

No. 1986-205

AN ACT

SB 1389

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," providing for Statewide and nationwide branching by savings banks and for regional, reciprocal interstate banking for savings banks; permitting savings banks to take demand deposits; further providing for the articles of incorporation and classes of stock of banking institutions; granting additional powers to savings banks; clarifying the right of directors, trustees and officers to consider the effect of an institution's actions upon employees, depositors, borrowers and others; providing for interested shareholder transactions; conferring certain rights on noncontrolling shareholders of institutions and national banks; revising provisions for savings banks' conversion to stock form; and making repeals.

The General Assembly makes the following findings as a basis for this act:

(1) The rapid development in recent years of interstate operations of financial institutions can be expected to continue and to have significant effects on the business of savings banks in this Commonwealth by reason of the economic, regulatory, financial and technological forces that affect the business.

(2) It is in the best interests of the economy of this Commonwealth and its public to enable savings banks in this Commonwealth to remain sound, strong and competitive with financial institutions located elsewhere.

(3) As an increasing number of states authorize financial institutions in their states to conduct interstate operations in some form, savings banks and their holding companies in this Commonwealth would be disadvantaged if not permitted to branch in any location and to combine on a regional, reciprocal basis with thrift institutions in other states.

(4) Geographical limitations on interstate operations by thrift institutions are important to the competitiveness, safety and soundness of Pennsylvania's thrift institutions.

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

Section 1. Section 102(f), (g), (i) and (x) of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, amended April 8, 1982 (P.L.262, No.79), 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:

* * *

(f) "Bank"—a corporation which exists under the laws of this Commonwealth and, as a bank under the Banking Code of 1933, was authorized to engage in the business of receiving demand deposits on the effective date of this act, or which receives authority to engage in such business *as a bank* pursuant to this act, but which is not authorized to act as fiduciary.

(g) "Bank and trust company"—a corporation which exists under the laws of this Commonwealth and, as a bank and trust company under the Banking Code of 1933, was authorized to engage in the business of receiving demand deposits and to act as fiduciary on the effective date of this act, or which receives authority both to engage in such business and to act as fiduciary *as a bank and trust company* pursuant to this act.

* * *

(i) "Capital"—the sum of the par value of the **[preferred and common] issued and outstanding** shares of an institution **[issued and outstanding] having a par value and the consideration received by an institution for the issued and outstanding shares of the institution without par value except such part thereof as may have been allocated other than to capital**, but not in an amount greater than the amount, if any, by which:

(i) the total assets of the institution which would properly be shown on its balance sheet, exclusive of amounts due on unpaid subscriptions for shares, exceed

(ii) the total of the items which would properly be shown on the liability side of its balance sheet other than such sum of the par value of its shares.

* * *

(x) "Savings bank"—a corporation with or without capital stock which exists under the laws of this Commonwealth and as a savings bank under the Banking Code of 1933 was authorized to engage in the business of receiving savings deposits on the effective date of this act or which receives authority to engage in such business *as a savings bank* pursuant to this act.

* * *

Section 2. Section 105(a) of the act, amended July 25, 1977 (P.L.101, No.37), is amended to read:

Section 105. Persons Authorized to Engage in Business of Receiving Deposits and Money for Transmission

(a) Restriction of authorized persons—No person may lawfully engage in this Commonwealth in the business of receiving money for deposit or transmission, or lawfully establish in this Commonwealth a place of business for

such purpose, except a bank, a bank and trust company, a savings bank, a private bank, a savings association to the extent provided in the Savings Association Code of 1967, *a regional thrift institution to the extent provided in section 117 of this act or section 114 of the Savings Association Code of 1967* and a person duly authorized by Federal law to engage in the business of receiving money for deposit or transmission. A bank, a bank and trust company and a savings bank that receives money for deposit shall insure such deposits with the Federal Deposit Insurance Corporation or any other Federal agency authorized by law to insure deposits.

* * *

Section 3. The act is amended by adding sections to read:

Section 112.1. Prohibition Against Certain Acquisitions

(a) *Certain acquisitions unlawful—Except as provided in section 117, it shall be unlawful for a commercial bank, a bank holding company, a thrift institution or a thrift institution holding company to acquire a savings bank unless the acquiring entity, and any savings and loan holding company or bank holding company which directly or indirectly owns or controls the power to vote five percent or more of its shares, is located in Pennsylvania.*

(b) *Definitions—The terms in subsection (a) shall have the same meaning as those terms have in section 117.*

(c) *Prior acquisitions—The prohibition in subsection (a) shall not affect any acquisition effected prior to the effective date of this act.*

Section 117. Authorization of Regional, Reciprocal Operations of Savings Banks

(a) *Definitions for purpose of section—The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the following meanings:*

(i) *“Acquire”—to acquire (as defined in section 112(a)(i)) five percent or more of the voting stock of an entity and shall also mean a merger or consolidation or a purchase of assets and an assumption of liabilities, other than in the regular course of business.*

(ii) *“Bank holding company”—the same meaning as that term has under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841(a).*

(iii) *“Branch”—an office which performs the functions described in section 102(h).*

(iv) *“Control”—the power, directly or indirectly, to direct the management or policies of an entity or to vote twenty-five percent or more of any class of voting securities of an entity.*

(v) *“Entity”—any corporation, partnership, association or similar organization, including banks and thrift institutions.*

(vi) *“Pennsylvania savings bank”—a savings bank as defined in section 102(x).*

(vii) *“Pennsylvania savings bank holding company”—an entity which controls one or more Pennsylvania savings banks and is located in Pennsylvania.*

(viii) *“Region”—the States of Delaware, Kentucky, Maryland, New Jersey, Ohio, Virginia and West Virginia, and the District of Columbia.*

(ix) *“Regional association”*—a savings and loan association or building and loan association located in and organized and operating under the laws of a state in the region and a Federal association, as defined in 12 U.S.C. § 1462(d), that is located in the region.

