

No. 1978-266

AN ACT

HB 2398

Amending the act of May 15, 1933 (P.L.565, No.111), entitled "An act relating to the powers and duties of the Department of Banking and the Secretary of Banking in exercising supervision over, and taking possession of and conducting or liquidating the business and property of, corporations, associations, and persons receiving deposits or otherwise transacting a banking business, corporations acting as fiduciaries, and building and loan associations; providing for the payment of the expenses of the Department of Banking by supervised corporations, associations, or persons, and appropriating the Banking Department Fund; authorizing the Department of Banking, under certain circumstances, to examine corporations, associations, or persons affiliated, or having business transactions with supervised corporations, associations or persons; authorizing appeals to the Supreme Court, and prescribing and limiting the powers and duties of certain other courts and their prothonotaries, registers of wills, recorders of deeds, and certain State departments, commissions, and officers; authorizing certain local public officers and State departments to collect fees for services rendered under this act; providing penalties; and repealing certain acts and parts of acts," further providing for the applicability of the act and penalties for conflicts of interest; authorizing appointment as receiver of a closed institution, a public body of the United States; clarifying authority of the secretary to seek bids for the purchase of assets and assumption of liabilities of a closed institution.

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

Section 1. Subsection A of section 2, act of May 15, 1933 (P.L.565, No.111), known as the "Department of Banking Code," is amended by adding a definition to read:

Section 2. Definitions.—A. The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise:

* * *

"Public body of the United States." The Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or any other agency or instrumentality of the United States which insures deposits of an institution.

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Section 2. Section 15 of the act, amended April 22, 1937 (P.L.337, No.96), is amended to read:

Section 15. Act Not Applicable to [Small Loan Companies and] Credit Unions.—[A. This] ***Except where otherwise expressly provided, this act does not apply to, and does not affect any act relating to, [corporations and persons licensed by the department to make small loans, as provided by the act, approved the seventeenth day of June, one thousand nine hundred fifteen (Pamphlet Laws, one thousand twelve), entitled "An act regulating the business of loaning money in sums of three hundred***

(\$300.00) dollars or less, either with or without security, to individuals pressed by lack of funds to meet immediate necessities; fixing the rates of interest and charges therefor; requiring the licensing of lenders; and prescribing penalties for the violation of this act," its amendments and supplements; nor to credit unions incorporated under the act, approved the twenty-sixth day of May, one thousand nine hundred thirty-three (Pamphlet Laws, one thousand seventy-six), entitled "An act to provide for the organization, incorporation, operation, and supervision of cooperative savings and credit associations, to be termed credit unions; designating such credit unions as corporations, and defining their powers and duties; conferring certain powers and duties on the Department of Banking; and providing penalties," its amendments and supplements.] *credit unions as defined in the act of September 20, 1961 (P.L.1548, No.658), as amended, known as the "Credit Union Act."*

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

Section 16. General Authority.—Whenever, under the provisions of this act, the department takes possession of an institution or the secretary becomes receiver of an institution whose deposits or shares are insured by a public body of the United States, such public body may become receiver either by designation of the secretary or appointment by the court in which the certificate of possession is filed. As receiver, such public body shall have the same rights, powers and duties, either with respect to taking possession or acting as receiver, as are provided to the department or secretary under the provisions of this act.

Section 4. Section 301 of the act is repealed.

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

Section 303. Conflicts of Interest; Penalty.—A. For purposes of this section, "institution" shall mean: a Pennsylvania State-chartered or licensed bank, mutual savings bank, bank and trust company, trust company, private bank, savings and loan association, consumer discount company, motor vehicle sales finance company, licensed self-financing installment seller of motor vehicles, licensed collector-repossessor, money transmitter, pawnbroker or credit union.

B. Except as provided in subsection E, neither the Secretary of Banking, nor any officer or employe of the department, nor any deputy receiver or employe of the Secretary of Banking, as receiver, shall receive any sum of money or any property as a gift or loan or otherwise, directly or indirectly from any institution or from any officer, director or employe thereof.

C. Neither the Secretary of Banking, nor any officer or employe of the department, nor any deputy receiver or employe of the Secretary of Banking as receiver, shall hold any office or position in, have any direct or indirect pecuniary interest in, or direct or indirectly own shares or securities issued by an institution, except that the Secretary of Banking may continue to own shares or securities issued by an institution which are owned by him on the date of his appointment and all shares or securities distributed by the institution and received by him on account of the shares or securities so owned subject to the penalty provisions of this section.

