

No. 1992-89

AN ACT

SB 950

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 reciprocal interstate operations; further providing for acquisitions of the stock of a savings association; revising proxy rules; further providing for approval of branch by the Department of Banking; further providing for number and qualification of directors; and making repeals.

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

Section 1. Section 114 of the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967, amended or added December 18, 1986 (P.L.1723, No.206) and December 21, 1988 (P.L.1427, No.174), is amended to read:

Section 114. Authorization of Reciprocal **[Regional]** *Interstate* Operations of Savings Associations.—(a) The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the following meanings:

(1) "Acquire," to acquire (as defined in section 212(a)(1)) 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.

(2) "Bank holding company," the same meaning as that term has under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841(a).

(3) "Branch," an office which performs the functions described in section 102(5).

(4) "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.

(5) "Entity," any corporation, partnership, association or similar organization, including banks and thrift institutions.

(6) "*Foreign association*," a savings and loan association or building and loan association located in and organized and operating under the laws of a state other than Pennsylvania and a Federal association, as defined in 12 U.S.C. § 1462(5), that is located in a state other than Pennsylvania.

(7) *“Foreign association holding company,” an entity which controls one or more foreign associations and is located in a state other than Pennsylvania.*

(8) *“Foreign savings bank,” a savings bank located in and organized and operating under the laws of a state other than Pennsylvania.*

(9) *“Foreign thrift institution,” a foreign savings bank or a foreign association.*

(10) *“Foreign thrift institution holding company,” an entity which controls one or more foreign thrift institutions and is located in a state other than Pennsylvania.*

[(6)] (11) *“Pennsylvania association,” an association as defined in section 102(3) and a Federal association, as defined in 12 U.S.C. § [1462(d)] 1462(5), that is located in Pennsylvania.*

[(7)] (12) *“Pennsylvania association holding company,” an entity which controls one or more Pennsylvania associations and is located in Pennsylvania.*

[(8)] (13) *“Pennsylvania savings bank,” a savings bank as defined in section 102(x) of the Banking Code of 1965.*

[(9)] (14) *“Pennsylvania thrift institution,” a Pennsylvania savings bank or a Pennsylvania association.*

[(10)] (15) *“Pennsylvania thrift institution holding company,” an entity which controls one or more Pennsylvania thrift institutions and is located in Pennsylvania.*

[(11)] (16) *“Region,” the States of Delaware, Indiana, Kentucky, Maryland, New Jersey, Ohio, Virginia and West Virginia, and the District of Columbia.*

[(12)] (17) *“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)] 1462(5), that is located in the region.*

[(13)] (18) *“Regional association holding company,” an entity which controls one or more regional associations and is located in a state in the region.*

[(14)] (19) *“Regional savings bank,” a savings bank located in and organized and operating under the laws of a state in the region.*

[(15)] (20) *“Regional thrift institution,” a regional savings bank or a regional association.*

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

[(17)] (22) *“Savings and loan holding company,” the same meaning as defined in 12 U.S.C. § 1730a(a)(1)(D).*

[(18)] (23) *“State,” includes the District of Columbia.*

[(19)] (24) *State in which an entity is “located”:*

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

(ii) with regard to a thrift institution holding company, an association holding company, a bank holding company or a savings and loan 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) A **[regional] foreign** thrift institution or a **[regional] foreign** thrift institution holding company may acquire a Pennsylvania association or a Pennsylvania association holding company if:

(1) 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 bank holding company or savings and loan 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 (e);

(2) The acquiring thrift institution or thrift institution holding company and any bank holding company or savings and loan 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, *except that the requirement of location in the region or in Pennsylvania will not be applicable to an acquisition consummated after March 4, 1990*; and

(3) Approval has been received from the department. When considering a proposed acquisition by a **[regional] foreign** thrift institution or a **[regional] foreign** thrift institution holding company, the department shall give specific attention to the effects of the acquisition on the availability, in this Commonwealth, of those banking and basic transaction account services set forth in subsections (j) and (k).