(x) *“Regional savings bank”*—a savings bank located in and organized and operating under the laws of a state in the region.

(xi) *“Regional thrift institution”*—a regional savings bank or a regional association.

(xii) *“Regional thrift institution holding company”*—an entity which controls one or more regional thrift institutions and is located in a state in the region.

(xiii) *“Savings and loan holding company”*—as defined in 12 U.S.C. § 1730a(a)(1)(D).

(xiv) *“State”*—includes the District of Columbia.

(xv) *State in which an entity is “located”*—

(A) with regard to a thrift institution, the state in which its deposits are largest; and

(B) with regard to a thrift institution holding company, a savings bank holding company, a savings and loan holding company or a bank holding company, the state in which the total deposits of its subsidiaries, including commercial banks, are largest.

Provided, that an entity or its legal successor that is located in Pennsylvania on the effective date of this legislation shall be deemed thereafter to be located in Pennsylvania regardless of the location of its deposits or the deposits of its subsidiaries if said entity has not been either acquired by an entity located outside of Pennsylvania or a party to a merger or consolidation transaction in which the holders of its voting shares immediately prior to the transaction held less than fifty percent of the voting shares of any class of stock in the entity surviving after, or resulting from, the merger or consolidation.

(b) *Acquisitions by regional thrift institutions and regional thrift institution holding companies*—A regional thrift institution or regional thrift institution holding company may acquire a Pennsylvania savings bank or a Pennsylvania savings bank holding company if:

(i) *the law of the state where the acquiring thrift institution or thrift institution holding company is located and the law of the state where any savings and loan holding company or bank holding company which directly or indirectly owns or controls the power to vote five percent or more of its shares is located satisfies, in each case, the reciprocity requirement of subsection (d);*

(ii) *the acquiring thrift institution or thrift institution holding company and any savings and loan holding company or bank holding company which directly or indirectly owns or controls the power to vote five percent or more of its shares is, in each case, located in a state in the region or in Pennsylvania; and*

(iii) *approval has been received from the department. When considering a proposed acquisition by a regional thrift institution or a regional*

thrift institution holding company, the department shall give specific attention to the effect of the acquisition on the availability, in this Commonwealth, of those banking and basic transaction account services set forth in subsections (i) and (j).

(c) Branching by regional savings banks—

(i) A regional savings bank may, with the prior written approval of the department, maintain as a branch any office acquired as part of an acquisition effected under this section or section 114 of the Savings Association Code of 1967.

(ii) A regional savings bank may establish and maintain branches in this Commonwealth if:

(A) the state in which it is located and the state in which any savings and loan holding company or bank holding company which directly or indirectly owns or has the power to vote five percent or more of its shares is located satisfies, in each case, the reciprocity requirement of subsection (d);

(B) the savings bank and any savings and loan holding company or bank holding company which directly or indirectly owns or controls the power to vote five percent or more of its shares is, in each case, located in a state in the region or in Pennsylvania; and

(C) the branch is approved by the department in the same manner and subject to the same conditions as are applicable to de novo branches of Pennsylvania savings banks under sections 904 and 905.

(d) Reciprocity requirement—

(i) The law of another state is reciprocal under this section to the extent the department determines it to be so. The department's determination under this subsection shall include, but is not limited to:

(A) with regard to acquisitions, whether the law of that other state authorizes Pennsylvania savings banks and Pennsylvania savings bank holding companies to acquire regional thrift institutions and regional thrift institution holding companies located in that state on terms and conditions reasonably equivalent to those applicable to acquisitions by regional thrift institutions and regional thrift institution holding companies of Pennsylvania savings banks or Pennsylvania savings bank holding companies and whether the law of that other state imposes conditions on the acquisition by Pennsylvania savings banks or Pennsylvania savings bank holding companies of regional thrift institutions or regional thrift institution holding companies located in that state that are substantially more onerous than those imposed on the same acquisitions by thrift institutions or thrift institution holding companies located in that state; and

(B) with regard to branching, whether the law of that other state authorizes Pennsylvania savings banks to establish or maintain branches in that state on terms and conditions reasonably equivalent to those applicable to the establishment or maintenance of branches in Pennsylvania by savings banks located in that state, and reasonably equivalent to those applicable to the establishment and maintenance of branches in that state by a savings bank located in that state.

