

No. 1980-51

AN ACT

HB 1805

Amending the act of November 30, 1965 (P.L.847, No.356), 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," further providing for variable rate and alternative type mortgages, additional means of appraisal, secondary mortgages, clarification of late charges and deletion of equal payment requirements; providing for interest rates related to the discount rate of the Federal reserve banks; elimination of reference to Employes' Mutual Banking Association; increased reserves on deposits of mutual savings banks; authority to charge interest on fifteen day grace period of loan; expansion of authority to own treasury stock; and revising restrictions on officer and employe loans.

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

Section 1. Clause (n) of section 102, act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965," is repealed.

Section 2. Clauses (r) and (t) of section 102, subsection (a) of section 106 and subsections (a) and (d) of section 107 of the act are amended 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:

* * *

(r) "Institution"—an incorporated institution *or* a private bank [or an employes' mutual banking association], except where the definition of the word stated at the beginning of the chapter in which it is used either gives a less-inclusive meaning to the word or specifically includes a national bank.

* * *

(t) "Private bank"—an individual, partnership or unincorporated association [(other than an employes' mutual banking association)]

authorized as a private bank under the Banking Code of 1933 to engage in the business of banking in this Commonwealth on the effective date of this act and an individual, partnership or unincorporated association which receives authority, pursuant to this act, to continue in the business of banking as a private bank.

* * *

Section 106. Corporations Authorized to Act as Fiduciary

(a) Restriction of domestic corporations—No corporation existing under the laws of this Commonwealth may lawfully act as fiduciary except:

(i) a bank and trust company, a trust company and, to the extent provided in this act, a savings bank,

(ii) a non-profit corporation,

(iii) an incorporated institution or other corporation, to the extent that it executes a trust for its own use, or for the benefit of its own employes or for a purpose in connection with its business,

(iv) a corporation to the extent it engages in liquidating and winding-up the business and affairs of another corporation, other than an incorporated institution, for the benefit of the creditors and shareholders of such other corporation, and

(v) an association to the extent it acts as a trustee, as authorized by the **[Building and Loan Code] act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967,"** under a trust plan or instrument which satisfies the requirements of the Self-employed Individuals Tax Retirement Act.

* * *

Section 107. Accounting Rules; Accounting and Bookkeeping Services

(a) Accounting basis—An institution may maintain its books of account on a cash or accrual basis, as determined by its board of directors or trustees in the case of an incorporated institution[**, an employes' mutual banking association**] and a private bank which has such a board and by the owner or partners in the case of any other private bank.

* * *

(d) Accounting and bookkeeping service agreements—**[An] Whenever an institution may [not] cause to be performed, by contract or otherwise accounting or bookkeeping services for itself, whether on or off its premises, [unless assurances satisfactory to the department are furnished to the department by both the institution and the person performing such services that] the performance thereof will be subject to regulation and examination by the department to the same extent as if such services were being performed by the institution itself on its own premises. The institution shall notify the department of the existence of a service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.** For the purpose of this subsection (d), "services" shall

mean clerical, bookkeeping, accounting, statistical and other functions of the type covered by the Bank Service Corporation Act.

* * *

Section 3. Subsection (c) of section 309 of the act, amended July 30, 1975 (P.L.108, No.56), is amended to read:

Section 309. Installment Loans (Including Revolving Credit Plans)

* * *

(c) Term—The term within which all loans which at any time have been made under a revolving credit plan shall become due shall be ten years from the date of the last loan made under the plan. The term of any other installment loan shall be a period not in excess of **[one hundred nineteen months] *one hundred twenty months and fifteen days*** calculated from the **[payment date of] *time of making the loan.*** **[the] *The*** first installment **[which]** shall be scheduled no longer than forty-five days after the time of making the loan. The aggregate period for which the final maturity of any loan may be extended shall be six months.

