

No. 2000-89

AN ACT

HB 2533

Amending the act of November 30, 1965 (P.L.847, No.356), entitled "An act relating to and regulating the business of banking and the exercise by corporations of fiduciary powers; affecting persons engaged in the business of banking and corporations exercising fiduciary powers and affiliates of such persons; affecting the shareholders of such persons and the directors, trustees, officers, attorneys and employes of such persons and of the affiliates of such persons; affecting national banks located in the Commonwealth; affecting persons dealing with persons engaged in the business of banking, corporations exercising fiduciary powers and national banks; conferring powers and imposing duties on the Banking Board, on certain departments and officers of the Commonwealth and on courts, prothonotaries, clerks and recorders of deeds; providing penalties; and repealing certain acts and parts of acts," further providing for bank holding companies, for authorization of reciprocal interstate operations of savings banks, for corporations authorized to act as fiduciary, for general corporate powers and duties of incorporated institutions, for additional powers of incorporated institutions related to conduct of business, for additional powers related to conduct of business of incorporated institutions other than trust companies, for real estate loans by banks and bank and trust companies, for transactions with respect to shares of corporate stock and capital securities and for real estate loans by savings banks; further prohibiting promoters' fees; further providing for branches outside Pennsylvania, for audits and reports and for preferential rates of interest; and making repeals.

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

Section 1. Section 102 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, is amended by adding a subsection to read:

Section 102. Definitions

Subject to additional definitions contained in subsequent chapters of this act which are applicable to specific chapters or sections thereof, the following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

(ii) *"Subsidiary"*—*a corporation or other entity defined as a subsidiary by section 2 of the Bank Holding Company Act of 1956 (70 Stat. 133, 12 U.S.C. § 1841 et seq.), regardless of whether the corporation or other entity is a subsidiary of a bank holding company.*

Section 2. Sections 106(b) and 115 of the act, amended July 6, 1995 (P.L.271, No.39), are amended to read:

Section 106. Corporations Authorized to Act as Fiduciary

* * *

(b) Foreign fiduciaries—No corporation existing under the laws of a state other than this Commonwealth [or national bank located in another

state, except an interstate bank, may act in this Commonwealth as fiduciary unless:

(i) it shall be appointed fiduciary by will or other testamentary writing, by a deed of trust or by a court or register of wills of this Commonwealth or it shall be designated as fiduciary by the beneficiaries or by one or more other fiduciaries of the estate or trust pursuant to the terms of the instrument, or

(ii) it shall be the successor by merger or consolidation to a corporation lawfully acting as fiduciary in this Commonwealth at the time of such merger or consolidation

and unless the laws of such other state confer like powers on corporations existing under the laws of this Commonwealth. No corporation of another state or national bank located in another state authorized to act as fiduciary pursuant to this subsection (b) shall be authorized to establish a place of business in this Commonwealth.] *may act in this Commonwealth as fiduciary, except that an incorporated institution possessing fiduciary powers pursuant to the laws of another state shall have the same power to engage in fiduciary activities within this Commonwealth as a national banking association acting pursuant to 12 U.S.C. § 92a or a Federal savings association 12 U.S.C. § 1464(n), provided that:*

(i) *the state laws pursuant to which the incorporated institution is operating provide equivalent privileges to an incorporated institution chartered by the Commonwealth,*

(ii) *the incorporated institution complies with the minimum capital requirements of section 1102, and*

(iii) *the incorporated institution provides written notice to the department at least thirty days prior to the commencement of fiduciary activities, which notice shall be accompanied by documentation of its authorization to conduct fiduciary activities issued by the appropriate regulatory authority of the jurisdiction in which the institution is chartered or organized, acknowledgment by the appropriate regulatory authority of the jurisdiction in which the institution is chartered or organized that equivalent privileges are provided to incorporated institutions chartered within this Commonwealth, proof the institution complies with the minimum capital requirements of section 1102 and a certificate of authority to do business in this Commonwealth issued by the Department of State pursuant to 15 Pa.C.S. Ch. 41 (relating to foreign business corporations).*

