

No. 2002-209

## AN ACT

SB 1258

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," making extensive changes to modernize and update the law in the general areas of preliminary provisions; jurisdiction and maintenance of the Department of Banking; restrictions upon department and employees; examinations by and reports to the department; action by department after offenses by, or changes in, condition of institutions; taking of possession by the Secretary of Banking as receiver and surrender of possession; rights, powers and duties of secretary as receiver; secretary in possession of trust department; proof of claims, accounting and distribution; and special criminal history record information provisions.

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

Section 1. Section 2A of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking Code, amended October 5, 1978 (P.L.1133, No.266), is amended 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:

"Department." The Department of Banking of this Commonwealth.

"Secretary." The Secretary of Banking of this Commonwealth, or his duly authorized deputy or representative.

"Corporation." A corporation or a joint stock association, organized under the laws of this Commonwealth, of the United States, or of any other state, territory, foreign country, or dependency.

"Person." An individual, or an unincorporated association, including a partnership, a limited partnership, or any other form of unincorporated enterprise owned by two or more individuals.

"Licensee." *A corporation, person or any other type of business entity required to be licensed by, registered with or partially exempt from being*

*licensed by the Department of Banking under any law of this Commonwealth administered by the Department of Banking.*

**“Credit union.”** *A Pennsylvania State-chartered credit union.*

**“Institution.”** *A corporation or a person, as defined in this section, or other type of business entity, including, but not limited to, a mutual holding company, which is subject to the supervision of the department. The term does not include credit unions or licensees unless specifically stated otherwise.*

**“Court.”** *The court of common pleas of the county in which the corporation or person has its principal or only place of business in this Commonwealth; or, where an institution of which the secretary is receiver is concerned, the particular court in which the certificate of possession, as defined later in this act, is filed; or the Commonwealth Court where specified in this act.*

**“Prothonotary.”** *The prothonotary of such court.*

**“Written.”** *This includes printed, typewritten, engraved, lithographed, photographed, photostated, telephotographed, electronically transmitted or rendered by other means approved by the Department of Banking.*

**“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.*

\* \* \*

Section 2. Sections 4, 6 and 8 of the act are amended to read:

Section 4. Advertisements, Publications, or Notices in Newspapers.—A. Unless expressly provided otherwise, any advertisement, publication, or notice in a newspaper, required by this act, shall be published once [a week for three successive weeks] (1) in a newspaper of general circulation in the county, as defined by [the Newspaper Advertising Act, approved the sixteenth day of May, one thousand nine hundred twenty-nine (Pamphlet Laws, one thousand seven hundred eighty-four), its supplements and amendments,] 45 Pa.C.S. § 101 (relating to definitions) published in the city, borough, or township in which the principal place of business of the institution is located; and (2) in first-class counties, also in the legal newspaper, if any, published within the county, as defined by [the Newspaper Advertising Act] 45 Pa.C.S. § 101.

If there is no newspaper of general circulation published in the city, borough, or township, then the advertisement, publication, or notice shall be inserted in a newspaper of general circulation in the county, published at the county seat. If no newspaper of general circulation in the county is published at the county seat, then such advertisement, publication, or notice shall be inserted in the newspaper of general circulation published nearest to the city, borough, or township in which the principal place of business of such institution is located and within the county. If there is no newspaper of general circulation published within the county, then the advertisement or

notice shall be inserted in the newspaper of general circulation published nearest to such city, borough, or township in an adjoining county.

B. Any proof of publication required by this act shall be in accordance with the requirements set forth in the definition of proof of publication contained in **[the Newspaper Advertising Act] 45 Pa.C.S. § 101.**

Section 6. Fees.—Except as otherwise specifically provided in this act, any prothonotary or recorder of deeds, and any State department, board, commission, or officer, other than the **[Department of Banking] department** or its employes, shall be entitled to receive for services performed, as required by this act, such fees as it lawfully charges for such similar services.

Section 8. Fees for Copies and Certifications by Department.—A. The department may**[, by general rule or regulation,]** prescribe and charge reasonable fees for any copy of a book, account, report, or other paper *or record* filed in its offices *or under its control*, and for any certification thereof, authorized or required by law.

*B. The following apply to methods of payment:*

*(1) Whenever the department is authorized to impose or accept payment for an application fee, examination fee, assessment fee, fine, copy fee, certification fee or any other fee or charge, the department may designate receipt of such payment by any means, including wire transfer, credit card, debit card or other similar device.*

*(2) The department may permit such payment to be made using any medium, including telephone, facsimile transmission, wire transmission, electronic mail, World Wide Web site or any other method related to any transmission mechanism, including the Internet.*

*(3) The department may enter into any agreement in order to implement this section.*

Section 3. Section 15 of the act, amended October 5, 1978 (P.L.1133, No.266), is amended to read:

Section 15. Act Not Applicable to Credit Unions.—Except where otherwise expressly provided, this act does not apply to, and does not affect any act relating to, credit unions as defined in **[the act of September 20, 1961 (P.L.1548, No.658), as amended, known as the “Credit Union Act.”] 17 Pa.C.S. (relating to credit unions).**

Section 4. Section 201 of the act, amended July 2, 1935 (P.L.525, No.202), is amended to read:

Section 201. Corporations and Persons Subject to Supervision of Department.—The department shall have the power to supervise—

A. (1) All corporations and persons which are authorized to receive or which do receive in this Commonwealth money on deposit or for safe-keeping, or which are authorized to engage or which do engage in this Commonwealth in a banking business, and all corporations which are authorized to act or which do act in this Commonwealth as trustees, guardians, executors, administrators, or in other fiduciary capacities,

including, *but not limited to*, banks, bank and trust companies, trust companies, private banks, savings banks, [and mutual savings funds;] *savings associations, branches, agencies, or representative offices of foreign banks in this Commonwealth, mutual holding companies, and interstate banks*, but not including hotels or clubs which receive money from guests or members for temporary safe-keeping, express, steamship, or telegraph companies which receive money for transmission, and attorneys at law, real estate agents, and attorneys in fact, who are not engaged in the business of receiving moneys in this Commonwealth for deposit or for transmission but receive and transmit moneys only as an incident to their general business or profession, brokers licensed under the laws of this Commonwealth, holding membership in a lawfully constituted brokerage exchange, who do and have authority to do only such banking as is incidental to their brokerage business;

(2) **[All building and loan associations authorized to transact or transacting business in this Commonwealth;**

(3)] All national banking associations, incorporated under the laws of the United States and located within this Commonwealth, which are authorized to act or which do act in this Commonwealth as trustees, guardians, executors, administrators, or in any other fiduciary capacities, to the extent to which supervision by State authorities is or may be permitted under the laws of the United States.

[However, when] *B. If any [corporation] institution* subject to the supervision of the [Department of Banking shall also engage] *department, including any credit union, also engages* in a title insurance business[, a mortgage guarantee business,] or any other business subject to the supervision of the Insurance Department, *then* such [branch of its] business shall not be subject to the supervision *or examination authority* of the [Department of Banking] *department except to the extent necessary to determine the safety and soundness of the institution.*

Section 5. Section 202 of the act, amended July 3, 1957 (P.L.463, No.259), is amended to read:

Section 202. General Scope of Supervision; Exercise of Discretion.—A. In addition to the powers and duties provided for in this act, the department shall exercise any power and fulfill any duty imposed upon it by any other law of this Commonwealth. Except where otherwise specifically provided, the department shall enforce and administer all laws of this Commonwealth which relate to any institution, and shall exercise such general supervision over institutions as will afford the greatest possible safety to depositors, other creditors, and shareholders thereof, [insure] *ensure* the safe and sound conduct of the business of such institutions, conserve their assets, maintain the public confidence in such institutions and protect the public interest.

B. Whenever under this act, discretion is vested in the department or any board thereof as to whether, or the manner in which, to exercise a

power or fulfill a duty, the department [or board] shall, after such examination or investigation as it shall deem appropriate under the circumstances, exercise such discretion in such a manner as it shall deem necessary to [insure] *ensure* the safe and sound conduct of the business of any institution subject to its supervision, conserve its assets, maintain public confidence in the business of such institutions and protect the public interest and the interest of depositors, other creditors and shareholders thereof.

*C. The department may promulgate such rules and regulations necessary and appropriate to administer this act.*

*D. The department may issue statements of policy and interpretive letters necessary and appropriate to administer this act or any other statute within the department's jurisdiction to administer or enforce.*

Section 6. Section 204 of the act is amended to read:

Section 204. Assessment of Expenses of Department upon Institutions.—A. All the expenses of the department, including those enumerated in this act or otherwise authorized by law, shall be charged to and paid by all institutions, *including licensees*, in such equitable amounts, at such times, and in such manner as the department shall, by general rule or regulation, prescribe. The expenses incurred by the department in connection with any examination or investigation, whether regular or special, including a proportionate part of the salary of any examiner or other employe of the department [engaged in such examination or investigation, and all counsel assigned by the Department of Justice at the request of the Department of Banking to an examination or investigation,] *or third-party expenses, including attorneys retained by the department*, may be assessed by the [Department of Banking] *department* upon the particular institution examined or investigated.

B. The department shall give written notice to each institution, *including licensees*, of the amount lawfully charged against it under the provisions of this act. The institution shall pay the amount of such assessment to the department within [thirty] *sixty* days after [such] *the invoice date on the* notice. If payment is not made by any institution *or licensee* within [such thirty-day] *the sixty-day* period, the department[, through the Department of Justice,] *may impose in addition to the money assessed a maximum penalty fee of one hundred fifty dollars (\$150.00) for that sixty-day period and each successive thirty-day period of delinquency. In addition, the department, through the Office of Attorney General or its authorized designee*, may institute an appropriate action at law for the amount lawfully assessed against such institution, together with any additional costs incurred by the Department of Banking or the [Department of Justice] *Office of Attorney General or its authorized designee* by virtue of such failure to pay.

Section 7. Section 302 of the act, amended July 6, 1984 (P.L.634, No.129), is amended to read:

Section 302. Disclosure of Information Forbidden; Penalty; Exceptions.—A. (1) ***[Neither] This section applies to matters relating to institutions, credit unions and licensees.***

(2) ***Neither the secretary[,], nor any deputy, examiner, clerk, or other employe of the department, shall publish or divulge to anyone any information contained in or ascertained from any examination or investigation made by the department, or any letter, report, or statement sent to the department, or any other paper or document in the custody of the department, except when the publication or divulgement of such information is made by the department pursuant to the provisions of this act [or of any other law of this Commonwealth], or when the production of such information is required by subpoena or other legal process of a court of competent jurisdiction, or when it is used in deciding whether to prosecute or in prosecutions or other court actions instituted by or on behalf of or at the request of the department[,], or when referring for investigation to any Federal, State or local law enforcement or any Federal or State financial regulatory agency, including banking, insurance and securities regulatory agencies, or when the department provides information to any Federal or State financial regulatory agency, including banking, insurance and securities regulatory agencies, when the information pertains to an enforcement concern. The information shall be provided as may be necessary or appropriate, as determined in the discretion of the secretary.***

(3) The service of a subpoena upon the secretary, deputy, examiner, clerk or other employe of the department shall not be construed as requiring such person to disclose any information, but such person shall have all the rights and privileges as any other subpoenaed party to object to production of information on the same basis as provided in the Rules of Civil Procedure, statute [law], regulation or common law. ***The department may condition the release of such information on an order from a court of competent jurisdiction protecting the information from general disclosure to the public. The department retains and may exercise any and all remedies at law and in equity to quash a subpoena.***

(4) ***Any privileges available to Federal financial institution regulators under Federal statute, regulation or common law shall be available to the department.***

(5) ***The department may provide to any person, Federal, State or local government agency the following information regarding licensees to the extent that the department has such information in its possession: whether and for what time period a person's license is current, suspended or revoked pursuant to a final order issued by the department; whether and for what time period an individual is or has been suspended or prohibited from working for or otherwise participating as a licensee pursuant to a final order issued by the department.***

(6) *The department may condition the release of subpoenaed information on an order from a court of competent jurisdiction protecting the information from general disclosure to the public.*

(7) *If the department is subpoenaed for a report of examination information, the department may refuse to release the requested information as the secretary deems necessary and appropriate under the circumstances for the following reasons: safety and soundness; if the department requests and is denied a protective order; or if the department requests and is denied redaction of the report of examination to protect the privacy of persons not involved in the litigation.*

B. A violation of the provisions of this section by the secretary, or by any deputy, examiner, clerk, or other employe of the department, shall be sufficient ground for his removal from office. In addition the secretary, deputy, examiner, clerk, or other employe [committing] *who willfully or knowingly commits* such violation shall be deemed 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, or both.