* * *

Section 4. Subsections (a), (d) and (e) of section 310 of the act, subsections (a) and (e) amended September 27, 1973 (P.L.251, No.72), and clause (iii) of subsection (d) amended November 27, 1968 (P.L.1104, No.345), are amended and section 310 is amended by adding subsections to read:

Section 310. Real Estate Loans

(a) Permissible loans; maximum amount and term—An institution may, subject to the requirements of this section, make or acquire a loan secured by a lien on real estate (including a lease-hold) located in any state or the District of Columbia, in a dependency or insular possession of the United States or in the Commonwealth of Puerto Rico, in an amount and for a term not to exceed:

(i) in the case of improved real estate, including farm land:

(A) two-thirds of the value for ten years, if unamortized, or

(B) four-fifths of the value for thirty years, if the terms of the loan require substantially equal payments at successive intervals of not more than one year each and in an amount sufficient to pay all principal of and interest on the loan within the term of the loan, except that *a loan to a commercial or industrial borrower is exempted from the requirement of substantially equal payments and* the date of the initial payment on a loan to **[a commercial or industrial] *such*** borrower may be deferred for a period not in excess of three years from the date of the loan; or

(C) ninety percent of the value of a one family residential property for thirty years, in an amount not to exceed forty thousand dollars (\$40,000), or such larger amount as the department may permit by regulation, subject to the same requirements set forth in clause (B); or

(D) ninety-five percent of the value for thirty years, if that principal portion of the loan in excess of seventy-five percent of the value is made in reliance upon a private company mortgage insurance or guarantee acceptable to the Department of Banking, subject to the same requirements set forth in clause (B); or

(ii) in the case of unimproved real estate to be acquired or developed with the proceeds of the loan:

(A) two-thirds of the value for three years, or

(B) three-fourths of the value for five years, when utilities, roads or streets necessary for the development of such real estate have been completed.

* * *

(d) Requirements in connection with loans—The requirements for a loan subject to this section shall be:

(i) the loan shall be evidenced by a bond, note or other obligation and the lien securing such loan shall be obtained by a mortgage, deed of trust or judgment;

(ii) the lien shall be a first lien (except for a lien of taxes, assessments or charges which are not yet due or which are payable without penalty) unless all prior liens are held by the institution and the aggregate of all loans by the institution secured by liens on the real estate satisfy all other requirements of this section pertaining to such loans;

(iii) the value of the real estate shall be determined *either by a real estate appraiser qualified in the state where the real estate is located who shall inspect the real estate and state its value to the best of his judgment in a written report signed by him which must be preserved in the records of the institution or in the alternative* by an appraisal signed by two reputable persons who shall:

(A) be directors of the institution or selected in a manner authorized by the directors,

(B) be familiar with real estate values in the vicinity where the real estate is located, and

(C) inspect the real estate and state its value to the best of their judgment in a written report which must be preserved in the records of the institution. In the event the appraisers arrive at different conclusions as to the value of the real estate, it shall be permissible to use the average of their two appraisals to determine the value of the real estate: Provided, however, That each valuation is stated in the report;

(iv) Insurance against loss from fire on all buildings on the real estate which are included in the appraised value, issued by insurers acceptable to the institution and authorized to do business where the real estate is located and in form and amount satisfactory to the institution, shall be maintained during the term of the loan by or at the expense of the borrower, except that the institution may at its own expense maintain such insurance covering only its interest as lender; and

(v) the borrower shall pay all expenses in connection with the loan for title insurance, searches and certificates, appraisal fees and fees for preparation and recording of documents.

(vi) an institution may make a single delinquency charge for each payment in arrears for a period of more than fifteen days other than by reason of acceleration or by reason of a delinquency on a prior payment.