D. In the event of such ownership of shares or securities by the Secretary of Banking, he shall disclose the ownership, amount and date of acquisition of such shares or securities in writing to the Secretary of the Commonwealth immediately after his appointment and shall not during his term of office participate in any decision or take any action concerning an institution in which he owns such shares or securities other than actions or decisions generally applicable to institutions or classes of institutions. In the event of disqualification of the Secretary of Banking from participation in any decision or action for such reason, all authority vested in him by law shall, for the purpose of such decision or action, be exercised by the senior deputy Secretary of Banking.

E. The prohibitions of subsections B and C shall not apply to:

(1) A first lien mortgage loan upon the home of the Secretary of Banking, an officer or employe of the department, a deputy receiver or an employe of the Secretary of Banking as receiver, where such loan is granted upon the same terms and in the same manner as provided by law for mortgage loans granted by such institutions.

(2) A deposit account with an institution, provided that such account shall not be intentionally overdrawn; except that an examiner assigned to the examination of savings associations shall not have a savings account in any State-chartered savings association.

F. A violation of the prohibitions of this section by the Secretary of Banking, an officer or employe of the department, a deputy receiver or an employe of the Secretary of Banking as receiver shall constitute sufficient ground for removal from office. In addition, any such person who willfully or knowingly commits such violation shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for a period not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000.00), or both; and shall be subject to a further fine equal to the amount of money or value of the property which such individual has directly or indirectly received in violation of this section.

Section 6. Sections 606, 704 and 714 of the act are amended to read:

Section 606. Power of Courts to Appoint Receivers.—**[No] Except as hereinafter provided, no** court shall appoint anyone but the secretary as receiver of an institution. Whenever any court, at the instance of a depositor, shareholder, or other person entitled by law to institute such proceedings, shall determine that a receiver should be appointed, for any reason whatsoever, it shall appoint the secretary as such receiver.

When thus appointed receiver by a court, the secretary shall serve in the same manner and with the same limitations, and he shall have the same rights, powers, and duties, as when he becomes receiver by operation of law and without appointment by any court. No court shall impose upon the secretary as receiver any duties or restrictions which are in conflict with the provisions of this act.

In any proceeding for the appointment of a receiver of an institution whose deposits or shares are insured by a public body of the United States, the court shall upon the recommendation of the secretary (whether or not the department is a party) appoint said body or its administrator as receiver. If said public body or its administrator accepts the appointment it or he shall have all the rights, powers and duties of the secretary as receiver, under this act and other applicable law. The public body or its administrator may act as receiver without bond.

Section 704. Suspension or Continuation of Business.—The secretary is authorized, upon taking possession of the business and property of an institution as receiver, to continue or to suspend the business for such period as he may deem necessary to enable him to determine whether to surrender such possession to the institution, to authorize a merger or consolidation, ***to seek bids for the purchase of assets and assumption of liabilities of the institution by any State or Federal institution whose principal place of business is located in Pennsylvania***, to liquidate the affairs of such institution, or to take such other action as is authorized by law. During such period, he shall take any action he deems necessary to conserve the assets and business, or to protect the best interests of the estate.

Section 714. Power of Secretary to Borrow from ***or Sell or Pledge to Government Agencies***.—***A.*** The secretary may, without leave of court, borrow money from any agency or instrumentality of the United States government, except national banks, or of the Commonwealth of Pennsylvania, and pledge or hypothecate, as security therefor, any real or personal property of the institution, for the purpose of expediting the liquidation of the assets of the institution of which he is receiver, and the distribution of the proceeds thereof to the depositors, the other creditors, or the shareholders thereof.

B. ***The secretary may, without leave of court, sell or pledge assets of a closed institution to any public body of the United States, or agency or instrumentality of the United States government, except national banks, or of the Commonwealth of Pennsylvania.***

Section 7. The act is amended by adding a section to read:

Section 725. Rights of Subrogation.—When a public body of the United States has made payment to any depositor, it shall become subrogated to all rights of the depositor against the institution in possession to the extent of such payment.

Section 8. This act shall take effect immediately.

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

MILTON J. SHAPP