

ILLINOIS BUSINESS BROKERS ACT OF 1995

(815 ILCS 307/10-1)

Effective January 1, 1996

(As amended through January 1, 2002)



Illinois Securities Department

JESSE WHITE
Secretary of State



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A Message from the Secretary

I am pleased to present the Illinois Business Brokers Act of 1995, including recent amendments, effective Jan. 1, 2002. This Act provides an invaluable source of information for consumers and business brokers doing business in the state of Illinois.

I urge members of the business broker industry to review the most recent changes to this Act to ensure compliance with all provisions. The definition of a "person" now includes a joint stock company or a limited liability partnership. If a business broker's registration expires, it can now be renewed within 30 days of expiration. A request for a hearing to respond to any final orders must be made within 30 days of the date on the order.

The new amendments empower the Secretary of State's office to administer oaths and subpoena witnesses and materials deemed relevant to an investigation. A certificate issued by this office shall be prima facie evidence of registration. The amendments further eliminate the need to file a Service of Process form by appointing the Secretary of State for purposes of service of process. These modifications to the Act are important measures in furthering the goal of protecting Illinois consumers.

I sincerely thank those members of the industry and the General Assembly who assisted in the legislative process.

Sincerely,

A handwritten signature in cursive script that reads "Jesse White". The signature is written in dark ink and is positioned above the printed name.

JESSE WHITE
Secretary of State

ILLINOIS BUSINESS BROKERS ACT OF 1995

(as amended through January 1, 2002)

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Illinois Business Brokers Act of 1995

Cite: 815 ILCS 307/10-1 et seq.

Title: An Act concerning business activity regulation.

Sec. 10-1. Short title. This Article may be cited as the Illinois Business Brokers Act of 1995, and references in this Article to “this Act” mean this Article.

Sec. 10-5. Definitions. As used in this Act, unless the context otherwise requires, the terms defined in the Sections of this Act following this Section and preceding Section 10-6 have the meanings therein ascribed.

Sec. 10-5.10. Business Broker. “Business Broker” means any person who is required to register under Section 10-10 of this Act and, in return for a fee, commission, or other compensation:

- (1) promises to procure a business for any person or assists any person in procuring a business from any third person;
- (2) negotiates, offers, attempts or agrees to negotiate the sale, exchange, or purchase of a business;
- (3) buys, sells, offers to buy or sell or otherwise deals in options on businesses;
- (4) advertises or represents himself as a business broker;
- (5) assists or directs in the procuring of prospects intended to result in the purchase, sale, or exchange of a business;
- (6) offers, promotes, lists or agrees to offer, promote, or list a business for sale, lease, or exchange.

Sec. 10-5.15. Business. “Business” means an existing business, goodwill of an existing business, or any interest therein, or any one or combination thereof, where the transaction is not a securities transaction involving securities subject to the Illinois Securities Law of 1953, and wherein the sale or exchange of real estate is not the dominant element of the transaction.

Sec. 10-5.16. Client. “Client” means any person who has signed an agreement with a business broker that provides for the services described in Section 10-5.10 for compensation.

Sec. 10-5.17. Insolvency. “Insolvency” means the rendering of a business broker financially unable to perform any contractual obligations of its business brokering duties.

Sec. 10-5.18. Material. “Material”, when used to qualify a requirement for

the furnishing of information as to any subject, limits the information required to those matters as to which there is a substantial likelihood that a reasonable person would consider important.

Sec. 10-5.20. Person. “Person” means an individual, a corporation, a partnership, an association, a joint stock company, a limited liability company, a limited liability partnership, a trust, ~~or~~ any unincorporated organization, or any other entity.

(As amended through January 1, 2002.)

Sec. 10-5.25. Purchaser. “Purchaser” means a person who enters into a contract or agreement for the acquisition of a business or a person to whom an offer to sell a business is directed.

Sec. 10-5.30. Seller. “Seller” means a person who sells or offers to sell a business or any agent who directly or indirectly acts on behalf of such person, except that a person acting as a business broker is neither a seller nor purchaser.

Sec. 10-10. Registration of business brokers. Every person engaging in the business of business brokering shall be registered with the Office of the Secretary of State pursuant to the provisions of this Act. Persons employed, contracted by, or working on behalf of other persons who are registered under this Act need not register separately; provided that such non-registered employed or contracted persons working for a business broker have been identified in the registration submitted and proper fees, if any, are paid.