(e) Excepted loans—The restrictions and requirements of this section shall not apply to:

(i) a loan guaranteed at least to the extent of twenty percent thereof, or for which a written commitment for such guarantee has been issued, by the Veterans Administration pursuant to the Veterans' Benefits Act;

(ii) a loan insured, or for which a written commitment to insure has been issued, pursuant to national housing legislation;

(iii) a loan insured, or for which a written commitment to insure has been issued, by the Farmers Home Administration pursuant to the Consolidated Farmers Home Administration Act;

(iv) a loan made pursuant to the Small Business Act;

(v) an investment security acquired pursuant to section 307; or

(vi) a loan in connection with which the institution takes a real estate lien as security in the exercise of banking prudence but as to which it is relying for repayment on:

(A) the general credit of the obligor or of an installment buyer or of a lessee of the real estate,

(B) collateral other than the real estate lien,

(C) a guaranty, or an agreement to take over or purchase the loan in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans, or

(D) an agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of five years from the date of the loan and there is a certificate of reliance setting forth the applicable facts.

(vii) loans made pursuant to any secondary mortgage law of the Commonwealth.

* * *

(f.1) Variable interest rate loans—The requirements with respect to payments under subsection (a)(i) of this section shall not be applicable in the case of a variable interest rate loan permitted by the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law.

(f.2) Alternative payment terms—An institution may permit exceptions to the requirements as to time and amount of payments applicable under subsection (a)(i) as to:

(i) one payment in a calendar year and an aggregate of five payments during the term of the loan, the aggregate amount of which shall be added either to other regular payments or to the final payment of the loan; or

(ii) a difference in the amount of substantially equal payments at the intervals occurring during the first one-quarter of the total term of the loan from the amount of substantially equal payments at the intervals occurring during the remainder of the term; or

(iii) in a case in which the principal amount of the loan is distributed periodically to the borrower, a requirement of payment of interest only from the dates of such distributions of the principal amount and a requirement for the payment of principal and interest, commencing not more than three months after the last distribution, in substantially equal payments at successive intervals of not more than one year each and sufficient to pay all principal of and interest on the loan within ten years after the date of commencement of such payments.

* * *

Section 5. The act is amended by adding a section to read:

Section 318. Alternate Basis for Interest Charges by Institutions

An institution may make a charge for a loan at a rate, for the term of the loan, not in excess of the discount rate in effect, at the time the loan is made, at the Federal Reserve Bank of the Federal Reserve District in which the institution is located plus five percent. The basis for charging interest under this section is an optional alternative to other provisions of this act and other statutes authorizing rates of interest or charges for credit and is not limited by any of such other provisions.

Section 6. Subsections (a), (d) and (e) of section 505 of the act, subsections (a) and (e)¹ amended September 27, 1973 (P.L.251, No.72), and clause (iii) of subsection (d) amended November 27, 1968 (P.L.1104, No.345), are amended and section 505 is amended by adding subsections to read:

Section 505. Real Estate Loans

(a) Permissible loans; maximum amount and term—A savings bank may, subject to the requirements of this section, make or acquire a loan secured by a lien on real estate (including a leasehold) located in any state or the District of Columbia, in a dependency or insular possession of the United States or in the Commonwealth of Puerto Rico, in an amount and for a term not to exceed:

(i) in the case of improved real estate, including farm land:

(A) two-thirds of the value for ten years, if unamortized; or

(B) four-fifths of the value for thirty years, if the terms of the loan require payments which are substantially equal except for the last payment at successive intervals of not more than one year each and in an amount sufficient to pay all principal of and interest on the loan within thirty years, except that *a loan to a*

¹ The amendment to subsection (e) overlooked the amendment of December 13, 1979 (P.L.527, No.116)

commercial or industrial borrower is exempted from the requirement of substantially equal payments and the date of the initial payment on a loan to [a commercial or industrial] such borrower may be deferred for a period not in excess of three years from the date of the loan; or

(C) ninety percent of the value of a one family residential property for thirty years, in an amount not to exceed forty thousand dollars (\$40,000), unless the department by regulation approves the granting of loans under this subsection in greater amounts, subject to the same requirements set forth in clause (B); or

(D) ninety-five percent of the value for thirty years, if that portion of the loan in excess of seventy-five percent of the value is made in reliance upon a private company mortgage insurance or guarantee acceptable to the Department of Banking, subject to the same requirements set forth in clause (B); or

(ii) in the case of unimproved real estate to be acquired or developed with the proceeds of the loan:

(A) two-thirds of the value for three years, or

(B) three-fourths of the value for five years, when utilities, roads or streets necessary for the development of such real estate have been completed.

