

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2533 Session of
2000

INTRODUCED BY ALLEN, HASAY, CALTAGIRONE, GORDNER, PERZEL,
BARLEY, COY, ARGALL, BAKER, BOYES, L. I. COHEN, M. COHEN,
DEMPSEY, DERMODY, FAIRCHILD, FLICK, FRANKEL, GEIST, GODSHALL,
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SCHULER, VAN HORNE, MAHER, ROSS, STERN, STABACK, SAYLOR,
BASTIAN, KENNEY, MUNDY, PRESTON, WOJNAROSKI, THOMAS, STETLER
AND GANNON, MAY 9, 2000

AS REPORTED FROM COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 5, 2000

AN ACT

1 Amending the act of November 30, 1965 (P.L.847, No.356),
2 entitled "An act relating to and regulating the business of
3 banking and the exercise by corporations of fiduciary powers;
4 affecting persons engaged in the business of banking and
5 corporations exercising fiduciary powers and affiliates of
6 such persons; affecting the shareholders of such persons and
7 the directors, trustees, officers, attorneys and employes of
8 such persons and of the affiliates of such persons; affecting
9 national banks located in the Commonwealth; affecting persons
10 dealing with persons engaged in the business of banking,
11 corporations exercising fiduciary powers and national banks;
12 conferring powers and imposing duties on the Banking Board,
13 on certain departments and officers of the Commonwealth and
14 on courts, prothonotaries, clerks and recorders of deeds;
15 providing penalties; and repealing certain acts and parts of
16 acts," further providing for corporations authorized to act
17 as fiduciary, for general corporate powers and duties of
18 incorporated institutions, for additional powers of
19 incorporated institutions related to conduct of business, for
20 additional powers related to conduct of business of
21 incorporated institutions other than trust companies, for
22 real estate loans by banks and bank and trust companies, for
23 transactions with respect to shares of corporate stock and
24 capital securities and for real estate loans by savings

1 banks; further prohibiting promoters' fees; and further
2 providing for audits and reports and for preferential rates
3 of interest.

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

6 ~~Section 1. Section 106(b) of the act of November 30, 1965~~ <—
7 ~~(P.L.847, No.356), known as the Banking Code of 1965, amended~~
8 ~~July 6, 1995 (P.L.271, No.39), is amended to read:~~

9 SECTION 1. SECTION 102 OF THE ACT OF NOVEMBER 30, 1965 <—
10 (P.L.847, NO.356), KNOWN AS THE BANKING CODE OF 1965, IS AMENDED
11 BY ADDING A SUBSECTION TO READ:

12 SECTION 102. DEFINITIONS

13 SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN SUBSEQUENT
14 CHAPTERS OF THIS ACT WHICH ARE APPLICABLE TO SPECIFIC CHAPTERS
15 OR SECTIONS THEREOF, THE FOLLOWING WORDS AND PHRASES WHEN USED
16 IN THIS ACT SHALL HAVE, UNLESS THE CONTEXT CLEARLY INDICATES
17 OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SECTION:

18 * * *

19 (II) "SUBSIDIARY"--A CORPORATION OR OTHER ENTITY DEFINED AS
20 A SUBSIDIARY BY SECTION 2 OF THE BANK HOLDING COMPANY ACT OF
21 1956 (70 STAT. 133, 12 U.S.C. § 1841 ET SEQ.), REGARDLESS OF
22 WHETHER THE CORPORATION OR OTHER ENTITY IS A SUBSIDIARY OF A
23 BANK HOLDING COMPANY.

