

No. 1988-174

AN ACT

SB 980

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," reducing the number of incorporators of a savings association; granting additional powers to savings associations; further providing for stock conversions and stock associations; revising lending authorities and limitations; permitting regional ownership of service corporations; revising the restrictions on the transaction of business in this Commonwealth by foreign corporations; eliminating the Savings Association Board; revising advertising requirements in connection with mergers and other transactions; making provision for mergers and other transactions with Federal savings banks; and repealing certain provisions.

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

Section 1. Section 102(19), (22) and (23) of the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967, amended August 1, 1969 (P.L.208, No.84), are amended and the section is amended by adding a clause to read:

Section 102. Definitions.—The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

(9.1) "*Federal savings and loan association*," a savings and loan association or savings bank chartered by the Federal Home Loan Bank Board under section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. § 1461 et seq., 48 Stat. 128).

* * *

(19) "Net worth," in the case of a mutual association, the sum of [an] the association's general reserves, [and] surplus and, to the extent they would be includable as regulatory capital for an association insured by the Federal Savings and Loan Insurance Corporation, or as permitted by the department, mutual capital certificates and subordinated debt securities; or, in the case of a permanent reserve fund stock association, the sum of the association's general reserves, capital, capital surplus and, to the extent they would be includable as regulatory capital for an association insured by the Federal

Savings and Loan Insurance Corporation, or as permitted by the department, subordinated debt securities.

* * *

(22) "Savings account," the amount paid in cash to an association [by a member] for [investment] *deposit* plus all earnings or interest credited thereto, less all withdrawals, redemptions and charges.

(23) "Savings bank," a corporation [without capital stock] existing under the laws of this Commonwealth as a savings bank and authorized under the Banking Code of 1965 to receive savings deposits.

* * *

Section 2. Section 114(a)(11) of the act, added December 18, 1986 (P.L.1723, No.206), is amended to read:

Section 114. Authorization of Reciprocal Regional 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:

* * *

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

* * *

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

Section 115. Savings Association Holding Companies.—(a) The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the following meanings:

(1) "Savings association holding company," any entity:

(i) *which directly or indirectly owns, controls or holds with power to vote twenty-five percent or more of the voting shares of one or more savings association or of a company which is or becomes a savings association holding company; or*

(ii) *which controls in any manner the selection of a majority of the directors of one or more savings associations or of a majority of the directors of a savings association holding company.*

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

(3) "Savings association," an association as defined in section 102(3) of this act.

(4) "Subsidiary," with respect to a specified holding company, means any company twenty-five percent or more of whose voting shares are directly or indirectly owned, controlled or held by the holding company with the power to vote such shares, or in which the selection of a majority of the directors of the company is controlled by the holding company.

(b) *The Secretary of Banking may require any savings association holding company to furnish such reports as the secretary deems appropriate to the proper supervision of such companies. Unless the secretary determines otherwise, reports prepared for Federal authorities may be submitted by the savings association holding company in satisfaction of the requirements of this section. The secretary may make examinations of each savings associa-*

tion holding company and each subsidiary thereof, the cost of which shall be assessed against and paid by such savings association holding company.

(c) *The secretary shall have the authority to issue rules, regulations and orders as may be necessary to properly administer this section, including the authority to order a savings association holding company to cease and desist from engaging in any activity which constitutes a serious risk to the financial safety, soundness or stability of the savings association.*

Section 4. Section 201 of the act is amended to read:

Section 201. Incorporators.—(a) A savings association may be incorporated by **[fifteen]** *three* or more adults.

(b) At least two-thirds of the incorporators shall be citizens of the United States or of its territories or possessions and residents of Pennsylvania.

Section 5. Section 203(a) of the act, amended April 9, 1982 (P.L.334, No.94), is amended to read:

Section 203. Articles of Incorporation.—(a) Articles of incorporation shall be signed and acknowledged by **[at least five]** *each* of the incorporators.

* * *

Section 6. Section 504(e) of the act, added December 13, 1979 (P.L.522, No.115), is amended to read:

Section 504. Method of Action by Board of Directors, Executive or Other Committee.—Except as otherwise provided in this act or in the articles or bylaws:

* * *

(e) The board of directors may by resolution adopted by a majority of the whole board designate **[two]** *one* or more officers or personnel of the association to approve **[mortgages]** *loans* as to amount, type of **[property]** *collateral*, and other requirements, as shall be established in the resolution authorizing the approval of said loans.