* * *

(d) Requirements in connection with loans—The requirements for a loan subject to this section shall be:

(i) the loan shall be evidenced by a bond, note or other obligation and the lien securing such loan shall be obtained by a mortgage, deed of trust or judgment;

(ii) the lien shall be a first lien (except for a lien of taxes, assessments or charges which are not yet due or which are payable without penalty) unless all prior liens are held by the savings bank and the aggregate of all loans by the savings bank secured by liens on the real estate satisfy all other requirements of this section pertaining to such loans;

(iii) the value of the real estate shall be determined *either by a real estate appraiser qualified in the state where the real estate is located who shall inspect the real estate and state its value to the best of his judgment in a written report signed by him which must be preserved in the records of the institution, or in the alternative by an appraisal signed by two reputable persons who shall:*

(A) be trustees of the savings bank or selected in a manner authorized by the trustees,

(B) be familiar with real estate values in the vicinity where the real estate is located, and

(C) inspect the real estate and state its value to the best of their judgment in a written report which must be preserved in the records of the savings bank. In the event the appraisers arrive at

different conclusions as to the value of the real estate, it shall be permissible to use the average of their two appraisals to determine the value of the real estate: Provided, however, That each valuation is stated in the report.

(iv) insurance against loss from fire on all buildings on the real estate which are included in the appraised value, issued by insurers acceptable to the savings bank and authorized to do business where the real estate is located and in form and amount satisfactory to the savings bank, shall be maintained during the term of the loan by or at the expense of the borrower, except that the savings bank may at its own expense maintain such insurance covering only its interest as lender; and

(v) the borrower shall pay all expenses in connection with the loan for title insurance, searches and certificates, appraisal fees and fees for preparation and recording of documents.

(vi) a savings bank may make a single delinquency charge for each payment in arrears for a period of more than fifteen days other than by reason of acceleration or by reason of a delinquency on a prior payment.

(e) Excepted loans¹—The restrictions and requirements of this section shall not apply to:

(i) a loan secured by a lien on a dwelling for not more than four families, guaranteed at least to the extent of twenty percent thereof, or for which a written commitment for such guarantee has been issued, by the Veterans Administration pursuant to the Veterans' Benefits Act,

(ii) a loan secured by a lien on business property, guaranteed at least to the extent of one-third thereof, or for which a written commitment for such guarantee has been issued, by the Veterans Administration pursuant to the Veterans' Benefits Act,

(iii) a loan insured, or for which a written commitment to insure has been issued, pursuant to national housing legislation,

(iv) a loan insured, or for which a written commitment to insure has been issued, by the Farmers Home Administration pursuant to the Consolidated Farmers Home Administration Act,

(v) an investment security, or

(vi) a loan which the savings bank is authorized to make and in connection with which it takes a real estate lien as security in the exercise of prudence but as to which it is relying for repayment on:

(A) the general credit of the obligor or of an installment buyer or of a lessee of the real estate,

(B) collateral other than the real estate lien,

(C) a guaranty, or an agreement to take over or purchase the loan in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans, or

¹The amendment to subsection (e) overlooked the amendment of December 13, 1979 (P.L.527, No.116)

(D) an agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of five years from the date of the loan and there is a certificate of reliance setting forth the applicable facts.

(vii) loans made pursuant to any secondary mortgage law of the Commonwealth.

