residential mortgage business and one member shall be a
14 representative of the Mortgage Banking Trade Association and
15 one member shall be a representative of the Mortgage Broker
16 Trade Association. Members of the Board serving on the
17 effective date of this amendatory Act of 1996 shall continue to
18 serve their unexpired terms as members of the Residential
19 Mortgage Board. Thereafter, on or before January 15 of each
20 year, the Commissioner shall appoint one or more board members,
21 as shall be necessary to maintain a 5 member Board, whose terms
22 shall be for 3 years commencing February 1 of the year in which
23 they are respectively appointed.

24 If a vacancy occurs on the Residential Mortgage Board, the
25 Commissioner shall within 60 days appoint a new member who
26 shall hold office for the remainder of the vacated term.

27 The Board shall meet at the call of the chairman, who along
28 with a Secretary, shall be selected by the Board from among its
29 members.

30 ~~Members of the Board shall be entitled to receive a per~~
31 ~~diem allowance of \$25 for each day or part of a day spent on~~
32 ~~Board work and shall be entitled to their expenses actually and~~
33 ~~necessarily incurred in the performance of their duties. The~~

1 members of the Board serve at the pleasure of the Commissioner.

2 (b) Duties of Board. The Residential Mortgage Board shall
3 assist the Commissioner by:

4 (1) submitting recommendations to the Commissioner for
5 the efficient administration of this Act; and

6 (2) performing other duties as are prescribed by the
7 Commissioner.

8 (c) Conflict of interest declarations. Each member of the
9 Residential Mortgage Board shall file annually, no later than
10 February 1, with the Commissioner a statement of his or her
11 current business transactions or other affiliations with any
12 licensee under this Act. The Commissioner may adopt rules to
13 avoid conflicts of interest on the part of members of the
14 Residential Mortgage Board in connection with their position on
15 the Board.

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

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

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

19 (a) The Commissioner shall issue a license upon completion
20 of all of the following:

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

22 (2) The filing with the Commissioner of a listing of
23 judgments entered against, and bankruptcy petitions by,
24 the license applicant for the preceding 10 years.

25 (3) The payment, in certified funds, of investigation
26 and application fees, the total of which shall be in an
27 amount equal to \$2,700 annually, however, the Commissioner
28 may increase the investigation and application fees by rule
29 as provided in Section 4-11.

30 (4) Except for a broker applying to renew a license,
31 the filing of an audited balance sheet including all
32 footnotes prepared by a certified public accountant in
33 accordance with generally accepted accounting principles

1 and generally accepted auditing principles which evidences
2 that the applicant meets the net worth requirements of
3 Section 3-5.

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

23 (6) An investigation of the averments required by
24 Section 2-4, which investigation must allow the
25 Commissioner to issue positive findings stating that the
26 financial responsibility, experience, character, and
27 general fitness of the license applicant and of the members
28 thereof if the license applicant is a partnership or
29 association, of the officers and directors thereof if the
30 license applicant is a corporation, and of the managers and
31 members that retain any authority or responsibility under
32 the operating agreement if the license applicant is a
33 limited liability company are such as to command the
34 confidence of the community and to warrant belief that the

1 business will be operated honestly, fairly and efficiently
2 within the purpose of this Act. If the Commissioner shall
3 not so find, he or she shall not issue such license, and he
4 or she shall notify the license applicant of the denial.

5 The Commissioner may impose conditions on a license if the
6 Commissioner determines that the conditions are necessary or
7 appropriate. These conditions shall be imposed in writing and
8 shall continue in effect for the period prescribed by the
9 Commissioner.

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

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

18 (Source: P.A. 93-32, eff. 7-1-03.)

19 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

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

21 (a) Beginning July 1, 2003, licenses shall be renewed every
22 year on the anniversary of the date of issuance of the original
23 license. Properly completed renewal application forms and
24 filing fees must be received by the Commissioner 60 days prior
25 to the renewal date.