(c) A **[regional] foreign** association 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 117 of the Banking Code of 1965.

(d) A **[regional] foreign** association may establish and maintain branches in this Commonwealth if:

(1) The state in which the association is located and the state in which any bank holding company or savings and loan 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 (e);

(2) The association and any bank holding company or savings and loan **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, *except that the requirement of location in the region or in Pennsylvania will not be applicable with respect to a branch established after March 4, 1990*; and

(3) 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 associations under sections 403 and 404.

(e) (1) 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:

(i) with regard to acquisitions, whether the law of that other state authorizes Pennsylvania associations and Pennsylvania association holding companies to acquire **[regional] foreign** thrift institutions and **[regional] foreign** thrift institution holding companies located in that state on terms and conditions reasonably equivalent to those applicable to acquisitions by **[regional] foreign** thrift institutions and **[regional] foreign** thrift institution holding companies of Pennsylvania associations or Pennsylvania association holding companies and whether the law of that other state imposes conditions on the acquisition by Pennsylvania associations or Pennsylvania association holding companies of **[regional] foreign** thrift institutions or **[regional] foreign** 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

(ii) with regard to branching, whether the law of that other state authorizes Pennsylvania associations 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 associations located in that state and on terms and conditions reasonably equivalent to those applicable to the establishment of branches in that state by an association located in that state.

(2) The department need not determine that the law of another state fails to meet the reciprocity requirement of this section solely by reason of the fact that that law does not allow Pennsylvania associations or Pennsylvania association 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 thrift institutions or thrift institution holding companies located in that state. However, in such circumstances, the department shall find reciprocity only after imposing on the thrift institutions and thrift institution 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 associations and association holding companies.

(3) 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 associations or, alternatively, all Pennsylvania association holding companies to engage on equal terms with each other in the particular type of branching or acquisition. The department shall 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 federally chartered Pennsylvania associations (or federally chartered Pennsylvania associations converted from State-chartered Pennsylvania associations or Pennsylvania savings banks) or their holding companies to engage in the particular type of branching or acquisition on equal terms with State-chartered Pennsylvania associations or their holding companies.

(f) 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.

(g) If a **[regional] foreign** thrift institution or **[regional] foreign** thrift institution holding company **[located in another state]** which has acquired a Pennsylvania association or a Pennsylvania association 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)] (d)** (either by reason of a change in the place in which it is located or by reason of acquisition by a bank holding company or a savings and loan holding company located in a state which does not satisfy the conditions of subsection (b) or **[(c)] (d)** of five percent or more of its voting shares, or the power to vote those shares), said **[regional] foreign** thrift institution or **[regional] foreign** thrift institution holding company shall divest each Pennsylvania association, association 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.

(h) The purpose of this section is solely to authorize **[regional,]** reciprocal *interstate* operations by associations and savings banks, 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.

(i) A Pennsylvania association or Pennsylvania association 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 (j) and (k). 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.

(j) 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 a company located in another state under subsection (b) or approval of an acquisition in another state by a Pennsylvania association or Pennsylvania association holding company under subsection (i), the department shall review the credit practices and policies of each Pennsylvania association or Pennsylvania association 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 employee stock option plans and leveraged buy-outs of businesses by employees, financ-

ing of non-profit 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.

(k) 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:

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

(2) 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.

(3) 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 the 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.

(l) For the purpose of advising the department in the conduct of its functions under subsections (j) and (k), the advisory commission established by

section 116(k) of the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965," 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 (j) and the availability of basic transaction account services under subsection (k). All decisions and determinations made under this section shall be made by the department. *In evaluating an application which would result in an interstate acquisition or an interstate branch, the department shall consider the following regulatory criteria:*

- (i) *capital adequacy;*
- (ii) *asset quality;*
- (iii) *management ability and effectiveness;*
- (iv) *earnings quantity and quality;*
- (v) *liquidity;*
- (vi) *ability to meet the needs of the community;*
- (vii) *effect of the transaction upon competition;*
- (viii) *existence of insider transactions;*
- (ix) *adequacy of all disclosures relating to the transaction; and*
- (x) *resistance to external economic and financial conditions.*