Section 7. Section 701(a)(14) of the act 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:

* * *

(14) To sell *with or* without recourse and to purchase mortgages or other loans authorized by this act, including participating interests therein.

* * *

Section 8. Section 804 of the act, amended or added July 3, 1980 (P.L.378, No.96) and July 11, 1980 (P.L.638, No.132), is amended to read:

Section 804. Types of Savings Contracts.—(a) An association may make any type of savings account contract including a savings deposit account, *a savings account subject to withdrawal on demand*, and an optional type savings account subject to withdrawal by a Negotiable Order of Withdrawal. Savings **[deposit]** accounts shall be issued in accordance with

such regulations as the department shall prescribe. No type of account may be created by any association which imposes fines as penalties for late payment or nonpayment for a period of longer than six months. The resolution of the board creating the account may provide for transfer of the account at the termination of this period to another type of account.

(b) Any share certificates which may be outstanding upon the effective date of this act which were valid under prior law shall continue to be valid, with the same rights and privileges and subject to the same duties and liabilities as though such certificates were savings accounts opened in accordance with the terms of this act in the amount of the withdrawal value of such certificates.

[(c) Subject to the limitations of subsection (d) of this section, the regular savings accounts in any association which is insured by the Pennsylvania Savings Association Insurance Corporation shall be subject to the limitation that earnings on savings accounts shall not be in excess of the rate, on an annualized basis, at which earnings were paid for the earnings distribution period immediately preceding June 1, 1980, or that permitted to be paid by Pennsylvania chartered savings associations insured by the Federal Savings and Loan Insurance Corporation whichever is the greater. There is excepted from the foregoing limitation any serial installment accounts offered by an association. The Secretary of Banking shall issue regulations defining serial installment accounts and regular savings accounts.]

(d) As of three years from the effective date of this amendatory act, the rates of earnings on savings accounts issued by any association insured by the Pennsylvania Savings Association Insurance Corporation may not exceed the rates permitted to be paid by Pennsylvania chartered savings associations insured by the Federal Savings and Loan Insurance Corporation.

(e) Higher rate savings accounts issued subsequent to the date of this amendatory act by an association insured by the Pennsylvania Savings Association Insurance Corporation shall be subject to the limitation that rates of earnings on such accounts shall not be in excess of that permitted to be paid by Pennsylvania chartered savings associations insured by the Federal Savings and Loan Insurance Corporation. The Secretary of Banking shall issue regulations defining higher rate savings accounts.

(f) On the effective date of this amendatory act, any association paying a rate of earnings on higher rate savings accounts in excess of that permitted to be paid by associations insured by the Federal Savings and Loan Insurance Corporation shall reduce, at the earliest date permissible under existing savings account contracts, the rate of earnings to those which are no higher than the rate of earnings permitted to be paid on the same classes of higher rate savings accounts by associations insured by the Federal Savings and Loan Insurance Corporation.]

Section 9. Section 813 of the act, amended June 5, 1981 (P.L.81, No.28), is amended to read:

Section 813. Withdrawals from Savings Accounts.—Any savings account member may at any time withdraw all or any part of his savings account, including the right to effect such withdrawals by travelers' conven-

ience withdrawals. *If the savings account contract provides for withdrawal on demand, a savings account may be subject to withdrawal by check.* An optional type savings account may be subject to withdrawal by a Negotiable Order of Withdrawal.

Section 10. Section 816 of the act, amended August 1, 1969 (P.L.208, No.84), is amended to read:

Section 816. *Authorizing Payment of Earnings or Interest on Savings Accounts.*—The board of directors shall determine the earnings or interest, *if any*, to be credited not less frequently than annually to savings accounts on the books of the association unless a savings account holder shall have requested and the association shall have agreed to pay earnings or interest on such savings account in cash. Earnings or interest payable in cash may be paid by check or bank draft. All accounts of the same type and class shall be paid the same rate of earnings or interest.

Section 11. Sections 822(b) and 916 of the act are amended to read:

Section 822. Reserves.—***

(b) Whenever the general reserves *plus capital and capital surplus* of an association are not equal to at least eight percent of the savings accounts and whenever the net worth of an association is not equal to at least ten percent of such savings accounts it shall credit to its general reserves each year an amount equal to not less than five percent, and as much more as it may deem desirable, of its net profits for the year.