* * *

Section 115. *Bank and Savings and Loan Holding Companies*

[A] *To the fullest extent as permissible under Federal law and regulations, a bank holding company, as defined by the Federal Bank Holding Company Act (70 Stat. 133, 12 U.S.C. § 1841 et seq.), and a savings and loan holding company, as defined by section 10 of the Home*

Owners' Loan Act of 1933 (48 Stat. 128, 12 U.S.C. § 1467a), located in this Commonwealth, another state, the District of Columbia or a territory or possession of the United States may control one or more banks, bank and trust companies, national banks [and], interstate banks, *savings banks, savings associations, building and loan associations or Federal savings associations* and, with the prior written approval of the department, may acquire control of a bank, bank and trust company [or], national bank, *savings bank, savings association, building and loan association or Federal savings association* located in this Commonwealth.

Section 3. Section 117 of the act is repealed.

Section 4. Sections 201 and 202 of the act are amended by adding subsections to read:

Section 201. General Corporate Powers of Incorporated Institutions

* * *

(c) Notwithstanding any conditions, limitations, restrictions or other provisions of this act or any other law, in addition to any other power as authorized by this act or other law, an incorporated institution shall have the power:

(i) to engage in any activity permissible for a national banking association, including those activities as authorized by 12 U.S.C. § 24, subject to conditions, limitations and restrictions as may be imposed by the department which shall not be more restrictive than conditions, limitations and restrictions otherwise imposed upon a national banking association,

(ii) to engage in any activity permissible for a Federal savings association, including those activities as authorized by 12 U.S.C. § 1464, subject to conditions, limitations and restrictions as may be imposed by the department which shall not be more restrictive than conditions, limitations and restrictions otherwise imposed upon a Federal savings association,

(iii) to control or hold an interest in a subsidiary that engages in any activity permissible for a national bank to conduct through an operating or financial subsidiary, provided that:

(A) any activity permissible for an operating subsidiary shall be subject to conditions, limitations and restrictions as may be imposed by the department which shall not be more restrictive than conditions, limitations and restrictions otherwise imposed upon an operating subsidiary of a national banking association, and

(B) any activity only permissible for a financial subsidiary, and not permissible for an operating subsidiary, shall comply with the requirements of section 121(d) of the Gramm-Leach-Bliley Act (Public Law 106-102, 113 Stat. 1338),

(iv) to control or hold an interest in a subsidiary that engages in any activity permissible for a subsidiary of a Federal savings association pursuant to 12 U.S.C. § 1464, subject to conditions,

limitations and restrictions as may be imposed by the department which shall not be more restrictive than conditions, limitations and restrictions otherwise imposed upon a subsidiary of a Federal savings association, or

(v) to engage in any activity or to control or hold an interest in a subsidiary that engages in any activity determined to be permissible for an insured state bank or the subsidiary of an insured state bank by the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. § 1831a, subject to conditions, limitations and restrictions as may be imposed by the department with respect to the safety and soundness of the incorporated institution.

(d) If an incorporated institution engages in an activity or holds an interest permissible under more than one clause of subsection (c), the incorporated institution may elect under which clause notice as required by subsection (e) is given and the activity is conducted or the interest is held.

(e) Unless earlier approval is granted by the department, an incorporated institution shall provide at least thirty days' prior written notice to the department before it engages in an activity or acquires an interest only permissible under subsection (c) or engages in an activity or acquires an interest as otherwise authorized by this act, subject only to conditions, limitations or restrictions as provided by subsection (c). During the review period provided by this subsection, the department may:

(i) request further information concerning any proposed activity or interest,

(ii) impose any conditions, limitations or restrictions upon such interests or activities to the extent authorized by subsection (e), or

(iii) prohibit an incorporated institution from engaging in an activity or acquiring an interest if to do so would have a significant adverse impact upon the safety and soundness of the incorporated institution.

Except as otherwise agreed to by an incorporated institution, the department shall be deemed to have granted approval for an incorporated institution to engage in an activity or acquire an interest if within thirty days of receipt of written notice from an incorporated institution the department does not impose conditions, limitations or restrictions upon interests or activities as authorized by subsection (c) or prohibit the incorporated institution from engaging in an activity or acquiring an interest authorized by subsection (c).