(ii) *The department need not determine that the law of another state fails to meet the reciprocity requirement of this subsection solely by reason of the fact that that law does not allow Pennsylvania savings banks or Pennsylvania savings bank holding companies to engage in a particular type of branching or acquisition, or imposes conditions on such branching or acquisition that are substantially more onerous than those imposed on the same activities of savings banks or savings bank holding companies located in that state. However, in such circumstances, the department shall find reciprocity only after imposing on the savings banks and savings bank holding companies located in that state conditions and limitations on branching and acquisitions in Pennsylvania substantially similar to those imposed on branching and acquisitions in that state by Pennsylvania savings banks and savings bank holding companies.*

(iii) *The department may determine that the law of another state is not reciprocal regarding a particular type of branching or acquisition if the law of that other state does not allow all Pennsylvania savings banks or, alternatively, all Pennsylvania savings bank holding companies to engage on equal terms with each other in the particular type of branching or acquisition.*

(e) *Authority of the department—In addition to the powers granted elsewhere in this section and in other provisions of Pennsylvania law, the department is authorized to impose any conditions or requirements it deems appropriate, in light of the purposes of this act, on thrift institutions and thrift institution holding companies acquired or operating directly or indirectly in Pennsylvania under this section. Such conditions or requirements include, but are not limited to, provisions for examinations, reports and the payment of fees. The department may accept examinations and other reports of Federal and state regulators and may enter into agreements with Federal and state regulators for the exchange of information, including examination reports.*

(f) *Change in circumstances—If a regional thrift institution or regional thrift institution holding company located in another state which has acquired a Pennsylvania savings bank or Pennsylvania savings bank holding company or has established a branch in Pennsylvania under this section shall have a change of circumstances so that it no longer satisfies the conditions of subsections (b) and (c) (either by reason of a change in the place in which it is located or by reason of acquisition by a savings and loan holding company or a bank holding company located in a state which does not satisfy the conditions of subsections (b) and (c) of five percent or more of its voting shares, or the power to vote those shares), said regional thrift institution or regional thrift institution holding company shall divest each Pennsylvania savings bank, savings bank holding company and branch it has acquired or established prior to entering into a voluntary combination which causes such change of circumstances or within one year (or such longer period of not more than an additional year as the department may allow in writing) after the occurrence of an event, other than a voluntary combination, which causes the change in circumstances.*

(g) Effect of invalidity—*The purpose of this section is solely to authorize reciprocal, regional operations by savings banks and associations, and this section shall not be construed to authorize any acquisition or the establishment of any branch by any entity located in another state except as expressly provided in this section. In the event that any limitation on the geographical location of entities granted acquisition or branching powers by this section is held to be invalid by a final order of a court which is not subject to further review or appeal, the authorization of this section shall terminate immediately. Any acquisition or branch establishment consummated pursuant to this section prior to such termination shall not be affected thereby.*

(h) Acquisitions in other states by Pennsylvania savings banks and Pennsylvania savings bank holding companies—*A Pennsylvania savings bank or Pennsylvania savings bank holding company which proposes to acquire a thrift institution or thrift institution holding company located in another state shall file an application for approval by the department in such form and upon payment of such fee as the department shall prescribe and shall supplement such application with such additional information as the department may reasonably request. The department shall conduct such investigation as it deems necessary to determine whether to approve or disapprove the application. The investigation shall include consideration of the effects the proposed acquisition would have on the availability, in this Commonwealth, of those banking services and basic transaction account services set forth in subsections (i) and (j). Within sixty days after receipt of the application or within a longer period, not in excess of thirty days, after receipt from the applicant of additional information requested by the department, the department shall approve or disapprove the proposed acquisition and give written notice of its decision to the applicant. In approving an acquisition under this section, the department may place conditions upon such approval and incorporate such terms and agreements as are deemed necessary to effect the purposes of this act.*

(i) Availability of banking services—*The department shall have the authority to assure that interstate thrift acquisitions authorized by this section will not diminish reasonable availability of banking services to all segments of the public and economy of this Commonwealth, with special emphasis on economic development and the financing of enterprises to the end that employment opportunities will be either increased or, where there is the prospect of reduction, retained. Upon receipt of an application for approval of an acquisition by an institution or company located in another state under subsection (b) or approval of an acquisition in another state by a Pennsylvania savings bank or savings bank holding company under subsection (h), the department shall review the credit practices and policies of each Pennsylvania savings bank or savings bank holding company which is involved in the proposed transaction. Such review shall determine the overall performance of such company or institution in providing credit and financial services to individuals and business enterprises in the communities which it serves in the light of its role as a thrift institution, its resources, its capital and its income, the particular needs of such communities, competition and*

alternative sources of credit. With respect to individuals, there shall be a review of consumer loans, residential mortgages, home improvement loans and student loans, particularly to residents of low-income and moderate-income neighborhoods. With respect to business enterprises, there shall be a review of extensions of credit and investments intended to promote economic development and creation, or retention where there is the prospect of reduction, of employment opportunities, including, without limitation, Small Business Administration and other small business loans, industrial development loans, financing of employe stock option plans and leveraged buyouts of businesses by employes, financing of nonprofit community development projects, loans and investments intended to maintain existing businesses and to encourage economic expansion and job opportunities, and loans and investments to promote participation by businesses in this Commonwealth in international trade and to increase exports. The review by the department shall also include all other activities of the institution or company deemed to be suitable to its particular circumstances and the communities served. If the department determines that the overall performance of the institution or company has not been materially deficient and that it justifies the conclusion that the institution or company does and will provide suitable credit and financial services to its communities, it may approve the application without imposing any terms or conditions but otherwise may impose such terms and conditions as it deems appropriate to improve such overall performance over a stated period of time. The department shall, from time to time, review the continuing overall performance of each such institution or company after an acquisition and, if it finds that its overall performance has not continued to be satisfactory, shall issue such order to the applicant as it deems appropriate.