26 (b) It shall be the responsibility of each licensee to
27 accomplish renewal of its license; failure of the licensee to
28 receive renewal forms absent a request sent by certified mail
29 for such forms will not waive said responsibility. Failure by a
30 licensee to submit a properly completed renewal application
31 form and fees in a timely fashion, absent a written extension
32 from the Commissioner, will result in the assessment of
33 additional fees, as follows:

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

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

11 (c) A license which is not renewed by the date required in
12 this Section shall automatically become inactive. No activity
13 regulated by this Act shall be conducted by the licensee when a
14 license becomes inactive. The Commissioner may require the
15 licensee to provide a plan for the disposition of any
16 residential mortgage loans not closed or funded when the
17 license becomes inactive. The Commissioner may allow a licensee
18 with an inactive license to conduct activities regulated by
19 this Act for the sole purpose of assisting borrowers in the
20 closing or funding of loans for which the loan application was
21 taken from a borrower while the license was active. An inactive
22 license may be reactivated by ~~filing a completed reactivation~~
23 ~~application with~~ the Commissioner upon 7 payment of the renewal
24 fee, and payment of a reactivation fee equal to the renewal
25 fee.

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

28 (e) A licensee ceasing an activity or activities regulated
29 by this Act and desiring to no longer be licensed shall so
30 inform the Commissioner in writing and, at the same time,
31 convey the license and all other symbols or indicia of
32 licensure. The licensee shall include a plan for the withdrawal
33 from regulated business, including a timetable for the
34 disposition of the business. Upon receipt of such written

1 notice, the Commissioner shall issue a certified statement
2 canceling the license.

3 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; revised
4 9-23-03.)

5 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

6 Sec. 3-2. Annual audit.

7 (a) At the licensee's fiscal year-end, but in no case more
8 than 12 months after the last audit conducted pursuant to this
9 Section, except as otherwise provided in this Section, it shall
10 be mandatory for each residential mortgage licensee to cause
11 its books and accounts to be audited by a certified public
12 accountant not connected with such licensee. The books and
13 records of all licensees under this Act shall be maintained on
14 an accrual basis. The audit must be sufficiently comprehensive
15 in scope to permit the expression of an opinion on the
16 financial statements, which must be prepared in accordance with
17 generally accepted accounting principles, and must be
18 performed in accordance with generally accepted auditing
19 standards. Notwithstanding the requirements of this
20 subsection, a licensee that is a first tier subsidiary may
21 submit audited consolidated financial statements of its parent
22 as long as the consolidated statements are supported by
23 consolidating statements. The licensee's chief financial
24 officer shall attest to the licensee's financial statements
25 disclosed in the consolidating statements.

26 (b) As used herein, the term "expression of opinion"
27 includes either (1) an unqualified opinion, (2) a qualified
28 opinion, (3) a disclaimer of opinion, or (4) an adverse
29 opinion.

30 (c) If a qualified or adverse opinion is expressed or if an
31 opinion is disclaimed, the reasons therefore must be fully
32 explained. An opinion, qualified as to a scope limitation,
33 shall not be acceptable.

1 (d) The most recent audit report shall be filed with the
2 Commissioner within 90 days after the end of the licensee's
3 fiscal year. The report filed with the Commissioner shall be
4 certified by the certified public accountant conducting the
5 audit. The Commissioner may promulgate rules regarding late
6 audit reports.

7 (e) If any licensee required to make an audit shall fail to
8 cause an audit to be made, the Commissioner shall cause the
9 same to be made by a certified public accountant at the
10 licensee's expense. The Commissioner shall select such
11 certified public accountant by advertising for bids or by such
12 other fair and impartial means as he or she establishes by
13 regulation.

14 (f) In lieu of the audit or compilation financial statement
15 required by this Section, a licensee shall submit and the
16 Commissioner may accept any audit made in conformance with the
17 audit requirements of the U.S. Department of Housing and Urban
18 Development.

