

No. 85

AN ACT

SB 761

Amending the act of November 30, 1965 (P. L. 847), 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," enabling the State Banking System to acquire savings associations through merger, consolidation and conversion.

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

Section 1. Subsection (a) of section 1602, act of November 30, 1965 (P. L. 847), known as the "Banking Code of 1965," is amended to read: Section 1602. Authority to Merge or Consolidate

(a) Upon compliance with the requirements of this chapter one or more institutions and one or more national banks may merge or consolidate into a national bank and, with the approval by the department, may merge into an institution or consolidate into a new institution except that:

- (i) a savings bank may enter into a merger or consolidation only **[with one or more other savings banks,] as provided in section 1609**, and
- (ii) a trust company may enter into a merger or consolidation only with another trust company.

* * *

Section 2. The act is amended by adding after section 1608 thereof, a new section to read:

Section 1609. Mergers, Consolidations and Conversions of Savings Banks

(a) Authority to merge, consolidate or convert—

(i) upon compliance with the requirements of sections 1602, 1603, 1604, 1605 and 1606, a savings bank may enter into a merger or consolidation with one or more other savings banks.

(ii) upon compliance with the requirements of this section and other applicable law, one or more savings banks and one or more associations may merge into a savings bank or into an association or consolidate into a new savings bank or a new association. The word "association" in this chapter shall mean an association subject to the Savings Association Code of 1967.

(iii) upon compliance with the requirements of this section, one

or more savings banks and one or more Federal savings and loan associations may merge into a savings bank or a Federal savings and loan association or consolidate into a new savings bank or a new Federal savings and loan association.

(iv) the authority of a savings bank to merge or consolidate into a Federal savings and loan association shall be subject to the condition that at the time of the transaction the laws of the United States shall authorize a Federal savings and loan association to merge or consolidate into a savings bank.

(v) upon compliance with the requirements of this section and other applicable law, a savings bank may be converted into a Federal savings and loan association or an association, subject to the condition that at the time of the transaction the laws of the United States shall authorize a Federal savings and loan association to convert into a savings bank.

(vi) upon compliance with the requirements of this section and other applicable law and subject to the laws of the United States, a Federal savings and loan association may be converted into a savings bank or an association.

(vii) all mergers, consolidations and conversions in which the resulting corporation is a savings bank or an association shall be subject to the approval of the department.

(b) Requirements for a merger, consolidation or conversion—The requirements for a merger, consolidation or conversion under clauses (ii), (iii), (v) or (vi) of subsection (a) which must be satisfied by the parties thereto are as follows:

(i) the parties shall adopt a plan stating the method, terms and conditions of the merger, consolidation or conversion, including the rights under the plan of the members and depositors of each of the parties, and any agreement concerning the merger or consolidation.

(ii) if the proposed merger, consolidation or conversion will result in a savings bank, a Federal savings and loan association or an association, adoption of the plan by each party thereto shall require the affirmative vote, in the case of a savings bank, of at least two-thirds of the trustees present at a meeting at which the plan is proposed, and two-thirds of all the trustees at a subsequent meeting held upon not less than ten days' notice to all the trustees, and in the case of any other party, of two-thirds of the entire membership of the board of directors of each Federal savings and loan association, or association. The notice required to be given to the trustees of a savings bank shall include a copy or summary of the plan. The department may require such vote of the members of an association as it deems proper.

(iii) any modification of a plan which has been adopted shall be made by any method provided therein, or in the absence of such

provision by the same vote as that required for adoption.

(iv) if a proposed merger, consolidation or conversion will result in a savings bank or an association, an application for the required approval thereof by the department shall be made in a manner prescribed by the department. The department may require notice to be given to such persons as it designates. There shall also be delivered to the department:

(A) articles of merger, consolidation or conversion,

(B) applicable fees payable to the department in connection with the articles and with the conduct of the investigation required by subsection (e),

(C) if the resulting corporation is an association, any documents or other items required under the Savings Association Code of 1967.

(D) if the proposed name of the resulting savings bank or association is not identical with the name of one of the parties to the plan, evidence of reservation of such name in the Department of State, and

(E) if there is any modification of the plan at any time prior to the approval by the department, an amendment of the application and, if necessary, of the articles, signed in the same manner as the originals, setting forth the modification of the plan, the method by which such modification was adopted and any related change in the provisions of the articles of merger, consolidation or conversion.

(c) Articles of merger, consolidation or conversion—The articles of a merger, consolidation or conversion under clauses (ii), (iii), (v) or (vi) of subsection (a) shall be signed by two duly authorized officers of each party to the plan under their respective seals and shall contain:

(i) the names of the parties to the plan and of the resulting savings bank or association,

(ii) the location and post office address of the principal place of business of each,

(iii) the votes by which the plan was adopted and the time, place and notice of each meeting in connection with such adoption,

(iv) the names and addresses of the first trustees of the savings bank or the names and addresses of the first directors of the resulting association,

(v) in case of a merger, any amendment of the articles of the resulting savings bank or association,

(vi) if the resulting corporation is an association, a record of the employment contracts which are to be legally binding on the resulting association,

(vii) in the case of a consolidation, the provisions required in

articles of incorporation of a new savings bank or association as the case may be,

(viii) in the case of a conversion, the provisions required in the articles of incorporation of a new savings bank or association as the case may be,

(ix) the plan.