(f) Notwithstanding any other provisions of this act or any other law, an incorporated institution shall have the same power to engage in fiduciary activities, both within and outside of this Commonwealth, as a national banking association pursuant to 12 U.S.C. § 92a. The department shall interpret the provisions of 12 U.S.C. § 92a in a manner

consistent with regulations and interpretations as provided by the Comptroller of the Currency.

Section 202. Additional Powers of Incorporated Institutions Related to Conduct of Business

An incorporated institution shall have in addition to other powers granted by this act or its articles and subject to the limitations and restrictions contained in this act or in its articles:

* * *

(k) *Delivery service—the power to pick up from and deliver to customers cash or other valuables relating to financial services provided by the incorporated institution using a contract carrier or employes or affiliates of the incorporated institution. No separate authorization or approval by the department shall be required for an incorporated institution to provide delivery service, provided that the incorporated institution complies with other laws and regulations applicable to the provision of delivery service.*

Section 5. Sections 203(d) and 306(d) of the act, amended July 6, 1984 (P.L.621, No.128), are amended to read:

Section 203. Additional Powers Related to Conduct of Business of Incorporated Institutions Other Than Trust Companies

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

* * *

(d) *Subsidiaries—in addition to the power to acquire and hold interests in a subsidiary permissible under section 201(c)(iii), (iv) and (v)¹, the power to acquire and hold, without limitation of amount, the stock of subsidiary corporations engaged in activities permissible for such institution and activities permissible under the Bank Service Corporation Act (Public Law 87-856, 12 U.S.C. § 1861 et seq.), [if the shares are acquired with the prior written approval of the department and in accordance with the terms and conditions of transfer prescribed by the department.] subject to any conditions, limitations and restrictions comparable to those which may be imposed pursuant to section 201(c)(iii), (iv) and (v)² and to notice and review as provided by section 201(e).*

* * *

Section 306. Limits on Indebtedness of One Customer (Including Purchased Paper)

* * *

(d) *Regulation—The department may by regulation not inconsistent with the provisions of this section and section 1414(c)³ prescribe definitions*

¹"201(c)(3), (4) and (5)" in enrolled bill.

²"201(c)(3), (4) and (5)" in enrolled bill.

³"1414(b)" in enrolled bill.

of and requirements for transactions included in or excluded from the indebtedness to which the fifteen percent limitation of this section applies.

* * *

Section 6. Section 310(a) of the act, amended December 21, 1988 (P.L.1416, No.173), is amended to read:

Section 310. Real Estate Loans

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

(i) in the case of improved real estate, including farm land, *for a term not to exceed*:

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

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

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

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

(ii) in the case of unimproved real estate to be acquired or developed with the proceeds of the loan, [three-fourths of the value for five years.] *for a term not to exceed five years; and*

(iii) *in an amount not to exceed ninety percent of the value of the loan except that if the amount of the loan does not exceed one hundred thousand dollars (\$100,000) or is made in reliance upon a private mortgage insurance or guarantee acceptable to the department regardless of the amount of the loan, then one hundred percent of the value of the loan.*

* * *

Section 7. Section 311 of the act is amended by adding subsections to read:

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

* * *

(c.1) Collateral loans with affiliates—An institution may engage in a covered transaction with an affiliate, including the acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit, if the institution complies with the requirements of 12 U.S.C. § 371c. The department shall interpret the requirements of 12 U.S.C. § 371c in a manner consistent with regulations, orders and interpretations as issued by the Board of Governors of the Federal Reserve System.

* * *

(e.1) Transactions with affiliates—An institution may engage in a transaction with an affiliate, including the extension of credit to acquire or hold shares of capital securities of an affiliate, if the institution complies with the requirements of 12 U.S.C. § 371c-1. The department shall interpret the requirements of 12 U.S.C. § 371c-1 in a manner consistent with regulations, orders and interpretations as issued by the Board of Governors of the Federal Reserve System.

(f) Determination of surplus—For the purposes of this section, an institution may determine its surplus in the same manner as calculated for purposes of satisfying limitations upon the ownership of shares of banks and holding companies as provided by 12 U.S.C. § 24.

Section 8. Section 403(g) of the act is repealed.

