

No. 1982-94

AN ACT

HB 2074

Amending the act of December 14, 1967 (P.L.746, No.345), entitled "An act relating to and regulating the business of savings associations heretofore designated under other acts and special charters variously as building and loan associations and savings and loan associations; defining the rights, powers, duties, liabilities, and immunities of such associations; affecting persons engaged in the business of savings associations; affecting the members, account holders and borrowers of such associations; affecting Federal savings and loan associations whose principal office is located in the Commonwealth; prohibiting the transaction of business in this Commonwealth by foreign savings associations; conferring powers and imposing duties on certain departments and officers of the Commonwealth and on the courts, recorders of deeds; creating a Savings Association Board and defining its powers and duties; prohibiting certain actions and imposing penalties, and repealing certain acts," providing for associations¹ to become permanent reserve fund stock associations; providing for² Statewide savings bank branches and further providing for interest rates, finance charges or terms of loans.

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

Section 1. Clauses (3) and (17) of section 102, act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967," are amended and clauses are added to read:

Section 102. Definitions.—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:

* * *

(3) "Association," any *mutual or permanent reserve fund stock* savings association organized under this act and includes also any building and loan association or savings and loan association heretofore organized under or by virtue of any other act or law of this Commonwealth.

* * *

(4.1) "*Authorized capital*," *the permanent reserve fund stock authorized in an association's articles.*

* * *

(5.1) "*Capital*," *the sum of the par value of the permanent reserve fund stock of a savings association issued and outstanding.*

(5.2) "*Capital surplus*," *the amount paid to an association for the purchase of permanent reserve fund stock in excess of its par value.*

* * *

(17) "Member," a person holding a savings account of [an] *a mutual association, a person owning one or more shares of permanent reserve fund stock of a permanent reserve fund stock association* and a person borrowing on the security of a mortgage or purchasing property upon which a mortgage lien is held by [an] *a mutual association.* A joint and

¹"association" in original.

²"for" omitted in original.

survivorship relationship whether savers or borrowers constitute a single membership.

* * *

(19.1) "Permanent reserve fund stock," the shares of stock issued by an association whose articles permit the issuance of stock which will share in the earnings of the association and for which there is set up from the money paid to the association for such stock a capital surplus. The total amount paid to the association for such stock and all earnings credited to it shall be a secondary fund for securing the payment of the savings liability of the association.

* * *

(25.1) "Shares," the units into which the permanent reserve fund stock is divided.

(25.2) "Subscriber," a person who subscribes to shares of the permanent reserve fund stock.

* * *

Section 2. Subsection (b) of section 202 and section 203 of the act are amended to read:

Section 202. Prohibition of Promoters' Fees.—* * *

(b) A majority of the incorporators shall file with the department at the time of the filing of the articles an affidavit:

(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the association. *If the association is a permanent reserve fund stock association there shall also be stated any expense in connection with the subscription for its shares and sale of its shares, if any,* and

(2) Stating that no fee, compensation or commission prohibited by subsection (a) of this section has been paid or incurred.

* * *

Section 203. Articles of Incorporation.—(a) Articles of incorporation shall be signed and acknowledged by at least five of the incorporators.

(b) The articles shall set forth, in the English language:

(1) The name of the association,

(2) The county in which its first principal place of business is to be located,

(3) A precise and accurate statement of the purpose or purposes for which it is organized, as well as a statement that it is organized under the provisions of this act,

(4) The term for which it is to exist, which may be perpetual,

(5) The name, occupation, citizenship, place of residence, and post office address of each incorporator,

(6) The name, occupation, citizenship, place of residence, [and] post office address, and term of office of each of the first directors,

(7) The aggregate number of permanent reserve fund shares which the association shall have authority to issue. If the articles provide for the issuance of permanent reserve fund stock it shall specify the par value of

each share, the number of shares and the kinds or classes which the association is authorized to issue. There shall also be specified the capital surplus to be contributed by each subscriber to permanent reserve fund stock. All shares shall contribute a pro rata proportion of the capital surplus. The authorized capital may be in any amount but may not be less than is required by the department.