- (a) In order to be registered under this Act, a business broker shall file an application for registration with the Secretary of State. The application for registration shall contain, to the extent reasonably available to the applicant:
 - (1) the disclosure document required under subsection (b) of Section 10-30 of this Act and the form of disclosure statement proposed to be used under subsection (b)(1) of Section 10-30 of this Act;
 - (2) consent to service of process under subsection (d) of this Section;
 - (3) a fee in the amount as provided for in subsection (a) of Section 10-25 of this Act, and shall not be returnable in any event; and
 - (4) any other information deemed necessary by the Secretary of State as prescribed by rule or regulation.
- (b) Whenever the provisions of this Act have been complied with, the Secretary of State shall issue a certificate of registration to the applicant, authorizing the applicant to engage in the business of business brokering.
- (c) An application for registration becomes effective 30 days after it is

filed, unless an order of the Secretary of State establishes an earlier effective date. Every registration is effective until January 1 of the year after it goes into effect.

- (d) Every applicant for registration shall file with the Secretary of State, in such form as the Secretary of State may prescribe by rule or regulation, an irrevocable consent appointing the Secretary of State to be the applicant's agent to receive service of any process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this Act.
- (e) The Secretary of State shall maintain a record, which shall be open for public inspection, upon which shall be entered the name and address of each business broker and all orders of the Secretary of State denying, suspending, or revoking registration. The Secretary of State may designate by rule or order any statements, information, or reports submitted to or filed with him or her pursuant to this Act which the Secretary of State determines are of a sensitive nature and therefore should be exempt from public disclosure. Any statement, information, or reports determined by the Secretary of State to be of a sensitive nature shall not be disclosed to the public except upon consent of the person filing or submitting the statement, information, or report or by order of a court or in court proceedings.

Sec. 10-20. Renewal of registration.

- (a) A business broker may not continue engaging in the business of business brokering unless the broker's registration is renewed annually. A business broker shall renew the registration by filing with the Secretary of State, at least 30 days before the expiration of the registration, an application containing any information the Secretary of State may require to indicate any material change from the information contained in the applicant's original application or any previous application.
- (b) An application for renewal must be accompanied by a filing fee in the amount specified in subsection (a) of Section 10-25 of this Act, and shall not be returnable in any event.
- (c) Notwithstanding the foregoing, applications for renewal of registration of business brokers may be filed within 30 days following the expiration of the registration provided that the applicant pays the annual registration fee together with an additional amount equal to the annual registration fee and files any other information or documents that the Secretary of State may prescribe by rule or order. Any application filed within 30 days following the expiration of the registration shall be automatically effective as of the time of the earlier expiration provided that the proper fee has been paid to the Secretary of State.

(As amended through January 1, 2002.)

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

- (a) The Secretary of State shall, by rule or regulation, impose and collect fees necessary for the administration of this Act, including but not limited to, fees for the following purposes:
- (1) filing an application pursuant to Section 10-10 of this Act;
 - (2) examining an application pursuant to Sections 10-10 and 10-20 of this Act;
 - (3) registering a business broker under Section 10-10 of this Act;
 - (4) renewing registration of a business broker pursuant to Section 10-20 of this Act;
 - (5) failure to file or file timely any document or information required under this Act;
 - (6) (Blank);
 - (7) acceptance of service of process pursuant to Section 10-125;
 - (8) issuance of certification pursuant to Section 10-50; and
 - (9) late registration fee pursuant to Section 10-20 (c).
- (b) The Secretary of State may, by rule or regulation, raise or lower any fee imposed by, and which he or she is authorized by law to collect under, this Act.

(As amended through January 1, 2002.)

Sec. 10-30. Disclosure document to be provided by business broker.

- (a) A business broker must provide a written disclosure document that meets the requirements set forth in subsection (b) of this Section to a client at the time or before the client signs a contract for the services of a business broker or at the time or before the business broker receives any consideration upon the contract. Any person who signs a contract for the services of a business broker shall have 7 days from the date of signing of the contract to rescind the contract and receive a refund of all payments, if any, made by that person.
- (b) A written disclosure document shall contain the following information:
- (1) A disclosure statement which shall be the cover sheet and shall be entitled, in at least 10-point boldface capital letters "DISCLOSURES REQUIRED BY LAW". Under this title shall appear the statement, in at least 10 point type that "THE SECRETARY OF STATE HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY BUSINESS BROKERAGE CONTRACT. THE INFORMATION CONTAINED IN THIS DISCLOSURE HAS NOT BEEN VERIFIED BY THE SECRETARY OF STATE. IF YOU HAVE ANY QUESTIONS, SEE AN ATTORNEY BEFORE YOU SIGN A CONTRACT OR AGREEMENT." Nothing except

the title and the required statement shall appear on the cover sheet, except that the name of the business broker, address, telephone number, facsimile number, and any other information as authorized by the Secretary of State by rule may appear on the cover sheet.