19 (g) With respect to licensees who solely broker residential
20 mortgage loans as defined in subsection (o) of Section 1-4,
21 instead of the audit required by this Section, the Commissioner
22 may accept compilation financial statements prepared at least
23 every 12 months, and the compilation financial statement must
24 be prepared by an independent certified public accountant
25 licensed under the Illinois Public Accounting Act or by an
26 equivalent state licensing law with full disclosure in
27 accordance with generally accepted accounting principals and
28 must be submitted within 90 days after the end of the
29 licensee's fiscal year. If a licensee under this Section fails
30 to file a compilation as required, the Commissioner shall cause
31 an audit of the licensee's books and accounts to be made by a
32 certified public accountant at the licensee's expense. The
33 Commissioner shall select the certified public accountant by
34 advertising for bids or by such other fair and impartial means

1 as he or she establishes by rule. A licensee who files false or
2 misleading compilation financial statements is guilty of a
3 business offense and shall be fined not less than \$5,000.

4 (h) The workpapers of the certified public accountants
5 employed by each licensee for purposes of this Section are to
6 be made available to the Commissioner or the Commissioner's
7 designee upon request and may be reproduced by the Commissioner
8 or the Commissioner's designee to enable to the Commissioner to
9 carry out the purposes of this Act.

10 (i) Notwithstanding any other provision of this Section, if
11 a licensee relying on subsection (g) of this Section causes its
12 books to be audited at any other time or causes its financial
13 statements to be reviewed, a complete copy of the audited or
14 reviewed financial statements shall be delivered to the
15 Commissioner at the time of the annual license renewal payment
16 following receipt by the licensee of the audited or reviewed
17 financial statements. All workpapers shall be made available to
18 the Commissioner upon request. The financial statements and
19 workpapers may be reproduced by the Commissioner or the
20 Commissioner's designee to carry out the purposes of this Act.

21 (Source: P.A. 93-561, eff. 1-1-04.)

22 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)

23 Sec. 3-4. Office and staff within the State.

24 (a) A licensee whose principal place of business is located
25 in the State of Illinois shall maintain at least one full
26 service office with staff reasonably adequate to handle
27 efficiently communications, questions, and all other matters
28 relating to any application for a home mortgage or an existing
29 home mortgage with respect to which such licensee is performing
30 services, regardless of kind, for any borrower or lender, note
31 owner or holder, or for himself or herself while engaged in the
32 residential mortgage business. The location and operation of a
33 full service office shall be in compliance with any applicable

1 zoning laws or ordinances and home office or business
2 regulations.

3 (b) In lieu of maintaining a full service office in the
4 State of Illinois, a licensee whose principal place of business
5 is located outside the State of Illinois must submit a
6 certified audit as required in Section 3-2 of this Act
7 evidencing a minimum net worth of \$100,000, which must be
8 maintained at all times, and shall submit and maintain a
9 fidelity bond in the amount of \$100,000.

10 (Source: P.A. 89-355, eff. 8-17-95; 90-301, eff. 8-1-97;
11 90-772, eff. 1-1-99.)

12 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)

13 Sec. 4-1. Commissioner of Banks and Real Estate; functions,
14 powers, and duties. The functions, powers, and duties of the
15 Commissioner of Banks and Real Estate shall include the
16 following:

17 (a) To issue or refuse to issue any license as provided by
18 this Act;

19 (b) To revoke or suspend for cause any license issued under
20 this Act;

21 (c) To keep records of all licenses issued under this Act;

22 (d) To receive, consider, investigate, and act upon
23 complaints made by any person in connection with any
24 residential mortgage licensee in this State;

25 (e) To consider and act upon any recommendations from the
26 Residential Mortgage Board;

27 (f) To prescribe the forms of and receive:

28 (1) applications for licenses; and

29 (2) all reports and all books and records required to
30 be made by any licensee under this Act, including annual
31 audited financial statements and annual reports of
32 mortgage activity;

33 (g) To adopt rules and regulations necessary and proper for

1 the administration of this Act;