* * *

(g) Variable interest rate loans—The requirements with respect to payments under subsection (a)(i) of this section shall not be applicable in the case of a variable interest rate loan permitted by the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law.

(h) Alternative payment terms—A savings bank may permit exceptions to the requirements as to time and amount of payments applicable under subsection (a)(i) as to:

(i) one payment in a calendar year and an aggregate of five payments during the term of the loan, the aggregate amount of which shall be added either to other regular payments or to the final payment of the loan; or

(ii) a difference in the amount of substantially equal payments at the intervals occurring during the first one-quarter of the total term of the loan from the amount of substantially equal payments at the intervals occurring during the remainder of the term; or

(iii) in a case in which the principal amount of the loan is distributed periodically to the borrower, a requirement of payment of interest only from the dates of such distributions of the principal amount and a requirement for the payment of principal and interest, commencing not more than three months after the last distribution, in substantially equal payments at successive intervals of not more than one year each and sufficient to pay all principal of and interest on the loan within ten years after the date of commencement of such payments: Provided, That in such case the priority of the lien of any distribution and all other amounts secured by the mortgage shall date from the recording of the mortgage whether or not the mortgagee was legally obligated to make such distribution of payment.

Section 7. Sections 601, 701 and 703 of the act are amended to read:

Section 601. Application of Chapter

This chapter shall apply to, and the word "institution" in this chapter shall mean:

(a) a bank, a bank and trust company, a savings bank, a private bank[, an employes' mutual banking association] and, to the extent permitted by applicable law, a national bank located in this state—for the purpose of all of the provisions of this chapter, and

(b) a trust company—for the purpose of the provisions of this chapter concerning safe-deposit agreements and for the purpose of section 610.

Section 701. Application of Chapter

This chapter shall apply to, and the word “institution” in this chapter shall mean, a bank, a bank and trust company, a savings bank *and* a private bank [and an employees’ mutual banking association].

Section 703. Requirement of Reserve Fund

(a) An institution which is not a member of the Federal Reserve System shall maintain at all times a reserve fund in an amount fixed by regulation of the department:

(i) in the case of a savings bank, *in the same amount fixed for demand deposits of other institutions for all deposits of the savings bank subject to withdrawal by negotiable or transferable instruments of withdrawal and* not in excess of six percent and not less than three percent of *the total of other* deposits, and

(ii) in the case of any other institution, not in excess of the aggregate of twenty-two percent of demand deposits and six percent of other deposits and not less than the aggregate of seven percent of demand deposits and three percent of other deposits.

The amount of the required reserve for each day shall be computed on the basis of average daily deposits covering such bi-weekly or shorter periods as shall be fixed by regulation of the department.

(b) An institution which is a member of the Federal Reserve System shall maintain at all times a reserve fund in accordance with the requirements applicable to a member bank under the laws of the United States.

Section 8. Clause (vii) of subsection (a) of section 802 of the act is repealed.

Section 9. Section 908 of the act, added October 5, 1978 (P.L.1131, No.265), is amended to read:

Section 908. Branches Acquired from the Receiver of a Closed Institution

Any institution or national bank whose principal place of business is located in Pennsylvania may maintain as a branch any office which it acquires from the secretary, or public body of the United States, as receiver, in conjunction with an assumption of deposit liabilities of a closed institution *or national bank* whether in connection with a purchase of assets, through a merger or consolidation or otherwise, without regard to the location of the principal place of business of the acquiring institution *or national bank*. A branch office so acquired may be relocated within the same county but shall not be moved to a new location in a contiguous county unless that county is also contiguous to the county of the principal place of business of the acquiring institution *or national bank*.