- (2) The name and form of organization of the business broker, the names under which the business broker has done or is doing business, and the name of any parent organization or affiliate of the business broker.
 - (3) The names, addresses, and titles of the business broker's officers, directors, trustees, general partners, general managers, principal executives, and any other person performing similar duties.
 - (4) A full and detailed description of the actual services that the business broker undertakes to perform for the client.
 - (5) A specific statement of the circumstances under which the business broker will be entitled to obtain or retain consideration from the party with whom the business broker contracts.
 - (6) Any other information the Secretary of State may require by rule or regulation.
- (c) A business broker shall amend the disclosure document required by subsection (b) of this Section whenever necessary to prevent it from containing any false or misleading statement of a material fact and shall deliver a copy of the amended disclosure document to the Secretary of State on or before the date of the amendment.
- (d) The information in subdivisions (b)(4) and (b)(5) of this Section need not be set out on the disclosure document if the business broker's contract contains the information required in subdivisions (b)(4) and (b)(5) of this Section and is provided with the disclosure document.

Sec 10-30.5. Exemptions from disclosure requirements. Section 10-30 shall not apply if:

- (a) the client to be represented by the business broker is:
- (1) a natural person who has, or is reasonably believed by the business broker relying upon this Section to have, a net worth or joint net worth with that person's spouse in excess of \$1,000,000 at the time of the execution of the business broker agreement or contract;
 - (2) a natural person who has, or is reasonably believed by the business broker relying upon this Section to have, an income or joint income with that person's spouse in excess of \$200,000 in the most recent fiscal year;
 - (3) a company, business, or other non-natural person that has, or is reasonably believed by the business broker relying upon this Section to have, a total asset value in excess of \$1,000,000

and has been in existence for at least nine months and was not formed for the purpose of the subject transaction;

- (4) a company, business, or other non-natural person that has, or is reasonably believed by the business broker relying upon this Section to have, gross revenues or gross sales in excess of \$200,000 in the most recent fiscal year and has been in existence for at least nine months and was not formed for the purposes of the subject transaction; or
 - (5) a company, business, or other non-natural person in which at least 90% of the equity interest is owned, or is reasonably believed by the business broker relying upon this Section to be owned, by persons who meet any of the tests set forth in subdivisions (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this Section; or
- (b) the client to be represented by the business broker has had an attorney review the business broker's contract for the client.

Sec. 10-35. Contracts required to be in writing; retention of copy by client. To be enforceable, every contract for the services of a business broker shall be in writing and signed by all contracting parties. The client shall have the right to retain a copy of the signed contract for the services of a business broker. The client's copy of the contract shall be provided to the client when the contract is signed, if that is reasonably feasible and the client so requests. Otherwise, the contract shall be mailed or otherwise sent to the client within one week of execution. No account number, as referred to in Section 10-75 of this Act, is required on the client's copy of the contract.

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

- (a) The Secretary of State may deny, suspend or revoke the registration of a business broker if the business broker:
- (1) Is insolvent.
 - (2) Has violated any provision of this Act.
 - (3) Has filed with the Secretary of State any document or statement containing any false representation of a material fact or omitting to state a material fact.
 - (4) Has been convicted, within 10 years before the date of the application, renewal or review, of any crime involving fraud or deceit.
 - (5) Has been found by any court or agency, within 10 years before the date of the application, renewal, or review, to have engaged in any activity involving fraud or deceit.
- (b) The Secretary of State may not enter a final order denying,

suspending, or revoking the registration of a business broker without prior notice to all interested parties, opportunity for a hearing and written findings of fact and conclusions of law. The Secretary of State may by summary order deny, suspend, or revoke a registration pending final determination of any proceeding under this Section. Upon the entry of a summary order, the Secretary of State shall promptly notify all interested parties that it has been entered, of the reasons for the summary order and, that upon receipt by the Secretary of State of a written request from a party, the matter will be set for hearing which shall be conducted in accordance with the provisions of the Illinois Administrative Procedure Act. If no hearing is requested within 30 days of the date of entry of the order and none is ordered by the Secretary of State, the respondent's failure to request a hearing shall constitute an admission of any facts alleged therein and shall constitute a sufficient basis to make the order final and it shall remain remains in effect until it is modified or vacated by the Secretary of State. If a hearing is requested or ordered, the Secretary of State, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(As amended through January 1, 2002.)