The department shall not approve the application for any such interstate acquisition or interstate branch, unless the evaluation determines that all of the institutions involved in the transaction are in compliance with all relevant regulatory criteria. These regulatory criteria shall apply to all interstate acquisition and interstate branch applications involving the following institutions: a Pennsylvania savings association, a Pennsylvania savings association holding company, a foreign association, a foreign savings bank, a foreign thrift institution or a foreign thrift institution holding company.

Section 2. The act is amended by adding a section to read:

Section 116. Federal Agency References.—(a) Any reference in this act to the Federal Home Loan Bank Board shall mean the Office of Thrift Supervision under section 3 of the Home Owners' Loan Act (48 Stat. 128, 12 U.S.C. § 1462a).

(b) Any reference in this act to the Federal Savings and Loan Insurance Corporation shall mean the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation.

Section 3. Section 212 of the act, added April 9, 1982 (P.L.334, No.94), is amended 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) "*Ownership change*," the same meaning as in section 382 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended.

~~[(4)]~~ (5) "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, *whether or not any prior acquisition had been approved by the department pursuant to this section*, would total more than:

(1) ten percent of any class of the outstanding shares of such institution; or

(2) five percent of any such class, if such institution or corporation had net operating loss carryforwards (as defined in the Internal Revenue Code of 1986) in excess of twenty percent of its total stockholders' equity, as reported in its most recent publicly available annual financial statements. ~~[, 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 *or ownership change* 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, *with respect to reimbursement for any loss occasioned by such ownership change* 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] Office of Thrift Supervision**,

(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).

(5) An acquisition or proposal to acquire shares by the issuer's tax-qualified employe benefit program.

(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 4. Section 404 of the act is amended by adding a subsection to read:

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

(g) An association may establish and operate as a branch any principal place of business or branch of an affiliated State or Federal savings and loan association or State or National bank or State or Federal savings bank upon written approval by the department of an application for approval in a form prescribed by the department accompanied by any applicable fee. The department may issue regulations under this subsection. However, the absence of regulations shall not be a bar to consideration of an application filed under this subsection nor a basis for denial of such application.

Section 5. Section 502(b) of the act is amended to read:

Section 502. Number and Qualifications of Directors.—* * *

(b) Each director shall be a citizen of the United States [and at least two-thirds of the directors shall be residents of Pennsylvania].

Section 6. Section 506 of the act is amended by adding a subsection to read:

Section 506. Removal of Directors.—* * *

(c) The shareholders may remove a director from office subject to the provisions of the association's bylaws or articles of incorporation.

Section 7. Section 513 of the act is repealed.

Section 8. The act is amended by adding a section to read:

Section 514. Department Review of Additions of any Director or Senior Executive Officer.—*(a) An insured association or a Pennsylvania thrift institution holding company shall notify the department of the proposed addition of any individual as a senior executive officer of such institution or holding company at least thirty days before such addition or employment becomes effective, if the insured association or the Pennsylvania thrift institution holding company:*

(1) has been chartered less than two years in the case of an insured association;

(2) has undergone a change in control or a charter conversion within the preceding two years; or

(3) is not in compliance with the minimum capital requirement applicable to such insured association or is otherwise in a troubled condition, as determined by the department on the basis of such insured association's or holding company's most recent report of condition or report of examination.

(b) An insured association or Pennsylvania thrift institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the department issues a notice of disapproval within thirty days following the receipt of the notice of proposed action pursuant to subsection (a).

(c) The department shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) if the competence, experience, character or integrity of the individual who is the subject of such notice indicates that it would not be in the best interests of the depositors of the insured association or in the best interest of the public to permit the individuals to be employed by or associated with the insured association or a Pennsylvania thrift institution holding company. The notice shall set forth the reason for such disapproval.