Section 10. Subsection (a) of section 1306 and section 1413 of the act are amended to read:

Section 1306. Redemption and Acquisition of Preferred Shares;
Statement of Reduction of Authorized Shares

(a) Unless otherwise provided in its articles, an institution may by resolution of its board of directors and with the prior approval of the department redeem or otherwise acquire preferred shares if immediately after the redemption or other acquisition surplus would be at **[last] least** equal to the amount of capital. In determining whether or not to give its approval under this subsection (a), the department shall give primary consideration to the question whether or not, after the cancellation of the preferred shares, the capital accounts of the institution would be adequate to support its anticipated deposit volume. *The provisions of this section do not restrict or otherwise affect the power of an institution with prior approval of the department to purchase (subject to the requirements of this act as to capital and surplus), hold and own its shares other than preferred shares.*

* * *

Section 1413. Prohibitions Applicable to Directors, Trustees, Officers, Employes and Attorneys

(a) No director, trustee, officer, employe or attorney of an institution or of an affiliate of the institution shall:

- (i) receive anything of value for procuring or attempting to procure any loan from or investment by the institution,
- (ii) overdraw his deposit account in the institution, *except in accordance with an automatic system for transfer of funds from another account or a written preauthorized interest-bearing extension of credit that specifies a method of repayment,* or
- (iii) purchase, or directly or indirectly be interested in purchasing, from the institution for less than its face value any promissory note or other evidence of indebtedness issued by the institution.

(b) A violation of this section shall be subject to the penalty provisions of this act.

Section 11. Section 1415 of the act, subsection (b) amended July 30, 1975 (P.L.108, No.56), is amended to read:

Section 1415. Loans to, and Agreements for the Payment of Money of, Directors, Trustees *and Executive Officers* **[and Employes]** of Institutions and Affiliates

(a) Authorized transactions—An institution shall not grant to a director, trustee *or executive officer* **[or employe]** a loan, or acquire an agreement for the payment of money on which he is liable, except one which either:

- (i) has been approved by the prior affirmative vote, or written consent filed with the secretary of the institution, of a majority of all the directors or trustees or members of an executive or other committee, other than a director or member of a committee having a direct or indirect personal interest in the transaction, or

(ii) is secured by deposits in the institution or cash surrender value of life insurance in an amount equal to, or by other collateral with a market value of at least twenty percent more than, the amount of the loan or of the agreement for the payment of money.

(b) Limitations as to **[salaried] executive officers [or employes]** of the institution or an affiliate—An institution shall not make a loan to **[a salaried] an executive officer [or employe]** of the institution or of an affiliate of the institution, or acquire an agreement for the payment of money on which he is liable, in an amount in excess of ten thousand dollars (\$10,000) exclusive of interest and charges, except one which either:

(i) is secured by deposits in the institution or cash surrender value of life insurance in an amount equal to, or by other collateral with a market value of at least twenty percent more than, the amount of the loan or agreement for the payment of money,

(ii) is secured by a mortgage on the home of such **executive officer [or employe]**,

(iii) is guaranteed, or is one for which a written commitment to guarantee has been made, by the Veterans Administration pursuant to the Veterans' Benefits Act,

(iv) is insured, or is one for which a written commitment to insure has been issued, pursuant to national housing legislation, or

(v) is an extension of credit not at any time exceeding **[ten thousand dollars (\$10,000)] twenty thousand dollars (\$20,000)** for the purpose of financing the education of a child or children of **[a salaried] an executive officer [or employe]**.

The aggregate of all loans and extensions of credit to one **executive officer [or employe]** and of all agreements for the payment of money on which he is liable shall not at any time exceed ten percent of the aggregate of surplus, undivided profits, unallocated reserves and subordinated securities in the case of a savings bank and ten percent of the aggregate of capital, surplus and capital securities in the case of any other institution.

(c) *Limited definition*—*The term "executive officer" for the purpose of this section shall be defined by regulation of the Department of Banking.*

[(c)] (d) Penalties—A violation of this section shall be subject to the penalty provisions of this act.