Section 8. Section 303 of the act, amended or added October 5, 1978 (P.L.1133, No.266) and July 6, 1984 (P.L.634, No.129), is amended 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] *include a licensee* or credit union. *The term includes credit unions unless specifically stated otherwise.*

B. Except as provided in subsection E, neither the [Secretary of Banking] *secretary*, nor any officer or employe of the department, nor any deputy receiver or employe of the [Secretary of Banking] *secretary*, 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. This subsection shall not apply to loans to employes of the [Department of Banking] *department* who function in a clerical or nondecision making capacity with regard to institutions, including, but not limited to, clerks, typists and stenographers.

C. Neither the [Secretary of Banking] *secretary*, nor any officer or employe of the department, nor any deputy receiver or employe of the [Secretary of Banking] *secretary*, 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] *secretary or any department employe or officer* may continue to own shares or securities issued by an institution *other than a credit union* which are owned by [him] *the secretary* on the date of his

appointment, or by other department employes on the date of commencement of employment with the department, and all shares or securities distributed by the institution and received by [him] any of them on account of the shares or securities so owned subject to the penalty provisions of this section. All department employes subject to this subsection shall provide the department with written notice of his or her ownership of any such shares or securities prior to or upon his or her commencement of employment with the department. Notwithstanding the foregoing, the department may impose terms on the employe or officer, including, but not necessarily limited to, requiring the employe or officer to place into a blind trust, sell or divest of such shares or securities as a condition of obtaining or continuing employment with the department, provided such sale or divestment is deemed to be reasonably necessary under the circumstances, or to recuse himself or herself from being involved in any department decision that pertains solely to the institution of which he or she owns shares or securities.

D. In the event of such ownership of shares or securities by the [Secretary of Banking] secretary, 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] secretary from participation in any decision or action for such reason, all authority vested in him or her by law shall, for the purpose of such decision or action, be exercised by the [senior deputy Secretary of Banking] appropriate deputy secretary in accordance with their jurisdictional responsibilities.

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] secretary or other employe of the department, or an indirect motor vehicle loan originated under the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance Act," in any and all such mortgage loans or indirect motor vehicle loans which may be originated by an institution other than a credit union, where such loan is granted upon the same terms and in the same manner as provided by law for mortgage loans or indirect motor vehicle loans granted by such institutions. All persons subject to this subsection shall provide the department with written notice of any loan referenced in this subsection and its terms within thirty days of receiving the loan. Notwithstanding the foregoing, the department may impose terms on the employe or officer,



*including, but not necessarily limited to, requiring such person to recuse himself or herself from being involved in any department decision that pertains solely to the institution from which he or she received a loan.*

(2) A deposit account with an institution *other than a credit union*, 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.] *and the secretary, department employe or officer does not participate in any vote as a shareholder or member of such institution.*

F. A violation of the prohibitions of this section by the [Secretary of Banking] *secretary*, an officer or employe of the department, a deputy receiver or an employe of the [Secretary of Banking] *secretary* 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 9. Section 401 of the act, amended July 6, 1984 (P.L.634, No.129), is amended to read:

Section 401. Examinations of Institutions.—[A. The department shall examine all institutions thoroughly at least once every two calendar years, and more frequently if it deems such action necessary or advisable to safeguard the interests of depositors, other creditors, or shareholders of such institutions. This examination shall include a complete review of the property, assets, and resources of the institution; the loans and discounts made by it and the collateral deposited with it as security for such loans; the mode of conducting its affairs; the investment of its funds; the interest taken in its affairs by its officers, directors, and employes if a corporation, or by its employes and the partners or individuals owning it if a person; its compliance with the law, and with the terms of its charter or license if it has either; and any other matters, bearing any relation to its condition, which the department shall prescribe.

The department may also make special examinations or investigations of any institution at any time the department deems such action necessary or advisable, to protect depositors, other creditors or shareholders thereof.]

B. The department, when requested in writing by [a person subject to its supervision, or by the board of directors or the holders of a majority of the shares of capital stock of a corporation subject to its supervision, shall] *an owner of all or part of an institution, credit union or licensee, including a shareholder, partner or member, or a director or officer of an institution, credit union or licensee subject to its supervision, may at the*

*department's discretion* examine or investigate the affairs and condition of such institution. However, this provision shall not be construed to mean that such person, directors, or shareholders shall have any greater right to require the department to disclose to them the results of any such examination or investigation than they have in the case of any regular examination or investigation.

C. The department, upon the receipt of notice from the Insurance Commissioner that he has become receiver of a corporation or person, any branch of the business of which is subject to the supervision of the [Department of Banking] *department*, [shall] *may* examine or investigate the affairs and condition of such institution in order to determine whether any action should be taken by the [Department of Banking] *department*, pursuant to the provisions of this act.

D. Examinations or investigations shall be made by the secretary, or by qualified examiners or other qualified employees designated for that purpose by the secretary or by his duly authorized deputy, and empowered, in writing, by the department to make examinations or investigations of institutions, *including credit unions and licensees who may be assessed charges to cover the department's costs of such examinations and investigations.*

E. In the case of an institution which is a member of a Federal Reserve Bank *or any other institution, including a credit union*, the department may, in its discretion, accept the examinations or reports made [under the Federal Reserve Act] *pursuant to the requirements of applicable Federal law* in lieu of those required by this act[.] *or any other act of this Commonwealth. The department may accept Federal application forms from applicants for charter or other approvals or nonobjections of the department under the statutes administered by the department in lieu of department forms when the department deems such acceptance appropriate.*

F. In connection with any examination or investigation *authorized by this act or any other law*, the department shall have, *in addition to the authority provided by any other law*, power to issue subpoenas requiring the attendance of, or the production of pertinent books [and papers by], *papers, electronic data or information of any kind which is in any form by*, the officers, directors, agents, employees, or members, respectively, of any corporation or person, *including a credit union or licensee*, which the department is authorized, under the provisions of this act *or any other law of this Commonwealth*, to examine. *The department shall have power to issue subpoenas to any other person or entity of any kind whatsoever provided that the information from such person or entity is necessary for the enforcement of this act or any other law within the jurisdiction of the department.* The department shall also have the power to question such witnesses under oath or affirmation, and to examine such books and papers.

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 *Commonwealth Court* or any court of common pleas within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

Section 10. Section 402 of the act, amended July 2, 1935 (P.L.525, No.202), is amended to read:

Section 402. Examination of Corporations or Persons Affiliated with Institutions.—[A. The Department of Banking] *The department* shall have the power to supervise, regulate, *examine*, limit, or prohibit the activities of corporations or persons affiliated with institutions, *including credit unions*, to the same extent as such activities of corporations or persons affiliated with national banking associations, *Federal savings associations or Federal credit unions*, or with members of a Federal Reserve Bank, are, or shall be, supervised, regulated, *examined*, limited, or prohibited by general law, [or] by *Federal statutes or by regulations* issued by any Federal authority pursuant to law, *but in no event shall the department's examination and enforcement authority over affiliates be less than is permissible for banking institutions under the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965," savings associations under the act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967," or credit unions under 17 Pa.C.S. (relating to credit unions).*

[B. For the purpose of determining the condition of, and obtaining full information about, an institution, the department may examine and investigate the property, assets, books, papers, and affairs of any corporation or person affiliated with such institution. A corporation or person shall be deemed to be affiliated with an institution for the purposes of this section if—

- (1) It is owned directly or indirectly by such institution; or
  - (2) It owns directly or indirectly such institution; or
  - (3) It is owned directly or indirectly by the same person or corporation which owns directly or indirectly such institution; or
  - (4) The election of a majority of its board of directors is controlled directly or indirectly by any instrumentality, agency, or arrangement that controls directly or indirectly the election of a majority of the board of directors of such institution; or
  - (5) A majority of its directors are also directors of such institution; or
- or
- (6) Members of its board of directors constitute a majority of the board of directors of such institution; or

(7) Substantially all of its principal executive officers constitute a majority of the board of directors of any such institution, or comprise all or substantially all of the executive officers of any such institution; or

(8) Its board of directors is composed of executive officers of any such institution; or

(9) It dominates or controls, in whole or in part, the business or policy of such institution, either by contract or otherwise.

Provided, however, that the department shall not have power to examine any corporation or person as an affiliated corporation or person under this section, unless—(1) it either directly or indirectly owns or is owned by an institution; or (2) the institution within the preceding two-year period had investments in, or outstanding loans secured, in whole or in part, by shares of stock or securities of, such corporation or person, which have no readily ascertainable market value.

For the purposes of this section, the ownership of more than fifty per centum of the total number of shares, voted upon at the last meeting of the shareholders of a corporation for the election of its directors, shall be deemed to be ownership of such corporation.

Shares of stock, held in the name of a nominee of any corporation, for the benefit of such corporation, shall be deemed to be shares owned or controlled by the corporation.]

Section 11. Section 403 of the act, amended July 29, 1941 (P.L.583, No.247) and August 14, 1963 (P.L.863, No.414), is amended to read:

Section 403. Reports to Department; Publication; Penalties.—A. Every institution[, except building and loan associations, shall send to the department at least twice each year, and more frequently if the department shall so order, a complete report of its condition, exhibiting in detail, under appropriate headings, the resources and liabilities of the institution, and shall also send to the department at least once each year, and more frequently if the department shall so order, a complete report of its earnings setting forth in detail all items of income and expense. Every building and loan association shall send such reports to the department once each year, unless the department orders more frequent reports.] *shall maintain copies of the complete reports of its condition in such form and as of such dates as may be required by the department and publish copies or compilations thereof to the extent required by Federal law.*

The department may also require special reports on the condition of, or any particular facts concerning, any institution at any time the department deems it necessary or advisable for the protection of the depositors, other creditors, or shareholders thereof. *The manner of delivery of such reports or special reports may include such electronic or other type of technologically advanced delivery as may be permitted by the department.*

B. The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, cashier, secretary, treasurer, or other managing officer of a corporation, or by one of the firm in the case of a partnership or other unincorporated association, or by the banker if an individual *or in such other manner as may be provided by the department*. In the case of a corporation, the report shall also be attested as correct by the signatures of at least three of its directors or trustees *or in such other manner as may be provided by the department*.

