

No. 1988-173

AN ACT

SB 979

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," authorizing banks to invest in the stock of savings associations; granting additional powers to banks and savings banks; revising lending and investment authorities for banks and savings banks; further providing for all rates and charges of nonresident cardholders; and providing for cumulative voting in banking institutions.

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

Section 1. Section 310(a) of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, amended May 21, 1980 (P.L.173, No.51), is amended to read:

Section 310. Real Estate Loans

(a) Permissible loans; maximum amount and term—An institution may, subject to the requirements of this section, make or acquire a loan secured by a lien on real estate (including a lease-hold) located in any state or the District of Columbia, in a dependency or insular possession of the United States or in the Commonwealth of Puerto Rico, in an amount and for a term not to exceed:

(i) in the case of improved real estate, including farm land:

(A) two-thirds of the value for ten years, if unamortized, or

(B) four-fifths of the value for thirty years, if the terms of the loan require substantially equal payments at successive intervals of not more than one year each and in an amount sufficient to pay all principal of and interest on the loan within the term of the loan, except that a loan to a commercial or industrial borrower is exempted from the requirement of substantially equal payments and the date of the initial payment on a loan to such borrower may be deferred for a period not in excess of three years from the date of the loan; or

(C) ninety percent of the value of a one family residential property for thirty years, in an amount not to exceed forty thousand dollars (\$40,000), or such larger amount as the department may permit by regulation, subject to the same requirements set forth in clause (B); or

(D) ninety-five percent of the value for thirty years, if that principal portion of the loan in excess of seventy-five percent of the value is made in reliance upon a private company mortgage insurance or guarantee acceptable to the Department of Banking, subject to the same requirements set forth in clause (B); or

(ii) in the case of unimproved real estate to be acquired or developed with the proceeds of the loan[:

(A) two-thirds of the value for three years, or

(B) three-fourths of the value for five years, when utilities, roads or streets necessary for the development of such real estate have been completed], *three-fourths of the value for five years.*

* * *

Section 2. Section 311(d) of the act, amended July 6, 1984 (P.L.606, No.125) and July 6, 1984 (P.L.621, No.128), is amended to read:

Section 311. Transactions With Respect to Shares of Corporate Stock and Capital Securities

* * *

(d) Ownership—An institution may acquire and hold:

(i) shares of stock of a Federal Reserve Bank, without limitation of amount;

(ii) shares of stock of:

(A) the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Student Loan Marketing Association, a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968 or any other such corporations or agencies as may from time to time be approved by the department,

(B) a bank, a bank and trust company or a trust company subject to this act, a national bank located in Pennsylvania or a Pennsylvania bank holding company—to the extent of ten percent of the sum of the par value of the issued and outstanding shares of any such issuer, and, for purposes of this limitation, the shares owned by all the affiliates of a Pennsylvania bank holding company shall be aggregated to determine whether the ten percent limitation is reached,

(B.1) a subsidiary corporation engaged in the functions or activities that an institution is authorized to carry on, if the shares are acquired with the prior written approval of, and in accordance with the terms and conditions of transfer prescribed by, the department, or

(C) a corporation organized under the laws of the United States or of any state or any foreign country and principally engaged, directly or indirectly, in international or foreign banking or financial operations or in banking or financial operations in a dependency, or insular possession of the United States or in the Commonwealth of Puerto Rico, if the shares are acquired with the prior written approval of, and in accordance with the terms and conditions prescribed by, the department in an amount the cost of which to the institution for the shares of any such association or corporation so acquired or held is not in excess of ten

percent of the aggregate of the capital, surplus and capital securities of the institution and in the case of shares covered by clause (B) of this subsection (d)(ii), in an amount the cost of which to the institution for the shares of all such issuers so acquired or held is not in excess of the lesser of ten percent of the total assets of the institution or one hundred percent of the aggregate of the capital, surplus and capital securities of the institution;

(iii) shares of stock of small business investment companies organized pursuant to the Small Business Investment Act, in an amount the cost of which is not in excess of one percent of the aggregate of the capital, surplus and capital securities of the institution;

(iv) in the case of a bank and trust company, shares of stock of a corporation organized under the laws of the Commonwealth for the purpose of conducting a title insurance business to which the institution has transferred the assets of its title insurance business, in an amount:

(A) the cost of which is not in excess of the lesser of (1) ten percent of the aggregate of the capital, surplus and capital securities of the institution or (2) double the minimum amount of capital and paid-in surplus required for the incorporation of such corporation, or