2 (h) To subpoena documents and witnesses and compel their
3 attendance and production, to administer oaths, and to require
4 the production of any books, papers, or other materials
5 relevant to any inquiry authorized by this Act;

6 (h-1) To issue orders against any person, if the
7 Commissioner has reasonable cause to believe that an unsafe,
8 unsound, or unlawful practice has occurred, is occurring, or is
9 about to occur, if any person has violated, is violating, or is
10 about to violate any law, rule, or written agreement with the
11 Commissioner, or for the purpose of administering the
12 provisions of this Act and any rule adopted in accordance with
13 the Act;

14 (h-2) To address any inquiries to any licensee, or the
15 officers thereof, in relation to its activities and conditions,
16 or any other matter connected with its affairs, and it shall be
17 the duty of any licensee or person so addressed, to promptly
18 reply in writing to such inquiries. The Commissioner may also
19 require reports from any licensee at any time the Commissioner
20 may deem desirable;

21 (i) To require information with regard to any license
22 applicant as he or she may deem desirable, with due regard to
23 the paramount interests of the public as to the experience,
24 background, honesty, truthfulness, integrity, and competency
25 of the license applicant as to financial transactions involving
26 primary or subordinate mortgage financing, and where the
27 license applicant is an entity other than an individual, as to
28 the honesty, truthfulness, integrity, and competency of any
29 officer or director of the corporation, association, or other
30 entity, or the members of a partnership;

31 (j) To examine the books and records of every licensee
32 under this Act at intervals as specified in Section 4-2;

33 (k) To enforce provisions of this Act;

34 (l) To levy fees, fines, and charges for services performed

1 in administering this Act; the aggregate of all fees collected
2 by the Commissioner on and after the effective date of this Act
3 shall be paid promptly after receipt of the same, accompanied
4 by a detailed statement thereof, into the Savings and
5 Residential Finance Regulatory Fund; the amounts deposited
6 into that Fund shall be used for the ordinary and contingent
7 expenses of the Office of Banks and Real Estate. Nothing in
8 this Act shall prevent continuing the practice of paying
9 expenses involving salaries, retirement, social security, and
10 State-paid insurance of State officers by appropriation from
11 the General Revenue Fund.

12 (m) To appoint examiners, supervisors, experts, and
13 special assistants as needed to effectively and efficiently
14 administer this Act; ~~and~~

15 (n) To conduct hearings for the purpose of:

16 (1) appeals of orders of the Commissioner;

17 (2) suspensions or revocations of licenses, or fining
18 of licensees;

19 (3) investigating:

20 (i) complaints against licensees; or

21 (ii) annual gross delinquency rates; and

22 (4) carrying out the purposes of this Act; ~~+~~

23 (o) To exercise exclusive visitorial power over a licensee
24 unless otherwise authorized by this Act or as vested in the
25 courts, or upon prior consultation with the Commissioner, a
26 foreign residential mortgage regulator with an appropriate
27 supervisory interest in the parent or affiliate of a licensee;

28 (p) To enter into cooperative agreements with state
29 regulatory authorities of other states to provide for
30 examination of corporate offices or branches of those states
31 and to accept reports of such examinations;

32 (q) To assign an examiner or examiners to monitor the
33 affairs of a licensee with whatever frequency the Commissioner
34 determines appropriate and to charge the licensee for

1 reasonable and necessary expenses of the Commissioner, if in
2 the opinion of the Commissioner an emergency exists or appears
3 likely to occur; and

4 (r) To impose civil penalties of up to \$50 per day against
5 a licensee for failing to respond to a regulatory request or
6 reporting requirement.

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

8 (205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

9 Sec. 4-2. Examination; prohibited activities.

10 (a) The business affairs of a licensee under this Act shall
11 be examined for compliance with this Act as often as the
12 Commissioner deems necessary and proper. The Commissioner
13 shall promulgate rules with respect to the frequency and manner
14 of examination. The Commissioner shall appoint a suitable
15 person to perform such examination. The Commissioner and his
16 appointees may examine the entire books, records, documents,
17 and operations of each licensee and may examine any of the
18 licensee's officers, directors, employees and agents under
19 oath.