[C. Every institution, except building and loan associations, shall publish during each year, in a newspaper or newspapers in the manner provided by this act, abstract summaries of any two of its reports of condition designated for this purpose by the department, and shall send proof of such publication to the department. Such publication shall be required only once in a newspaper of general circulation, and, in first class counties, once in a legal newspaper. If there is no newspaper of general circulation published at the city, borough or township in which the principal place of business of such institution is located, such publication may be inserted in a newspaper of general circulation published nearest to such city, borough or township, and within the same county. Building and loan associations shall not be required to publish any abstract summaries of reports.]

D. The department shall furnish to anyone requesting it, upon payment of a reasonable fee to be fixed by the department, an abstract summary of any report then in its possession of any building and loan association subject to its supervision, showing the assets, liabilities, receipts, and disbursements of such building and loan association.]

E. (1) Any institution which fails to make or publish any report, or to furnish any proof of publication, in accordance with the provisions of this section, shall pay to the department a penalty of one hundred dollars for each day after the time fixed by the department for filing such report, making such publication, or furnishing such proof of publication, but the department may, in its discretion, relieve any institution from the payment of such penalty, in whole or in part, if good cause be shown to it for the failure of such institution to file or publish the report or to furnish proof of publication thereof. [If an institution] (2) *Notwithstanding any licensing statute to the contrary, if a licensee licensed under any respective licensing statute within the department's jurisdiction to enforce fails to notify the department in writing received by the department within ten days of relocating the licensee's licensed office that the licensee has relocated such licensed office to a location stated by the licensee, then the licensee shall pay to the department a fine up to a maximum of two thousand dollars (\$2,000.00) per violation for failing to timely notify the department of such change of licensed office location. For the purposes*

*of this subsection, the term "licensing statute" means any State law pursuant to which the department may grant a license.*

*(3) If an institution or licensee fails to pay a penalty from which it has not been relieved, the department may, through the [Department of Justice] Office of Attorney General or its authorized designee, maintain an action at law to recover it, together with any additional costs incurred by the department or the Office of Attorney General or its authorized designee.*

Section 12. Section 404 of the act is amended to read:

Section 404. Disclosure of Information.—A. The department may divulge to an institution, or to any officer, or any director [or trustee], *trustee or attorney* thereof, any information contained in or ascertained from an examination or investigation of such institution made by the department. *Reports of examination issued by the department remain the sole property of the department. A report of examination issued by the department to an institution is strictly confidential. Any copy of a report of examination is and shall remain the property of the department and is furnished to the institution, subject to the express condition that it shall be returned to the department immediately upon a request from the secretary. If a subpoena or other legal process is received calling for production of such a report of examination, or any portion thereof, the department shall be notified immediately by the institution. Under no circumstances shall the institution or any of its directors, trustees, officers or employes make copies of the report of examination or any portion thereof available to any organization or person who is not officially connected with such institution as a director, trustee, officer, attorney or employe without the prior written approval or nonobjection of the department. Notwithstanding the foregoing, an institution may disclose the existence and contents of an order or other enforcement action issued to it by the department to the extent required by applicable Federal securities law or State securities law.*

B. The department, on the written request or consent of any institution, authorized in the case of corporations by [resolution of its board of directors, or its board of trustees, as the case may be] *the president or senior executive officer of the institution*, may discuss with any person or persons selected by the department, or selected by such institution and approved by the department, any matters relating to the financial condition of such institution.

C. The department, *by itself and in its reasonable discretion for regulatory or enforcement purposes*, or on the written request or consent of any institution, authorized in the case of corporations by [resolution of its board of directors, or its board of trustees, as the case may be] *the president or senior executive officer of the institution*, may furnish to the Federal Reserve Board, to the Federal Reserve Bank of the district in which the place of business of any institution is located, or to any agency or

instrumentality of the United States government, or of the Commonwealth of Pennsylvania, *or any other supervisor of financial institutions in another state*, any information in its possession relating to such institution.

D. The department may, from time to time, with the approval of the Governor, cause to be published a summary of the condition of institutions under its supervision, containing such information in relation to such institutions as in its judgment is desirable.

E. [This section shall not] *Neither this section nor any other statute or regulation shall* be construed to require the department to publish or divulge any such information *under this section*, when in the opinion of the department such publication or divulgement is undesirable.

F. *Notwithstanding any of the foregoing provisions of this section, the department may enter into such cooperative, coordinating and information-sharing agreements with any other Federal and State banking, insurance or securities regulatory agencies or do so by, with and through any trade association of such agencies, with respect to any examination, supervision, enforcement, criminal referral, consumer complaints or any other regulatory matters related to institutions, including credit unions, trust companies and licensees, as may be reasonably necessary or appropriate, as determined in the discretion of the secretary. The department may enter into joint examinations or joint enforcement actions with any other Federal or state banking regulatory agency or any insurance or securities regulatory agency having concurrent jurisdiction over any person or entity lawfully or unlawfully engaging in the business of a depository institution, trust company, credit union or licensee as may be reasonably necessary and appropriate in the discretion of the secretary.*

G. *This section also applies to credit unions and licensees.*

Section 13. The act is amended by adding a section to read:

**Section 405. Criminal History Record Information.—A.** *For the purposes of this section, a “covered individual” has the following meanings:*

(1) *Any individual or owner of a sole proprietorship that initially applies to the department for any kind of a covered license under a licensing statute or any individual that controls such an individual or sole proprietorship, or any branch office manager or other employe of such an individual or sole proprietorship who will engage in activity that will be subject to a licensing statute, provided that such activity is not solely back office functions or clerical work.*

(2) *Any individual who owns thirty per centum or more of any type or class of stock or other ownership interest in a business corporation that initially applies to the department for a covered license, or, with respect to a trust company, ten per centum of such stock or other ownership interest, or any chief executive officer, president, chief financial officer, chief operating officer, corporate secretary, corporate treasurer, or other senior*

*level executive of such business corporation, or any junior level executive of such business corporation that participates in the conduct of such business corporation's affairs that are related to such business corporation's activity in Pennsylvania, or any branch office manager or other employe of such business corporation who will engage in activity that will be subject to a licensing statute, provided that such activity is not solely back office functions or clerical work.*

*(3) Any individual with any kind of ownership or membership interest in a noncorporate entity that initially applies to the department for a covered license under a licensing statute, or any officer of any business corporation or noncorporate entity with any kind of ownership or membership interest in another noncorporate entity, or any branch office manager or other employe of a noncorporate entity that applies to the department for a license under a licensing statute who will engage in activity that will be subject to a licensing statute, provided that such activity is not solely back office functions or clerical work.*

*B. For the purposes of this section, a "covered license" means a mortgage broker license or limited mortgage broker license under the act of December 22, 1989 (P.L.687, No.90), known as the "Mortgage Bankers and Brokers and Consumer Equity Protection Act," a secondary mortgage broker license under the act of December 12, 1980 (P.L.1179, No.219), known as the "Secondary Mortgage Loan Act," a consumer discount company license used only in the capacity of a broker that is not originating loans under the act of April 8, 1937 (P.L.262, No.66), known as the "Consumer Discount Company Act," a money transmitter license under the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, a check-casher license under the act of February 18, 1998 (P.L.146, No.22), known as the "Check Casher Licensing Act," a pawnbroker license under the act of April 6, 1937 (P.L.200, No.51), known as the "Pawnbrokers License Act," a collector-repossessor license or installment seller license under the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance Act," a license the department may grant pursuant to any other licensing statute, or the articles of incorporation of a trust company under the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965."*

*C. For the purposes of this section, "national criminal history record information" means criminal history records maintained by the Federal Bureau of Investigation Criminal Justice Information Services Division consistent with the act of October 25, 1972 (Public Law 92-544, 86 Stat. 1115).*

*D. For the purposes of this section, "noncorporate entity" means an association, joint venture or joint stock company, partnership, limited partnership, limited partnership association, nonprofit corporation,*



*professional corporation or any other group of individuals, however organized.*

*E. For the purposes of this section, "licensing statute" means the "Mortgage Bankers and Brokers and Consumer Equity Protection Act," the "Secondary Mortgage Loan Act," the "Consumer Discount Company Act," the "Motor Vehicle Sales Finance Act," the Money Transmission Business Licensing Law, the "Check Cashier Licensing Act," the "Pawnbrokers License Act," any other statute pursuant to which the department may grant a license or the "Banking Code of 1965" only insofar as it relates to the business of a trust company.*

*F. (1) In connection with any initial application submitted to the department for a covered license, a covered individual shall submit his or her fingerprints to the department or to such other international, Federal, State or local government agency, or designee thereof, selected by the department, including the Pennsylvania State Police and the Federal Bureau of Investigation, in order for the department to receive criminal history record information from any international, Federal, State or local government agency, or designee thereof, including criminal history record information from the Pennsylvania State Police or national criminal history record information from the Federal Bureau of Investigation. The department shall send or receive such criminal history record information or national criminal history record information to or from the Pennsylvania State Police, the Federal Bureau of Investigation or any other international, Federal, State or local government agency, or designee thereof, in a manner that is satisfactory to the department. National criminal history record information received by the department shall be handled or maintained in accordance with Federal Bureau of Investigation policy.*

*(2) Any individual who was not a covered individual at the time an application for a covered license was submitted to the department, but who later occupies a position that would have made that person a covered individual at the time an application for a covered license was submitted to the department, shall comply with all of the requirements of paragraph (1) at the time an application to renew an existing covered license is submitted to the department, or, with regard to a trust company, at any time designated by the department.*

*G. During the initial or renewal license application process, the department may deem the license application as incomplete and therefore not commencing the review period stated in the respective licensing statutes if the department has not received evidence from the applicant that national criminal history record information and other criminal history record information required under this section has been requested from the Federal Bureau of Investigation for national criminal history record information, or the Pennsylvania State Police or any other*

*international, Federal, State or local governmental agency or designee thereof for criminal history record information.*

*H. Notwithstanding any other law to the contrary, the department may suspend its processing and consideration of any initial or renewal license application submitted to the department under a licensing statute unless and until the department receives any and all national criminal history record information from the Federal Bureau of Investigation, criminal history record information from the Pennsylvania State Police, or criminal history record information from any other international, Federal, State or local government agency responsible for such recordkeeping. If the department does not receive the criminal history record information, including national criminal history record information, required under this section, then the department may deny the initial or renewal license application.*

*I. Notwithstanding the foregoing provisions of this section, the department's approval or denial of a covered license application under a licensing statute without the department receiving criminal history record information or national criminal history record information regarding covered individuals as required under this section shall not prohibit the department from taking any action authorized by law, including suspension or revocation of such a license. In addition, the department may deny a covered license application or suspend or revoke a covered license based on the contents of criminal history record information, or the untimely receipt or failure to provide criminal history record information, or misleading or inaccurate information provided by the applicant or covered individual, pursuant to this section, any licensing statute and other applicable law including 18 Pa.C.S. Ch. 91 (relating to criminal history record information).*

*J. The cost of any criminal history record information, including national criminal history record information, obtained by the department pursuant to this section shall be paid by the initial or renewal license applicant or the individual whose criminal history is being checked.*

Section 14. Section 501B and C of the act, amended July 1, 1981 (P.L.178, No.52), are amended to read:

Section 501. Orders by Department.—\* \* \*

*B. Whenever it shall appear to the department that an attorney, officer, or employe of an institution, and in the case of an incorporated institution, a director or trustee thereof, shall have continued to violate any law relating to such institution, or shall have continued unsafe or unsound practices in conducting the business of such institution, after having been warned by the department to discontinue such violations of law or such unsafe or unsound practices, the department may issue an order directing such attorney, officer, employe, director, or trustee to appear on the day fixed in such order before the department and show cause why he should not be removed from his office or position and such office or position declared vacant. A copy of*

such order shall be sent to the institution of which such person is an attorney, officer, employe, director, or trustee.