(B) with the prior approval of the department, the cost of which is not in excess of fifteen percent of the aggregate of the capital, surplus and capital securities of the institution;

(v) shares of stock of business development credit corporations to the extent provided by the Business Development Credit Corporation Law;

(vi) shares of stock of a corporation organized to promote the public welfare and community development, expand the economy or provide for social reform, subject to regulation by the department;

(vii) shares of stock of a clearing corporation as defined in Article 8 of the Uniform Commercial Code;

(viii) shares of stock of a stock savings bank located in Pennsylvania;
[and]

(ix) shares of stock of a corporation engaged exclusively in activities not prohibited by this act, which shares have been held continuously since November 30, 1965[.]; *and*

(x) *shares of stock of a savings association, a Federal savings and loan association or a Federal savings bank, located in Pennsylvania, provided that an institution may hold no more than ten percent of the outstanding shares of the common stock of such savings association, Federal savings and loan association or Federal savings bank.*

* * *

Section 3. Section 315 of the act is amended to read:

Section 315. Miscellaneous and Incidental Banking Powers

An institution shall have, subject to the limitations and restrictions contained in this act:

(a) Letters of credit—the power to issue, advise and confirm letters of credit authorizing the beneficiaries thereof to draw upon the institution or its correspondents;

(b) Money for transmission—the power to receive money for transmission;

(c) Membership in clearing house—the power to become a member of a clearing house association and to pledge assets required for its qualification;

(d) Exchange, coin, bullion—the power to buy and sell exchange, coin and bullion; [and

(e) **Incidental powers—all powers incidental to the conduct of banking business.]**

(e) Municipal and mortgage-related securities—with the prior approval of the department the power to deal in and underwrite municipal and mortgage-related securities to the extent permitted for a savings bank under section 502(f);

(f) Ownership interests in real estate—the power to acquire or maintain ownership interests in improved or unimproved real estate of any type held for development, rental or sale, subject to the prudent man rule of section 504(c), provided that the development shall be completed within five years of the commencement of the development unless that period is extended by the department, and provided that the direct cost of the total of all such ownership interests shall not exceed one percent of the assets of the institution measured at the time investment is made, unless authorized by the department;

(g) Other investment—with the prior written approval of the department, the power to make investments permitted by regulations promulgated by the department that are not otherwise authorized by this act or that do not comply with the conditions, restrictions, limitations or requirements provided elsewhere in this act, but the total amount of such investments may not exceed three percent of the assets of the institution; however, no one investment shall exceed one percent of assets of the institution. The regulations promulgated by the department may include such conditions, restrictions, limitations or requirements as the department deems necessary and appropriate;

(h) Additional powers—the power to exercise any power a savings bank may exercise under sections 502(g) and 505(i) (with the written approval of the department and in accordance with any limitations or conditions prescribed by the department); and

(i) Incidental powers—all powers incidental to the conduct of banking business.

Section 4. Section 502(e) and (f) of the act are amended and the section is amended by adding clauses to read:

Section 502. Additional Powers Related to Conduct of Business of Savings Banks

A savings bank shall have, in addition to other powers granted by this act or its articles and subject to the limitations and restrictions contained in this act or in its articles:

* * *

(e) Investment advisor—the power to act as investment advisor to any management investment company registered under the Investment Company

Act of 1940, whose shares are sold by such company only to depositors in savings banks incorporated under the laws of the United States, any state, the District of Columbia, a dependency or insular possession of the United States or the Commonwealth of Puerto Rico; **[and]**

(f) Underwriting of municipal and mortgage-related securities—with the prior approval of the department, the power to deal in and underwrite municipal securities and mortgage-related securities, as those terms are defined in section 3(a)(29) and (41) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(29) and (41)), securities that would be such mortgage-related securities if they were rated in one of the two highest rating categories by a nationally recognized rating organization, and securities offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. § 77d(5));

(g) Subsidiary powers—the power to undertake any activity permissible to a subsidiary of the savings bank with the written approval of the department and in accordance with any limitations or conditions prescribed by the department; and

[(f)] (h) Incidental powers—all powers incidental to the conduct of business of a savings bank.

Section 5. Section 504 of the act is amended by adding a subsection to read:

Section 504. Investments

* * *

(a.1) Investments authorized by Savings Association Code—Notwithstanding any other provision of this act, a savings bank may make such investments as may be authorized for a savings association by section 922 of the act of December 14, 1967 (P.L. 746, No. 345), known as the Savings Association Code of 1967.