Section 3. Subsection (a) of section 206 of the act, clause (6) amended November 26, 1978 (P.L.1397, No.329), is amended to read:

Section 206. Approval of Proposed Association by Department.—

(a) Upon receipt of an application for approval of a proposed association the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles and supporting items satisfy the requirements of this act,

(2) The convenience and needs of the public will be served by the proposed association,

(3) The population density or other economic characteristics of the area primarily to be served by the association afford reasonable promise of adequate support for the association,

(4) The character and fitness of the incorporators, of the directors and of the proposed officers are such as to command confidence of the community and to warrant the belief that the business of the association will be honestly and efficiently conducted,

(5) There has not been nor will there be any violation of section 202,

(6) The amount of savings, which will be attracted to the association, shall be adequate properly to operate the association with safety to prospective members, and such savings will be insured by the Federal Savings and Loan Insurance Corporation or by any other public or private corporation authorized by law to insure accounts of savings associations and approved by the Department of Banking, [and]

(7) The proposed association will have sufficient personnel with adequate knowledge and experience to administer the business of the association, and

(8) *In the case of a permanent reserve fund stock association, the capital and capital surplus thereof are adequate in relation to the amount and character of the anticipated business of the association.*

* * *

Section 4. The act is amended by adding a section to read:

Section 212. Acquisitions and Offers to Acquire Shares of Permanent Reserve Fund Stock of Association.—(a) The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the following meanings:

(1) **“Acquire,”** *obtaining legal or beneficial ownership of shares, or voting rights of shares, whether obtained directly or indirectly, through an intermediary or otherwise; beneficial ownership by a person shall be deemed to include ownership by another person which controls, is controlled by or is under common control with such person and to include*

ownership by a spouse or member of the family of such person; the acquisition of options, warrants and rights to subscribe for, or to purchase, shares and the acquisition of rights to obtain shares through conversion or exchange shall be deemed an acquisition of such shares.

(2) *“Control,” the power to elect a majority of the board of directors of an institution or corporation.*

(3) *“Institution,” a permanent reserve fund stock association.*

(4) *“Proposal to acquire,” any offer or attempt to buy or solicitation of an offer to sell or other attempt or offer to acquire by any means, directly or indirectly, through an intermediary or otherwise.*

(b) *Except as provided in subsection (i), it shall be unlawful, without the prior written approval of the department pursuant to this section, for any person to acquire, or to make a proposal to acquire, shares of an institution or shares of a corporation which controls an institution if the aggregate number of shares held after such acquisition would total more than ten percent of the outstanding shares of such institution or corporation, whether or not any prior acquisition had been approved by the department pursuant to this section.*

(c) *If the approval of the department is required under subsection (b), a person who intends to acquire, or to make a proposal to acquire, shares of an institution or of a corporation which controls an institution shall:*

(1) *File an application for approval in such form as the department may prescribe,*

(2) *Deliver to the department from time to time such other information as the department may require with such certification of financial information and such verification by oath or affirmation of other data as the department may specify,*

(3) *Pay such investigation fee as the department may specify, and*

(4) *Except in the case of an applicant which is a domestic corporation or a foreign corporation qualified to do business in Pennsylvania, deliver to the department a written consent to service of process in any action or suit arising out of or in connection with the proposed acquisition through service of process on the Secretary of Banking.*

(d) *Upon receipt of an application for approval and other items required under subsection (c) the department shall conduct an investigation to determine whether the acquisition, its purposes and probable effects would be consistent with the purposes of this act set forth in section 103(a), whether the applicant, or its directors and officers in the case of a corporation, and any proposed new officers or directors of the institution involved would satisfy the test for incorporators, directors and officers of a new institution under section 206(a), and whether the proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts or shareholders of the institution or corporation involved. As part of its investigation, the department shall transmit to the institution or the corporation whose shares are proposed to be acquired a copy of the application and all other*

information received from the applicant, except such information which the department determines should be kept confidential, for the purpose of receiving such comments thereon as such institution or corporation shall transmit to the department upon its request.