The office or position of any attorney, officer, employe, director, or trustee, so ordered by the department to appear, who does not appear on the day fixed in such order, shall, unless the date for his appearance shall previously have been extended by the department, upon such failure to appear, be declared vacant.

On the day fixed in the department's order such attorney, officer, employe, director, or trustee shall be heard, in person or by counsel, by the department. If, after such hearing, it shall appear to the department that such attorney, officer, employe, director, or trustee has not shown cause why he should not be removed from his office or position and such office or position declared vacant, the department shall, within sixty days of such hearing, issue an order directing the institution to remove such attorney, officer, employe, director, or trustee from his office or position, and declare such office or position vacant. A copy of such order shall be sent to the attorney, officer, employe, director, or trustee so removed.

The department shall set forth in its order the date upon which any such removal and declaration of vacancy shall become effective.

If the institution, of which such person, ordered by the department to appear is an attorney, officer, employe, director, or trustee, is *an interstate bank or is a member of a Federal Reserve Bank, the Federal Deposit Insurance Corporation[,] or the Federal Home Loan Bank, [or the Federal Savings and Loan Insurance Corporation,]* the department may notify such Federal Reserve Bank, Federal Deposit Insurance Corporation, Federal Home Loan Bank, *[or Federal Savings and Loan Insurance Corporation,]* *or other bank supervisory agencies having jurisdiction over an interstate bank*, as the case may be, of its order directing such attorney, officer, employe, director, or trustee to appear before the department *and of its decisions issued in such a case*. At such hearing, any duly authorized representative of such Federal Reserve Bank, Federal Deposit Insurance Corporation, Federal Home Loan Bank or *[Federal Savings and Loan Insurance Corporation] other bank supervisory agencies having jurisdiction over such interstate bank*, as the case may be, may appear as a witness *[against such attorney, officer, employe, director, or trustee]*.

Except as *[herein]* otherwise specifically provided *in this act*, the proceedings of the department and its decisions *regarding institutions* shall not be published or divulged to anyone.

Any attorney, officer, employe, director, or trustee, who is removed from his office or position as provided in this section, shall thereafter be disqualified from acting as an attorney, officer, employe, director, or trustee of any institution in this Commonwealth, for such period as the department shall prescribe.

C. In connection with any hearing or investigation *authorized by this act or by any other law*, the department shall have, *in addition to the*

**authority provided by any other law**, power to issue subpoenas, requiring the attendance of or the production of pertinent books [and], papers, **electronic data or information of any kind in any form**, by the officers, directors, agents, employes, or members, respectively, of any corporation or person which the department is authorized under the provisions of this act or any other law of this Commonwealth to examine. **The department shall also have power to issue subpoenas to any person or entity provided that the information from such person or entity is necessary for the enforcement of this act or any other law within the jurisdiction of the department.** The department may, upon application of the attorney, officer, employe, director, or trustee to be heard, subpoena such witnesses as are set forth in such application. The department shall also have the power to question such witnesses under oath or affirmation, and to examine such books and papers. **In the event that a person fails to comply with a subpoena for documents or testimony issued by the department, the department may request an order from the Commonwealth Court requiring the person to produce the requested information.**

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 **the Commonwealth Court or to** any court of common pleas, within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

\* \* \*

Section 15. Section 502 of the act is amended to read:

Section 502. Enforcement of Department's Order by Court.—Whenever [an institution] **a person, institution, credit union, licensee or other entity of any kind whatsoever** shall not comply with the terms of an order of the department which has been properly issued under the circumstances **pursuant to this act or any other law**, the department, upon notice to the [institution, may, through the Department of Justice, petition the court of common pleas, either of Dauphin County, or of the county in which the institution has its principal or only place of business,] **person, institution, credit union, licensee or entity, may, in addition to the authority provided by any other law, through the Office of Attorney General, petition the Commonwealth Court** for an order directing the institution to obey the order of the department within such period as shall be fixed by the court. Upon the filing of such petition, the court shall allow a rule to show cause why it should not be granted. Whenever, after a hearing upon the merits, it shall appear that the order of the department was lawfully issued, the court shall grant the petition of the department.

Section 16. Section 503 of the act is amended to read:

Section 503. Quo Warranto or Injunction Proceedings.—[A. When any corporation subject to the supervision of the department (1) has not had

its capital, surplus, or expense fund paid in as required by law, or (2) has not in any manner exercised at least one of the powers conferred upon it by its articles of incorporation within two years after the issuance of its certificate of incorporation by the Department of State, or (3) has formerly exercised any of its corporate powers but for a period of two years has not exercised at least one of them, the department shall notify the Department of Justice of these facts, and the Department of Justice may then proceed by quo warranto against such corporation, in the manner provided by law, to oust it from its corporate powers and privileges.]

B. When any institution violates any provision of its articles of incorporation, and refuses to obey a lawfully issued order of the department that it cease such violation, the department may notify the [Department of Justice] *Office of Attorney General* of these facts, and the [Department of Justice] *Office of Attorney General* may then institute quo warranto proceedings against such corporation *or other type of institution*, in the manner provided by law.

[C. When any person subject to the supervision of the department has not, for a period of two years, done any act in pursuance of its banking powers, the department shall notify the Department of Justice of these facts, and the Department of Justice may then proceed against such person by the method provided by law to enjoin it permanently from doing a banking business in this Commonwealth.]

C. *The department may maintain an action in Commonwealth Court or any other court of competent jurisdiction for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this act or any other statute or regulation within the department's jurisdiction to administer or enforce.*

D. *This section pertains to institutions and credit unions. Subsection C is applicable to institutions, credit unions and licensees.*

Section 17. Sections 504, 601 and 604 of the act are amended to read:

Section 504. Taking of Possession by Department.—A. The department may take possession *as receiver, which throughout this act includes the authority to act as conservator*, of the business and property of any institution subject to its supervision whenever it shall appear to it that such institution—

(1) Is violating its articles of incorporation, any order of the court issued upon application of the department, *any cease and desist or similar order of the department*, or any law of the Commonwealth regulating its business; or

(2) Is conducting its business in an unsafe manner; or

(3) Is in an unsafe or unsound condition to transact its business; or

(4) In the case of a corporation, has an impairment of its capital below the minimum required by law or by its articles of incorporation; and in the case of a person, has not made good a depreciation in the value of the bonds

or securities deposited with the department below the minimum required by law; *or, after due examination of the corporation or person, is determined to be insolvent; or has a substantial dissipation of assets or earnings or any unsafe or unsound practice or for any violation of Federal or State financial law or pertinent regulation; or*

(5) Has suspended payment of its obligations, without authority of law[, and in the case of a building and loan association, has not, for a period of one year after due demand or notice by a shareholder, paid any matured share or any withdrawal]; *or is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business; or*

(6) Has refused to submit its records and affairs to, or its officers or directors have refused to be examined upon oath or affirmation concerning its affairs by, the secretary, or any other duly authorized examiner, in connection with any lawful examination or investigation; or

(7) Requests the department, by its board of directors or its board of trustees in the case of a corporation, and, in the case of a person, by its individual owner or owners, to take possession for the benefit of depositors, other creditors, and shareholders[.]; *or*

(8) *Has assets less than its obligations to its creditors and others, including members of the institution.*

[B. Before taking possession, the department shall conduct a hearing before the department and the Department of Justice, which may be attended only by, and notice of which shall be given only to, the officers and directors of the corporation, or the officers and individual owner or owners of the person. After such hearing, the department may, if it first procures the consent of the Department of Justice, take possession:

Provided, however, That whenever immediate action shall be necessary in order to protect the interests of the depositors, other creditors, or shareholders of an institution, it may take possession without conducting a hearing and without the approval of the Department of Justice.]

*B. Prior to the department taking possession, the department shall have full authority to take any action it deems appropriate in anticipation of taking possession of an institution, including, but not limited to, seeking and contacting potential acquirers of part or all of the institution that may be taken into possession and obtaining qualified agents or seeking and contacting potential successor trustees to administer fiduciary accounts.*

C. In addition, whenever the secretary in his official capacity is appointed receiver by any court of equity, as provided by law, the department shall take possession of the business and property, and the secretary shall act as receiver, of the institution in the same way and with

the same rights and limitations as when the department takes possession in the customary manner provided by this act.

**Section 601. Taking Over Possession by Secretary as Receiver.**—Whenever the department takes possession of the business and property of an institution, *including a foreign bank office licensed by the department*, the secretary shall, by operation of law, simultaneously take over such possession from the department and become receiver of such institution, subject to the provisions of this act. His official title, when thus in possession of the business and property of an institution, shall be receiver of such institution. *The secretary may act as receiver without bond.*

**Section 604. Certificates of Possession; Filing; Title To and Liens Against Real Property; Supplements to Certificate of Possession to Surrender or Transfer Receivership.**—A. The secretary, upon taking possession of the business and property of an institution as receiver, shall forthwith, under the seal of the department, prepare in duplicate a certificate, to be known as the certificate of possession, setting forth that he has become receiver of the institution. It shall state the name of the deputy receiver whom the secretary, pursuant to the provisions of this act, appoints to take charge of the affairs of the institution, and shall set forth the duties which he delegates to such deputy receiver. If the secretary does not appoint a deputy receiver prior to the date of the filing of the certificate of possession, or if he appoints a new deputy receiver or an additional one, or if he adds to the duties of the deputy receiver, he shall prepare, in duplicate, and file a supplement to the certificate of possession.

B. The secretary shall file the original certificate of possession and the original of any supplement thereto in his office in Harrisburg, and the duplicate certificate of possession and the duplicate of any supplement thereto in the office of the prothonotary. The certificate of possession filed in the prothonotary's office, and any supplement thereto, shall be listed in the judgment index in the name of the institution as defendant and of the secretary as plaintiff.

C. [In addition the secretary shall, as soon as possible, file a certified copy of the certificate of possession, and of any supplement thereto, in the office of the recorder of deeds in each county in the Commonwealth, or with the proper official in any other state or country, in which any real property shall be situated which belongs to the institution or title to which is in its name, or upon which there is a mortgage or other lien which belongs to the institution or title to which is in its name. Such copy shall be recorded in the current deed book, and shall be indexed in the grantors' index in the name of the institution and in the grantees' index in the name of the secretary, or it shall be filed, indexed, or registered by whatever other method is provided by the law of the particular county, state, or country in which such real property is located.] *The certificate of possession filed with the prothonotary shall constitute valid evidence that any real property owned by or upon which*

*there is a lien which belongs to the institution has come into possession of the receiver as of the date specified therein.*

*D. The receiver shall file with the prothonotary a supplementary certificate of possession stating when the receiver has transferred or surrendered possession of the institution to another entity and stating the entity's name, address and telephone number.*

Section 18. Section 606 of the act is repealed.

