

No. 1988-65

## AN ACT

HB 1992

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," further providing for acquisitions and offers to acquire shares of certain financial institutions; and further defining the interstate banking region.

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

Section 1. Section 112 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, added March 3, 1972 (P.L.104, No.38) and amended April 8, 1982 (P.L.262, No.79), is amended to read:

Section 112. Acquisitions, and Offers to Acquire, Shares of Banks, Bank and Trust Companies, Trust Companies and National 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"—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.

(ii) "Control"—the power to elect a majority of the board of directors of an institution or corporation.

(iii) "Institution"—a bank, bank and trust company, trust company, national bank or stock savings bank located in Pennsylvania.

(iv) "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.

**[(iv)] (v) "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) Requirement of prior approval**—Except as provided in subsection (i), it shall be unlawful, without the prior written approval of the department pursuant to this section, for any person to acquire, or to make a proposal to acquire, shares of an institution or shares of a corporation which controls an institution if the aggregate number of shares held after such acquisition would total more than:

**(i)** ten percent of *any class* of the outstanding shares of such institution or corporation; *or*

**(ii)** *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, as amended) 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) Application for approval**—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:

**(i)** file an application for approval in such form as the department may prescribe;

**(ii)** 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;

**(iii)** pay such investigation fee as the department may specify; and

**(iv)** 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) Investigation by department**—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 1007 (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) Action by department—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) Requirements as to proposals—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) Prohibition of misleading statements—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) Regulations by department—The enforcement and implementation of this section shall be subject to regulation by the department.

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

(i) 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;

(ii) a merger or consolidation which requires the approval of the department or the Comptroller of the Currency of the United States;

(iii) 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

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

(j) Penalties—A violation of the provisions of this section shall be subject to the *civil and criminal* penalty provisions of this act.

Section 2. Section 116(a)(iii) of the act, added June 25, 1986 (P.L.259, No.69), is amended to read:

Section 116. Authorization of Reciprocal Interstate Banking

(a) Definitions—As used in this section:

\* \* \*

(iii) "Region"—shall mean, in addition to this State, the states of Delaware, *Indiana*, Kentucky, Maryland, New Jersey, Ohio, Virginia and West Virginia and the District of Columbia.

\* \* \*

Section 3. Section 117(a)(viii) of the act, added December 18, 1986 (P.L.1702, No.205), is amended to read:

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:

\* \* \*

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

\* \* \*

Section 4. This act shall take effect immediately.

APPROVED—The 18th day of May, A. D. 1988.

ROBERT P. CASEY