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

- (a) The Secretary of State may do the following:
- (1) Adopt rules and regulations to implement this Act.
 - (2) Conduct investigations and examinations:
 - (A) In connection with any application for registration of any business broker or any registration already granted; or
 - (B) Whenever it appears to the Secretary of State, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
 - (3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of any employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination.
 - (4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under paragraph (2) of subsection (a) of this Section. The Secretary of State may also bring an action to prohibit a person from violating this Act. The Secretary of State shall notify the person that an order or notice has been issued, the reasons for it and

that a hearing will be set in accordance with the provisions of the Illinois Administrative Procedure Act after the Secretary of State receives a written request from the person requesting a hearing.

- (5) Sign all orders, official certifications, documents or papers issued under this Act or delegate the authority to sign any of those items to his or her designee.
 - (6) Hold and conduct hearings.
 - (7) Hear evidence.
 - (8) Conduct inquiries with or without hearings.
 - (9) Receive reports of investigators or other officers or employees of the State of Illinois or any municipal corporation or governmental subdivision within the State.
 - (10) ~~(Blank). Administer oaths or cause them to be administered.~~
 - (11) ~~(Blank). Subpoena witnesses and compel them to attend and testify.~~
 - (12) ~~(Blank). Compel the production of books, records and other documents.~~
 - (13) Order depositions to be taken of any witness residing within or without the State. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the Secretary of State.
 - (14) For the purposes of all investigations, audits, examinations, or inspections which in the opinion of the Secretary of State are necessary and proper for the enforcement of this Act, the Secretary of State or a person designated by him or her is empowered to administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena or other lawful means provided by this law or such rules and regulations adopted by the Secretary of State the production of any books and records, papers, or other documents that the Secretary of State or a person designated by him or her deems relevant or material to the injury.
- (b) If any person refuses to obey a subpoena issued under this Act, the Secretary of State may make application to any court of competent jurisdiction to order the person to appear before the Secretary of State and produce documentary evidence or give evidence as directed in the subpoena. The failure to obey the order of the court shall be subject to punishment by the court as contempt of court.
- (c) No person shall be excused from complying with a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subject to any penalty or

forfeiture for or on account of any transaction, matter or thing which the individual is compelled to testify or produce evidence, after claiming the privilege against self-incrimination. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

- (d) In any prosecution, action, suit or proceeding based upon or arising out of this Act, the Secretary of State may sign a certificate showing compliance or non-compliance with this Act by any business broker. This shall constitute prima facie evidence of compliance or non-compliance with this Act and shall be admissible in evidence in any court to enforce this Act.
- (e) Whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this Act, or of any rule or regulation prescribed under authority of this Act, the Secretary of State may at his or her discretion, through the Attorney General:
 - (1) File a complaint and apply for a temporary restraining order without notice, and upon a proper showing the court may enter a temporary restraining order without a bond, to enforce this Act.
 - (2) File a complaint and apply for a preliminary or permanent injunction, and, after notice and hearing and upon a proper showing, the court may grant a preliminary or permanent injunction and may order the defendant to make an offer of rescission with respect to any contract for business brokerage services determined by the court to be unlawful under this Act.
- (f) The court shall further have jurisdiction and authority, in addition to the penalties and other remedies in this Act provided, to enter an order for the appointment of the court or a person as a receiver, conservator, ancillary receiver or ancillary conservator for the defendant or the defendant's assets located in this State, or to require restitution or damages on behalf of the person or persons injured by the act or practice constituting the subject matter of the action, and may assess costs against the defendant for the use of the State.
- (g) No provision of this Act imposing liability shall apply to any act done or omitted in good faith in conformity with any rule of the Secretary of State under this Act, notwithstanding that such rule may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(As amended through January 1, 2002.)

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

- (a) Copies of any statement or document filed with the Secretary of State, and copies of any records of the Secretary of State, certified to by the Secretary of State are admissible in any prosecution, action, suit or proceeding based upon, or arising out of or under, the provisions of this Act to the same effect as the original of the statement, document or record would be if actually produced.
- (b) In any action, administrative, civil, or criminal, a certificate under the seal of the State of Illinois, signed by the Secretary of State, attesting to the filing of or the absence of any filing of any document or record with the Secretary of State under this Act, shall constitute prima facie evidence of such filing or of the absence of the filing, and shall be admissible in evidence in any administrative, criminal, or civil court.
- (c) Any certificate pursuant to subsection (a) or (b) of this Section shall be furnished by the Secretary of State upon an application therefor in the form and manner prescribed by the Secretary of State by rule, and shall be accompanied by payment of a non-refundable certification fee in the amount specified by rule or by order of the Secretary of State.