Section 19. Sections 607, 608, 701, 702 and 703 of the act are amended to read:

Section 607. Taking of Possession upon Request of Institution.—No institution shall make a general assignment of its business and property for the benefit of its creditors by the appointment of an assignee or a trustee, or otherwise. In lieu of the power to make an assignment for the benefit of creditors, an institution may request the department to take possession in the regular manner provided by law. In such cases, the department [shall] *may take possession or may take other action deemed appropriate in its discretion*, and the secretary [shall] *may take over such possession and become receiver, in the same manner and subject to the same provisions of this act as when the department takes possession of the business and property of an institution without the request of such institution[.], unless the secretary determines that the Federal Deposit Insurance Corporation or other appropriate banking agency should take possession and such agency agrees to do so.*

Section 608. Surrender of Possession; Special Liquidations and Reorganizations.—[A.] The secretary may, upon conditions approved by him, surrender possession of an institution of which he has taken possession as receiver, at any time prior to final liquidation and distribution, under the following circumstances:

(1) He may surrender possession to the institution itself when he finds it to be in a safe and sound condition to resume its business;

(2) He may surrender possession to the institution itself when he is without funds to liquidate its business and property. In such case, the secretary shall first accord to the shareholders, and the depositors or other creditors of the institution, a period of not less than two weeks in which to advance sufficient funds for the secretary to liquidate the business. Where such funds are advanced, they shall be considered an expense of administration and shall be given the same preference in the distribution of assets as any other expenses of administration. Where possession has been surrendered to an institution under such circumstances, the institution may not conduct any business except the liquidation of the assets. In the distribution of any moneys realized by the institution on its assets, it shall follow the same order and preference as is established by this act for distribution by the secretary of the assets of an institution of which he is in possession as receiver. Upon the approval of his account by the court, and upon the filing of the supplement to the certificate of possession, pursuant to



the provisions of this section, the secretary shall be relieved of all duties with reference to such institution. However, if the department shall deem it advisable to resume possession of the institution at any time, it may do so in the same manner as is provided for the taking possession of any institution, in which case the secretary shall again take over possession and become receiver, with all the rights, powers, and duties granted to, or imposed upon the secretary, as receiver, by this act.

(3) He may surrender to the institution itself, or to any other corporation or person, possession of all or part of the business, property, moneys, credits, or other assets of the institution of which he is in possession as receiver to permit to be carried into effect a special plan of liquidation, reorganization, or rehabilitation which has been approved by the court and by (a) depositors and other creditors of the institution, to whom is due [ninety per cent] *a majority* in amount, regardless of the number, of the claims stated in writing by the secretary to be due to depositors and other creditors of such institution, and (b) the holders of a majority of the shares of stock of such institution, if a corporation, except that in the case of a [building and loan] *savings* association, the approval of the holders of eighty per cent of the shares of stock of such corporation shall be required.

However, the secretary shall not authorize any decrease of capital by a corporation affected by the provisions of this section, except upon compliance by such corporation with the provisions of law as to such decrease.

**[B. Whenever the secretary shall surrender possession under the provisions of this section, he shall forthwith, under the seal of the department, prepare in duplicate a supplement to the certificate of possession, setting forth in detail all the conditions and purposes of such surrender. He shall file the original of such supplement in his office in Harrisburg and the duplicate in the office of the prothonotary, where it shall be indexed in a manner which will, in so far as necessary, satisfy the prior record of the certificate of possession. He shall also file a certified copy of such supplement in the office of the recorder of deeds in each county in the Commonwealth, or with the proper official in any other state or country, in which any real property so surrendered, or any real property upon which there shall be a mortgage or other lien so surrendered, shall be situated.**

**C. Whenever the secretary shall, under the provisions of this section, surrender possession of the entire business and property of an institution of which he is in possession as receiver, he shall file in the court an account, which shall correspond to any other final account which he is required by this act to file. Such account shall be subject to exceptions by shareholders, or depositors, or other creditors, and to confirmation by the court, in the same manner as is provided by this act for any account filed by the secretary as receiver.]**

Section 701. Status of Secretary as Receiver.—A. Except as otherwise provided in this act, the secretary, when he has taken possession of the business and property of an institution, shall be responsible to the court in which the certificate of possession is filed[, and not to any other court]. His rights, powers, and duties shall be those of a general receiver appointed by any court of equity in this Commonwealth, except as such rights, powers, and duties are increased or limited by the provisions of this act. *The secretary as receiver may act as a conservator of the institution.* He shall be vested, in his official capacity, with all the rights, *titles, privileges,* powers, and duties of such institution[;] *and of any shareholder, member, account holder, depositor, officer or director of such institution* with the title or the right to possession of all property to which the institution has title or the right to possession, including debts due, and liens and other security therefor *and ownership of the books, records and assets of any previous legal custodian of such institution;* and with the institution's rights of action or redemption. This shall be so whether such property and debts due, such liens or other security therefor, or such rights of action or redemption, are held in the name of such institution, or in the name of some other corporation or person. He shall have power to execute in his name, as receiver, any instrument incident to the exercise of any power granted to or any duty imposed upon him as receiver of such institution.

The secretary shall be the representative of the creditors of the institution and shall be entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or encumbrance, which could have been avoided by any of the creditors, or by which one creditor is given an unlawful preference over another.

*B. The secretary may, as receiver: (i) exercise all powers and authorities, including all incidental powers as shall be necessary to carry out his enumerated duties; and (ii) take any action which the secretary determines is in the best interests of the institution, its depositors, owners, shareholders, creditors, trust accounts or the Commonwealth of Pennsylvania.*

Section 702. Appointment of Deputy Receivers, Counsel, *Independent Receivers* and Other Assistants.—A. The secretary may appoint one or more official agents, to be known as deputy receivers, to assist him in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of any institution, *or administration of fiduciary accounts* of which he has taken possession as receiver. The secretary may delegate to each deputy receiver any duty imposed upon, or any right or power granted to, him as receiver. The secretary may also employ such other assistants as he deems necessary, including such deputy attorneys general, special deputy attorneys general, assistant deputy attorneys general, or other attorneys as may be appointed by the [Department of Justice] *Office of Attorney General* and assigned to the secretary for the handling of

any legal business pertaining to the affairs or property of such institution. The secretary may also retain to assist him in the management, reorganization, consolidation, liquidation, or distribution, any officer or other employe of the institution of which he has taken possession.

*B. (1) On request of the secretary, the court in which the receivership proceeding is pending may appoint an independent receiver, including any appropriate governmental entity, to handle the receivership proceedings consistent with the provisions of this act and may require a suitable bond of the independent receiver. The appointed independent receiver shall have the same status and incidental powers provided to the secretary as receiver in section 701.*

*(2) If an independent receiver is appointed, the secretary is discharged as receiver from any liability for the acts thereafter of the independent receiver but shall remain a party to the receivership proceeding with the right to terminate such independent receiver upon petition to and approval by the court and, with standing to initiate, contest or participate in any actions involving or related to the receivership at the discretion of the secretary. The views of the secretary are entitled to deference if not contrary to the plain meaning of this article.*

Section 703. Exercise of Discretion by Secretary.—A. Whenever, under this act, discretion as to whether, or the manner in which, to exercise a power or fulfill a duty is vested in the secretary in possession of an institution as receiver, he shall, after such examination or investigation as shall seem appropriate under the circumstances, take such action as he deems to be the best interests of the depositors or other creditors[, and, in the case of building and loan associations, also of the shareholders of such institution].

B. The words “the best interests of the estate,” whenever used in this act, shall be construed to refer to the best interests of the depositors or other creditors[, and in the case of building and loan associations, also of the shareholders of such institution].

Section 20. Section 704 of the act, amended October 5, 1978 (P.L.1133, No.266), is amended to read:

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, *to organize a new institution* or to take such other action [as is] authorized by law *which is in the best interests of the estate*. 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. *In addition, the*

*secretary may enter into agreements, conditional or otherwise, for the purchase of assets and assumption of liabilities of the institution and take related actions prior to and in reasonable anticipation of such institution being placed into receivership by the secretary or other banking agency.*

Section 21. Sections 705, 710A and 711A of the act are amended to read:

Section 705. Determination to Liquidate; Filing of Supplemental Certificates *Upon Determination to Liquidate Institution*.—The secretary shall, within six months after the date on which he takes possession of any institution as receiver, determine whether or not to liquidate the business and property and distribute the assets of the institution. If he shall determine to liquidate, he shall forthwith, under the seal of the department, prepare, in duplicate, a supplement to the certificate of possession, setting forth this fact. He shall file the original supplement in his office in Harrisburg and the duplicate in the office of the prothonotary. He shall then proceed to liquidate the affairs of the institution with as much dispatch as shall appear to be expedient under the circumstances.

Section 710. Notice to Holders of Assets; Power of Court to Order Transfer.—A. Upon becoming receiver of any institution, the secretary shall forthwith give notice in writing of such fact to all corporations and persons having custody or possession of any assets or other property which the institution of which he is receiver owns or to which it has the right to possession or custody for any purpose whatsoever. *Such notice shall be given at the addresses which appear for such corporations and persons upon the records of the institution or, if none appear there, then at their last known addresses. However, if it shall appear to be in the best interests of the institution, the court may order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to the corporations and persons.*

\* \* \*

Section 711. Sale of Assets Repledged by Institution; Repledge after Possession.—A. Where assets belonging to others, shall be pledged or given as collateral by an institution of which the secretary subsequently takes possession as receiver, and the pledgee has actual knowledge at the time of the pledge that the assets are not assets of the institution, such pledgee shall not forfeit or sell any such collateral or pledged assets, after the secretary has taken possession, without the written permission of the secretary, any provision in any collateral note or agreement to the contrary notwithstanding; but if the secretary refuses such permission, the pledgee may, after notice to the secretary, petition the court for leave to sell such assets. The court may, after giving the pledgee and the secretary an opportunity to be heard, grant such leave, or it may make such other order as it deems to *be in* the best interests of all parties concerned.

However, if the assets so pledged by any such institution are accompanied by the obligation of the corporation or person owning them,

the pledgee shall have the power to exercise all the rights, powers, and privileges contained in such obligation held by such pledgee, including the sale of the assets.

\* \* \*

Section 22. Section 712B and D of the act, amended July 2, 1935 (P.L.525, No.202), are amended to read:

Section 712. Liens, Judgments, and Executions; Assignments of Claims.—\* \* \*

B. In the case of an institution, of which the secretary has taken possession, **[which, at the time of possession, was a member, in the case of a bank, bank and trust company, or savings bank of the Federal Deposit Insurance Corporation, and in the case of a building and loan association of the Federal Savings and Loan Insurance Corporation,]** the claims of depositors**[, and of shareholders of a building and loan association,]** shall be subrogated in favor of the Federal Deposit Insurance Corporation **[or the Federal Savings and Loan Insurance Corporation, as the case may be,]** to the extent that the Federal Deposit Insurance Corporation **[or the Federal Savings and Loan Insurance Corporation]** makes available, pursuant to applicable laws of the United States, for payment, the claims of such depositors **[or such shareholders]:** Provided, That the rights of such depositors **[or of such shareholders,]** to participate in and receive dividends or other distributions upon that portion of their claims not made available for payment**[,]** shall not be affected by such subrogation. When the claims of depositors **[or of shareholders]** have been made available for payment, in whole or in part, by the Federal Deposit Insurance Corporation **[or the Federal Savings and Loan Insurance Corporation, as the case may be,]** the secretary shall file a partial or final account, in the manner required by this act, of his administration of the business and property of the institution.