* * *

Section 6. Section 504(b)(xiii) of the act, added April 16, 1981 (P.L. 9, No. 4), is amended and the subsection is amended by adding a clause to read:

Section 504. Investments

* * *

(b) Authority under this act or other statutes—Except as otherwise provided in its articles, a savings bank may, in addition to investments authorized by its articles, other provisions of this act or other statutes, make investments in:

* * *

*(xiii) in the case of a savings bank which has elected to exercise the conditional powers provided in section 513, capital stock, securities or other obligations of any service corporation **[organized under the laws of this Commonwealth]**, subject to the following limitations:*

*(A) the entire capital stock of the service corporation shall be available for purchase by, or be transferable to, only savings banks, savings and loan associations organized under the laws of this Commonwealth, **[or]** Federal *savings banks and* savings and loan associations having their home offices in this Commonwealth, *or regional thrift institutions, as that term is defined in section 117,**

(B) unless authorized by the department a savings bank shall not have an aggregate outstanding investment in the capital stock, securities or obligations of service corporations the cost of which exceeds [one] **three** percent of the assets of the savings bank at the time of acquisition of such stock, securities or obligations,

(C) a service corporation qualifying for investment under this subsection may engage in the following activities:

(1) originating, purchasing, selling and servicing loans upon real estate and participating interests therein,

(2) performing clerical, bookkeeping, accounting, statistical or similar functions, primarily for financial institutions,

(3) acquisition and development of real estate, principally for construction of housing or for resale to others for such construction or for use as mobile home sites, either separately or in conjunction with others provided that such development shall be completed within five years of the commencement of development, unless that period is extended by the department,

(4) acquiring interests in improved residential real estate and mobile homes to be held for rental, and

(5) any other activity authorized by the department by regulation[.]; and

(xiv) ownership interests in improved or unimproved real estate of any type held for development, rental or sale, subject to the prudent man rule of subsection (c), provided that development shall be completed within five years of the commencement of the development unless that period is extended by the department, and provided that the direct cost of the total of all such ownership interests shall not exceed one percent of the assets of the savings bank measured at the time investment is made, unless authorized by the department.

* * *

Section 7. Section 504 of the act is amended by adding a subsection to read:

Section 504. Investments

* * *

(d) Other investment—The department may, by regulation, permit a savings bank with the prior written approval of the department, to make investments that are not otherwise authorized by this act or that do not comply with the conditions, restrictions, limitations or requirements provided elsewhere in this act, but the total amount of such investments may not exceed three percent of the assets of the savings bank: Provided, however, That no one investment shall exceed one percent of assets of the savings bank. The regulations may include such conditions, restrictions, limitations or requirements as the department deems necessary and appropriate.

Section 8. Section 505(a) and (d) of the act, amended May 21, 1980 (P.L.173, No.51) and July 6, 1984 (P.L.621, No.128), are amended and the section is amended by adding a subsection to read:

Section 505. Real Estate Loans

(a) Permissible loans; maximum amount and term—A savings bank may, subject to the requirements of this section, make or acquire a loan secured by a lien on real estate (including a leasehold) located in any state or the District of Columbia, in a dependency or insular possession of the United States or in the Commonwealth of Puerto Rico, in an amount and for a term not to exceed:

(i) in the case of improved real estate, including farm land:

(A) two-thirds of the value for ten years, if unamortized, or three-fourths of the value for five years, if unamortized; or

(B) four-fifths of the value for thirty years, if the terms of the loan require payments which are substantially equal except for the last payment at successive intervals of not more than one year each and in an amount sufficient to pay all principal of and interest on the loan within thirty years, except that a loan to a commercial or industrial borrower is exempted from the requirement of substantially equal payments and the date of the initial payment on a loan to such borrower may be deferred for a period not in excess of **[three] five** years from the date of the loan; or

(C) ninety percent of the value of a one family residential property for thirty years, in an amount not to exceed forty thousand dollars (\$40,000), unless the department by regulation approves the granting of loans under this subsection in greater amounts, subject to the same requirements set forth in clause (B); or

(D) ninety-five percent of the value for thirty years, if that portion of the loan in excess of seventy-five percent of the value is made in reliance upon a private company mortgage insurance or guarantee acceptable to the Department of Banking, subject to the same requirements set forth in clause (B); or