(e) Within sixty days after receipt of an application under subsection (c) or within a longer period not in excess of thirty days after receipt from the applicant of additional information required by the department, the department shall approve or disapprove the proposed acquisition and give written notice of its decision to the applicant and the institution or corporation whose shares are proposed to be acquired. If the department approves a proposed acquisition which may result in a change of control of such institution or corporation it may impose conditions to be observed after such acquisition with respect to transactions between the institution involved and the applicant or affiliate of the applicant, with respect to dividends or distributions by such institutions, with respect to employe relations or with respect to such other matters as the department may deem advisable on the basis of the purposes of this act set forth in section 103(a). The decision of the department shall be subject to review by the Commonwealth Court in the manner provided by law.

(f) A proposal to acquire shares which is made to all or substantially all of the shareholders of an institution or a corporation which controls an institution shall, to the extent required by the department in approving the proposal, provide that the proposal will remain open for a specified minimum period of time, that shares may be withdrawn from deposit prior to the time the person making the proposal becomes bound to acquire them and that there will be pro rata acceptance of shares offered or deposited if they exceed the number proposed to be acquired.

(g) It shall be unlawful for any person directly or indirectly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading in connection with any acquisition of, or proposal to acquire, shares within the scope of this section or in any application or submission of information to the department under subsection (c).

(h) The enforcement and implementation of this section shall be subject to regulation by the department.

(i) No approval under this section shall be required for an acquisition or proposal to acquire shares in the case of either:

(1) An acquisition or proposal to acquire shares by the issuer thereof or by a person who at the time controls the institution or corporation whose shares are proposed to be acquired,

(2) A merger or consolidation which requires the approval of the department or the Federal Home Loan Bank Board,

(3) A transaction by a broker-dealer who does no more than perform the customary broker's function in transactions on a stock exchange or in the over-the-counter market, who receives no more than the customary broker's commission and who does not solicit, or arrange for the solicitation of orders, or

(4) A transaction of a type exempted by regulation of the department in the light of the purposes of this act set forth in section 103(a).

(j) (1) Any person who acquires or proposes to acquire shares of an institution or of a corporation which controls an institution in violation of this section or who violates subsection (g) shall be guilty of a misdemeanor and shall upon conviction be subject, in the case of an individual, to imprisonment for a period not exceeding five years or a fine not exceeding five thousand dollars (\$5,000), or both, and, in the case of any other person, to a fine not exceeding fifty thousand dollars (\$50,000).

(2) Any person who violates any provision of this section shall be liable to any institution or corporation or shareholder thereof damaged thereby and, in the discretion of the court, for punitive damages. The provisions of this section shall be enforceable in any administrative action, action or suit instituted by the department or by any such institution, corporation or shareholder to enjoin or restrain any violation or threatened violation of that section.

Section 5. Section 402 of the act, subsection (b) amended October 5, 1978 (P.L.1137, No.267), is amended to read:

Section 402. Change of Location of Office.—**[(a) An association with the prior written approval of the department may change the location of its principal place of business to a new location in the same county.]**

(b) An association with the prior written approval of the department and [an] any necessary amendment to its articles may change its principal place of business to a [contiguous county] location anywhere in Pennsylvania.

(c) An association may with the prior written approval of the department change the place of business of a branch to a [place located either within the county of its principal place of business or within a county contiguous thereto] new location in the same manner and subject to the same requirements and limitations as are prescribed by this act for the establishment of branches.

(d) An association may with the prior written approval of the department designate a branch office as its main office and the original main office may thereafter be conducted as a branch office. [Except as provided in section 405, no branches may be conducted which are not in a county contiguous to the county of the main office.]

(e) An association which has changed the place of business of a branch shall discontinue operation of the branch at the previous location immediately upon commencing operation of the branch at the new location.

(f) In the event a place of business becomes unavailable an association with the prior written approval of the department may temporarily or permanently change its place of business to another place [within the same county] in close proximity thereto.