Section 916. *Limitation on Amount of Loans to Any One Borrower.*—An association shall not, directly or indirectly, grant loans, *except loans secured by savings accounts in the association*, to any one corporation or person to a total amount in excess of ten percent of the amount of its savings.

(a) In computing the total **[mortgage]** loans made by an association to an individual, there shall be included all **[mortgage]** loans made by the association to a partnership or other unincorporated association of which he is a member, all **[mortgage]** loans made either for his benefit or for the benefit of such partnership or other unincorporated association, and all **[mortgage]** loans to or for the benefit of a corporation of which he owns twenty-five percent or more of the capital stock.

(b) In computing the total **[mortgage]** loans made by an association to a partnership or other unincorporated association, there shall be included all **[mortgage]** loans to its individual members, all **[mortgage]** loans made for the benefit of such partnership or other unincorporated association, or of any member thereof, and all **[mortgage]** loans to or for the benefit of any corporation of which the partnership or unincorporated association, or any member thereof, owns twenty-five percent or more of the capital stock.

(c) In computing the total **[mortgage]** loans made by an association to a corporation, there shall be included all **[mortgage]** loans made for the benefit of the corporation and all **[mortgage]** loans to or for the benefit of any individual who owns twenty-five percent or more of the capital stock of such corporation.

Section 12. The heading and subsection (a) of section 917 of the act, amended December 27, 1974 (P.L.1012, No.329), are amended to read:

Section 917. Right to Make, Purchase, Sell and Participate in Mortgages and Other Loans.—(a) An association may purchase and sell **[mortgages] loans** and participations in **[mortgages] loans** and participate with other lenders in originating and making any type of **[mortgage] loan** that it is authorized to make under the provisions of this act.

* * *

Section 13. Section 920 of the act, amended July 22, 1977 (P.L.92, No.33), is amended to read:

Section 920. Loans on the Security of Savings Accounts and Certificates.—Subject to regulation by the department, an association may make loans on the security of its savings accounts and certificates whether or not the borrower is the owner of such account, provided:

(a) The association obtains a lien upon or a pledge of such savings accounts and certificates as security therefor,

(b) The loan shall not exceed the withdrawal value of the savings account and certificates securing the loan.

(c) Notwithstanding different provisions of any other act, interest on loans secured by **[the security of]** savings accounts and certificates shall **[not be less] be at least one percent higher** than the rate of earnings paid by the association on the account or certificate securing the loan **[and shall not exceed a rate two percent higher than the rate of earnings paid by the association on the account or certificate securing the loan]**.

Section 14. Section 922(n) of the act, amended June 5, 1981 (P.L.81, No.28), is 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 **[organized under the laws of the Commonwealth of Pennsylvania]** 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, **[and]** 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.** The department shall have the right to define service corporations and the activities thereof. An association may make investments in service corporations up to **[two] three** percent of its assets plus such additional percentage of assets as the department may by regulation authorize,

* * *

Section 15. The act is amended by adding a section to read:

Section 922.1. Other Investments.—Notwithstanding any other provision of this act and as permitted in regulations promulgated by the department, an association may make such investments as may be authorized for a savings bank by section 504 of the act of November 30, 1965 (P.L.847, No.356), known as the “Banking Code of 1965,” and may make such loans

as may be authorized for a savings bank by section 506(a)(iv) of the "Banking Code of 1965." The regulations promulgated by the department may include such conditions, restrictions, limitations or requirements as the department deems necessary and appropriate.

Section 16. Section 1101(h) of the act, added April 9, 1982 (P.L.334, No.94), is amended to read:

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

(h) (1) All savers (including all classes thereof) shall be given a preemptive right to purchase reserve fund stock. The preemptive right to savers shall be nonassignable. The department, by regulation, **[shall] may define the rights and** prescribe the terms on which **[such preemptive rights] they** may be exercised.

(2) No preemptive rights will be given to any savers if the *book value of the total assets of the association to be converted [has no positive net worth] (determined in accordance with generally accepted accounting principles) is less than two percent in excess of the book value of its total liabilities*, unless determined to be in the public interest by the Secretary of Banking.

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Section 17. Section 1105 of the act is amended to read:

Section 1105. Advertisement.—(a) The association shall advertise its intention to deliver, or the delivery of articles of merger, consolidation or conversion, once in each newspaper in which advertisement is required to be published in accordance with section 107 of this act and file proof of advertisement with the department.