Section 12. Section 1801, the heading of Chapter 19, and sections 1901 and 1902 of the act are amended to read:

Section 1801. Application of Chapter

This chapter shall apply to, and the word "institution" in this chapter shall mean, a bank, a bank and trust company and a trust company for the purpose of all of the provisions of this chapter and also a savings bank *and* a private bank **[and an employes' mutual banking association]** for the purpose of sections 1808 and 1809 of this chapter.

CHAPTER 19
PRIVATE BANKS [AND EMPLOYES' MUTUAL
BANKING ASSOCIATIONS]

Section 1901. Application of Chapter

This chapter shall apply to[, and the words "unincorporated institution" in this chapter shall mean,] a private bank [and an employees' mutual banking association].

Section 1902. Continuation of and Changes in Existing Private Banks [and Employes' Mutual Banking Associations]

(a) Continuation—Any individual or partnership lawfully engaged upon the effective date of this act in conducting the business of a private bank[, and any unincorporated association so engaged in conducting the business of an employes' mutual banking association,] may continue to do so but no new private bank [or employes' mutual banking association] shall hereafter be established.

(b) Admission of new partners in a private bank—A partnership which owns and operates a private bank may admit a new partner, and an individual private banker may form a partnership for conducting the private bank with one or more other individuals, but if any new partner is a limited partner, or if he takes part in the conduct of the business of the private bank, it shall procure a new certificate of authorization.

(c) Death or withdrawal of partner in a private bank—Neither the death nor withdrawal of a partner in a private bank shall change its status if one or more of the remaining partners elect to continue its business and assume all of its obligations, but if the deceased or withdrawing partner had taken part in the conduct of the business or if its net worth is reduced as a result of such death or withdrawal the private bank shall procure a new certificate of authorization.

(d) Death of individual private banker—In case of the death of a private banker who had conducted a private bank individually, his personal representative shall forthwith liquidate the private bank following the order of distribution established by section 1809, unless the department shall take possession of the private bank and the Secretary of Banking, as receiver, shall liquidate it. If the personal representative shall not begin or continue the liquidation promptly and in a reasonable manner the department shall take possession from the personal representative and the secretary shall liquidate the private bank.

[e) Changes in employes' mutual banking associations—An employes' mutual banking association may admit new members in the manner set forth in its articles of association or by-laws. Neither the death nor withdrawal of a member shall affect the status of the association, except that in case of the death or withdrawal of all of the members of the association, the department shall take possession of the association and the Secretary of Banking shall liquidate it.]

Section 13. Section 1909 of the act is repealed.

Section 14. Sections 1910, 1911, 1912 and 1914 of the act are amended to read:

Section 1910. Directors, Officers, Employes and Attorneys of
[Unincorporated Institutions] Private Banks

(a) Board—The business and affairs of a private bank may be[, and those of an employes' mutual banking association shall be,] managed by a board of directors. The partnership agreement[, the articles of association] or the by-laws of such [unincorporated institution] *private bank* may grant the board of directors such powers, prescribe such procedures, and impose such restrictions and limitations upon the board [and upon the individual members thereof] as the partners in the private bank [or the members of the association] may agree upon with respect to all matters that are dealt with as to incorporated institutions by chapter 14 of the act or which are normally provided for by the articles or by-laws of an incorporated institution.

(b) Officers—[An unincorporated institution] *A private bank* may have such officers, who shall have such functions and authority, as may be specified in its partnership agreement [or articles of association] or by-laws.

(c) Bonds—Each officer and employe of [an unincorporated institution] *a private bank* and any director who is authorized to handle money or negotiable assets shall be bonded, and the [unincorporated institution] *private bank* shall pay the cost of such bond. The form, amount and surety of such bonds shall be such as is approved by the governing body of the [unincorporated institution] *private bank* but the department may require an additional amount or new or additional surety.

(d) Responsibility of directors and officers—Directors and officers of [an unincorporated institution] *a private bank* shall discharge the duties of their respective positions in good faith and with that diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.