Section 6. Section 403 of the act is amended to read:

Section 403. Authorization of New Branches.—(a) Upon a merger, consolidation or conversion of a Federal savings and loan association into a State association the resulting association may with the prior written approval of the department maintain as branches, in addition to its principal place of business, every office which was maintained prior to the merger or consolidation by the parties thereto or prior to the conversion by the Federal savings and loan association and which is located **[in the same county as the principal place of business of the resulting association or in a contiguous county] within Pennsylvania.**

(b) Except as provided in subsection (a) of this section, an association 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 in] anywhere in Pennsylvania upon compliance with the following requirements:**

(1) The proposed branch shall be authorized by resolution by its board of directors.

(2) If the location of the proposed branch is outside of the city, incorporated town, borough or township in which the principal place of business of the association is located, the association shall give notice of the filing of the application by advertisement in the county in which the proposed branch is to be located.

(3) The branch shall be approved by the department.

Section 7. Subsections (b) and (c) of section 404 of the act, subsection (c) repealed in part June 3, 1971 (P.L.118, No.6), are amended to read:

Section 404. Approval of Branch by Department.—* * *

[(b) The department may in its discretion disapprove an application by an association if the location of the proposed branch would be in a county contiguous to the county in which the principal place of business of the association is located and if an association which has its principal place of business in the county in which the proposed branch would be located has in good faith previously notified the department in writing of its intention to establish a branch in the same city, incorporated town, borough or township in which the proposed branch would be located.]

(c) Within sixty days after receipt of the application or such longer periods as may be required by any hearing which the department may hold, the department shall, **[except as provided in subsection (b) of this section,]** approve the application if it finds that **[there is a need for services or facilities such as are contemplated by]** the establishment of the proposed branch **would be consistent with the purposes of this act set forth in subsection (a) of section 103** and that the requirements of this act have been complied with, but shall otherwise disapprove the application. If the department approves the application it shall issue to the association a letter of authority to establish a branch. If the department disapproves the application it shall give the association written notice of its disapproval and a statement in detail of the reasons for its decision.

* * *

Section 8. Section 405 of the act, added October 5, 1978 (P.L.1137, No.267), is amended to read:

Section 405. Branches Acquired from the Receiver of a Closed Association.—Any association 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 association 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 association. **[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 association.]**

Section 9. Subsection (a) of section 604 of the act, clause (4) added July 30, 1975 (P.L.105, No.55), is amended to read:

Section 604. Voting Rights of Members.—(a) Except as otherwise provided in this act at every meeting of the members of an association the members shall have the right to vote as follows:

(1) In the case of a mutual association:

[(1)] (i) Each borrowing member shall have one vote,

[(2)] (ii) Each savings member shall have one vote. For each one hundred dollars (\$100) in excess of the first one hundred dollars (\$100) in a savings account such saver shall be entitled to one additional vote,

[(3)] (iii) A member who qualifies in more than one of the above classes shall be entitled to cast the total number of votes for which he qualifies. A member may vote in person or by proxy and shall not sell his vote nor execute a proxy for any sum of money or anything of value.

(2) In the case of a permanent reserve fund stock association each member shall have one vote for each share of permanent reserve fund stock, or as defined in association bylaws.

[(4)] (3) If the bylaws of an association so provide, in each election of directors of an association each member entitled to vote shall have the right to multiply the number of votes to which he may be entitled by the total number of directors to be elected, and he may cast the whole number of such votes for one candidate or he may distribute them among any two or more candidates.

* * *

Section 10. Clauses (22) and (26) of subsection (a) of section 701 of the act, clause (22) amended July 22, 1977 (P.L.92, No.33), and clause (26) added June 5, 1981 (P.L.81, No.28), are amended and a clause is added to read:

Section 701. Powers of Associations.—(a) Every association incorporated pursuant to or operating under the provisions of this code shall have all of the powers enumerated, authorized, and permitted by this code and such other rights, privileges and powers as may be incidental to or reasonably necessary or appropriate for the accomplishment of the

objects and purposes of the association. Among others, and except as otherwise limited by the provisions of this code, every association shall have the following powers:

* * *

(22) **[Associations]** *Notwithstanding any other provision of this act, associations shall have all powers granted to Federal savings and loan associations [except as limited or prohibited by this act]. Associations may invest in such bonds, capital stock obligations, and other securities that qualify for investment for any purposes by Federal savings and loan associations. The department may by regulation supervise the exercise of any additional powers which associations may acquire by virtue of this subsection.*

