

No. 1978-255

AN ACT

SB 1456

Establishing the Pennsylvania Deposit Insurance Corporation.

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

Section 1. Short title.

This act shall be known and may be cited as the "Pennsylvania Deposit Insurance Corporation Act."

Section 2. Pennsylvania Deposit Insurance Corporation.

(a) There is hereby established a body corporate to be known as "Pennsylvania Deposit Insurance Corporation" (hereinafter in this act referred to as "PDIC"), whose purpose shall be the insurance of deposits in private banks. PDIC is a nonprofit corporation and its existence shall be perpetual until dissolved by act of the Legislature. PDIC shall:

(1) Not be an agency or instrumentality of the Commonwealth of Pennsylvania.

(2) Be a corporation the members of which shall be all private banks holding certificates of authorization from the Commonwealth, which have filed an application for membership accepted by the board of directors, such membership being for the life of PDIC unless any member elects to withdraw by giving written notice one year in advance.

(3) Not be subject to regulation by the Department of Insurance, or to laws of the Commonwealth concerning insurance of deposits in private banks.

(b) In addition to the powers conferred upon a nonprofit corporation by the Commonwealth of Pennsylvania and to the powers granted to PDIC elsewhere in this act, PDIC shall have the power:

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any State or Federal court;

(2) to adopt, alter and use a corporate seal, which shall be judicially noticed;

(3) subject to the provision of this act, to adopt, amend and repeal, by its board of directors bylaws and rules relating to the conduct of its business and the exercise of all other rights and powers granted to it by this act;

(4) to conduct its business, including the carrying on of operations and the maintenance of offices, and to exercise all other rights and powers granted to it by this act anywhere in the Commonwealth of Pennsylvania;

(5) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal mixed, or any interest therein, wherever situated;

(6) subject to the provisions of subsection (c), to elect or appoint such officers, attorneys, employees and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries and to require bonds from them;

(7) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to PDIC by this act; and

(8) by bylaw, to establish its fiscal year.

(c) PDIC shall have a board of directors which, subject to the provisions of this act, shall establish the policies which shall govern the operations of PDIC. The board shall consist of three persons, who are residents of the Commonwealth. One director shall be appointed by the Governor, who shall be the chairman; one director shall be appointed by a majority vote of the members which are private banks; and one director shall be appointed by the State Treasurer of Pennsylvania (hereinafter "treasurer"). Director shall be appointed for terms of three years, except that of the directors first appointed, one shall hold office for a term expiring on December 31, 1979, one shall hold office for a term expiring on December 31, 1980, and one shall hold office for a term expiring on December 31, 1981, as designated by the Governor at the time they take office. A vacancy in the board shall be filled in the same manner as the original appointment was made, but if such vacancy is not so filled within six months it shall be filled by the remaining directors. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office. All matters relating to compensation of directors shall be as provided in the bylaws of PDIC.

(d) The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of PDIC.

(e) As soon as practicable but not later than 45 days after the date of enactment of this act, the board of directors shall adopt bylaws relating to the conduct of the business of PDIC and the exercise of the rights and powers granted to it by this act, and shall file a copy thereof with the Department of Banking (hereinafter "department"). Thereafter, the board of directors may alter, supplement, or repeal any bylaw and may adopt additional bylaws and in each such case shall file a copy thereof with the department. Each such bylaw, alteration, supplement or repeal and additional bylaw shall take effect upon the sixtieth day, or such later date as

PDIC may designate, after the filing of the copy thereof with the department or upon such earlier date as the department may determine, unless the department shall, by notice to PDIC setting forth the reasons therefor, disapprove the same, in whole or in part, as being contrary to the public interest or contrary to the purposes of this act.

Section 3. PDIC Fund.

(a) PDIC shall establish a "PDIC Fund" (hereinafter in this act referred to as the "fund"). All amounts received by PDIC, other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by PDIC, shall be deposited in the fund, and all expenditures made by PDIC shall be made out of the fund.

The balance of the fund at any time shall consist of the aggregate at such time of:

- (1) cash on hand or on deposit in an institution where the deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;
- (2) amounts invested in United States Government or agency securities, or securities issued by the Commonwealth or any political subdivision thereof; and
- (3) confirmed lines of credit, as defined herein.