(d) Action where approval by department not required—If a proposed merger, consolidation or conversion will result in a Federal savings and loan association, a savings bank which is a party to a plan shall:

(i) notify the department of the proposed merger, consolidation or conversion,

(ii) provide such evidence of the adoption of the plan as the department may request,

(iii) notify the department of any abandonment or disapproval of the plan,

(iv) file with the department and with the Department of State a certificate of the approval of the merger or consolidation by the Federal Home Loan Bank Board or its successor which has the right on behalf of the United States to approve such mergers, consolidations or conversions into Federal savings and loan associations.

(e) Approval of merger, consolidation or conversion by department—

(i) upon receipt of an application for approval of a merger, consolidation or conversion under clauses (ii), (iii), (v) or (vi) of subsection (a) and of the supporting items required by clause (iv) of subsection (b), the department shall conduct such investigation as it may deem necessary to ascertain whether:

(A) the articles of merger, consolidation or conversion and supporting items satisfy the requirements of this act, and if the Savings Association Code of 1967 is applicable, the requirements of that act are satisfied,

(B) the name of the resulting, new or converted savings bank or association conforms with the requirements of law,

(C) the plan and any modification thereof adequately protect the interests of depositors and other creditors of a savings bank which is a party to the plan,

(D) the requirements for a merger, consolidation or conversion under all applicable laws have been satisfied and the resulting corporation would satisfy the requirements of this act applicable to it, and

(E) the merger, consolidation or conversion would be consistent with adequate and sound banking and in the public interest on the basis of

- (1) *the financial history and condition of the parties to the plan,*
- (2) *their prospects,*
- (3) *the character of their management,*
- (4) *the potential effect of the merger, consolidation or conversion on competition, and*
- (5) *the convenience and needs of the area primarily to be served by the resulting corporation.*

(ii) *within sixty days after receipt of the application, articles of merger, consolidation or conversion and the applicable fee payable to the department, or within an additional period of not more than thirty days an amendment to the application, the department shall approve or disapprove the application on the basis of its investigation. The department shall immediately give to the parties to the plan written notice of its decision and, in the event of disapproval, a statement in detail of the reasons for its decision. The decision of the department shall be conclusive and shall not be subject to review except by the Supreme Court under broad certiorari.*

(f) *Procedure after approval by department; issuance of certificate of merger, consolidation or conversion—*

(i) *if the laws of the United States require the approval of the merger, consolidation or conversion by any Federal agency, the department shall after its approval retain the articles of merger, consolidation or conversion until it receives notice of the decision of such agency. If such agency shall refuse to give its approval, the department shall notify the parties to the plan that the department's approval has been rescinded for that reason. If such agency gives its approval, the Department of Banking shall immediately deliver the articles of merger, consolidation or conversion with its written approval to the Department of State for filing as of a date and time specified by the Department of Banking and shall notify the parties to the plan.*

(ii) *if all the taxes, fees and charges required by law shall have been paid and if the name of the resulting savings bank or association continues to be reserved or is available on the records of the Department of State, the receipt of the articles by the Department of State with the written approval of the Department of Banking shall constitute filing of the articles of merger, consolidation or conversion as of the date and time of receipt or as of any later date and time specified by the Department of Banking. The Department of State shall issue to the resulting corporation a certificate of merger, consolidation or conversion as of the date and time of filing with the approved articles of merger, consolidation or conversion attached thereto and shall make and retain a copy of such certificate and articles.*

(g) *Effect of merger, consolidation or conversion—*

(i) *as of the filing of the articles of merger, consolidation or*

conversion in the Department of State, the merger, consolidation or conversion shall be effective.

(ii) the certificate of merger, consolidation or conversion shall be conclusive evidence of the performance of all conditions precedent to the merger, consolidation or conversion and of the existence or creation of the resulting savings bank or association, except as against the Commonwealth.

(iii) when a merger, consolidation or conversion becomes effective, the existence of each party to the plan, except the resulting savings bank or association, shall cease as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the resulting savings bank or association and which shall have without further act or deed, all the property, rights, powers, duties and obligations of each party to the plan.

(iv) the articles of the resulting savings bank or association shall be, in the case of a merger, the same as its articles prior to the merger with any change stated in the articles of merger, or in the case of a consolidation, the provisions stated in the articles of consolidation.

(v) if the resulting corporation shall be a savings bank it shall engage only in such business and it shall have only such powers as it would have if it had been originally incorporated under this act, except that it may engage in any business and exercise any right that any party to the plan which was an institution subject to this act could lawfully exercise or engage in immediately prior to the merger, consolidation or conversion. If the resulting corporation shall be a savings association such association shall have the authority to engage thereafter only in such business and exercise only such powers as it would have under original incorporation under the Savings Association Code of 1967.

(vi) no liability of any party to the plan or of its trustees, officers, members or directors shall be affected, nor shall any lien on any property of a party to the plan be impaired, by the merger, consolidation or conversion. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger, consolidation or conversion had not taken place or the resulting corporation may be substituted in its place.

(h) Rights of depositors in a merger, consolidation or conversion—A depositor of a savings bank that is a party to the plan shall be entitled to notification of the effective date of the merger, consolidation or conversion and shall have the right, within thirty days of the receipt of such notice, to make written claim for payment in full of his deposit account together with all interest accrued thereon to the date of withdrawal.

Section 3. This act shall take effect immediately.

APPROVED—The 1st day of August, A. D. 1969.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly
No. 85.

A handwritten signature in cursive script, reading "Joseph P. Kelly II". The signature is written in black ink and is positioned above the printed name of the Secretary of the Commonwealth.

Secretary of the Commonwealth.