

No. 1994-51

## AN ACT

HB 2650

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," providing for indemnity and immunity of certain directors; and further providing for mergers, consolidations and conversions of savings banks.

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:

\* \* \*

(z.1) *"Special institution"*—any of the following:

(i) *A State-chartered bank which meets all of the following criteria:*

(A) *Has previously assumed or may assume deposit liabilities of an entity which was subject to the supervision of the department under the act of May 15, 1933 (P.L.565, No.111), known as the "Department of Banking Code," the act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967," or this act and whose deposits were not insured by the Federal Deposit Insurance Corporation or any other Federal agency authorized by law to insure deposits.*

(B) *Is wholly owned directly or indirectly by an agency or instrumentality of the Commonwealth, including specifically, the State Workmen's Insurance Fund.*

(C) *Has deposits that are insured by the Federal Deposit Insurance Corporation or any other Federal agency authorized by law to insure deposits.*

*(ii) The nonprofit corporation created by the act of April 6, 1979 (P.L.17, No.5), referred to as the Pennsylvania Savings Association Insurance Corporation Act.*

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Section 2. The act is amended by adding a section to read:

**Section 1417. Indemnity and Immunity of Certain Directors**

**(a) Indemnity—**

*(i) The department shall have the power and its duty shall be to procure, on behalf of the members of the board of directors of special institutions as defined in section 102(z.1)(i), directors' liability insurance or such other contract of insurance providing for the indemnification of these directors against any liability asserted against them or incurred by them solely in their capacity or arising out of their status as directors, including actions undertaken in connection with the organization of the special institution.*

*(ii) The department shall have the power and its duty shall be to procure, on behalf of the members appointed by the Governor of the board of directors of special institutions as defined in section 102(z.1)(ii), directors' liability insurance or such other contract of insurance providing for the indemnification of these directors against any liability asserted against them or incurred by them solely in their capacity or arising out of their status as directors, including actions undertaken in connection with the organization of the special institution.*

*(iii) The department is authorized to provide otherwise for indemnification under this subsection in lieu of directors' liability insurance.*

*(iv) Indemnification under this subsection includes, but is not limited to, expenses and fees incurred in defending any action or proceeding relating to their status as directors.*

**(b) Immunity—***Notwithstanding any other provision of law to the contrary, the directors of a special institution shall be deemed to be Commonwealth employees subject to and for all of the purposes of 42 Pa.C.S. Ch. 85 (relating to matters affecting government units). The immunity conferred under this subsection shall apply to all actions of the directors in accordance with subsection (a), including actions undertaken in connection with the organization of the special institution.*

**(c) Applicability—***This section shall apply to all actions taken as members of the board of directors in accordance with subsection (a) prior to the effective date of this section.*

Section 3. Section 1609(a) and (b) of the act, amended July 6, 1984 (P.L.606, No.125), July 6, 1984 (P.L.621, No.128), July 10, 1986 (P.L.1393, No.119), December 18, 1986 (P.L.1702, No.205) and December 18, 1990 (P.L.766, No.191), are amended 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. In the event the book value of the total assets of the acquired savings bank is less than one percent in excess of the book value of the total liabilities, the resulting institution may maintain as a branch, any office operated by the acquired institution.

(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 and other applicable law,

(A) one or more savings banks, one or more Federal savings banks and one or more Federal savings and loan associations may merge into a savings bank, Federal savings bank or a Federal savings and loan association or consolidate into a new savings bank, a new Federal savings bank or a new Federal savings and loan association,

(B) one or more savings banks may merge or consolidate with a regional thrift institution, and, after March 4, 1990, with a foreign thrift institution, as those terms are defined in and subject to any applicable limits of section 117, and

(C) a business corporation which owns all of the issued and outstanding shares of a savings bank may merge into such savings bank.

(iv) the authority of a savings bank to merge or consolidate into a Federal savings bank or 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 bank or 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) a savings bank may be converted into an association,

(B) a savings bank may be converted into a Federal savings bank or a Federal savings and loan association, subject to the condition that at the time of the transaction the laws of the United States shall authorize a Federal savings bank or a Federal savings and loan association to convert into a savings bank, or

(C) an association may convert to a savings bank. An association whose deposits were insured by the Pennsylvania Savings Association Insurance Corporation prior to conversion may maintain all existing branches operating at the time application for conversion is made if the

application is made within ninety days of the effective date of this subclause.

(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 bank or a Federal savings and loan association may be converted into a savings bank or an association.

(vii) upon compliance with the requirements of this section, a mutual savings bank may be converted into a stock savings bank. A stock savings bank shall have authority, upon compliance with the requirements of this section, to enter into a merger or consolidation with one or more other stock savings banks, banks, *national banking associations*, bank and trust companies, trust companies or stock savings and loan associations.

(viii) 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), (vi) or (vii) 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, depositors and shareholders, if any, 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 Federal savings bank, 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,

(A) in the case of a mutual 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,

(B) in the case of a stock savings bank, of at least a majority of the trustees, at a meeting held upon not less than ten days' notice to all the trustees, and of the shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast thereon, at a meeting held upon not less than ten days' notice to all shareholders,

(C) in the case of a Federal savings bank, a Federal savings and loan association or an association, of two-thirds of the entire membership of the board of directors,

(D) in the case of any other party, such vote as is required by law for merger, consolidation or conversion, and

(E) in the case of the notice required to be given to the trustees of a savings bank and to the shareholders of a stock 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.

*(v) if a proposed merger, consolidation or conversion will result in a national banking association, all requirements of the applicable Federal law shall be met.*

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Section 4. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 5. This act shall take effect immediately.

APPROVED—The 16th day of June, A.D. 1994.

ROBERT P. CASEY