For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which PDIC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by PDIC not less than one year from the time of such borrowings including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of PDIC.

(b) Within nine months from the date of enactment of this act, the balance of the fund shall aggregate not less than one quarter of one per cent of deposits, less any amounts expended from the fund within that period.

(c) PDIC shall, by bylaw, impose upon its members such assessments as may be necessary and appropriate to establish and maintain the fund and to repay any borrowings by PDIC. Any assessments so made shall be such as will enable PDIC to meet its contractual obligations in connection with any borrowing incurred by PDIC. Subject to limitations in this subsection and to subsection (d), any assessment upon the members shall be uniform and be based upon or measured by the amount of their deposits not secured by a pledge of assets under Pennsylvania law or insured by the Securities Investor Protection Corporation or any other Federal agency authorized to insure deposits (hereinafter "deposits").

Notwithstanding any other provision of this act, other than subsection (f), no assessment shall be made upon a member otherwise than pursuant to this subsection and an assessment may be made under this subsection during any 12-month period if PDIC determines that such rate of

assessment during such period will not have a material adverse effect on the financial condition of its members or their customers. No assessments shall be made pursuant to such paragraph which require payments during any such period which exceed in the aggregate one quarter of one per cent of deposits for such period.

(d) Subject to subsection (c), PDIC shall impose upon each of its members an assessment at a rate of not less than one tenth of one per cent per annum of the deposits of such member until the balance of the fund aggregates not less than \$2,000,000, or such greater amount as PDIC may determine in the public interest, and during any period when there is outstanding borrowing by PDIC pursuant to subsection (f) or subsection (g).

(e) To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c), the excess shall not be recoverable except against future payments by such member in accordance with a bylaw of PDIC. If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by PDIC by bylaw.

(f) PDIC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes or other evidences of indebtedness, all upon such terms and conditions as the board of directors may determine in the case of a borrowing other than pursuant to subsection (g), and as may be prescribed by the treasurer in a borrowing pursuant to subsection (g). To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes or other evidences of indebtedness so issued, PDIC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of PDIC and of the assessments made or to be made upon members. Any such pledge of future assessments shall be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by PDIC, or any examining authority as collection agent for PDIC, shall immediately be subject to the lien, subject to any prior pledge, of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against PDIC or such collection agent whether pursuant to this act, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. The department shall by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make, or any defect in, any such filing shall not affect the validity of such pledge or borrowing.

(g) In the event that the fund is, or may reasonably appear to be, insufficient for the purposes of this act, the treasurer is authorized to make loans to PDIC. At the time of application for, and as a condition to, any such loan, PDIC shall file with the treasurer a statement with respect to the anticipated use of the proceeds of the loan. If the treasurer determines that

such loan is necessary for the protection of depositors and the maintenance of confidence in depositories and that PDIC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then PDIC is authorized to issue to the treasurer notes or other obligations in an aggregate amount of not to exceed \$10,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the treasurer. Such notes or other obligations shall bear interest at a rate determined by the treasurer, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The treasurer may reduce the interest rate if he determines such reduction to be in the interest of the Commonwealth. The treasurer is authorized and directed to purchase any notes and other obligations issued hereunder. The treasurer may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases and sales by the treasurer of such notes or other obligations shall be treated as public debt transactions of the Commonwealth.

(h) PDIC may by bylaw define all terms used in this subsection insofar as such definitions are not inconsistent with the provisions of this subsection.

Section 4. Protection of depositors.

(a) If the department is aware of facts which lead it to believe that any private bank subject to its regulation is in or is approaching financial difficulty, it shall immediately notify PDIC. If PDIC determines that any member has failed or is in danger of failing to meet its obligations to depositors, PDIC, upon notice to such member, shall immediately notify the department.

(b) The provisions of the act of May 15, 1933 (P.L.565, No.111), known as the "Department of Banking Code," shall cover the liquidation of any member.

Section 5. Liquidation proceedings.