(j) Availability of basic transaction account services—The department shall have the authority to assure that thrift institution holding companies and thrift institutions that become part of interstate banking organizations by reason of acquisitions requiring approval under this section make basic transaction account services available to the public. For this purpose the department shall obtain, from all sources available to it or through such studies as it may commission, adequate information to determine:

(i) The needs of the public and, in particular, individuals with low or moderate income, for a basic checking or other transaction account.

(ii) The principal characteristics that such an account should have, such as the number of checks, deposits and other items for which a minimum charge may be made, the amount or rate of such minimum charge and the forms of identification that may be required for opening and using such an account.

(iii) The existing availability of basic accounts with some or all of such principal characteristics currently offered by depository institutions, including applicants under this section, in separate communities of this Commonwealth.

An applicant shall, at the request of the department, supply information to the department with respect to such accounts offered by the applicant and by

each institution which is a subsidiary of the applicant. The department may approve an application prior to the time it has acquired the information required by this section, but the applicant and each institution which is a subsidiary of the applicant shall be subject, both before and after an approval of the acquisition under this section, to requirements imposed by the department, from time to time, to assure to the public, in the communities served by the institution, the continuing availability of the basic transaction account services which the department has determined the public needs.

(k) Advisory Commission—For the purpose of advising the department in the conduct of its functions under subsections (i) and (j), the advisory commission established by section 116(k) is empowered and directed to provide information, opinions and recommendations as to guidelines the department may establish, from time to time, for the purpose of determining the overall performance of an institution or company under subsection (i) and the availability of basic transaction account services under subsection (j). All decisions and determinations made under this section shall be made by the department.

Section 206. Interested Directors and Shareholders; Quorum

(a) Voting requirements—Any transaction authorized under Chapter 16 of this act between an institution or subsidiary thereof and a shareholder of such an institution, or any transaction authorized under section 1803 of this act in which a shareholder is treated differently from other shareholders of the same class (other than any dissenting shareholders under section 1607 of this act), shall require the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders other than the interested shareholder are entitled to cast with respect to the transaction, without counting the vote of the interested shareholder. For the purposes of the preceding sentence, interested shareholder shall include the shareholder who is a party to the transaction or who is treated differently from other shareholders and any person, or group of persons, that is acting jointly or in concert with the interested shareholder and any person who, directly or indirectly, controls, is controlled by or is under common control with the interested shareholder. An interested shareholder shall not include any person who, in good faith and not for the purpose of circumventing this subsection, is an agent, bank, broker, nominee or trustee for one or more other persons, to the extent that such other person or persons are not interested shareholders.

(b) Exceptions—Subsection (a) shall not apply to a transaction:

(i) which has been approved by a majority vote of the board of directors or trustees without counting the vote of directors or trustees who:

(A) are directors, trustees or officers of, or have a material equity interest in, the interested shareholder; or

(B) were nominated for election as a director or trustee by the interested shareholder, and first elected as a director or trustee, within twenty-four months of the date of the vote on the proposed transaction; or

(ii) in which the consideration to be received by the shareholders for shares of any class of which shares are owned by the interested shareholder

is not less than the highest amount paid by the interested shareholder in acquiring shares of the same class.

(c) Approvals required—The approvals required by this section shall be in addition to, and not in lieu of, any other approval required by this act, the articles of the institution, the bylaws of the institution or otherwise.

Section 4. Section 503 of the act is amended to read:

Section 503. Deposits

[A savings bank may receive money for deposit and:

(a) Provisions for withdrawal—may provide by its articles or by-laws for the terms of withdrawal thereof except that deposits may not be accepted which are legally subject to withdrawal within a period of less than fourteen days,

(b) Notice in absence of provisions—shall repay deposits on demand after sixty days' notice in the absence of any requirement of notice in its articles, by-laws or rules or in the event of failure by the savings bank to give any notice required by this act or by its articles, by-laws or rules,

(c) Interest—may provide by rules of the savings bank or by agreement with the depositor for payment of interest on deposits for the period of the deposit and an additional period not in excess of fifteen calendar days in any one month or such longer time as the Department may provide by regulation, and

(d) Limits on deposits—may limit the aggregate amount of the deposits of any one person and may refuse any deposit or return all or any part of any deposit when it deems such action in the best interests of the savings bank.] *An institution may receive money for deposit and may provide by rules of the institution or by agreement with the depositor for the terms of withdrawal thereof and for payment of interest thereon for the period of the deposit and an additional period not in excess of fifteen calendar days in any one month or such longer time as the department may provide by regulation.*

Section 5. Section 904(c) of the act, amended March 4, 1982 (P.L.135, No.44), is amended and the section is amended by adding a subsection to read:

Section 904. Authorization of New Branches

* * *

(c) Eight years immediately following the effective date of this act, an institution *other than a savings bank* may locate branches within any county in the Commonwealth, subject to the same approval of the department as is required under subsection (b)(v).