(d) The department may issue regulations regarding exceptions to prior notice required in subsection (a). The department shall publish a notice outlining the information required to be included in such notice as required in subsection (a).

Section 9. Section 604(b) of the act is amended to read:

Section 604. Voting Rights of Members.—* * *

(b) A proxy:

(1) Shall be in writing and filed with the secretary of the association. *Except as otherwise provided in the association's bylaws, a proxy shall be filed with the secretary not less than five days prior to the meeting at which the proxy is to be exercised.*

(2) Shall, unless coupled with an interest, be revocable at will notwithstanding any agreement to the contrary, but the revocation of a proxy shall not be effective until written notice thereof has been given to the association,

(3) Shall not be revoked by the death or incompetency of the maker unless, before the vote is counted or the authority exercised written notice of such death or of an adjudication of such incompetence is received by the secretary.

Section 10. Section 701(a)(5) of the act, amended July 11, 1980 (P.L.638, No.132), is amended 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:

* * *

(5) An association may borrow from the Federal Home Loan Bank such sums as are permitted by the rules and regulations of the Federal Home Loan Bank and such borrowings shall be in accordance with such rules and regulations as may be prescribed by the Federal Home Loan Bank. An association may borrow from the Pennsylvania Savings Association Insurance Corporation such sums as are permitted by the rules and regulations of the Pennsylvania Savings Association Insurance Corporation and such borrowings shall be in accordance with such rules and regulations as may be prescribed by the Pennsylvania Savings Association Insurance Corporation. An association may borrow from sources individual or corporate, an aggregate amount not in excess of fifty percent of its savings liability. An insured association shall also have the right to issue notes, bonds, debentures and other securities in accordance with such rules and regulations as are prescribed by the **[Federal Savings and Loan Insurance Corporation] Office of Thrift Supervision, the Federal Deposit Insurance Corporation** and the Department of Banking. Loans and other evidences of indebtedness may be secured by assets of the association. The pledge of assets may be with recourse. When authorized by statute, an association may also pledge its assets for public fund deposits to the extent the same are not insured.

* * *

Section 11. Section 823 of the act, amended or added November 26, 1978 (P.L.1397, No.329) and July 11, 1980 (P.L.638, No.132), is amended to read:

Section 823. Account Insurance.—(a) Each association subject to this act shall obtain insurance of accounts as soon as the association can qualify for such coverage as provided 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.

[(b) After December 31, 1980, an association subject to this act which has not obtained insurance of accounts as prescribed in subsection (a) shall not accept further funds from savings account holders or create new savings accounts unless, prior to January 1, 1981, an application for insurance of its

savings accounts has been filed with a public or private corporation authorized by law to insure accounts of savings associations or an application for merger under which an insured association shall be the resulting association has been filed with, as required, the department, the Pennsylvania Savings Association Insurance Corporation, the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation. If such application is disapproved by the department, the Federal Home Loan Bank Board, on behalf of the Federal Savings and Loan Insurance Corporation, or the Pennsylvania Savings Association Insurance Corporation subsequent to December 31, 1980, the uninsured association, immediately upon notification of such action, shall cease to accept further funds from savings account holders and shall not create new savings accounts.]

(b) An association which is not insured or which loses its insurance may become the subject of a charter revocation proceeding by the department.

Section 12. Section 922(n) and (s) of the act, amended or added December 18, 1986 (P.L.1723, No.206) and December 21, 1988 (P.L.1427, No.174), are amended to read:

Section 922. Securities and Obligations.—An association may invest its funds:

* * *

(n) In capital stock obligations or other securities of any service corporation if the entire capital stock of such corporation is available for purchase only by savings associations and savings banks organized and existing under the laws of the Commonwealth of Pennsylvania, by Federal savings and loan associations having their home offices in the Commonwealth of Pennsylvania, [and] by regional thrift institutions, as that term is defined in section 114, and by foreign thrift institutions, as that term is defined in section 114. The department shall have the right to define service corporations and the activities thereof. An association may make investments in service corporations up to three percent of its assets plus such additional percentage of assets as the department may by regulation authorize,

* * *

(s) With the prior approval of the department, in up to one hundred percent of the stock of a bank, a bank and trust company, a trust company, a bank holding company, a savings bank, a regional thrift institution [or], a regional thrift institution holding company or a foreign thrift institution or a foreign thrift institution holding company, as those terms are defined in the Banking Code of 1965 and in section 114.