* * *

(26) **[Any]** *Except as provided in clause (27) any loans authorized by this code may be made at such interest, finance charge, rate, and/or terms herein authorized or at any interest, finance charge, rate, and/or terms permitted any other [regulated] lender regulated by the Commonwealth of Pennsylvania or Federally chartered institutions operating in Pennsylvania and regulated by the Federal Home Loan Bank Board.¹ The department shall have power to issue regulations with respect to amounts, terms and conditions including prepayment penalties and late charges.*

(27) *The extension of credit through the issuance and use of credit cards may be made at such interest, finance charge, rate and/or terms as may lawfully be permitted State chartered institutions as defined by the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965" or in accordance with the following:*

(i) *For cash advances such interest, finance charge, rate and/or terms shall be as provided in the "Banking Code of 1965."*

(ii) *For purchases of goods and services such interest, finance charge, rate and/or terms shall be as provided in the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the "Goods and Services Installment Sales Act."*

* * *

Section 11. The act is amended by adding a section to read:

Section 825. Dividends on Permanent Reserve Fund Stock.—*An association may not more frequently than it credits or pays earnings to savings accounts pay a dividend on permanent reserve fund stock subject to the following conditions:*

(1) *The association shall have during the then current year, from its net earnings, credited or paid earnings on its savings accounts,*

(2) *The association shall have from its net earnings of the then current year in which the dividend is to be paid credited to its general reserves such amounts as may be required by the department, and*

(3) *No dividends shall be declared for permanent reserve fund stock that will impair reserves as set forth in section 822 or 10 Pa. Code section 40.1 except upon written permission by the department.*

¹"underscoring" omitted in original.

Section 12. Subsection (g) of section 1101 of the act is amended and subsections are added to read:

Section 1101. Mergers, Consolidations and Conversions.—***

(g) Upon compliance with the requirements of this article, a mutual association may be converted to a permanent reserve fund stock association and a permanent reserve fund stock association may be converted to a mutual association. Such converted associations may not be voluntarily liquidated for a period of ten years from the date of conversion.

(h) (1) All savers (including all classes thereof) shall be given a preemptive right to purchase reserve fund stock. The preemptive right to savers shall be nonassignable. The department, by regulation, shall prescribe the terms on which such preemptive rights may be exercised.

(2) No preemptive rights will be given to any savers if the association to be converted has no positive net worth unless determined to be in the public interest by the Secretary of Banking.

[(g)] (i) All mergers, consolidations and conversions in which the resulting institution is an association or a savings bank shall be subject to the approval of the department.

Section 13. Section 1109 of the act is amended to read:

Section 1109. Rights of Dissenting Members.—**[No] (a)** *In the case of a mutual association, no mortgage account member shall have any rights of any nature with regard to proceedings for merger, consolidation or conversion and shall conclusively become a borrower of the resulting association or savings bank in the event of a merger, consolidation or conversion. A savings member who dissents from any plan of merger, consolidation or conversion shall have the right to have his savings paid to him in full together with any and all additions thereto which have been credited to his account by way of earnings prior to the effective date of the merger, consolidation or conversion within thirty days of the receipt of notice by the association of his dissent.*

(b) In the case of a permanent reserve fund stock association, a permanent reserve fund stockholder shall have only the rights given him in the plan of merger, consolidation or conversion.

Section 14. Subsection (e) of section 1208 of the act, added December 27, 1974 (P.L.1012, No.329), is amended to read:

Section 1208. Distribution of Assets Upon Liquidation.—In the distribution of assets of an association which is liquidated or dissolved, either under this act or by any other method, payment shall be made of liabilities and obligations to members in the following order:

(e) Fifth, any excess of assets shall be distributed to savings accounts on a basis pro rata to the balance in each account as of the date of liquidation or dissolution in the case of a mutual association. In a permanent reserve fund association, the excess of assets shall be distributed pro rata to the reserve fund stockholders.

Section 15. This act shall take effect immediately.

APPROVED--The 9th day of April, A. D. 1982.

DICK THORNBURGH