(ii) in the case of unimproved real estate to be acquired or developed with the proceeds of the loan[:

(A) **two-thirds], *three-fourths*** of the value for **[three] five** years[, or

(B) **three-fourths of the value for five years, when utilities, roads or streets necessary for the development of such real estate have been completed].**

* * *

(d) Requirements in connection with loans—The requirements for a loan subject to this section shall be:

(i) the loan shall be evidenced by a bond, note or other obligation and the lien securing such loan shall be obtained by a mortgage, deed of trust or judgment;

(ii) the lien shall be a first *or second* lien (except for a lien of taxes, assessments or charges which are not yet due or which are payable without penalty) unless all prior liens are held by the savings bank **[and the]. *The aggregate of all loans by the savings bank secured by liens on the real estate shall satisfy all other requirements of this section pertaining to such loans;***

(iii) the value of the real estate shall be determined [either] by a real estate appraiser qualified in the state where the real estate is located who shall inspect the real estate and state its value to the best of his judgment in a written report signed by him which must be preserved in the records of the institution[, or in the alternative by an appraisal signed by two reputable persons who shall:

(A) be trustees of the savings bank or selected in a manner authorized by the trustees,

(B) be familiar with real estate values in the vicinity where the real estate is located, and

(C) inspect the real estate and state its value to the best of their judgment in a written report which must be preserved in the records of the savings bank. In the event the appraisers arrive at different conclusions as to the value of the real estate, it shall be permissible to use the average of their two appraisals to determine the value of the real estate: **Provided, however, That each valuation is stated in the report.];**

(iv) insurance against loss from fire on all buildings on the real estate which are included in the appraised value, issued by insurers acceptable to the savings bank and authorized to do business where the real estate is located and in form and amount satisfactory to the savings bank, shall be maintained during the term of the loan by or at the expense of the borrower, except that the savings bank may at its own expense maintain such insurance covering only its interest as lender; **[and]**

(v) the borrower shall pay all expenses in connection with the loan for title insurance, searches and certificates, appraisal fees and fees for preparation and recording of documents[.]; **and**

(vi) a savings bank may make a single delinquency charge for each payment in arrears for a period of more than fifteen days other than by reason of acceleration or by reason of a delinquency on a prior payment.

* * *

(i) Loans without regard to certain limitations—The department may, by regulation, permit savings banks to make, invest in, acquire, sell or otherwise deal with such loans on the security of liens upon residential or nonresidential real property (including leaseholds) as it considers consistent with the purposes of this act, as set forth in section 103, without regard to any of the conditions, restrictions, limitations or requirements imposed upon real estate lending by this section.

Section 9. Section 506 of the act, amended December 17, 1982 (P.L.1367, No.313), is amended to read:

Section 506. Lending Powers; Direct Leasing of Personal Property

(a) A savings bank may:

(i) make loans [for a period not in excess of ninety days] on the collateral security of property in which the savings bank is authorized to invest, in an amount which shall not at any time exceed ninety percent of the [market] readily marketable value of the collateral;

(ii) make loans for repair, alteration or improvement of real estate or for the purpose of mobile home financing without the necessity for mortgage security, subject to the following provisions:

(A) when such loans are insured or are the subject of a written commitment to insure pursuant to national housing legislation, they may be granted in such amounts and upon such terms as are permitted by such legislation or regulations issued thereunder,

(B) when any such loan is not insured under national housing legislation, the principal amount thereof shall not exceed the amount authorized under Title I of the National Housing Act and the loan shall be evidenced by a note or other written evidence of debt requiring repayment in regular monthly installments over a period not exceeding that authorized under Title I of the National Housing Act. The note or other written evidence of debt may contain a provision that if the borrower shall sell the premises or assign his leasehold interest therein or remove therefrom any improvements described in the security agreement the entire balance remaining due on the loan shall immediately become due and payable. The annual interest rate for loans made under this subsection shall not exceed the sum of the authorized interest rate for loans insured under Title I of the National Housing Act plus the annual rate for insurance on loans insured under Title I of the National Housing Act or creditor insurance applied to the loan. In addition to the interest herein authorized a savings bank may make the following charges in connection with said loan:

(1) premiums for insurance obtained in connection with the loan, but not including any charge for creditor insurance, if any, on such loan,