(d) A savings bank may, from and after the effective date of this act, establish and maintain branches within any county in the Commonwealth, or within any state of the United States or the District of Columbia, subject to the same approval of the department as is required under subsection (b)(v).

Section 6. Section 1004 of the act, amended April 8, 1982 (P.L.262, No.79), is amended to read:

Section 1004. Articles of Incorporation

(a) Execution—Articles of incorporation shall be signed by at least five of the incorporators in the case of a mutual savings bank and by each of the incorporators in any other case.

- (b) Contents—The articles shall set forth in the English language:
- (i) the name of the institution;
 - (ii) the location and post office address of its principal place of business;
 - (iii) a brief statement of the purpose or purposes for which it is incorporated and that it is incorporated under the provisions of this act;
 - (iv) the term for which it is to exist which may be perpetual;
 - (v) except in the case of a mutual savings bank, the aggregate number of shares which the institution shall have authority to issue and
 - (A) if the shares are to consist of one class only, the par value of each of the shares, or
 - (B) if the shares are to be divided into classes, [**the number of shares of each class, the par value of each share of each class, a description of each class and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions and the special or relative rights granted to or imposed upon the shares of each class;**]
 - (I) *the number of shares of each class that are to have a par value and the par value of each class and the number of shares of each class, if any, that are to be without par value,*
 - (II) *a statement of the designations, preferences, redemption provisions, qualifications, privileges, limitations, options, conversion rights and other special rights in respect of the shares of any class or series of any class, the fixing of which by the articles is desired, and*
 - (III) *a statement of such authority as may be desired to vest in the board of directors to fix by resolution any designations, preferences, redemption provisions, qualifications, privileges, limitations, options, conversion rights and other special rights in respect of the shares of any class or a series of any class that shall not be fixed in the articles;*
 - (vi) the name, occupation, citizenship, place of residence and post-office address of each incorporator and, except in the case of a mutual savings bank, the number of shares to which he has subscribed;
 - (vii) the name, occupation, citizenship, place of residence and post-office address, in the case of a savings bank, of each of the first trustees and, in any other case, of each of the first directors who shall serve until the first annual meeting;
 - (viii) except in the case of a mutual savings bank, any provision which the incorporators may choose to insert granting to shareholders preemptive rights to subscribe to issues of shares or securities of the institution; and
 - (ix) any provision not inconsistent with law which the incorporators may choose to insert for the regulation of the internal affairs and business of the institution.

Section 7. Section 1202 of the act is amended to read:

Section 1202. Classes of Shares

- (a) Types of shares—An institution may create and issue:
- (i) common shares with par value, and
 - (ii) one or more classes of **[preferred] other shares and one or more series of shares within any class thereof**, all of which **[shall be] classes may consist of shares with par value or shares without par value** and any or all of which **classes or series** may consist of shares with full, limited, multiple,] or fractional or no voting rights and with such designations, preferences, qualifications, privileges, limitations, redemption provisions, options, conversion rights and other special rights as shall be stated **[or authorized]** in the articles **or in the resolution or resolutions providing for the issue of such shares adopted by the board of directors pursuant to authority expressly vested in it by the articles. Any of the terms of a class or series of preferred shares may be made dependent upon facts ascertainable outside of the articles, or outside of the resolution or resolutions providing for the issue of such shares adopted by the board of directors pursuant to authority expressly vested in it by the articles, provided that the manner in which the facts will operate upon the terms of the class or series is set forth in the articles or in the resolution or resolutions providing for the issue of such shares adopted by the board of directors. Different series of the same class of shares shall not be construed to constitute different classes of shares for the purpose of voting by classes under this act.**
- (b) Redemption of **[preferred] redeemable** shares—Any **[preferred] redeemable** shares subject to redemption shall be redeemable only pro-rata or by lot or by such other equitable method as is selected by the board of directors, except as otherwise provided in the articles.
- (c) Status of shares—Shares of an institution shall be deemed personal property. Except as otherwise provided in the articles, each share shall be in all respects equal to every other share.
- (d) Method of Issue—Unless the articles or by-laws otherwise provide, the board of directors may, by resolution duly adopted, issue from time to time, in whole or in part, the shares authorized by the articles.
- (e) Increase or decrease—The power to increase or decrease authorized capital as provided in, and subject to the limitations **[of, chapter 15]** of this act shall apply to all or any shares authorized by *subsection (a)* of this section.
- (f) *Filing of statement affecting class or series of shares—Before any institution shall issue any shares of any class or any series of any class of which the designations, preferences, qualifications, privileges, limitations, redemption provisions, options, conversion rights and other special rights, if any, shall not have been set forth in the articles but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the articles, the institution shall:*
- (i) *file with the department a statement executed under the seal of the institution and signed by two duly authorized officers of the institution, setting forth:*

- (A) *the name of the institution,*
- (B) *the resolution establishing and designating the class or series and fixing and determining the relative rights and preferences thereof,*
- (C) *the aggregate number of shares of such class or series established and designated by:*

- (I) *such resolution,*

- (II) *all prior statements, if any, filed under this act with respect thereto, and*