24 SECTION 2. SECTION 106(B) OF THE ACT, AMENDED JULY 6, 1995
25 (P.L.271, NO.39), IS AMENDED TO READ:

26 Section 106. Corporations Authorized to Act as Fiduciary

27 * * *

28 (b) Foreign fiduciaries--No corporation existing under the
29 laws of a state other than this Commonwealth [or national bank
30 located in another state, except an interstate bank, may act in
31 this Commonwealth as fiduciary unless:

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

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

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

23 (i) the state laws pursuant to which the incorporated
24 institution is operating provide equivalent privileges to an
25 incorporated institution chartered by the Commonwealth;

26 (ii) the incorporated institution complies with the
27 minimum capital requirements of section 1102; and

28 (iii) the incorporated institution provides written
29 notice to the department at least thirty days prior to the
30 commencement of fiduciary activities, which notice shall be

1 accompanied by documentation of its authorization to conduct
2 fiduciary activities issued by the appropriate regulatory
3 authority of the jurisdiction in which the institution is
4 chartered or organized, acknowledgment by the appropriate
5 regulatory authority of the jurisdiction in which the
6 institution is chartered or organized that equivalent
7 privileges are provided to incorporated institutions
8 chartered within this Commonwealth, proof the institution
9 complies with the minimum capital requirements of section
10 1102 and a certificate of authority to do business in this
11 Commonwealth issued by the Department of State pursuant to 15
12 Pa.C.S. Ch. 41 (relating to foreign business corporations).

13 * * *

14 Section 2 3. Sections 201 and 202 of the act are amended by <—
15 adding subsections to read:

16 Section 201. General Corporate Powers of Incorporated
17 Institutions

18 * * *

19 (c) Notwithstanding any other provisions of this act or any
20 other law, in addition to any other power as authorized by this
21 act or other law, an incorporated institution shall have the
22 power:

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

30 (ii) To engage in any activity permissible for a Federal

1 savings association, including those activities as authorized
2 by 12 U.S.C. § 1464, subject to conditions, limitations and
3 restrictions as may be imposed by the department which shall
4 not be more restrictive than conditions, limitations and
5 restrictions otherwise imposed upon a Federal savings
6 association;

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

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

18 (B) any activity only permissible for a financial
19 subsidiary, and not permissible for an operating
20 subsidiary, shall comply with the requirements of section
21 121(d) of the Gramm-Leach-Bliley Act (Public Law 106-102,
22 113 Stat. 1380 et seq);

23 (iv) To control or hold an interest in a subsidiary that
24 engages in any activity permissible for a subsidiary of a
25 Federal savings association pursuant to 12 U.S.C. § 1464
26 subject to conditions, limitations and restrictions as may be
27 imposed by the department which shall not be more restrictive
28 than conditions, limitations and restrictions otherwise
29 imposed upon a subsidiary of a Federal savings association;

30 or

1 (v) To engage in any activity OR TO CONTROL OR HOLD AN
2 INTEREST IN A SUBSIDIARY THAT ENGAGES IN ANY ACTIVITY
3 determined to be permissible for an insured state bank or the
4 subsidiary of an insured state bank by the Federal Deposit
5 Insurance Corporation pursuant to 12 U.S.C. § 1831a subject
6 to conditions, limitations and restrictions as may be imposed
7 by the department with respect to the safety and soundness of
8 the incorporated institution.

9 (d) If an incorporated institution engages in an activity or
10 holds an interest permissible under more than one clause of
11 subsection (c), the incorporated institution may elect under
12 which clause such notice is given and the activity is conducted
13 or the interest is held.

14 (e) Unless earlier approval is granted by the department, an
15 incorporated institution shall provide at least thirty days
16 prior written notice to the department before it engages in an
17 activity or acquires an interest permissible under subsection
18 (c). During the review period provided by this subsection, the
19 department may:

20 (i) Request further information concerning any proposed
21 activity or interest;

22 (ii) Impose any conditions, limitations or restrictions
23 upon such interests or activities to the extent authorized by
24 subsection (c); or

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

29 Except as otherwise agreed to by an incorporated institution,
30 the department shall be deemed to have granted approval for an

1 incorporated institution to engage in an activity or acquire an
2 interest if within thirty days of receipt of written notice from
3 an incorporated institution the department does not impose
4 conditions, limitations or restrictions upon interests or
5 activities as authorized by subsection (c) or prohibit the
6 incorporated institution from engaging in an activity or
7 acquiring an interest authorized by subsection (c).