\* \* \*

D. No execution or attachment, pending or otherwise, shall respectively issue, or be proceeded with, against any property, moneys, or assets, owned by, or legally in the custody or possession of, an institution of which the secretary is in possession as receiver. **[, except that an execution may be permitted by special leave of the court. In lieu of the right to issue an attachment against money or property belonging to others, which is legally in the custody or possession of such institution, a]** A plaintiff may proceed as follows: He may give written notice of his claim to the secretary, or to the deputy receiver of such institution, and he shall thereafter present proof in the regular manner provided by this act for the proof of the claim, which he is attempting to attach. After the filing of the regular account of the secretary, the court shall adjudicate the matter as in the case of other disputed claims. **[Where two or more plaintiffs attempt to attach the same claim in this manner, the order in which they shall take, as among**

**themselves, shall be determined by the order in which written notice of their claims was received by the secretary.]**

Section 23. Section 715 of the act, amended May 26, 1949 (P.L.1842, No.546), is amended to read:

Section 715. Surrender or Transfer of Burdensome Assets.—The secretary may, with leave of court, surrender to the institution of which he is receiver any real estate which appears to be burdensome and of no advantage to the estate. He may likewise, with leave of court, convey title to any other holder of a mortgage or a lien against property in his possession, where it shall appear that to continue to hold such property is burdensome and of no advantage to the estate.

The secretary shall give notice to the depositors or other creditors of the institution[, and, in the case of building and loan associations, to the shareholders,] of the filing of the petition for leave to transfer or convey such property pursuant to the provisions of this section. Such notice shall be given at the addresses which appear for such depositors[,] *or* other creditors[, or shareholders] upon the books or other records of the institution, or if none appear there, then at their last known addresses. However, the court may, if it shall appear *to be in* the best interests of the estate, order the secretary to substitute a single advertisement in a newspaper or newspapers, for the individual notice to the depositors and other creditors[, and in the case of a building and loan association, the shareholders]. The court shall grant at least ten days for the filing of objections by the depositors or other creditors of the institution [and, in the case of a building and loan association, the shareholders of such institution].

Section 24. Sections 718 and 721A and C of the act are amended to read:

Section 718. Sales of Real Property.—[A.] The secretary may, with leave of, and upon the terms and conditions prescribed by, the court, sell any real property of the institution of which he is in possession as receiver. The order of the court authorizing such sale shall state whether the sale shall be entirely for cash or partly for cash and partly for evidences of indebtedness, whether it shall be public or private, whether notice shall be given to depositors, other creditors, and shareholders, or to any of these groups, and whether advertisement shall be made. Unless the court, in any case, deems advertisement or notice necessary or desirable to protect the interests of the estate, such advertisement or notice shall not be required. *If the court does require advertisement or notice, then the court shall in no case require more than a single insertion in one newspaper of general circulation in the county of the receivership and one in such other county where the real property may be located.*

[Where the order of the court provides for advertisement, it shall in no case require that there be more than a single insertion in one newspaper of general circulation in the county, and, in first-class

counties, in one legal newspaper. Where real property which is to be sold is situated in a county other than the one in which the institution is located, the court may also authorize a single insertion in a newspaper of general circulation in such other county, and, in first-class counties, in one legal newspaper.]

Every such sale of real property shall be confirmed by the court, if all the terms and conditions of its order authorizing such sale have been complied with.

[B. When any real property of an institution of which the secretary is in possession as receiver is situated in a county other than the one in which the institution is located, the secretary shall proceed in the same manner as is provided by this section for the sale of real property within the county. In addition, he shall petition the court of common pleas of the county in which the real property is located, and it shall be the duty of such court, to issue an order authorizing the sale upon the terms or conditions prescribed by the order of the court having jurisdiction of the receivership. The secretary shall file a return of the sale in the court of common pleas in the county in which the real estate is located, which court, if all the terms and conditions of the order of the court, in which the certificate of possession is filed, have been met, shall confirm the sale and shall give the secretary a certified copy of the return of the sale and a certified copy of the confirmation thereof. Such certified copies shall be filed with the prothonotary of the court in which the certificate of possession is filed.]

Section 721. Sale or Exchange of Personal Property, Listed and Unlisted Securities.—A. The secretary may, without leave of court, sell on any stock exchange or otherwise, at such times and in such manner as he shall deem to be [to] *in* the best interests of the estate, listed or unlisted securities which belong to the institution of which he is in possession as receiver, or which such institution has the power to sell.

\* \* \*

C. The secretary may, without leave of court, sell any mortgage or other lien upon real property or any judgment, at such times and in such manner as he shall deem to *be in* the best interests of the estate.

\* \* \*

Section 24.1. Section 723 of the act is repealed.

Section 25. Section 725 of the act, added October 5, 1978 (P.L.1133, No.266), is amended to read:

Section 725. Rights of Subrogation.—When a public body of the United States *or this Commonwealth* 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 26. The act is amended by adding sections to read:

*Section 726. Additional Powers of the Receiver.—In addition to any other power, right, privilege, immunity, ability or other authority*

*conferred upon the secretary by this act, the secretary, as receiver of any institution, shall have any power, right, privilege, immunity, ability or other authority conferred upon the Federal Deposit Insurance Corporation by Federal law when acting as conservator or receiver which does not conflict with any power, right, privilege, immunity, ability or other authority conferred upon the secretary by this act, including the powers, rights, privileges, immunities, abilities and authorities conferred upon the Federal Deposit Insurance Corporation by section 11(d) through (w) of the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. § 1821(d) through (w)). The powers, rights, privileges, immunities, abilities and other authorities conferred upon the secretary by this provision are discretionary, and nothing in this act or any other law shall require the secretary to exercise any such power, right, privilege, immunity, ability or other authority when the secretary, in his discretion, determines not to do so.*

**Section 727. Taxation.**—A. *The receiver, including, for purposes of this section, the secretary and the department, shall be exempt from all taxation imposed by any state, county, municipality, local or other taxing authority in any state to the extent permitted by law and the Federal Government to the extent permitted by Federal law, except that any real property of the receiver shall be subject to applicable state, county, municipal or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.*

B. *No property of the receiver shall be subject to levy, attachment, garnishment, foreclosure or sale without the consent of the receiver, nor shall an involuntary lien attach to the property of the receiver.*

C. *The receiver shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate or recording tax or any recording or filing fees when due.*

Section 27. Article VIII heading of the act is amended to read:

**ARTICLE VIII  
SECRETARY IN POSSESSION OF  
TRUST COMPANY OR TRUST DEPARTMENT**

Section 28. Sections 801 and 802 of the act are amended to read:

**Section 801. Institution as Fiduciary.**—References in this act to funds, property, or investments held in a fiduciary capacity by an institution of which the secretary has taken possession, shall apply only to funds, property, or investments held in such fiduciary capacity by the *trust company* or trust department of such institution, and shall not apply to



funds, property or investments which were held by the commercial department of such institution.

Section 802. Secretary in Possession of *Trust Company or Trust Department*.—A. The secretary, upon taking possession of an institution as receiver, shall keep all the funds, property, and investments, if any, which are held by such institution in a fiduciary capacity, separate from the assets of the institution itself.

B. The secretary, when in possession of an institution as receiver, shall have all the rights, powers, and duties which such institution had in its fiduciary capacity. He shall have title to all the assets, including debts due, liens and other security therefor, and all rights of action or redemption, of all estates of which the institution, either alone or jointly with someone else, was trustee, executor, administrator, guardian, assignee, or other similar fiduciary, and shall have the power to administer such estates. In pursuance of this power, the secretary may institute any action at law or in equity, or execute and sign any written instruments, which the institution itself could have instituted, executed, or signed.

C. The secretary shall not[, however,] have the power to invest funds or property of any such estate, except where it shall appear necessary to purchase any real or personal property or any interest therein, in order to protect an equity which such estate has in such property. Such purchase by the secretary shall not[, however,] be made without the approval of any corporation or person whose approval would have been necessary to such purchase by the institution prior to the taking of possession by the secretary, and of the court which has exercised jurisdiction over such estate. If no court has yet exercised jurisdiction over the estate, then the approval either of the court of common pleas or of the orphans' court of the county in which the place of business of the institution is situated shall be procured.

Except where otherwise specifically provided, references in this act to the court which has exercised jurisdiction over an estate of which an institution in possession of the secretary was fiduciary, shall be construed to refer, in cases in which the institution was executor or administrator, to the orphans' court of the county of which the register of wills issued the letters testamentary or letters of administration respectively, and in all other cases, to the court of common pleas or the orphans' court in which an account of the estate has been filed, or which has, in any manner, exercised control or supervision over the administration of such estate by the institution as fiduciary.

Section 28.1. The act is amended by adding a section to read:

***Section 802.1. Appointing Successor Trustee.—A. Before or after determining to liquidate the institution, the secretary, upon taking possession of an institution as receiver, may enter into any agreement to assign, sell or transfer one or more trust accounts to one or more successor trustees without incurring any liability.***

***B. Upon the sale, assignment or transfer of a trust account pursuant to subsection A, the successor trustee shall be automatically substituted by reason of the sale, assignment or transfer as fiduciary of the trust account without further action and without any order or decree of any court or public officer.***

***C. No designation, nomination or appointment as fiduciary shall lapse by reason of the sale, assignment or transfer of a trust account pursuant to subsection A. The successor trustee shall be entitled to act as fiduciary to the same extent as the institution taken into possession by the secretary.***

Section 29. Sections 804, 805, 806 and 807 of the act are amended to read:

Section 804. Appointment of Substituted Fiduciaries.—A. Upon filing a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of the institution, the secretary shall forthwith give written notice, in so far as the giving of such notice is practicable, to [all parties of whom he has notice, who are interested in any funds, property, or investments held by such institution in a fiduciary capacity.] ***settlers of the account that has not been assigned, sold, or transferred to a successor trustee under section 802.1, or if the settlor is deceased, to persons who are readily ascertainable as beneficiaries of the account by their receipt of statements of the account, and any co-fiduciary of the account, of whom the secretary has notice. Such notice shall be given at the addresses which appear for such parties upon the books or records of the institution, or if none appears there, then at their last known address.*** Such notice shall require such parties, within thirty days after the giving of notice, to apply for the appointment of substituted fiduciaries[.] ***and shall notify such parties that the receiver is statutorily stayed from taking any action regarding the administration of the trust accounts unless otherwise ordered by the court except for transferring the trust account to a successor trustee or a substituted fiduciary.*** Such application shall be made as follows, ***with a copy of the application being mailed or delivered to the secretary upon the filing of the application:*** In any case in which the institution was executor or administrator, application shall be made to the register of wills having jurisdiction to grant new letters in such form as the case shall require; in any other case, application shall be made to any court which has exercised jurisdiction over the estate, or if no court has exercised such jurisdiction, then to the court of common pleas, or the orphans' court, of the county in which the institution has its place of business. However, if the instrument under which the fiduciary relationship was established provides a particular method for the selection of fiduciaries, such method shall be followed.