20 (b) The Commissioner shall prepare a sufficiently detailed
21 report of each licensee's examination, shall issue a copy of
22 such report to each licensee's principals, officers, or
23 directors and shall take appropriate steps to ensure correction
24 of violations of this Act.

25 (c) Affiliates of a licensee shall be subject to
26 examination by the Commissioner on the same terms as the
27 licensee, but only when reports from, or examination of a
28 licensee provides for documented evidence of unlawful activity
29 between a licensee and affiliate benefiting, affecting or
30 deriving from the activities regulated by this Act.

31 (d) The expenses of any examination of the licensee and
32 affiliates shall be borne by the licensee and assessed by the
33 Commissioner as established by regulation.

1 (e) Upon completion of the examination, the Commissioner
2 shall issue a report to the licensee. All confidential
3 supervisory information, including the ~~The examination report,~~
4 and the work papers of the report, shall belong to the
5 Commissioner's office and may not be disclosed to anyone other
6 than the licensee, law enforcement officials or other
7 regulatory agencies that have an appropriate regulatory
8 interest as determined by the Commissioner ~~shall be defined in~~
9 ~~rules promulgated by the Commissioner,~~ or to a party presenting
10 a lawful subpoena to the Office of the Commissioner. The
11 Commissioner may immediately appeal to the court of
12 jurisdiction the disclosure of such confidential supervisory
13 information and seek a stay of the subpoena pending the outcome
14 of the appeal. Reports required of licensees by the
15 Commissioner under this Act and results of examinations
16 performed by the Commissioner under this Act shall be the
17 property of only ~~the licensee and~~ the Commissioner, but may be
18 shared with the licensee. Access under this Act to the books
19 and records of each licensee shall be limited to the
20 Commissioner and his agents as provided in this Act and to the
21 licensee and its authorized agents and designees. No other
22 person shall have access to the books and records of a licensee
23 under this Act. Any person upon whom a demand for production of
24 confidential supervisory information is made, whether by
25 subpoena, order, or other judicial or administrative process,
26 must withhold production of the confidential supervisory
27 information and must notify the Commissioner of the demand, at
28 which time the Commissioner is authorized to intervene for the
29 purpose of enforcing the limitations of this Section or seeking
30 the withdrawal or termination of the attempt to compel
31 production of the confidential supervisory information. The
32 Commissioner may impose any conditions and limitations on the
33 disclosure of confidential supervisory information that are
34 necessary to protect the confidentiality of such information.

1 Except as authorized by the Commissioner, no person obtaining
2 access to confidential supervisory information may make a copy
3 of the confidential supervisory information. The Commissioner
4 may condition a decision to disclose confidential supervisory
5 information on entry of a protective order by the court or
6 administrative tribunal presiding in the particular case or on
7 a written agreement of confidentiality. In a case in which a
8 protective order or agreement has already been entered between
9 parties other than the Commissioner, the Commissioner may
10 nevertheless condition approval for release of confidential
11 supervisory information upon the inclusion of additional or
12 amended provisions in the protective order. The Commissioner
13 may authorize a party who obtained the records for use in one
14 case to provide them to another party in another case, subject
15 to any conditions that the Commissioner may impose on either or
16 both parties. The requestor shall promptly notify other parties
17 to a case of the release of confidential supervisory
18 information obtained and, upon entry of a protective order,
19 shall provide copies of confidential supervisory information
20 to the other parties.

21 (f) The Commissioner, deputy commissioners, and employees
22 of the Office of Banks and Real Estate shall be subject to the
23 restrictions provided in Section 2.5 of the Office of Banks and
24 Real Estate Act including, without limitation, the
25 restrictions on (i) owning shares of stock or holding any other
26 equity interest in an entity regulated under this Act or in any
27 corporation or company that owns or controls an entity
28 regulated under this Act; (ii) being an officer, director,
29 employee, or agent of an entity regulated under this Act; and
30 (iii) obtaining a loan or accepting a gratuity from an entity
31 regulated under this Act.