- (III) *any other provision of the articles,*

- (D) *the date and manner of the adoption of such resolution, and*

- (ii) *file with the Department of State a copy of the statement described in clause (i), stamped or otherwise marked by the department to evidence the prior filing thereof with the department pursuant to clause (i). Upon the filing of such statement with the Department of State, the resolution shall become effective and shall operate as an amendment of the articles.*

(g) *Increase or decrease in number of shares—Except to the extent otherwise provided in the articles or in any such resolution, the number of shares of any class or series established and designated in such resolution may be increased or decreased (but not below the number of shares thereof then outstanding) by a statement and a copy thereof filed with the department and with the Department of State, respectively, in accordance with the procedures described in subsection (f), setting forth a resolution adopted by the board of directors increasing or decreasing the authorized number of shares of such class or series. In case the number of shares shall be decreased, the number of shares so specified in the statement shall resume the status which they had prior to the adoption of the preceding resolution or resolutions with respect thereto.*

(h) *Preferences, voting rights, etc.—Except to the extent otherwise provided in the articles or in any such resolution, the authority granted to the board of directors to determine the designations, preferences, qualifications, privileges, limitations, redemption rights, options, conversion rights and other special rights of any class or series shall be deemed to include the power to determine preferences as to dividends or assets which are prior or subordinate to or on parity with any other class or series and to determine designations, qualifications, privileges, limitations, redemption provisions, options, conversion rights and other special rights, including, but not limited to, voting rights, which are greater or lesser than or equal to those of any other class or series, whether or not the other shares are issued or outstanding at the time when the board of directors acts to determine them.*

Section 8. Section 1203(a) of the act, amended July 23, 1970 (P.L.597, No.199), is amended to read:

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 assets with a value, which shall be at least:*

(i) in the case of the issuance of common shares *and other shares with par value* 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 provide 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.] *other shares without par value, the amount of value of the agreed consideration received for such shares which the board of directors shall, in the resolution authorizing the issue of such shares, allocate to capital or surplus by specifying in dollars the part of such consideration allocated to capital, which shall not be less than the preferential right of such shares in the assets of the institution in the event of involuntary liquidation, and the part of such consideration allocated to surplus.*

* * *

Section 9. Sections 1205(a) and 1303(b) of the act are amended to read:
Section 1205. Share Certificates

(a) Contents—The shares of an institution shall be represented by share certificates which shall in every case contain:

(i) a statement that the institution is incorporated under the laws of this Commonwealth,

(ii) the name of the registered holder of the shares represented thereby,

(iii) the number and class of shares which the certificate represents, and *the designation of the series, if any,*

(iv) the par value of each share represented, *or a statement that the shares are without par value,*

and if the institution is authorized to issue shares of more than one class, the certificate shall contain on the face or back either a full or a summary statement, or a statement that the institution will furnish to any shareholder upon request and without charge a full statement, of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued *and, if the institution is authorized to issue any class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.*

* * *

Section 1303. Distributions of Shares of Institution

* * *

(b) Capital and surplus requirements—No distribution may be made in authorized but unissued shares of the institution unless:

(i) *if the distribution is made in shares having a par value*, there shall be transferred to capital an amount equal to the aggregate par value of the shares distributed, **[and]**

(ii) *if the distribution is made in shares without par value, the board of directors may fix a value for the shares so issued and there shall be transferred to capital at the time of such distribution an amount of accumulated net earnings equal to the aggregate value so fixed, and*

(iii) immediately after the distribution, surplus would be at least equal to the amount of capital.

* * *

Section 10. Section 1306 of the act, amended May 21, 1980 (P.L.173, No.51), is amended to read:

Section 1306. Redemption and Acquisition of **[Preferred] Redeemable** 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 *subject to redemption* if immediately after the redemption or other acquisition surplus would be at 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 *subject to redemption*.*

(b) **[Preferred shares] Shares subject to redemption** which are redeemed or otherwise acquired shall be canceled and shall not be reissued. Immediately upon the redemption or other acquisition, the institution shall deliver to the department a statement of reduction of authorized shares which shall be signed by two duly authorized officers under its seal and shall set forth:

(i) the aggregate number of shares of each class which the institution had authority to issue and the number of issued shares of each class,

(ii) the number of **[preferred]** shares of each class *subject to redemption* which have been canceled,

(iii) the aggregate number of shares of each class which the institution has authority to issue after giving effect to the reduction made by such cancellation, and

(iv) the provisions of the articles of the institution which are to be changed by reason of the reduction of authorized shares.

If the Department of Banking finds that the statement conforms to law it shall deliver the statement with its written approval to the Department of

State for filing. Receipt thereof by the Department of State shall have the effect of amending the articles of the institution to the extent of the changes set forth in the statement. The Department of State shall make and retain a copy of the statement and shall send the approved statement to the institution.

Section 11. Sections 1411 and 1503(d) of the act are amended to read:

Section 1411. Responsibility of Directors, Trustees and Officers

(a) *Good faith*—Directors, trustees and officers of an institution 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.