(As amended through January 1, 2002.)

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

- (a) If the Secretary of State determines, after notice and opportunity for a hearing, that a person has violated this Act, the Secretary of State may in addition to all other remedies, impose an administrative fine upon the person in an amount not to exceed \$10,000 for each violation.
- (b) The Secretary of State may bring an action in the circuit court of Sangamon or Cook county to enforce payment of fines imposed under this Section.
- (c) If the Secretary of State shall find that any person has violated any provision of this Act, the Secretary of State may, by written order temporarily or permanently prohibit or suspend such person from acting as a business broker.
- (d) If the Secretary of State shall find, after notice and opportunity for hearing, that any person is acting or has acted as a business broker as defined in Section 10-5.10 of this Act, without prior thereto or at the time thereof having complied with the registration requirements of this Act, the Secretary of State may by written order prohibit or suspend such person from acting as a business broker in this State.
- (e) Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend, for a maximum period of 90 days, by an order effective immediately, the

registration of a business broker or the business of providing business brokerage services, without notice and prior hearing, if the Secretary of State shall in his or her opinion, based upon credible evidence, deem it necessary to prevent an imminent violation of this Act or to prevent losses to clients which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act. Immediately after taking action without such notice and hearing, the Secretary of State shall deliver a copy of the temporary order to the respondent named therein by personal service or registered mail or certified mail, return receipt requested. The temporary order shall set forth the grounds for the action and shall advise that the respondent may request a hearing ~~as soon as reasonably practicable~~; that the request for a hearing will not stop the effectiveness of the temporary order and that respondent's failure to request a hearing within 30 days after the date of the entry of the temporary order, shall constitute an admission of any facts alleged therein and shall make the temporary order final. A business broker whose registration has been suspended pursuant to this Section may request the Secretary of State permission to continue to receive payment for any executory contracts at the time of any suspension and to continue to perform its obligation thereunder. The decision to grant or deny permission to receive payment for any executory contracts or perform any obligation thereunder shall be at the sole discretion of the Secretary of State and shall not be subject to review under the Administrative Review Law.

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

(As amended through January 1, 2002.)

Sec. 10-60. Violations; liability of business broker to damaged parties; rights of prospective client. A person who commits a material violation of this Act, in connection with a contract for the services of a business broker, is liable to any client damaged by the violation, for the amount of the actual damages suffered, but not more than the fees actually paid by the client seeking relief, together with interest at the legal rate, and attorney fees. If a business broker commits a material violation of Section 10-10, 10-20, or 10-30 of this Act, in connection with a contract for business

brokering services, the contract is void, and the prospective client is entitled to receive from the business broker all sums paid to the business broker, with interest and any attorney's fee required to enforce this Section.

Sec. 10-65. Willful violation classified as Class 4 felony. Any person who willfully violates this Act commits a Class 4 felony.

Sec. 10-75. Account numbers; retention and maintenance of records.

- (a) Each business broker agreement shall be given an account number and all instruments executed in connection with that agreement must bear this number, except as provided in Section 10-35 of this Act. Each business broker shall keep and maintain the following records or their equivalent:
- (1) A business agreement register that consists of a chronological listing of all business broker agreements that have been entered into. For each business broker agreement the register shall contain the following:
 - (A) The account number.
 - (B) The date of the agreement.
 - (C) The name of the client.
 - (D) The amount of any fees charged.
 - (E) The cost and type of any insurance required.
 - (2) A record for each client shall contain the following:
 - (A) The name and address of the client.
 - (B) A copy of the signed business broker agreement.
 - (C) A copy of any other papers or instruments used in connection with the business broker agreement and signed by the client, including a copy of the disclosure document required by Section 10-30 of this Act, that contains an acknowledged receipt by the client.
 - (D) The amount of the business broker's fee that the client has paid. If there is an unpaid balance, the status of any collection efforts.
 - (3) All receipts from or for the account of clients and all disbursements to or for the account of clients recorded so that the transactions are readily identifiable.
 - (4) (Blank)
 - (5) A copy of:
 - (A) All advertisements, pamphlets, circulars, letters, articles or communications published in any newspaper, magazine or periodical.
 - (B) Scripts of any recording, radio or television announcement.
 - (C) Any sales kits or literature to be used in solicitation of clients.