Section 9. Section 505(a) of the act, amended December 21, 1988 (P.L.1416, No.173), is amended to read:

Section 505. Real Estate Loans

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

(i) in the case of improved real estate, including farm land, for a term not to exceed:

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

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

payment on a loan to such borrower may be deferred for a period not in excess of five years from the date of the loan; or

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

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

(ii) in the case of unimproved real estate to be acquired or developed with the proceeds of the loan, **[three-fourths of the value for five years.] for a term not to exceed five years; and**

(iii) in an amount not to exceed ninety percent of the value of the loan except that, if the amount of the loan does not exceed one hundred thousand dollars (\$100,000) or is made in reliance upon a private mortgage insurance or guarantee acceptable to the department regardless of the amount of the loan, then one hundred percent of the value of the loan.

* * *

Section 10. Section 907(c) of the act, added July 6, 1995 (P.L.271, No.39), is amended to read:

Section 907. Branches Outside Pennsylvania

* * *

(c) An institution may maintain branches in any other state, the District of Columbia or a territory or possession of the United States upon receiving the prior written approval of the department after filing an application and paying a fee to the department in a form and amount prescribed by the department, except no approval is required for national banks *or Federal savings associations* under this subsection.

Section 11. Section 1003(a) of the act is amended to read:

Section 1003. Prohibition of Promoters' Fees

(a) Prohibited fees—An institution shall not pay any fee, compensation or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions for shares to promoters' fees for obtaining subscriptions, selling shares or other services in connection with its organization, except legal fees and other usual and ordinary expenses, *including reasonable brokers' fees, commissions and underwriting costs*, necessary for its organization.

* * *

Section 12. Section 1407 of the act is amended by adding a subsection to read:

Section 1407. Audits and Reports by Directors or Trustees; Accountants;
Internal Auditors

* * *

(d) Accounting standards—Audits and reports shall be deemed to satisfy the requirements of this section to the extent the audits and reports conform to accounting standards and principles applicable pursuant to 12 U.S.C. § 1831n to reports or statements required to be filed with Federal banking agencies.

Section 13. Section 1414 of the act, amended April 8, 1982 (P.L.262, No.79), is amended to read:

Section 1414. Preferential Rates of Interest

(a) Preferences prohibited—[An] Notwithstanding the provisions of section 306 and except as provided by subsection (c), an institution shall not pay to any director, trustee, executive officer or attorney a higher rate of interest on deposits than the rate paid to any other depositor on similar deposits and shall not grant to any such individual a lower rate of interest on a loan, or a lower rate of charge on an agreement for the payment of money, than the rate granted to other customers under similar circumstances.

[(b) Limited definition—The term “executive officer” for the purposes of this section shall be defined by regulation of the Department of Banking.]

(c) Authorized activities—Notwithstanding any other provision of this act, an institution may extend credit to any director, trustee, executive officer, attorney or principal shareholder, or to any related interest of such a person, to the extent permissible pursuant to 12 U.S.C. §§ 375a and 375b. The department shall interpret the provisions of 12 U.S.C. §§ 375a and 375b in a manner consistent with regulations, orders and interpretations as issued by the Board of Governors of the Federal Reserve System. A regulation, order or interpretation of the provisions of 12 U.S.C. §§ 375a and 375b by the Board of Governors of the Federal Reserve System shall take effect for the purposes of this subsection within thirty days of promulgation by the Board of Governors except that the department may for good cause suspend the application of such regulation, order or interpretation for up to a one-year period. Notice of such suspension shall be published by the department in the Pennsylvania Bulletin. Thereafter, the regulation, order or interpretation shall take effect for the purposes of this subsection unless the department adopts administrative regulations setting forth a contrary interpretation of the provisions of 12 U.S.C. §§ 375a and 375b. A regulation, order or interpretation of the provisions of 12 U.S.C. §§ 375a and 375b by the Board of Governors of the Federal Reserve System may take effect for the purposes of this subsection within less than thirty days of promulgation by the Board of Governors if approved by the department.

Section 14. Sections 1415 and 2102(c) of the act are repealed.

Section 15. (a) The following acts and parts of acts are repealed to the extent specified:

Sections 114 and 212.1 of the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 16. This act shall take effect immediately.

APPROVED—The 22nd day of November, A.D. 2000.

THOMAS J. RIDGE