Section 1911. Recording Powers of Attorney

[An unincorporated institution] *A private bank* shall, in the manner provided by section 1412 of this act with respect to incorporated institutions, designate the individual or individuals who are authorized to make entries of record affecting mortgages.

Section 1912. Prohibitions Applicable to Directors, Trustees, Officers, Employes and Attorneys

(a) No director, trustee, officer, employe or attorney of [an unincorporated institution] *a private bank* or of an affiliate of the [institution] *private bank* shall:

(i) receive anything of value for procuring or attempting to procure any loan from or investment by the [institution] *private bank*,

(ii) overdraw his deposit account in the [institution] *private bank*,
or

(iii) purchase,, or directly or indirectly be interested in the purchase, from the [institution] *private bank* for less than its face value of any promissory note or other evidence of indebtedness issued by the [institution] *private bank*.

(b) A violation of this section shall be subject to the penalty provisions of this act.

Section 1914. Voluntary Dissolution of Private Bank [or Employees' Mutual Banking Association]

(a) Plan of dissolution—[An unincorporated institution] *A private bank* may elect to dissolve voluntarily upon:

(i) adoption by an individual private banker or the partners in a private bank[, or by at least two-thirds of the members of an employees' mutual banking association,] of a plan of dissolution providing for the full payment of its liabilities, and

(ii) approval of such plan by the department after application for approval in a form prescribed by the department accompanied by a copy of the plan.

(b) Certificate of election for voluntary dissolution—Immediately after adoption and approval of a plan of dissolution, the [unincorporated institution] *private bank* shall deliver to the department a certificate of dissolution which shall be signed by the individual private banker or by two of the partners [or members of the unincorporated institution] and which shall contain:

(i) the name of the [unincorporated institution] *private bank*,

(ii) the location and post office address of its principal place of business,

(iii) the name and address of the individual private banker or of each of the partners in the private bank[, or of each of the officers and directors of the employees' mutual banking association], and

(iv) a statement of the manner in which the plan of dissolution was adopted.

(c) Filing of certificate—If the Department of Banking has approved the plan of dissolution and if the certificate satisfies the requirements of this act and if all applicable fees and charges have been paid, the department shall issue to the [unincorporated institution] *private bank* the approved certificate of election to dissolve and shall make and retain a copy thereof.

(d) Effect of certificate—Upon the issuance of an approved certificate of an election to dissolve, the [unincorporated institution] *private bank* shall cease to carry on its business except insofar as may be necessary for the proper winding up thereof.

(e) Winding up—The [unincorporated institution] *private bank* shall give notices, pay claims, dispose of unclaimed property, and make reports to the department in the same manner as an incorporated institution in voluntary dissolution is required to do by section 1805 of this act.

(f) Possession by department—If during the course of dissolution proceedings it appears that the assets of the **[unincorporated institution] private bank** will not be sufficient to discharge its liabilities, the department may take possession of the business and property of the institution and complete the dissolution in accordance with the provisions of the Department of Banking Code.

(g) Articles of dissolution—When all the liabilities of the **[unincorporated institution] private bank** have been discharged and all its remaining assets have been distributed to the persons entitled thereto, articles of dissolution shall be signed by the individual private banker or by two of the partners **[or members of the institution]** and shall contain statements substantially similar to those required in articles of dissolution of an incorporated institution.

(h) Certificate of dissolution—The articles of dissolution shall be delivered to the department. If all applicable fees, charges and taxes required by law have been paid, the department shall immediately issue to the **[unincorporated institution] private bank** a certificate of dissolution as of the date and time of filing with the approved articles of dissolution attached thereto and shall make and retain a copy of such certificate and articles. Upon the filing of the articles of dissolution, the existence of the **[unincorporated institution] private bank** shall cease.

Section 15. Sections 4, 6 and 7 of this act shall take effect in 30 days; the remainder of this act shall take effect immediately.

APPROVED—The 21st day of May, A. D. 1980.

DICK THORNBURGH