(b) *Consideration of effect of action*—*In discharging the duties of their respective positions, the board of directors or trustees, committees of the board, individual directors and trustees and individual officers may, in considering the best interests of the institution, consider the effects of any action upon employes, depositors, borrowers, beneficiaries of fiduciary accounts, creditors and suppliers of the institution, communities in which offices or other establishments of the institution are located and all other pertinent factors.*

Section 1503. Proposal and Adoption of Amendments

* * *

(d) Shareholders entitled to vote—If a proposed amendment would:

(i) make any change in the preferences, [redemption provisions,] qualifications, limitations, restrictions or special or relative rights of the shares of any class *or series* adverse to such class *or series*,

(ii) increase or decrease the par value of the shares of any class,

(iii) increase the authorized number of shares of any class *or series*, *unless otherwise provided in the articles*,

(iv) limit or deny the existing preemptive rights of the shares of any class, [or]

(v) authorize a new class *or series* of shares *having a preference as to dividends or assets*, or increase the number of authorized shares of any *existing class or series, having a preference as to dividends or assets*, senior [or superior in any respect] to the shares of [any] a class [previously authorized,] *or series, or*

(vi) *authorize the board of directors to fix and determine the relative rights and preferences as between series of any preferred or special class,*

the holders of the outstanding shares of such class *or series* shall be entitled to vote as a class on such amendment, regardless of any limitation stated in the articles on the voting rights of [such] *any class*. Except in such case, only the holders of outstanding shares who, under the articles are entitled to vote on proposed amendments, shall be entitled to vote thereon.

Section 12. The heading of Chapter 16 and section 1601 of the act are amended to read:

Chapter 16
Mergers **[and]**, Consolidations *and Certain Other Fundamental Transactions*

Section 1601. Application of Chapter

This chapter shall apply to, and the word "institution" in this chapter shall mean, an incorporated institution, *except that section 1610 shall apply to a national bank as provided therein.*

Section 13. Section 1609(a), (i) and (j) of the act, amended April 8, 1982 (P.L.262, No.79), July 6, 1984 (P.L.606, No.125) and July 6, 1984 (P.L.621, No.128), are amended to read:

Section 1609. Mergers, Consolidations and Conversions of Savings Banks

(a) Authority to merge, consolidate or convert—

(i) upon compliance with the requirements of sections 1602, 1603, 1604, 1605 and 1606, a savings bank may enter into a merger or consolidation with one or more other savings banks. In the event the book value of the total assets of the acquired savings bank is less than one percent in excess of the book value of the total liabilities, the resulting institution may maintain as a branch, any office operated by the acquired institution.

(ii) upon compliance with the requirements of this section and other applicable law, one or more savings banks and one or more associations may merge into a savings bank or into an association or consolidate into a new savings bank or a new association. The word "association" in this chapter shall mean an association subject to the Savings Association Code of 1967.

(iii) upon compliance with the requirements of this section *and other applicable law,*

(A) one or more savings banks, one or more Federal savings banks and one or more Federal savings and loan associations may merge into a savings bank, Federal savings bank or a Federal savings and loan association or consolidate into a new savings bank, a new Federal savings bank or a new Federal savings and loan association, *and*

(B) *one or more savings banks may merge or consolidate with a regional thrift institution as defined in and subject to any applicable limits of section 117.*

(iv) the authority of a savings bank to merge or consolidate into a Federal savings bank or Federal savings and loan association shall be subject to the condition that at the time of the transaction the laws of the United States shall authorize a Federal savings bank or Federal savings and loan association to merge or consolidate into a savings bank.

(v) upon compliance with the requirements of this section and other applicable law,

(A) a savings bank may be converted into an association, or

(B) a savings bank may be converted into a Federal savings bank or a Federal savings and loan association, subject to the condition that at the time of the transaction the laws of the United States shall authorize a Federal savings bank or a Federal savings and loan association to convert into a savings bank.

(vi) upon compliance with the requirements of this section and other applicable law and subject to the laws of the United States, a Federal savings bank or a Federal savings and loan association may be converted into a savings bank or an association.

(vii) upon compliance with the requirements of this section, a mutual savings bank may be converted into a stock savings bank. A stock savings bank shall have authority, upon compliance with the requirements of this section, to enter into a merger or consolidation with one or more other stock savings banks, banks, bank and trust companies, trust companies or stock savings and loan associations.

(viii) all mergers, consolidations and conversions in which the resulting corporation is a savings bank or an association shall be subject to the approval of the department.

* * *

(i) Review of approval of a merger, consolidation or conversion that results in a stock savings bank—The department's approval of a merger, consolidation or conversion that results in a stock savings bank shall not be reviewable except by an appeal to the Commonwealth Court filed within twenty days after notice of the approval appears in the Pennsylvania Bulletin. In any such appeal, the department's determination that the plan adequately protects the interests of depositors of a mutual savings bank which is a party to the plan shall be conclusive if:

(i) such depositors are given **[the] a preemptive** right to buy shares of the stock savings bank at fair market value *or at the price at which shares are sold to the public in a public offering in connection with the conversion*, or

(ii) *such depositors are not given a preemptive right to buy shares by reason of the determination referred to in subsection (j) of this section, and the plan makes available to the savings bank significant additional funds which are junior in right to the deposits, and the book value of the mutual savings bank's assets does not exceed the dollar amount of its total liabilities*].