- (b) The records listed in subsection (a) of this Section shall be kept for a period of 6 years in the business broker's principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the business broker. After a period of 2 years, a copy of such information may be retained on magnetic, digital, or other electronic medium in a form that may be readily retrieved.
- (c) The records listed in subsection (a) of this Section need not be kept for a client where no fee, expense reimbursement, retainer, or other charge was incurred and no transaction was consummated.

Sec. 10-80. Persons exempt from registration and other duties under law; burden of proof thereof.

- (a) The following persons are exempt from the requirements of this Act:
 - (1) Any attorney who is licensed to practice in this State, while engaged in the practice of law and whose service in relation to the business broker transaction is incidental to the attorney's practice.
 - (2) Any person licensed as a real estate broker or salesperson under the Illinois Real Estate License Act of 1983 who is primarily engaged in business activities for which a license is required under that Act and who, on an incidental basis, acts as a business broker.
 - (3) Any dealer, salesperson, or investment adviser registered pursuant to the Illinois Securities Law of 1953 or any investment adviser representative, or any person who is regularly engaged in the business of offering or selling securities in a transaction exempted under subsection C, H, M, R, Q, or S of Section 4 of the Illinois Securities Law of 1953 or subsection G of Section 4 of the Illinois Securities Law of 1953 provided that such person is registered pursuant to federal securities law.
 - (4) An associated person described in subdivision (h)(2) of Section 15 of the Federal 1934 Act.
 - (5) An investment adviser registered pursuant to Section 203 of the Federal 1940 Investment Advisors Act.
 - (6) A person described in subdivision (a)(11) of Section 202 of the Federal 1940 Investment Advisors Act.
 - (7) Any person who is selling a business owned or operated (in whole or in part) by that person in a one time transaction.
- (b) This Act shall not be deemed to apply in any manner, directly or indirectly, to: (i) a State bank or national bank, as those terms are defined in the Illinois Banking Act, or any subsidiary of a State bank or national bank; (ii) a bank holding company, as that term is defined

in the Illinois Bank Holding Company Act of 1957, or any subsidiary of a bank holding company; (iii) a foreign banking corporation, as that term is defined in the Foreign Banking Office Act, or any subsidiary of a foreign banking corporation; (iv) a representative office, as that term is defined in the Foreign Bank Representative Office Act; (v) a corporate fiduciary, as that term is defined in the Corporate Fiduciary Act, or any subsidiary of a corporate fiduciary; (vi) a savings bank organized under the Savings Bank Act, or a federal savings bank organized under federal law, or any subsidiary of a savings bank or federal savings bank; (vii) a savings bank holding company organized under the Savings Bank Act, or any subsidiary of a savings bank holding company; (viii) an association or federal association, as those terms are defined in the Illinois Savings and Loan Act of 1985, or any subsidiary of an association or federal association; (ix) a foreign savings and loan association or foreign savings bank subject to the Illinois Savings and Loan Act of 1985, or any subsidiary of a foreign savings and loan association or foreign savings bank; or (x) a savings and loan association holding company, as that term is defined in the Illinois Savings and Loan Act of 1985, or any subsidiary of a savings and loan association holding company.

- (b-1) Persons registered under the Illinois Franchise Disclosure Act of 1987 (and their employees) are exempt from the requirements of this Act as to: offers and sales in connection with such franchising activities; or assisting any of their franchisees in the offer or sale of a franchise by any such franchisee for the franchisee's own account regardless of whether the sale is effected by or through the registered persons.
- (b-2) Any certified public accountant licensed to practice in Illinois, while engaged in the practice as a certified public accountant and whose service in relation to the business broker transaction is incidental to his or her practice, is exempt from the requirements of this Act.
- (b-3) Any publisher, or regular employee of such publisher, of a bona fide newspaper or news magazine of regular and established paid circulation who, in the routine course of selling advertising, advertises businesses for sale and in which no other related services are provided is exempt from the requirements of this Act.
- (c) The burden of proof of any exemption or classification provided in this Act shall be on the party claiming the exemption or classification.

Sec. 10-85. Fraudulent and prohibited acts.

- (a) A business broker shall not, in connection with a contract for the services of a business broker, either directly or indirectly, do any of the following:
 - (1) Employ any device, scheme or artifice to defraud.
 - (2) Make any untrue statements of a material fact or omit to state

a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading, unless the statement is made in reasonable reliance on information provided by the client.

- (3) Engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person.
- (b) A business broker shall not either directly or indirectly do the following:
- (1) Engage in the business of acting as a business broker without registration under this Act unless exempt under the Act;
 - (2) Fail to file with the Secretary of State any application, report, document, or answer required to be filed under the provisions of this Act or any rule made by the Secretary of State pursuant to this Act or to fail to comply with the terms of any order issued pursuant to this Act or rule made by the Secretary of State.
 - (3) Fail to maintain any records as required under the provisions of this Act or any rule made by Secretary of State pursuant to this Act.

(As amended through January 1, 2002.)

Sec. 10-90. Deposit of moneys. All moneys received under this Act shall be deposited into the Securities Audit and Enforcement Fund.

Sec. 10-95. Miscellaneous provisions.

- (a) The rights and remedies under this Act are in addition to any other rights or remedies that may exist at law or equity.
- (b) Any condition, stipulation, or provision binding any client of a business broker to waive compliance with or relieve a person from any duty or liability imposed by or any right provided by this Act or any rule or order pursuant to this Act is void.
- (c) If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not effect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Sec. 10-100. Immunity for official acts. In no case shall the Secretary of State, or any of his or her employees or agents, in the administration of this Act, incur any official or personal liability while acting in accordance with their official duties or authority or both.

Sec. 10-105. Scope of the Act. This Act shall apply only when the person engaged or sought to be engaged by the business broker is domiciled in this State or when the company or business sought to be sold has its principal place of business in this State. Notwithstanding any other provision of this Section, a lien on property arising under Section 10-115 is enforceable only against tangible property located in this State.

Sec. 10-110. Previous and ongoing agreements or contracts and transactions not affected. All business broker agreements or contracts and transactions between a business broker and its clients or proposed clients which do not comply with the Act, if entered into prior to January 1, 1996, shall be deemed to be valid and enforceable, notwithstanding this Act.

Sec. 10-115 Business broker lien.

- (a) Any business broker shall have a lien upon the tangible assets of a business located in this State that is the subject of a business broker's written contract in the amount due to the broker under the written contract.
- (b) The lien shall be available to the business broker named in the instrument signed by the owner of an interest in the assets. The lien arising under this Act shall be in addition to any other rights that a business broker may have.
- (c) A lien under this Act does not attach unless and until:
 - (1) the business broker is otherwise entitled to a fee or commission under a written contract signed by the seller or its duly authorized agent; and
 - (2) before the actual conveyance or transfer of the business assets or property with respect to which the business broker is claiming a lien, the business broker files a notice of lien
 - (i) as to real property, with the recorder of the county in which the real property is located or
 - (ii) as to tangible personal property, in the Office of the Secretary of State.
- (d) When payment to a business broker is due in installments, a portion of which is due only after the conveyance or transfer of the tangible assets, any claim for lien for those payments due after the transfer or conveyance may be filed at any time subsequent to the transfer or conveyance of the tangible assets and prior to the date on which the payment is due but shall only be effective as a lien against the tangible assets to the extent moneys are still owed to the transferor by the transferee. In all other respects, the lien shall attach as described in this subsection.
- (e) If a business broker has a written agreement with a prospective purchaser, then the lien shall attach upon the prospective purchaser purchasing or otherwise accepting a conveyance or transfer of the real property or tangible personal property of the business and the filing of a notice of lien
 - (i) in the recorder's office of the county in which the real property is located, as to real property, and
 - (ii) in the Office of the Secretary of State, as to tangible personal property, by the business broker within 90 days

after the transfer to the purchaser. The lien shall attach to the interest purchased by the purchaser as of the date of the filing of the notice of lien and does not relate back to the date of the written contract.

- (f) The business broker shall, within 10 days after filing its notice of lien, mail a copy of the notice of lien to the owner of the property by depositing it in the United States mail, registered or certified mail, with return receipt requested, or personally serve a copy of the notice on the owner of record or his agent. Mailing of the copy of the notice of claim for lien is effective if mailed to the seller at the address of the business that is the subject of the notice of lien or to another address that the seller or purchaser has provided in writing to the business broker. The broker's lien shall be unenforceable if mailing of the copy of the notice of lien does not occur at the time and in the manner required by this Act.
- (g) A business broker may bring suit to enforce a lien in the circuit court (i) in the county where the real property is located, as to real property, or (ii) as to tangible personal property, either in the county where the personal property is located or where the principal office of the owner of the personal property, or the owner's residence, is located, by filing a complaint and sworn affidavit that the lien has been filed.
- (h) The person claiming a lien shall, within 2 years after filing the lien, commence proceedings by filing a complaint. Failure to commence proceedings within 2 years after filing the lien shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this Act.
- (i) A complaint under this Section shall have attached to it a copy of the written contract on which the lien is founded and shall contain a description of the services performed, the amount due and unpaid, a description of the tangible assets of the business that are subject to the lien, and other facts necessary for a full understanding of the rights of the parties. The plaintiff shall make all interested parties, of whose interest the plaintiff is notified or has actual or constructive knowledge, defendants to the action and shall issue summons and provide service as in other civil actions. When any defendant resides or has gone out of the State, or on inquiry cannot be found, or is concealed within this State so that process cannot be served on that defendant, the plaintiff shall cause a notice to be given to that defendant, or cause a copy of the complaint to be served upon that defendant, in the manner and upon the same conditions as in other civil actions. Failure of the plaintiff to provide proper summons or notice shall be grounds for judgment against the plaintiff with prejudice. Every lien claimed under this Act shall be foreclosed as provided in the Illinois Mortgage Foreclosure Law, if the lien is on

real property, or as provided in the Uniform Commercial Code, if the lien is on personal property.

- (j) The lien notice shall state the name and address of the claimant, the name of the purchaser or seller whose property or assets are subject to the lien, a description of the real or personal property that is subject to the lien, the amount for which the lien is claimed, and the registration number of the business broker. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signer. The notice of lien shall be signed by the business broker or by a person authorized to sign on behalf of the business broker and shall be verified.
- (k) Whenever a claim for lien has been filed with the Office of the Secretary of State or the county recorder's office and a condition occurs that would preclude the business broker from receiving compensation under the terms of the business broker's written agreement, the business broker shall provide to the purchaser of the business, if the lien is filed against the purchaser's assets of the business that are subject to this Act, or the seller of the business, if the lien is filed against the seller's assets of the business that are subject to this Act, within 10 days following demand by that party, a written release or satisfaction of the lien.
- (l) Upon written demand of the owner, lienee, or other authorized agent, served on the person claiming the lien requiring suit to be commenced to enforce the lien or answer to be filed in a pending suit, a suit shall be commenced or answer filed within 30 days thereafter, or the lien shall be extinguished. Service may be by registered or certified mail, return receipt requested, or by personal service.
- (m) If a claim for lien has been filed with the Office of the Secretary of State or the county recorder's office and is paid, the business broker shall acknowledge satisfaction or release of the lien, in writing, within 5 days after payment.
- (n) The cost of proceedings brought under this Act, including reasonable attorneys' fees, costs, and prejudgment interest due to the prevailing party, shall be borne by the nonprevailing party or parties. When more than one party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by the court among those responsible parties.
- (o) Prior recorded liens and mortgages shall have priority over a broker's lien. A prior recorded lien shall include, without limitation,
 - (i) a mechanic's lien claim,
 - (ii) prior recorded liens securing revolving credit or future advances under construction loans as described in Section 15-1302 of the Code of Civil Procedure, and

- (iii) prior recorded liens perfected under the Uniform Commercial Code.
- (p) No lien under this Section 10-115 shall attach to any real property asset of a business unless and until a notice of lien is filed with the recorder of the county in which the real property asset is located. A lien recorded under this subsection (p) shall otherwise be subject to the same notice, enforcement, and limitations as any other lien under this Section. A copy of the notice of lien recorded under this subsection (p) shall be filed with the Secretary of State.

Sec. 10-125. Service of process.

- (a) Any person acting as a business broker, unless exempt from registration under this Act, shall constitute an appointment of the Secretary of State, or his or her successors in Office, by the person to be the true and lawful attorney for the person upon whom may be served all lawful process in any action or proceeding against the person, arising out of his or her activities as a business broker.
- (b) Service of process under this section shall be made by serving a copy upon the Secretary of State or any employee in his or her office designated by the Secretary of State to accept such service for him or her, provided notice of such and a copy of the process are, within 10 days of receipt, sent by registered mail or certified mail, return receipt requested, by the plaintiff to the defendant, at the last known address of the defendant. The filing fee for service of process under this section is non-refundable and is the amount established in Section 10-25 of this Act. The Secretary of State shall keep a record of all such processes that shall show the day of the service.

(As amended through January 1, 2002.)

Sec. 99-1. Effective date. This Act takes effect Jan. 1, 1996.