***B. The court may, if it shall appear to be in the best interests of the estate, order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to all such parties. Such notice shall require such parties, within thirty days after the giving***

*of notice, to apply for the appointment of substituted fiduciaries and shall notify such parties that the receiver is statutorily stayed from taking any action regarding the administration of the trust accounts unless otherwise ordered by the court. The stay shall not apply to transferring the trust account to a successor trustee or a substituted fiduciary.*

C. If the parties to whom [such] notice pursuant to subsection A or B has been given do not, within the thirty-day period designated, make such application, or pursue whatever method is prescribed by the instrument under which the fiduciary relationship was established, for the appointment of a substituted fiduciary, or if it is impracticable to give notice to the parties interested in the estate, then the secretary shall make the application for the appointment of a substituted fiduciary to the court or the register of wills, whichever the case may be, designated above. Such court or register of wills shall appoint a substituted fiduciary upon such petition of the secretary.

**Section 805. [Transfer of Assets to Substituted Fiduciary without Filing Account.—If a substituted fiduciary has been appointed in accordance with the provisions of this act, and if there is no dispute as to the amount or identity of the funds, property, or investments of the particular estate, and as to the fees, commissions, and expenses due either to the institution before the secretary took possession or to the secretary as receiver since the taking of possession, and if all the parties in interest, being sui juris, agree in writing to waive an accounting in court, the secretary in possession of an institution as receiver, may transfer to such substituted fiduciary all the funds, property, and investments of the particular estate without filing an account in any court. Upon such transfer, he shall procure from all the parties in interest and from the substituted fiduciary a receipt and release in full, which shall discharge the secretary and the institution from any further duty or liability with reference to such estate.] Notice of Transfer; Filing of Disputes.—Within thirty days, or another period of time designated by the department, of the sale, assignment or transfer of a trust account to a successor trustee pursuant to section 802.1A, or of the appointment of a substituted fiduciary pursuant to section 804, the successor trustee or substituted fiduciary shall provide notice to settlors of the account, or, if the settlor is deceased, to persons who are readily ascertainable as beneficiaries of the trust account by their receipt of statements of the account, and any co-fiduciary of the account, of whom the secretary has notice. With respect to trust accounts that have not been transferred, assigned or sold, the secretary as receiver shall provide the notice required in this section. The notice to such parties shall indicate that the account has been sold, assigned or transferred to the successor trustee or transferred to the substituted fiduciary. Such notice shall require such parties within thirty days of receipt of the notice to notify the receiver and the successor trustee or substituted fiduciary if there is any dispute as to the amount or identity of the funds, property or investments of the estate,**

*and as to the fees, commissions, and expenses due either the institution before the secretary took possession or to the secretary as receiver since the taking of possession. If such parties do not notify the secretary as receiver and the successor trustee or substituted fiduciary of any dispute, no accounting in court shall be required, and the secretary and the institution in receivership shall be discharged and released in full from any further duty or liability with regard to such trust account.*

Section 806. Filing of Account; Transfer of Assets to Substituted Fiduciary.—A. Except in cases in which the secretary is authorized by the provisions of this act to transfer to a *successor trustee or a* substituted fiduciary, without filing an account, the funds, property, or investments of an estate of which the institution was fiduciary, he shall file an account for every estate of which such institution was fiduciary *and of which the secretary received notice of a dispute under section 805*. The secretary, *with the assistance of the successor trustee or the substituted fiduciary*, shall file each such account upon the date fixed by the instrument creating the fiduciary relationship, or if there is no such date fixed, then as soon as expedient after the filing of a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of the institution. Such account shall be filed in the court which has exercised jurisdiction over the particular estate, or if no court has yet exercised jurisdiction, then in the court of common pleas, or the orphans' court, of the county in which the place of business of the institution is situated. [The secretary shall then transfer or pay to the substituted fiduciary, appointed pursuant to the provisions of this act, any funds, property, or investments in his possession which belong to such estate. Such transfer or payment shall be made in accordance with the order of the court in which the account for such estate is filed. The court, in directing such transfer or payment, may reserve for future determination any question of surcharge.]

B. The *secretary may seek an order from the* court which has exercised jurisdiction over a particular estate of which the institution was fiduciary, or if no court has exercised such jurisdiction, then the court of common pleas, or the orphans' court, of the county in which the institution has its place of business, [may order the secretary] to transfer the funds, property, or investments of the estate to the *successor trustee or the* substituted fiduciary, even prior to the filing of an account. The court, in such order, may reserve for future determination any question of surcharge, or any other question which may arise upon the audit of the account.

C. This section shall not be construed to give any court, other than the one in which the certificate of possession is filed, jurisdiction over disputes involving the identity of funds, property, or investments of an estate of which the institution was fiduciary.

Section 807. Deficiencies in Assets Held by Institution as Fiduciary.—Whenever the court, in which the secretary has filed the account of an estate of which an institution in his possession was fiduciary,

shall, in the manner provided by law, rule that there is a deficiency in the funds, property, or investments of such estate, or that the institution is liable to surcharge in respect thereto, the amount determined by such court to be due shall constitute a claim against the institution and shall be presented in the same manner as other claims, except that it may be presented at any time within six months after the appointment of a *successor trustee or a substituted fiduciary* of the estate and the adjudication of the account of such estate by the competent court. Such order or decree of such court shall be conclusive as to the amount due, except for the right of appeal provided by law. Any dispute as to the classification or order of payment of such claim, as distinguished from the amount, shall be adjudicated by the court in which the certificate of possession is filed.

If the existence or amount of any such deficiency or surcharge, or the liability of the institution therefor, is in litigation but undetermined at the time dividends for claims having no priority in order of payment over such claims are being distributed, the secretary shall, upon notice of such fact from the *successor trustee or substituted fiduciary*, withhold and set apart a sufficient amount to pay the proportionate dividend which will be due upon such undetermined claim if it is finally adjudicated in favor of the estate of which the institution was fiduciary.

Section 30. Article IX of the act is repealed.

Section 31. Sections 1001, 1002, 1003A, 1004, 1006, 1007 and 1010 of the act are amended to read:

Section 1001. Notice to Depositors[, Shareholders,] and Other Creditors.—After filing a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of an institution of which he has taken possession as receiver, the secretary shall forthwith give notice of such fact to all corporations or persons who appear upon the books of the institution as, or who are otherwise known to the secretary to be or claim to be, depositors or other creditors [and, in the case of a building and loan association, shareholders of such institution]. He shall likewise give notice to any corporation or person who, pursuant to the provisions of this act, has given the secretary notice of his claim to the right of execution or attachment against any assets, owned by, or legally in the custody or possession of, the secretary as receiver of the institution. *Such notice shall be given at the addresses which appear for such corporations or persons upon the books or other records of the institution or, if none appear there, then at their last known addresses. However, if it appears to be in the best interests of the estate, the court may order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to the corporations or persons.*

The notice to each depositor[, or, in the case of a building and loan association, to each shareholder,] shall state the amount which the books or other records of the institution show to be due to such depositor [or shareholder]. It shall also state that unless such depositor [or shareholder]

shall, within a specified time, present to the secretary for settlement, his deposit or pass book, or other evidence of his account, showing a different amount to be due, or unless such depositor **[or shareholder]** shall, within a specified time from the date of such notice, prove in the manner provided by this act that a different amount is due, the amount shown to be due by the books of the institution will be conclusively presumed to be correct, unless the court, pursuant to the provisions of this act, grants him an extension of time.

The notice to each creditor other than a depositor**[, or in the case of a building and loan association, other than a shareholder,]** shall inform such creditor that he must present his claim in the manner provided by this act, within a specified time from the date of such notice, or else be permanently barred from sharing in any distribution of the assets of the institution, unless the court pursuant to the provisions of this act, grants him an extension of time.

The secretary shall also advertise in a newspaper or newspapers, as provided in this act, the fact that he has determined to liquidate the affairs of the institution, and that he has filed an inventory and appraisement in the office of the prothonotary. Such advertisement shall state that all depositors**[, or in the case of building and loan associations, all shareholders,]** must prove their claims within a specified period or be bound by the amount shown by the books or records of the institution to be due them, and that any corporation or person not appearing upon the books of the institution to be a depositor**[, or in the case of a building and loan association, a shareholder,]** and not presenting his pass book, or other evidence of the state of his account, or otherwise presenting his claim, will be permanently barred from sharing in any distribution of the assets of the institution, unless the court, pursuant to the provisions of this act, grants him an extension of time. It shall also state that all creditors, other than depositors**[, or in the case of building and loan associations, other than shareholders,]** not proving their claims in the manner provided by this act and within a specified period will likewise be permanently barred from sharing in any distribution of the assets of the institution, except where the court, pursuant to the provisions of this act, grants to a creditor an extension of time.

The secretary shall specify as the last day upon which depositors**[,] and creditors[, and in the case of a building and loan association, shareholders,]** can present their claims, a date not less than **[one hundred twenty] sixty** days after the taking of possession of the institution by him as receiver, provided that such date shall be at least thirty days after the date of the sending of such notice. However, claims based upon deficiencies in, or surcharges with respect to funds, property, or investments which such institution held in a fiduciary capacity may be presented at any time within **[six months] sixty days** after the appointment of a substituted fiduciary of

the estate of which such funds, property, or investments were a part and the adjudication of the account of such estate by the competent court.

**Section 1002. Proof of Claims of Depositors[, or, in Building and Loan Associations, Shareholders].—**Any depositor[, or, in the case of a building and loan association, any shareholder,] who disagrees with the amount shown by the books or other records of the institution to be due to him, shall present his claims to the secretary by presenting his deposit or pass books, or other evidence of indebtedness, to the secretary, within the time and in the manner designated by the secretary, pursuant to the provisions of this act. Any such depositor [or shareholder,] who shall not have received or shall have lost his deposit or pass book or other evidence of indebtedness, or who shall believe that the amount shown by such deposit or pass book or other evidence of indebtedness to be due to him is incorrect, shall, within the time designated by the secretary, present his claim to the secretary by whatever method he shall designate.

Any depositor[, or, in the case of a building and loan association, any shareholder,] who shall not present his claim within the designated time and in the manner provided by this section, shall be bound by the amount appearing to be due to him upon the books or records of the institution, or where the name of such depositor [or shareholder] does [nor] *not* appear at all upon the books or records of the institution, or appears on such books or records but with no balance appearing to be due to him by the institution, shall be permanently barred from sharing in any distribution of the assets of the institution. However, the court may, upon petition and adequate cause shown, permit any depositor[, or, in the case of a building and loan association, any shareholder,] to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the secretary.

This section shall not, however, be construed to deprive any such depositor [or shareholder] of any right of action at law or in equity which he may have against an employe or former employe of the institution, or upon the bond of such employe or former employe, for any act committed by such employe which resulted in such depositor's [or shareholder's] not appearing upon the books of the institution, or appearing upon them but being credited with an amount below that actually due.