32 (g) After the initial examination for those licensees whose
33 only mortgage activity is servicing fewer than 1,000 Illinois
34 residential loans, the examination required in subsection (a)

1 may be waived upon submission of a letter from the licensee's
2 independent certified auditor that the licensee serviced fewer
3 than 1,000 Illinois residential loans during the year in which
4 the audit was performed.

5 (Source: P.A. 90-301, eff. 8-1-97; 91-586, eff. 8-14-99.)

6 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

12 (1) Through separate acts or an act or a course of
13 conduct, the licensee has violated any provisions of this
14 Act, any rule or regulation promulgated by the Commissioner
15 or of any other law, rule or regulation of this State or
16 the United States.

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

21 (3) If a licensee is other than an individual, any
22 ultimate equitable owner, officer, director, or member of
23 the licensed partnership, association, corporation, or
24 other entity has so acted or failed to act as would be
25 cause for suspending or revoking a license to that party as
26 an individual.

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

31 (c) The Commissioner, on good cause shown that an emergency
32 exists, may suspend any license for a period not exceeding 180
33 days, pending investigation. Upon a showing that a licensee has

1 failed to meet the experience or educational requirements of
2 Section 2-2 or the requirements of subsection (g) of Section
3 3-2, the Commissioner shall suspend, prior to hearing as
4 provided in Section 4-12, the license until those requirements
5 have been met.

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

9 (e) No revocation, suspension or surrender of any license
10 shall impair or affect the obligation of any pre-existing
11 lawful contract between the licensee and any person.

12 (f) Every license issued under this Act shall remain in
13 force and effect until the same shall have expired without
14 renewal, have been surrendered, revoked or suspended in
15 accordance with the provisions of this Act, but the
16 Commissioner shall have authority to reinstate a suspended
17 license or to issue a new license to a licensee whose license
18 shall have been revoked if no fact or condition then exists
19 which would have warranted the Commissioner in refusing
20 originally to issue such license under this Act.

21 (g) Whenever the Commissioner shall revoke or suspend a
22 license issued pursuant to this Act or fine a licensee under
23 this Act, he or she shall forthwith execute in duplicate a
24 written order to that effect. The Commissioner shall publish
25 notice of such order in the Illinois Register and post notice
26 of the order on an agency Internet site maintained by the
27 Commissioner ~~a newspaper of general circulation in the county~~
28 ~~in which the license is located~~ and shall forthwith serve a
29 copy of such order upon the licensee. Any such order may be
30 reviewed in the manner provided by Section 4-12 of this Act.

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

34 (1) Revocation of license;

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

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

7 (4) Issuance of a reprimand;

8 (5) Imposition of a fine not to exceed \$25,000 for each
9 count of separate offense; and

10 (6) Denial of a license.

11 (i) The following acts shall constitute grounds for which
12 the disciplinary actions specified in subsection (h) above may
13 be taken:

14 (1) Being convicted or found guilty, regardless of
15 pendency of an appeal, of a crime in any jurisdiction which
16 involves fraud, dishonest dealing, or any other act of
17 moral turpitude;

18 (2) Fraud, misrepresentation, deceit or negligence in
19 any mortgage financing transaction;

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

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

24 (5) Insolvency or filing under any provision of the
25 Bankruptcy Code as a debtor;

26 (6) Failure to account or deliver to any person any
27 property such as any money, fund, deposit, check, draft,
28 mortgage, or other document or thing of value, which has
29 come into his or her hands and which is not his or her
30 property or which he or she is not in law or equity
31 entitled to retain, under the circumstances and at the time
32 which has been agreed upon or is required by law or, in the
33 absence of a fixed time, upon demand of the person entitled
34 to such accounting and delivery;