Section 13. Section 1101(b.1) of the act, added December 18, 1986 (P.L.1723, No.206), is amended and the section is amended by adding a subsection to read:

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

(b.1) Upon compliance with the requirements of this article, one or more associations may merge or consolidate with a regional thrift institution or with a foreign thrift institution, as those terms are defined in, and subject to any applicable limits of, section 114.

(b.2) Upon compliance with all of the requirements of this article, except section 1105, an association may purchase the assets and assume the liabilities of another association, a Federal savings association or a State savings bank.

* * *

Section 14. Section 1404 of the act, amended December 21, 1988 (P.L.1427, No.174), is amended to read:

Section 1404. Orders by Department; Hearings.—(a) The department may by written order ***under seal of the department*** direct an association to discontinue any violation of law ***or regulation*** or any unsafe or unsound business practice ***within such period as shall be specified in the order.***

(b) If any director, officer, attorney or employe continues to violate the law or conduct the business of an association in an unsafe or unsound manner after having been warned by the department to discontinue such violations of law or such unsafe or unsound business practices, the department may issue a written order ***under seal of the department*** directing such director, officer, attorney or employe to appear on the date fixed in such order before the department and show cause why he should not be removed from his office or position.

(c) A copy of such order shall be sent to the association of which such person is a director, officer, attorney or employe.

(d) On the day fixed in the department's order, such director, officer, attorney or employe shall be heard in person or by counsel. The hearing shall be closed to the public unless the department determines that the public interest requires that the hearing be open to the public.

(e) If the director, officer, attorney or employe does not appear on the day fixed in the department's order, or if, after hearing, the department determines that such director, officer, attorney or employe is guilty of a violation of law or an unsafe or unsound business practice and should be removed from his office or position, the department shall, within sixty days of such hearing, issue an order directing the association to remove such person from his office or position and declare such office or position vacant. A copy of such order shall be sent to the director, officer, attorney or employe so removed. The department shall specify in its order the date upon which any such removal and declaration of vacancy shall become effective.

(f) If the person ordered by the department to appear is a director, officer, attorney or employe of an association which is a member of the Federal Home Loan Bank System or is insured by the Federal Savings and Loan Insurance Corporation, the department may advise the Federal Home Loan Bank or the Federal Savings and Loan Insurance Corporation of its order directing the appearance of such person before the department and of the decision of the department.

(g) In connection with any hearing or investigation, the department shall have power to issue subpoenas requiring the attendance of or the production of pertinent books and papers by any person, including the officers, directors, agents, employes or members of any association. The department may, upon application of the director, officer, attorney or employe to be heard,

subpoena such witnesses as are set forth in such application. The department shall have the power to question such witnesses under oath or affirmation and to examine such books and papers.

(h) Any witness who refuses to obey a subpoena issued under this section or who refuses to be sworn or affirmed or to testify or who is guilty of any contempt after summons to appear may be punished as for contempt of court, and for this purpose an application may be made to any court of common pleas within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

(i) Except as herein otherwise specifically provided, the proceedings of the department and its decisions **[shall not] may** be published **[or divulged to anyone] at the discretion of the department.**

(j) A director, officer, attorney or employe who is removed from his office or position as provided in this article *and as provided in section 506* shall thereafter be disqualified from acting as a director, officer, attorney or employe of any association *or any insured depository institution* in this Commonwealth for such period as the department shall prescribe.

Section 15. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1992.

ROBERT P. CASEY