(a) In order to provide for prompt payment and satisfaction of the net claims of depositors of members of PDIC of which the Secretary of Banking has taken possession as receivers, PDIC shall advance to the Secretary of Banking, as receiver, upon written requests, such moneys as may be required to pay or otherwise satisfy claims in full of each depositor to the extent of the coverage provided by the Federal Deposit Insurance Corporation or any other Federal agency authorized by law to insure deposits; except that a depositor who holds accounts with the private bank in receivership in separate capacities shall be deemed to be a different depositor in each capacity. PDIC shall, if necessary, advance to the secretary, as receiver, upon written request, moneys to cover administration expenses as defined in the "Department of Banking Code."

To the extent that moneys are advanced by PDIC to the secretary to pay the claims of depositors or administration expenses, PDIC shall be subrogated to the claims of such depositors with the rights and priorities provided by law.

(b) Except as otherwise provided in this section, nothing in this section shall limit the right of any depositor to establish by formal proof such claims as such persons may have to payment, without resort to moneys advanced by PDIC.

Section 6. Department functions.

(a) In the event of the refusal of PDIC to commit its funds or otherwise to act for the protection of depositors of any member of PDIC, the department may apply to the Commonwealth Court for an order requiring PDIC to discharge its obligation under this act and for such other relief as the court may deem appropriate to carry out the purposes of this act.

(b) The department may make such examinations and inspections of PDIC and require PDIC to furnish it with such reports and records of copies thereof as the department may consider necessary or appropriate in the public interest or to effectuate the purposes of this act. As soon as practicable after the close of each fiscal year, PDIC shall submit to the department a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this act, during such fiscal year. Such report shall include financial statements setting forth the financial position of PDIC at the end of such fiscal year and the results of its operations, including the source and application of its funds, for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by PDIC and satisfactory to the department, and shall be accompanied by the report thereon of such accountant or firm.

Section 7. Examining authority functions.

Each member of PDIC shall file with PDIC such information as PDIC may determine to be necessary or appropriate for the purpose of making assessments under section 3. The department shall make available to PDIC all or such part of such information and such compilations and analyses thereof as PDIC, by bylaw, shall specifically request.

Section 8. Prohibited acts.

(a) If a member of PDIC shall fail to file any report or information required pursuant to this act, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this act, and such failure shall not have been cured, by the filing of such report of information or by the making of such payment, together with interest thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of PDIC, such private bank shall cease to be a member of PDIC, and may be sued by PDIC in Commonwealth Court. If such member denies that he owes all or any part of the amount specified in such notice, he may after payment of the full amount so specified

commence an action against PDIC in the Commonwealth Court to recover the amount he denies owing. The department shall take such action as it deems appropriate against any private bank which ceases to be a member of PDIC.

(b) Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, securities, or other assets of PDIC shall be fined not more than \$50,000 or imprisoned not more than five years or both.

Section 9. Public inspection of reports.

Any document or information supplied to PDIC by the department shall be kept confidential unless the department specifically specifies otherwise, and violation of such confidentiality shall subject the personnel of PDIC to the same sanctions to which personnel of the department would be subject under section 302 of the "Department of Banking Code." Any other notice, report or other document filed with PDIC pursuant to this act shall be available for public inspection unless PDIC shall determine that disclosure thereof is not in the public interest.

Section 10. Liability.

(a) Except for such assessments as may be made upon such member pursuant to the provisions of section 3, no member of PDIC shall have any liability under this act as a member of PDIC for, or in connection with, any act or omission of any other member whether in connection with the conduct of the business or affairs of such member or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of PDIC.

(b) Neither PDIC nor any of its directors shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this act.

Section 11. Advertising.

PDIC shall by bylaw prescribe the manner in which a member of PDIC may display any sign or signs, or include in any advertisement a statement, relating to the protection to customers and their accounts, or any other protections, afforded under this act. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws.

Section 12. PDIC exempt from taxation.

PDIC, its property, its franchise, capital, reserves, surplus and its income, shall be exempt from all taxation now or hereafter imposed by the Commonwealth or local taxing authority, except that any real property and any tangible personal property, other than cash and securities, of PDIC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property of a nonprofit corporation is taxed. Assessments made upon a member of

PDIC shall constitute ordinary and necessary expenses in carrying on the business of such member.

Section 13. Effective date.

This act shall take effect in 60 days.

APPROVED—The 5th day of October, A. D. 1978.

MILTON J. SHAPP