8 (f) Notwithstanding any other provisions of this act or any
9 other law, an incorporated institution shall have the same power
10 to engage in fiduciary activities, both within and outside of
11 this Commonwealth, as a national banking association pursuant to
12 12 U.S.C. § 92a. The department shall interpret the provisions
13 of 12 U.S.C. § 92a in a manner consistent with regulations and
14 interpretations as provided by the Comptroller of the Currency.

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

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

21 * * *

22 (k) Delivery service--the power to pick up from and deliver
23 to customers cash or other valuables relating to financial
24 services provided by the incorporated institution using a
25 contract carrier or employees or affiliates of the incorporated
26 institution. No separate authorization or approval by the
27 department shall be required for an incorporated institution to
28 provide delivery service, provided that the incorporated
29 institution complies with other laws and regulations applicable
30 to the provision of delivery service.

1 Section 3.—~~Section 203(d)~~ 4. SECTIONS 203(D) AND 306(D) of <—
2 the act, amended July 6, 1984 (P.L.621, No.128), ~~is~~ ARE amended <—
3 to read:

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

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

11 * * *

12 ~~[(d) Subsidiaries the~~ (D) SUBSIDIARIES--IN ADDITION TO THE <—
13 POWER TO ACQUIRE AND HOLD INTERESTS IN A SUBSIDIARY PERMISSIBLE
14 UNDER SECTION 201(C)(3), (4) AND (5). THE power to acquire and
15 hold, without limitation of amount, the stock of subsidiary
16 corporations engaged in activities permissible for such
17 institution and activities permissible under the Bank Service
18 Corporation Act (Public Law 87-856, 12 U.S.C. § 1861 et seq.),
19 [if the shares are acquired with the prior written approval of <—
20 the department and in accordance with the terms and conditions
21 of transfer prescribed by the department.] SUBJECT TO ANY <—
22 CONDITIONS, LIMITATIONS AND RESTRICTIONS COMPARABLE TO THOSE
23 WHICH MAY BE IMPOSED PURSUANT TO SECTION 201(C)(3), (4) AND (5)
24 AND TO NOTICE AND REVIEW AS PROVIDED BY SECTION 201(E).

25 * * *

26 SECTION 306. LIMITS ON INDEBTEDNESS OF ONE CUSTOMER (INCLUDING <—
27 PURCHASED PAPER)

28 * * *

29 (D) REGULATION--THE DEPARTMENT MAY BY REGULATION NOT
30 INCONSISTENT WITH THE PROVISIONS OF THIS SECTION AND SECTION

1 1414(B) PRESCRIBE DEFINITIONS OF AND REQUIREMENTS FOR
2 TRANSACTIONS INCLUDED IN OR EXCLUDED FROM THE INDEBTEDNESS TO
3 WHICH THE FIFTEEN PERCENT LIMITATION OF THIS SECTION APPLIES.

4 * * *

5 Section 4 5. Section 310(a) of the act, amended December 21, <—
6 1988 (P.L.1416, No.173), is amended to read:

7 Section 310. Real Estate Loans

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

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

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

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

30 [(C) ninety percent of the value of a one family

1 residential property for thirty years, in an amount not
2 to exceed forty thousand dollars (\$40,000), or such
3 larger amount as the department may permit by regulation,
4 subject to the same requirements set forth in clause (B);
5 or

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

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

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

22 * * *

23 Section 5 6. Section 311 of the act is amended by adding
24 subsections to read:

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

27 * * *

28 (c.1) Collateral loans with affiliates--An institution may
29 engage in a covered transaction with an affiliate, including the
30 acceptance of securities issued by an affiliate as collateral

1 security for a loan or extension of credit, if the institution
2 complies with the requirements of 12 U.S.C. § 371c. The
3 department shall interpret the requirements of 12 U.S.C. § 371c
4 in a manner consistent with regulations, orders and
5 interpretations as issued by the Board of Governors of the
6 Federal Reserve System.