1 (7) Failure to disburse funds in accordance with
2 agreements;

3 (8) Any misuse, misapplication, or misappropriation of
4 trust funds or escrow funds;

5 (9) Having a license, or the equivalent, to practice
6 any profession or occupation revoked, suspended, or
7 otherwise acted against, including the denial of licensure
8 by a licensing authority of this State or another state,
9 territory or country for fraud, dishonest dealing or any
10 other act of moral turpitude;

11 (10) Failure to issue a satisfaction of mortgage when
12 the residential mortgage has been executed and proceeds
13 were not disbursed to the benefit of the mortgagor and when
14 the mortgagor has fully paid licensee's costs and
15 commission;

16 (11) Failure to comply with any order of the
17 Commissioner or rule made or issued under the provisions of
18 this Act;

19 (12) Engaging in activities regulated by this Act
20 without a current, active license unless specifically
21 exempted by this Act;

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

24 (14) Failure to maintain, preserve, and keep available
25 for examination, all books, accounts or other documents
26 required by the provisions of this Act and the rules of the
27 Commissioner;

28 (15) Refusal to permit an investigation or examination
29 of the licensee's or its affiliates' books and records or
30 refusal to comply with the Commissioner's subpoena or
31 subpoena duces tecum;

32 (16) A pattern of substantially underestimating the
33 maximum closing costs;

34 (17) Failure to comply with or violation of any

1 provision of this Act.

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

6 (k) Such licensee shall be subject to suspension or
7 revocation for employee actions only if there is a pattern of
8 repeated violations by employees or the licensee has knowledge
9 of the violations.

10 (l) Procedure for surrender of license:

11 (1) The Commissioner may, after 10 days notice by
12 certified mail to the licensee at the address set forth on
13 the license, stating the contemplated action and in general
14 the grounds therefor and the date, time and place of a
15 hearing thereon, and after providing the licensee with a
16 reasonable opportunity to be heard prior to such action,
17 fine such licensee an amount not exceeding \$25,000 ~~\$10,000~~
18 per violation, or revoke or suspend any license issued
19 hereunder if he or she finds that:

20 (i) The licensee has failed to comply with any
21 provision of this Act or any order, decision, finding,
22 rule, regulation or direction of the Commissioner
23 lawfully made pursuant to the authority of this Act; or

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

28 (2) Any licensee may surrender a license by delivering
29 to the Commissioner written notice that he or she thereby
30 surrenders such license, but surrender shall not affect the
31 licensee's civil or criminal liability for acts committed
32 prior to surrender or entitle the licensee to a return of
33 any part of the license fee.

34 (Source: P.A. 93-561, eff. 1-1-04.)

1 (205 ILCS 635/4-8.3 new)

2 Sec. 4-8.3. Annual report of mortgage and servicing
3 activity. On or before March 1 of each year, each licensee,
4 except residential mortgage brokers, shall file a report with
5 the Commissioner that shall disclose such information as the
6 Commissioner requires. Exempt entities as defined in
7 subsection (d) of Section 1-4 shall not file the annual report
8 of mortgage and servicing activity required by this Section.

9 (205 ILCS 635/6-2) (from Ch. 17, par. 2326-2)

10 Sec. 6-2. Removal and prohibition.

11 (a) Upon making any one or more of the following findings,
12 the Commissioner may issue a notice of intent to issue an order
13 of removal or prohibition, or an order of removal and
14 prohibition, which order may remove a named person, persons, or
15 entity or entities from participating in the affairs of one or
16 more licensees and may be permanent or for a specific shorter
17 period of time. The findings required under this Section may be
18 any one or more of the following:

19 (1) A finding that the party or entity subject to the
20 order has been convicted of a crime involving material
21 financial loss to a licensee, a federally insured
22 depository institution, a government sponsored enterprise,
23 a Federal Home Loan Bank, a Federal Reserve Bank, or any
24 other person.