(j) In the event of conversion by a mutual savings bank to a stock savings bank, all depositors shall be given a preemptive right to purchase stock. The preemptive right to depositors shall be nonassignable. The department, by regulation, **[shall] may define the rights and** prescribe the terms on which **[such preemptive rights] they** may be exercised. In the event the book value of the total assets of the savings bank, *determined in accordance with generally accepted accounting principles*, is less than **[one] two** percent in excess of the book value of its total liabilities, no preemptive rights will be given depositors, *unless determined to be in the public interest by the Secretary of Banking*. A stock savings bank which has converted from a mutual savings bank may not be voluntarily liquidated for a period of ten years from the date of conversion.

Section 14. The act is amended by adding a section to read:

Section 1610. Right of Shareholders to Receive Payment for Shares Following a Control Transaction

(a) Rights and remedies—Unless (i) the bylaws, by amendment adopted within ninety days of the date of enactment of this section and not subsequently rescinded by an amendment of the articles, or (ii) the articles explicitly provide that this section shall not be applicable to the institution, any holder of voting shares of an institution that becomes the subject of a control transaction described in subsection (b) who shall object to the transaction shall be entitled to the rights and remedies herein provided.

(b) Definition—

(i) A controlling person or group shall mean, for the purposes of this section, a person who has, or a group of persons acting in concert that has, voting power over voting shares of the institution that would entitle the holders thereof to cast at least thirty percent of the votes that all shareholders would be entitled to cast in an election of directors or trustees of the institution.

(ii) Notwithstanding clause (i), a person or group which would otherwise be a controlling person or group within the meaning of this section shall not be deemed such a controlling person or group unless, subsequent to the enactment of this section, that person or group increases the percentage of outstanding voting shares of the institution over which it has voting power to in excess of the percentage of outstanding voting shares of the institution over which that person or group had voting power on the date of enactment of this section, and to at least the amount specified in clause (i), as the result of forming or enlarging a group, or acquiring, by purchase, voting power over voting shares of the institution.

(iii) (A) A person shall not be a controlling person under clause (i) if such person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in clause (i) or who are not deemed a controlling person or group under clause (ii).

(B) For the purposes of this section, a person has voting power over a voting share if such person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of, such voting share.

(iv) A control transaction shall mean, for the purposes of this section, the acquisition by a person or group of the status of a controlling person or group other than in the conversion to stock form of a mutual savings bank.

(c) Notice—Prompt notice that a control transaction has occurred shall be given by the controlling person or group to each shareholder of record of the institution holding voting shares. If the person or group so requests, the institution shall, at the option of the institution and at the expense of the person or group, either furnish a list of all such shareholders to the person or group or mail the notice to all such shareholders. There shall be included in or enclosed with the notice a copy of this section and subsections (F) through

(I) of section 515 of the act of May 5, 1933 (P.L.364, No.106), known as the "Business Corporation Law."

(d) Demand for payment—After the occurrence of the control transaction, any holder of voting shares of the institution may, prior to or within a reasonable time after the notice required by subsection (c) is given, which time period may be specified in the notice, make written demand on the controlling person or group for payment of the amount provided in subsection (e) with respect to the voting shares of the institution held by the shareholder, and the controlling person or group shall agree to pay that amount to the shareholder upon surrender of the share certificate or certificates representing such shares. The demand of the shareholder shall state the number and class or series, if any, of the shares owned by him with respect to which the demand is made. Nothing contained in this section shall preclude a controlling person or group subject to this section from offering, whether in such notice or otherwise, to purchase voting shares of the institution at a price other than that provided in subsection (e), and nothing contained in this section shall preclude any shareholder from agreeing to sell his voting shares at that or any other price to any person.

(e) Shareholders' rights—A shareholder making written demand under subsection (d) shall be entitled to receive cash for each of his shares in an amount equal to the fair value of each voting share as of the day prior to the date on which the control transaction occurs, taking into account all relevant factors, including an increment representing a proportion of any value payable for acquisition of control of the institution. Either the controlling person or group or the shareholder may proceed under subsections (F) through (I) of section 515 of the act of May 5, 1933 (P.L.364, No.106), known as the "Business Corporation Law," for a determination of the fair value of such share as defined in this subsection. The date of notice of the occurrence of the control transaction, or if no notice is given, the date of written demand made by the shareholder, shall be deemed to be the effective date of the plan, the shareholders who make written demand shall be deemed to be the dissenting shareholders, and the controlling person or group shall be deemed to be the institution for the purposes of those subsections.

(f) Control transactions—A person or group that proposes to engage in a control transaction may comply with the requirements of this section in connection with the control transaction, and the effectiveness of the rights afforded herein to shareholders may be conditioned upon the consummation of the control transaction. The person or group shall give prompt written notice of the satisfaction of any such condition to each shareholder who has made demand as herein provided.

(g) Application—Subsections (a) through (f) shall apply to any national bank located in Pennsylvania unless such application is in conflict with an express provision of the national banking laws.

Section 15. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 16. Section 6 (section 1004), section 7 (section 1202), section 11 (section 1503(d)) and section 13 (section 1609(i) and (j)), shall take effect immediately. All other provisions of this act shall take effect in 60 days.

APPROVED—The 18th day of December, A. D. 1986.

DICK THORNBURGH