(b) The advertisement shall appear prior to, or within seven days after, the date of delivery of the articles to the department and shall set forth briefly:

(1) The name and county of the principal place of business of each of the associations or Federal savings and loan associations or **[mutual] savings [bank] banks** intending to merge, consolidate or convert,

(2) The name and county of the place of business of the new, resulting or converted association or **[mutual] savings bank**,

(3) A statement that the articles of merger, consolidation or conversion are to be filed under the provisions of this act if such merger, consolidation or conversion results in an association subject to the provisions of this act, or if the articles provide for a conversion from a Federal savings and loan association to an association subject to the provisions of this act. If the resulting corporation is a savings bank[,], subject to the Banking Code of 1965 as amended, a statement to this effect shall be contained in the advertisement,

(4) The purpose or purposes of the resulting, new or converted association or savings bank[,],

(5) **The date when the articles of merger, consolidation, or conversion will be or have been delivered to the department].**

Section 18. Section 1301 of the act, amended December 18, 1986 (P.L.1723, No.206), is amended to read:

Section 1301. Foreign Corporations.—(a) Except as provided in section 114, foreign corporations shall not transact the business of an associ-

ation within this Commonwealth, nor maintain an office within this Commonwealth for the purpose of transacting such business. It shall be unlawful for any person to engage in the business of soliciting or receiving within this Commonwealth subscriptions to the shares or savings accounts of such corporations or payments therefor, or of granting loans within this Commonwealth on behalf of such corporations, or of soliciting applications therefor, or of receiving within this Commonwealth on behalf of such corporations, interest, premiums, fees or payments of any kind or of transacting business in any manner within this Commonwealth on behalf of such corporation. *Nothing in this section shall prohibit a bona fide mortgage or loan subsidiary of a foreign association from conducting its business in this Commonwealth.*

(b) A violation of this section shall be subject to the penalty provisions of this act.

Section 19. The heading of Article XIV and section 1402 of the act are amended to read:

ARTICLE XIV
PROVISIONS APPLICABLE TO DEPARTMENT OF BANKING
[AND SAVINGS ASSOCIATION BOARD]

Section 1402. Relationship of Savings Associations and Their Personnel with Officials and Employees of the Department.—(a) Except as provided in subsection (c) of this section a savings association or any director, officer, employe or attorney thereof shall not grant or give to the Secretary of Banking, any official or employe of the department, any deputy or any employe of the Secretary of Banking as receiver, any sum of money or any property as a gift, loan or otherwise, directly or indirectly—subject to the penalty provisions of this act.

(b) Neither the Secretary of Banking, nor any official or employe of the department shall hold any office or position in a savings association nor exercise any right to vote on an association matter by reason of membership in such association—subject to the penalty provisions of this act.

(c) The prohibitions of subsections (a) and (b) of this section shall not apply to either:

(1) A loan subject to the provisions of this act secured by a lien on the home of the Secretary of Banking, an official or employe of the department, or

(2) A savings account with an association except that an examiner assigned to the examination of savings associations shall not have a savings account in any *mutual* association.

Section 20. Section 1403 of the act is repealed.

Section 21. Section 1404 of the act is amended to read:

Section 1404. Orders by Department; *Hearings*.—(a) The department may by written order direct an association to discontinue any violation of law or any unsafe or unsound business practice.

(b) If any director, officer, attorney or employe[,] continues to violate the law or conduct [of] the business of an association in an unsafe or unsound manner[,] after having been [ordered] *warned* by the department to

discontinue such violations of law or such unsafe or unsound business practices, the department may issue a written order directing such director, officer, attorney or employe to appear on the date fixed in such order before the **[Savings Association Board] 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, **and a copy sent to the Savings Association Board**].

[(d) If the director, officer, attorney or employe so ordered to appear before the Savings Association Board does not so appear, or if after appearance the board determines that he has been guilty of a violation of law or an unsafe or unsound business practice and should be removed from office and so notifies the department, the department shall issue an order directing the association to remove such person from his office or position and declare such office or position vacant. The department shall specify in its order the date upon which any such removal and declaration of vacancy shall become effective.]

(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 be published or divulged to anyone.

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

Section 22. Section 1405 of the act is repealed.

Section 23. This act shall take effect immediately.

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

ROBERT P. CASEY