25 (2) A finding that the person or entity subject to the
26 order has submitted or caused to be submitted any document
27 that contains multiple willful and material misstatements
28 of facts, and that includes the signature of the person or
29 entity specified in the Commissioner's order, or that is
30 notarized, certified, verified or is in any other way
31 attested to, as to its veracity. An application for
32 licensure or license renewal may be considered such a

1 document.

2 (3) Conviction of a business offense under subsection
3 (e) of Section 1-3 or subsection (g) of Section 3-2.

4 (4) A finding prepared by a hearing officer pursuant to
5 a hearing held under Section 4-1(n) of this Act that the
6 person subject to the order, while an employee of a
7 licensee, has knowingly submitted or caused to be submitted
8 any document that contains willful and material
9 misstatement of facts and which is used in connection with
10 any licensable activity as defined in Section 1-3(a) of
11 this Act.

12 (b) Whenever, in the opinion of the Commissioner, any
13 director, officer, or employee of a licensee shall have
14 violated any law, rule, or order relating to that licensee or
15 shall have obstructed or impeded any examination or
16 investigation by the Commissioner, shall have engaged in an
17 unsafe, unsound, or unlawful practice in conducting the
18 business of the licensee, or shall have violated any law or
19 engaged or participated in any unsafe, unsound or unlawful
20 practice in connection with any licensee or other business
21 entity such that the character and fitness of the director,
22 officer, or employee does not assure reasonable promise of
23 safe, sound, and lawful operation of the licensee, the
24 Commissioner may issue an order of removal. If, in the opinion
25 of the Commissioner, any former director, officer, or employee
26 of a licensee, prior to the termination of his or her service
27 with that licensee, violated any law, rule, or order relating
28 to that licensee, obstructed or impeded any examination or
29 investigation by the Commissioner, engaged in an unsafe or
30 unsound practice in conducting the business of that licensee or
31 any subsidiary or holding company of the licensee, or violated
32 any law or engaged or participated in any unsafe, unsound, or
33 unlawful practice in connection with any financial institution
34 or other business entity such that the character and fitness of

1 the director, officer, or employee would not have assured
2 reasonable promise of safe, sound, and lawful operation of the
3 licensee, the Commissioner may issue an order prohibiting that
4 person from further service with a licensee as a director,
5 officer, or employee. An order issued pursuant to this
6 subsection shall be served upon the director, officer, or
7 employee. A copy of the order shall be sent to each owner or
8 director of the licensee affected by registered mail. The
9 person affected by the action may make a request to the
10 Commissioner for a hearing pursuant to Section 4-1(n) within 10
11 days after receipt of the order. The hearing shall be held
12 before a hearing officer within 30 days after the request has
13 been received by the Commissioner. The hearing officer shall
14 prepare a finding and report the same to the Commissioner who
15 shall consider the finding in making his determination
16 approving, modifying, or disapproving his order as a final
17 administrative decision. If a hearing is held before a hearing
18 officer, the Commissioner shall make his determination within
19 60 days from the conclusion of the hearing. Any person affected
20 by a decision of the Commissioner under this subsection (b) may
21 have the decision reviewed only under and in accordance with
22 the Administrative Review Law and the rules adopted pursuant
23 thereto. A copy of the order shall also be served upon the
24 licensee of which he is a director, officer, or employee,
25 whereupon he shall cease to be a director, officer, or employee
26 of that licensee. The Commissioner may institute a civil action
27 against the director, officer, or employee of the licensee to
28 enforce compliance with or to enjoin any violation of the terms
29 of the order. Any person who has been the subject of an order
30 of removal or an order of prohibition issued by the
31 Commissioner under this subsection may not thereafter serve as
32 director, officer, or employee of any licensee, or of any other
33 entity that is subject to licensure or regulation by the
34 Commissioner unless the Commissioner has granted prior

1 approval in writing.

2 (Source: P.A. 89-355, eff. 8-17-95; 90-772, eff. 1-1-99.)".