(2) a single delinquency charge for each installment in arrears for a period of more than fifteen days other than by reason of acceleration or by reason of delinquency on a prior installment in an amount not to exceed the lesser of five dollars (\$5) or five percent of the amount of the installment,

(3) a charge for an extension in an amount not to exceed two percent of the unpaid balance of the loan. Said charge may be imposed only one time during the life of the loan,

(4) fees paid for filing documents in public offices in connection with said loan, and

(5) actual expenditures, including reasonable attorneys' fees, for proceedings to collect the loans,

(C) the aggregate amount of all such loans held by any one savings bank at one time with or without insurance under national housing legislation shall not exceed twenty percent of its total assets. Any such loan made without such insurance shall also conform to rules and regulations which may be prescribed from time to time by the department,

(D) a loan is authorized under subsection (a)(ii)(B) only if the savings bank retains in its files written evidence that the loan is of the type that would be insurable under Title I of the National Housing Act. Such written evidence shall be retained in the files of the savings bank while the loan is outstanding and for a period of one year thereafter;

(iii) notwithstanding different provisions of any other law, make loans secured by at least an equal amount of deposits of the borrower in the savings bank at a rate of interest **[not less] at least one percent higher** than the rate of interest paid by the savings bank on said deposits, **[and the rate of interest charged on such loans shall not be more than two percent higher than the rate of interest paid by the savings bank on said deposits,]** or make loans secured by at least an equal amount of cash surrender value of life insurance;

(iv) make loans to borrowers who are engaged in commercial, industrial or financial enterprises or who are nonprofit corporations, or associations, subject to the prudent man rule of section 504(c) of this act:

(A) for terms not less than ten years, or

(B) in the case of a savings bank which has elected to exercise the conditional powers provided in section 513, for terms of less than ten years, except that the total amount of such short term loans shall not exceed **[seven and one-half percent of the assets of the savings bank prior to January 1, 1984, or ten] twenty** percent of the assets of the savings bank **[thereafter]**;

(v) enter into transactions with a member or nonmember bank for the purpose of selling reserve balances of the savings bank to such banks without limitation;

(vi) in the case of a savings bank which has elected to exercise the conditional powers provided in section 513, make secured or unsecured loans for personal, family or household purposes, including loans reasonably incident to the provision of such credit, and subject to regulation by the department, issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, except that the total amount of such loans or extensions of credit shall not exceed thirty percent of the assets of such savings bank. In any loan or extension of credit made under the authority of this clause, a savings bank may charge or impose any rate or charge which could be imposed by a bank in connection with any such loan or extension of credit and shall be subject to the same restrictions and limitations imposed upon a bank in connection with such loan or extension of credit;

(vii) make overdraft loans specifically related to deposits which are subject to *withdrawal by check or by negotiable [orders] order* of withdrawal; and

(viii) make loans for the payment of educational expenses.

A savings bank may not lend money or discount or purchase evidences of indebtedness or agreements for the payment of money except as provided in sections 504 and 505 and in this subsection (a).

(b) A savings bank may, subject to regulation by the department, make investments in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture, for rental or sale, but such investment may not exceed ten percent of the assets of the savings bank.

Section 10. Section 1213 of the act is amended to read:

Section 1213. Election of Directors; Cumulative Voting

(a) Elections of directors need not be by ballot, except as otherwise provided in the by-laws or upon demand made by a shareholder at the election and before the voting begins.

(b) **[In]** *Except as provided in the article of incorporation, in each election of directors, every shareholder entitled to vote shall have the right, in person or by proxy, to multiply the number of votes to which he may be entitled by the total number of directors to be elected in the same election by the holders of the class or classes of shares of which his shares are a part, and he may cast the whole number of such votes for one candidate or he may distribute them among any two or more candidates. The candidates receiving the highest number of votes from each class or group of classes entitled to elect directors separately, up to the number of directors to be elected in the same election by such class or group of classes, shall be elected.*

Section 11. Section 1403(a) of the act, amended April 8, 1982 (P.L.262, No.79), is amended to read:

Section 1403. Number, Qualifications and Eligibility of Directors or Trustees

(a) Number—The by-laws may fix the number of trustees of a savings bank at not less than **[seven]** *five*. The by-laws of any other institution may fix the number of directors at not less than five or more than twenty-five and may provide that the board may, within such limitation, increase the number of directors by not more than two in any one year.

* * *

Section 12. This act shall take effect in 30 days.

APPROVED—The 21st day of December, A. D. 1988.

ROBERT P. CASEY