The secretary shall prescribe the form for the proof of claim of all depositors[, or, in the case of building and loan associations, shareholders,] and for the affidavit to be included therein. Whenever requested by any such depositor [or shareholder] to prepare such proof of claim or to take the affidavit thereto, the secretary shall do so without any charge to such depositor [or shareholder].

**Section 1003. Proof of Claims of Creditors.—**A. Creditors other than depositors[, or in the case of a building and loan association, other than shareholders,] shall not share in any distribution of the assets of the institution, unless the creditor, or someone for him, shall, within the time

specified by the secretary, pursuant to the provisions of this act, present to the secretary a statement of his claim, together with a copy of any book entries pertaining thereto, any note or other instrument received as evidence thereof, and a list of any collateral or agreement of pledge received in connection therewith.

However, the court may, upon petition and adequate cause shown, permit any creditor to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the secretary.

The statement of a creditor's claim, required by this section, shall be verified by affidavit in substantially the following form:

"I, (name of claimant), do solemnly swear (or affirm) that the above is a true statement of my claim against (name of institution); that there are no credits or allowances against this claim except as therein set forth; that there is no collateral security for this indebtedness or any part thereof held by me or by anyone else, other than as above set forth; and that I am not the owner or the obligee, directly or indirectly, of any contract of indemnity or insurance covering this claim, except as set forth above."

If the creditor shall be a corporation, such affidavit shall be made by the treasurer or assistant treasurer thereof, and if a partnership, by any member thereof. In either such case the form of the affidavit shall be modified accordingly.

\* \* \*

**Section 1004. Allowance of Claims.**—For the purposes of the accounting provided for in this act, the secretary shall allow the claims of depositors[, or, in the case of a building and loan association, shareholders,] for the amounts shown to be due to them upon the books or other records of the institution, or for such other amounts as they shall, within the time and in the manner provided by this act, prove to the satisfaction of the secretary are due to them. He shall likewise allow the claims of all other creditors, when presented within the time and in the manner provided by this act, if he shall be satisfied that the amounts claimed are rightfully due. He shall reject all other claims of depositors[, and other creditors[, and, in the case of building and loan associations, shareholders].

**Section 1006. Expenses of Administration.**—Any reasonable expenditure made by the secretary as receiver of an institution, including any expense incurred in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of the institution, and any compensation paid to the deputy receiver or any other person employed to assist the secretary in such management, reorganization, consolidation, liquidation, or distribution, and to any deputy attorney general, special deputy attorney general, assistant deputy attorney general, or other attorney who has been assigned by the [Department of Justice] *Office of Attorney General* to the secretary to handle for him any legal business pertaining to



the affairs or property of such institution, shall be paid out of the assets of the institution, provided it is included in any partial or final account filed by the secretary, pursuant to the provisions of this act, and is approved by the court in which such account is filed.

Where such expenses are incurred, or such compensation is paid, for the benefit of the estate of more than one institution in the possession of the secretary as receiver, an equitable portion of such expenses or compensation shall be paid out of the assets of each institution on whose behalf such expenditures were made.

Section 1007. Partial or Final Account; Objections.—A. At any time after the expiration of the period fixed by the secretary, pursuant to the provisions of this act, for the presentation of claims, he shall file a partial or final account of his administration of the business and property of the institution, duly verified by him under oath or affirmation, in the office of the prothonotary.

If the secretary shall not file his first account within one year after he takes possession of an institution, any depositor[, or other creditor[, or shareholder]] of such institution may petition the court to order the secretary to file an account. The court may, in its discretion, grant or refuse the petition.

The account shall present his administration of the estate, including a statement of all receipts or expenditures by the secretary, as receiver, a list of all claims which have been allowed and a separate list of claims which have been objected to or are disputed, showing as to all depositors[, and other creditors[, and, in the case of a building and loan association, shareholders,]] their names and addresses, the amounts due or claimed to be due to them, and any priorities in the order of distribution granted to or claimed by them.

B. The secretary shall forthwith give written or printed notice of such filing of an account to all corporations or persons whom he knows to be, or to claim to be, depositors[, and other creditors[, and, in the case of building and loan associations, shareholders,]] of the institution, at the addresses which respectively appear for them upon the books of the institution, or if none appear there, at their last known respective addresses. *However, if it shall appear to be in the best interests of the estate, the court may order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to such corporations or persons.* Such notice shall also state that unless an exception to the account or to any item therein is filed with the court within thirty days from the date of the filing thereof, it will be confirmed absolutely.

He shall likewise give notice to any corporation or person who, pursuant to the provisions of this act, has given the secretary notice of his claim to the right of execution or attachment against any assets, owned by, or legally in the custody or possession of, the secretary as receiver of the institution.

He shall also advertise such notice in a newspaper or newspapers as provided in this act, stating the date upon which he has filed his partial or final account and the fact that all exceptions to the account must be filed within thirty days from the date of the filing of such account.

The secretary shall forthwith file with the court, under oath or affirmation, a statement that he has, in the manner provided by this act, sent both the notice of his determination to liquidate and the notice of his filing of an account to all corporations or persons entitled thereto, whose names appear in the account, at the addresses stated therein. He shall also file the proofs of publication of the advertisements which he has inserted, pursuant to the provisions of this act, which respectively set forth his determination to liquidate and his filing of an account.

C. The prothonotary shall not be under any duty to recopy or otherwise record such account. He shall make no charge except the regular fee for filing such or similar papers.

Section 1010. Confirmation of Account; Distribution of Dividends.—A. If the secretary has approved all depositors' claims[, or, in the case of building and loan associations, all shareholders' claims,] as presented by them pursuant to the provisions of this act, or if not presented, as they appear upon the books or other records of the institution, and if no exception has been filed to an account or to any item thereof within thirty days after the filing of such account by the secretary, the court shall confirm the account absolutely. If any funds are available for distribution, the secretary shall then declare and pay out of such funds a partial or a final dividend, according to the priorities established by law.

If the secretary has rejected any such deposit or claim, or if any such exception has been filed, the court shall confirm the account as to all other matters and claims. The secretary may then declare and pay out of the funds available for distribution, if any, a dividend, according to the priorities established by law. The dividend shall be calculated as if all deposits and other claims were valid and approved. The secretary, before paying any such dividend, shall set apart the proportion of such dividend which would be properly apportionable to any claim which has been rejected by the secretary, or to which an exception has been filed, if the amount and the priority claimed were sustained by the court. If any such claim shall be determined by the court to be valid, the secretary shall pay to the corporation or person entitled thereto the dividend which has been set apart in the manner provided by this section. If any such claim shall be determined by the court to be invalid, the dividend which has been set apart in the manner provided by this section shall be distributed in the order of the priorities established by law, to those whose claims have been approved by the court.

B. The confirmation of any account after the adjudication of all claims therein which have been rejected by the secretary, or to which exceptions have been filed, and of all other exceptions to such account, shall be

conclusive as to all matters therein. Except as otherwise provided in this act, no claim of any depositor [or other creditor or, in the case of a building and loan association, any shareholder,] shall be valid if not listed and approved in the first account which has been filed.

The confirmation of the final account and distribution thereunder shall discharge the secretary, the deputy receiver, any other employe, and the legal counsel, as well as the surety for any of them, from all further civil liability for any act done in his official capacity as receiver, deputy receiver, employe, or legal counsel of the institution.

*C. If the receiver in all other respects is in a position to close the receivership proceeding, the proposed closing is sufficient grounds for the rejection of any remaining claim based on an unliquidated or undetermined demand. The receiver shall notify the claimant of the intention to close the proceeding. If the demand is not liquidated or determined before the sixty-first day after the date of the notice, the receiver may reject the claim.*

Section 32. Section 1011 of the act is repealed.

Section 33. Sections 1012, 1013 and 1101 of the act are amended to read:

Section 1012. Liquidation of Balance by Trustees.—Except in the case of a [building and loan association] *mutual institution*, the secretary shall dispose in the following manner of any unliquidated assets of an institution of which he was receiver, which are still in his possession after the filing and confirmation of his final account, the payment in full of the claims of all depositors, creditors, and other claimants which have been approved by the court, the return to shareholders, pro rata, of any amounts paid by them pursuant to an assessment made by the secretary, under the provisions of this act, which have proved unnecessary to pay in full the duly presented and approved claims of depositors and other creditors, and the distribution to shareholders of any cash balance remaining thereafter.

The secretary shall call a meeting of all the shareholders of the institution by giving them written notice at least thirty days before the day fixed for the meeting. At such meeting, the shareholders shall elect by ballot a trustee or trustees, who shall complete the liquidation. A majority of the shares present in person or by proxy shall be necessary to elect such trustee or trustees. The secretary shall file one copy of the proceedings of such shareholders' meeting in his office, and one in the office of the prothonotary. Both copies shall be prepared by him under oath or affirmation.

If no trustee is elected in this manner on the day designated, the secretary shall petition the court in which the certificate of possession is filed for the appointment of a trustee or trustees.

The trustee or trustees who are thus elected by the shareholders or appointed by the court shall give bond to the Commonwealth, in such amount, with such surety and under such conditions as the court may direct.

The secretary shall then transfer to such trustee or trustees all the assets of the institution which are still in his possession.

After such transfer by the secretary to a trustee or trustees for the benefit of the shareholders, the institution shall have no corporate powers or privileges whatsoever. The trustee or trustees shall not succeed to any of its powers or privileges except such as shall be necessary to the liquidation of the remaining assets which have been transferred to such trustee or trustees by the secretary.

Section 1013. Unclaimed Dividends.—Whenever, upon the audit or adjudication of the final account of the secretary in possession of an institution as receiver, there shall be and remain in his possession any dividends which shall have been awarded to any depositor or other creditor the whereabouts of whom or of whose legal representatives the secretary has been unable to ascertain, or any dividends which otherwise are by law escheatable to the Commonwealth, he shall file in the court the sworn statement required by law, and shall thereupon pay the dividends into the State Treasury, through the Department of Revenue, in accordance with the provisions of law, such moneys to be subject to refund to any corporation or person entitled thereto, pursuant to the provisions of law.

This section shall not be construed to relieve the secretary of any of the duties with respect to such unclaimed or escheatable dividends imposed by law, *to the extent applicable*, upon any receiver appointed by any court within this Commonwealth.

Section 1101. Criminal Prosecutions.—Upon discovery, by report or otherwise, of any *alleged* violation of any criminal law of this Commonwealth, which relates to an institution, the department [shall institute criminal proceedings in the manner provided by law.] *shall refer the matter to the proper criminal enforcement authorities and notify other regulatory agencies.*

Section 34. The act is amended by adding a section to read:

*Section 1104. Protection of Employes.—A. No licensee may discharge, threaten or otherwise discriminate or retaliate against an employe regarding the employe's compensation, terms, conditions, location or privileges of employment because the employe or a person acting on behalf of the employe makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority a violation of this act.*

*B. No licensee may discharge, threaten or otherwise discriminate or retaliate against an employe regarding the employe's compensation, terms, conditions, location or privileges of employment because the employe is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action relating to a violation of this act.*

Section 35. The Department of Banking shall have authority to promulgate regulations to implement and administer the provisions of this

act. Existing regulations not clearly inconsistent with the provisions of this act shall remain in effect until replaced, revised or amended.

Section 36. This act shall take effect immediately.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER