

No. 199

AN ACT

SB 771

Amending the act of November 30, 1965 (P.L. 847), entitled "An act relating to and regulating the business of banking and the exercise by corporations of fiduciary powers; affecting persons engaged in the business of banking and corporations exercising fiduciary powers and affiliates of such persons; affecting the shareholders of such persons and the directors, trustees, officers, attorneys and employes of such persons and of the affiliates of such persons; affecting national banks located in the Commonwealth; affecting persons dealing with persons engaged in the business of banking, corporations exercising fiduciary powers and national banks; conferring powers and imposing duties on the Banking Board, on certain departments and officers of the Commonwealth and on courts, prothonotaries, clerks and recorders of deeds; providing penalties; and repealing certain acts and parts of acts," defining a subsidiary and undivided profits, including obligations of holding companies in investment limitations, further providing for emergency powers expanding the base for determining lending limits, further providing for indebtedness excluded and for collateral loans and loans for carrying shares and capital securities, implementing investment authority granted under the Housing and Urban Development Act of 1968, expanding investment powers of institutions in subsidiary corporations, authorizing guarantees of liabilities of subsidiary corporations, granting the Department of Banking discretionary powers in determining capital requirements for new branches, further providing for branches outside of Pennsylvania and expanding the consideration for shares.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102, act of November 30, 1965 (P.L. 847), known as the "Banking Code of 1965," is amended by adding after clause (bb), a new clause to read:

Section 102. Definitions

Subject to additional definitions contained in subsequent chapters of this act which are applicable to specific chapters or sections thereof, the following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

(bb.1) "Subsidiary"—a corporation controlled by an institution which owns at least a majority of its shares.

* * *

Section 2. Section 102 of the act is amended by adding at the end thereof, a new clause to read:

Section 102. Definitions

Subject to additional definitions contained in subsequent chapters of

this act which are applicable to specific chapters or sections thereof, the following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

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(ff) "Undivided profits"—accumulated and undistributed net profits as recorded on the books of an institution for the last complete fiscal or accounting period, carried in an account captioned "undivided profits."

° ° °

Section 3. Section 111, clause (e) of section 202 and subsection (a) of section 306 of the act are amended to read:

Section 111. Emergency Powers

(a) In the event of an emergency resulting from a nuclear attack or similar disaster, an institution may during the continuance of such emergency, without regard to any restriction or limitation of this act, take any action to preserve the assets of the institution and to continue or resume its business, including any action to obtain the benefit of, or participate in, emergency action authorized by the Federal Government.

(b) Whenever the Secretary of Banking is of the opinion that circumstances or an emergency exists affecting all institutions and national banks in the Commonwealth or in any parts thereof, he may authorize by public announcement in such manner as he shall determine institutions located in the area or areas affected to close any or all of their offices. In addition, if the secretary is of the opinion that only a particular institution is affected but not those located in the area generally, he may authorize the particular institution to close its office or offices so affected.

As used in this subsection, the phrase "circumstances or an emergency" shall include but not be limited to any condition which may interfere with the conduct of the normal operations of an institution, poses a threat to the safety and security of the personnel or property of the institution, interrupts transportation or power facilities, involves war, riots, civil commotion or other acts of lawlessness or violence, or is a national or State occurrence of such magnitude as to justify authorization of a bank closing. Any closing made pursuant to this subsection shall be effective until the next business day or for such longer period as may be authorized by the secretary in his public announcement.

Section 202. Additional Powers of Incorporated Institutions Related to Conduct of Business

An incorporated institution shall have in addition to other powers granted by this act or its articles and subject to the limitations and restrictions contained in this act or in its articles:

° ° °

(e) Ownership of real property—the power to acquire and hold such real property as it:

- (i) occupies or intends to occupy for the transaction of its business or partly so occupies and partly leases,
- (ii) acquires for the purpose of providing parking facilities for the use of its customers, officers and employees, or
- (iii) acquires solely or jointly with others for the purpose of providing data processing facilities for the institution or for the institution and others

subject to the limitation that the book value of all such real property, of all furniture, fixtures and equipment acquired in connection with any real property owned or leased by the institution, of all alterations of buildings on real property owned or leased by the institution, [and] of all shares of stock or corporations acquired under subsection (d) of this section, *and investments in obligations of or for the benefit of corporations described in subsection (d) of this section or loans upon the security of the stock of such corporations* shall not exceed twenty-five percent of the aggregate of surplus, unallocated reserves, undivided profits and subordinated securities in the case of a savings bank, or twenty-five percent of the aggregate of capital, surplus and capital securities in the case of any other institution, or such larger amount as may be approved by the department, and subject to the requirement that estimates of costs of any building on real property owned or leased by the institution shall be submitted to the department for its approval prior to the erection thereof:

Section 306. Limits on Indebtedness of One Customer (Including Purchased Paper)

(a) General limit—An institution shall not at any time acquire indebtedness of any one customer (which includes an individual or any legal entity) of the types specified in this section, in an amount which together with all other such indebtedness then held would exceed ten percent of the aggregate of the capital, surplus, *undivided profits* and capital securities of the institution. If the department shall determine at any time that the interests of a group of more than one individual, partnership, unincorporated association or corporation are so interrelated that they should be considered as a unit for the purpose of extensions of credit, the total indebtedness of that group acquired at any time shall be combined and deemed indebtedness acquired from one customer in applying the limitation of this section. An institution shall not be deemed to have violated this section solely by reason of the fact that the indebtedness of a group then held exceeds the limitation of this section at the time of a determination by the department that the indebtedness of that group must be combined but the institution shall, if required by the department, dispose of indebtedness of the group in

the amount in excess of the limitation of this section within such reasonable time as shall be fixed by the department.

* * *

Section 3.1. Clauses (xi) and (xii) of subsection (c) of section 306 and the section heading and subsection (c) of section 311 of the act, amended November 27, 1968 (Act No. 345), are amended to read:

Section 306. Limits on Indebtedness of One Customer (Including Purchased Paper)

* * *

(c) Indebtedness excluded—There shall be excluded from the indebtedness of one customer to which the ten percent limitation of this section applies:

* * *

(xi) obligations of the kind covered by subsection (b) (ii) of this section, as to which there is a certificate of reliance on a primary obligor [or on security of real or personal property]; and

(xii) obligations of the customer as to which there is a certificate of reliance on an obligor other than the customer [or on security of real or personal property]; and

* * *

Section 311. Transactions With Respect to Shares of Corporate Stock and Capital Securities

* * *

(c) Collateral loans—An institution shall not take pledges of [stock of the institution itself] *shares of stock or capital securities issued by the institution* as collateral security for a loan, nor shall an institution take pledges of corporate stocks not dealt in on a recognized exchange if the amount of the loan secured by said pledge, together with the total amount of:

- (i) all indebtedness of the corporation to the institution,
 - (ii) rentals payable to the institution under leases of personal property to the corporation, and
 - (iii) the book value of investment securities of the corporation which are owned by the institution
- would at any time exceed twenty-five percent of the aggregate of the capital, surplus and capital securities of the institution.

* * *

Section 4. The section heading, subsections (d) and (e) of section 311, subsection (a) of section 313, and clause (ii) of subsection (b) of section 904 of the act are amended to read:

Section 311. Transactions With Respect to Shares of Corporate Stock and Capital Securities

* * *

(d) Ownership—An institution may acquire and hold:

(i) shares of stock of a Federal Reserve Bank, without limitation of amount;

(ii) shares of stock of:

(A) the Federal National Mortgage Association *and a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968,*

(B) a bank, a bank and trust company or a trust company subject to this act or, a national bank located in Pennsylvania—to the extent of ten percent of the sum of the par value of the issued and outstanding shares of any such issuer, [or]

(B.1) a subsidiary corporation engaged in the functions or activities that an institution is authorized to carry on, if the shares are acquired with the prior written approval of, and in accordance with the terms and conditions of transfer prescribed by, the department, or

(C) a corporation organized under the laws of the United States or of any state *or any foreign country* and principally engaged, directly or indirectly, in international or foreign banking or financial operations or in banking or financial operations in a dependency, or insular possession of the United States or in the Commonwealth of Puerto Rico, if the shares are acquired with the prior written approval of, and in accordance with the terms and conditions prescribed by, the department in an amount the cost of which to the institution for the shares of any such association or corporation so acquired or held is not in excess of ten percent of the aggregate of the capital, surplus and capital securities of the institution and in the case of shares covered by clause (B) of this subsection (d) (ii), in an amount the cost of which to the institution for the shares of all such issuers so acquired or held is not in excess of the lesser of ten percent of the total assets of the institution or one hundred percent of the aggregate of the capital, surplus and capital securities of the institution;

(iii) shares of stock of small business investment companies organized pursuant to the Small Business Investment Act, in an amount the cost of which is not in excess of one percent of the aggregate of the capital, surplus and capital securities of the institution;

(iv) in the case of a bank and trust company, shares of stock of a corporation organized under the laws of the Commonwealth for the purpose of conducting a title insurance business to which the institution has transferred the assets of its title insurance business, in an amount:

(A) the cost of which is not in excess of the lesser of (1) ten percent of the aggregate of the capital, surplus and capital securities of the institution or (2) double the minimum amount of

capital and paid-in surplus required for the incorporation of such corporation, or

(B) with the prior approval of the department, the cost of which is not in excess of fifteen percent of the aggregate of the capital, surplus and capital securities of the institution; and

(v) shares of stock of business development credit corporations to the extent provided by the Business Development Credit Corporation Law.

(e) Loans for carrying shares *and capital securities*—An institution shall not extend credit, directly or indirectly, for the purpose of enabling a customer to acquire or hold shares of [the institution] *stock or capital securities issued by the institution* unless all indebtedness incurred for that purpose is secured by other readily marketable collateral with a value not less than one hundred twenty percent of the indebtedness.

Section 313. Bonds and Suretyship

(a) An institution may in the ordinary course of its banking business:

(i) give its bond, either alone or as surety for another, in connection with any bona fide transaction involving the import, export or domestic shipment of goods,

(ii) give guarantees in connection with the receipt and forwarding of items for collection, [and]

(iii) give guarantees in connection with the transfer, exchange and collection of securities, *and*

(iv) *give such other guarantees as the department may from time to time by regulation approve.*

* * *

Section 904. Authorization of New Branches

* * *

(b) Except as provided in subsection (a) of this section and in section 907, an institution may establish a branch after the effective date of this act only in the same county in which its principal place of business is located or in a county contiguous thereto, and only upon compliance with the following requirements:

* * *

(ii) the institution, in the case of a bank, a bank and trust company or a trust company, shall have, in addition to the minimum capital and surplus required under sections 1102 and 1103, [the] *such* additional amounts of capital and surplus [required under section 906] *as may be required in the discretion of the department*, or in the case of a savings bank shall have at least the total of surplus, unallocated reserves and undivided profits required by the department or in the case of a private bank shall have at least the net worth required by the department,

* * *

Section 5. Section 906 of the act is repealed.

Section 6. Subsection (b) of section 907 and subsection (a) of section 1203 of the act are amended to read:

Section 907. Branches Outside Pennsylvania

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(b) An institution may maintain an office outside the states of the United States with the prior written approval of the department and subject to an agreement satisfactory to the department providing for the times, method and reimbursement of expenses of examination of such branch. *At any such branch, an institution shall have the power (without regard to other provisions of this act) to engage in any business or any activity permitted by applicable Federal law and regulations.*

Section 1203. Consideration for Shares

(a) Minimum requirements—Except in the case of a distribution of shares of the institution authorized by section 1303 or shares issued upon exchanges or conversions, shares of an institution may be issued only for cash in an amount, or for [the] assets [of another institution or of a national bank] with a value, which shall be at least:

(i) in the case of the issuance of common shares either:

(A) the par value of the shares if the surplus of the institution will be at least equal to its capital after the issuance of the shares, or

(B) the par value of the shares and such additional amount up to fifty percent of the par value of the shares as may be required to ¹provide surplus equal to capital after the issuance of the shares, or

(C) the par value of the shares and an additional amount equal to fifty percent of the par value of the shares if the surplus of the institution will not be at least equal to its capital after the issuance of the shares, and

in the case of a new institution, such additional amount as may be necessary to provide the expense fund required by section 1010(b)

(i) of this act; and

(ii) in the case of the issuance of preferred shares, the par value thereof.

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Section 7. This act shall take effect immediately.

¹ “provided” in original.

APPROVED—The 23rd day of July, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly
No. 199.

A handwritten signature in black ink, appearing to read "Joseph P. Kelley". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Secretary of the Commonwealth.