7 * * *

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

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

21 Section 6 7. Section 403(g) of the act is repealed. <—

22 Section 7 8. Section 505(a) of the act, amended December 21, <—
23 1988 (P.L.146, No.173), is amended to read:

24 Section 505. Real Estate Loans

25 (a) Permissible loans; [maximum amount and] term and maximum
26 amount--A savings bank may, subject to the requirements of this
27 section, make or acquire a loan secured by a lien on real estate
28 (including a leasehold) located in any state or the District of
29 Columbia, in a dependency or insular possession of the United
30 States or in the Commonwealth of Puerto Rico[, in an amount and

1 for a term not to exceed]:

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

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

7 (B) [four-fifths of the value for thirty] forty
8 years, if the terms of the loan require payments which
9 are substantially equal except for the last payment at
10 successive intervals of not more than one year each and
11 in an amount sufficient to pay all principal of and
12 interest on the loan within [thirty years] the term of
13 the loan, except that a loan to a commercial or
14 industrial borrower is exempted from the requirement of
15 substantially equal payments and the date of the initial
16 payment on a loan to such borrower may be deferred for a
17 period not in excess of five years from the date of the
18 loan; or

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

25 (D) ninety-five percent of the value for thirty
26 years, if that portion of the loan in excess of seventy-
27 five percent of the value is made in reliance upon a
28 private company mortgage insurance or guarantee
29 acceptable to the Department of Banking, subject to the
30 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 9. 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 broker's fees, commissions and underwriting costs, necessary for its organization.

* * *

Section 10. 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 the section to the extent the

1 audits and reports conform to accounting standards and
2 principles applicable pursuant to 12 U.S.C. § 1831n to reports
3 or statements required to be filed with Federal banking
4 agencies.

5 Section ~~10~~ 11. Section 1414 of the act, amended April 8, <—
6 1982 (P.L.262, No.79), is amended to read:

7 Section 1414. Preferential Rates of Interest

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

17 [(b) Limited definition--The term "executive officer" for
18 the purposes of this section shall be defined by regulation of
19 the Department of Banking.]

20 (c) Authorized activities--Notwithstanding any other
21 provision of this act, an institution may extend credit to any
22 director, trustee, executive officer, attorney or principal
23 shareholder, or to any related interest of such a person, to the
24 extent permissible pursuant to 12 U.S.C. §§ 375a and 375b. The
25 department shall interpret the provisions of 12 U.S.C. §§ 375a
26 and 375b in a manner consistent with regulations, orders and
27 interpretations as issued by the Board of Governors of the
28 Federal Reserve System. A regulation, order or interpretation of
29 the provisions of 12 U.S.C. §§ 375a and 375b by the Board of
30 Governors of the Federal Reserve System shall take effect for

1 the purposes of this subsection within thirty days of
2 promulgation by the Board of Governors, except that the
3 department may for good cause suspend the application of such
4 regulation, order or interpretation for up to a one-year period.
5 Notice of such suspension shall be published by the department
6 in the Pennsylvania Bulletin. Thereafter the regulation, order
7 or interpretation shall take effect for the purposes of this
8 subsection unless the department adopts administrative
9 regulations setting forth a contrary interpretation of the
10 provisions of 12 U.S.C. §§ 375a and 375b. A regulation, order or
11 interpretation of the provisions of 12 U.S.C. §§ 375a and 375b
12 by the Board of Governors of the Federal Reserve System may take
13 effect for the purposes of this subsection within less than
14 thirty days of promulgation by the Board of Governors if
15 approved by the department.

16 ~~Section 11. Section 1415 of the act is repealed.~~ <—

17 SECTION 12. SECTIONS 1415 AND 2102(C) OF THE ACT ARE <—
18 REPEALED.

19 ~~Section 12~~ 13. All acts and parts of acts are repealed <—
20 insofar as they are inconsistent with this act.

21 ~~Section 13~~ 14. This act shall take effect immediately. <—