

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1258 Session of
2002

INTRODUCED BY HOLL, WAGNER, ERICKSON, COSTA, LEMMOND, MOWERY AND
THOMPSON, JANUARY 10, 2002

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 25, 2002

AN ACT

1 Amending the act of May 15, 1933 (P.L.565, No.111), entitled "An
2 act relating to the powers and duties of the Department of
3 Banking and the Secretary of Banking in exercising
4 supervision over, and taking possession of and conducting or
5 liquidating the business and property of, corporations,
6 associations, and persons receiving deposits or otherwise
7 transacting a banking business, corporations acting as
8 fiduciaries, and building and loan associations; providing
9 for the payment of the expenses of the Department of Banking
10 by supervised corporations, associations, or persons, and
11 appropriating the Banking Department Fund; authorizing the
12 Department of Banking, under certain circumstances, to
13 examine corporations, associations, or persons affiliated, or
14 having business transactions with supervised corporations,
15 associations or persons; authorizing appeals to the Supreme
16 Court, and prescribing and limiting the powers and duties of
17 certain other courts and their prothonotaries, registers of
18 wills, recorders of deeds, and certain State departments,
19 commissions, and officers; authorizing certain local public
20 officers and State departments to collect fees for services
21 rendered under this act; providing penalties; and repealing
22 certain acts and parts of acts," making extensive changes to
23 modernize and update the law in the general areas of
24 preliminary provisions; jurisdiction and maintenance of the
25 Department of Banking; restrictions upon department and
26 employees; examinations by and reports to the department;
27 action by department after offenses by, or changes in,
28 condition of institutions; taking of possession by the
29 Secretary of Banking as receiver and surrender of possession;
30 rights, powers and duties of secretary as receiver; secretary
31 in possession of trust department; proof of claims,

1 accounting and distribution; and special criminal history
2 record information provisions.

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

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

8 Section 2. Definitions.--A. The following terms shall be
9 construed in this act to have the following meanings, except in
10 those instances where the context clearly indicates otherwise:

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

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

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

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

22 "Licensee." A corporation, person or any other type of
23 business entity required to be licensed by, registered with or
24 partially exempt from being licensed by the Department of
25 Banking under any law of this Commonwealth administered by the
26 Department of Banking.

27 "Credit union." A Pennsylvania State-chartered credit union.

28 "Institution." A corporation or a person, as defined in this
29 section, or other type of business entity, including, but not
30 limited to, a mutual holding company, which is subject to the

1 supervision of the department. The term does not include credit
2 unions or licensees unless specifically stated otherwise.

3 "Court." The court of common pleas of the county in which the
4 corporation or person has its principal or only place of
5 business in this Commonwealth; or, where an institution of which
6 the secretary is receiver is concerned, the particular court in
7 which the certificate of possession, as defined later in this
8 act, is filed; or the Commonwealth Court where specified in this
9 act.

10 "Prothonotary." The prothonotary of such court.

11 "Written." This includes printed, typewritten, engraved,
12 lithographed, photographed, photostated, telephotographed,
13 electronically transmitted or rendered by other means approved
14 by the Department of Banking.

15 "Public body of the United States." The Federal Deposit
16 Insurance Corporation [or the Federal Savings and Loan Insurance
17 Corporation,] or any other agency or instrumentality of the
18 United States which insures deposits of an institution.

19 * * *

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

22 Section 4. Advertisements, Publications, or Notices in
23 Newspapers.--A. Unless expressly provided otherwise, any
24 advertisement, publication, or notice in a newspaper, required
25 by this act, shall be published once [a week for three
26 successive weeks] (1) in a newspaper of general circulation in
27 the county, as defined by [the Newspaper Advertising Act,
28 approved the sixteenth day of May, one thousand nine hundred
29 twenty-nine (Pamphlet Laws, one thousand seven hundred eighty-
30 four), its supplements and amendments,] 45 Pa.C.S. § 101

1 (relating to definitions) published in the city, borough, or
2 township in which the principal place of business of the
3 institution is located; and (2) in first-class counties, also in
4 the legal newspaper, if any, published within the county, as
5 defined by [the Newspaper Advertising Act] 45 Pa.C.S. § 101.

6 If there is no newspaper of general circulation published in
7 the city, borough, or township, then the advertisement,
8 publication, or notice shall be inserted in a newspaper of
9 general circulation in the county, published at the county seat.
10 If no newspaper of general circulation in the county is
11 published at the county seat, then such advertisement,
12 publication, or notice shall be inserted in the newspaper of
13 general circulation published nearest to the city, borough, or
14 township in which the principal place of business of such
15 institution is located and within the county. If there is no
16 newspaper of general circulation published within the county,
17 then the advertisement or notice shall be inserted in the
18 newspaper of general circulation published nearest to such city,
19 borough, or township in an adjoining county.

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

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

30 Section 8. Fees for Copies and Certifications by

1 Department.--A. The department may[, by general rule or
2 regulation,] prescribe and charge reasonable fees for any copy
3 of a book, account, report, or other paper or record filed in
4 its offices or under its control, and for any certification
5 thereof, authorized or required by law.

6 B. The following apply to methods of payment:

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

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

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

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

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

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

30 Section 201. Corporations and Persons Subject to Supervision

1 of Department.--The department shall have the power to
2 supervise--

3 A. (1) All corporations and persons which are authorized to
4 receive or which do receive in this Commonwealth money on
5 deposit or for safe-keeping, or which are authorized to engage
6 or which do engage in this Commonwealth in a banking business,
7 and all corporations which are authorized to act or which do act
8 in this Commonwealth as trustees, guardians, executors,
9 administrators, or in other fiduciary capacities, including, but
10 not limited to, banks, bank and trust companies, trust
11 companies, private banks, savings banks, [and mutual savings
12 funds;] savings associations, branches, agencies, or
13 representative offices of foreign banks in this Commonwealth,
14 mutual holding companies, and interstate banks, but not
15 including hotels or clubs which receive money from guests or
16 members for temporary safe-keeping, express, steamship, or
17 telegraph companies which receive money for transmission, and
18 attorneys at law, real estate agents, and attorneys in fact, who
19 are not engaged in the business of receiving moneys in this
20 Commonwealth for deposit or for transmission but receive and
21 transmit moneys only as an incident to their general business or
22 profession, brokers licensed under the laws of this
23 Commonwealth, holding membership in a lawfully constituted
24 brokerage exchange, who do and have authority to do only such
25 banking as is incidental to their brokerage business;

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

28 (3)] All national banking associations, incorporated under
29 the laws of the United States and located within this
30 Commonwealth, which are authorized to act or which do act in

1 this Commonwealth as trustees, guardians, executors,
2 administrators, or in any other fiduciary capacities, to the
3 extent to which supervision by State authorities is or may be
4 permitted under the laws of the United States.

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

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

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

30 B. Whenever under this act, discretion is vested in the

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

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

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

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

18 Section 204. Assessment of Expenses of Department upon
19 Institutions.--A. All the expenses of the department, including
20 those enumerated in this act or otherwise authorized by law,
21 shall be charged to and paid by all institutions, including
22 licensees, in such equitable amounts, at such times, and in such
23 manner as the department shall, by general rule or regulation,
24 prescribe. The expenses incurred by the department in connection
25 with any examination or investigation, whether regular or
26 special, including a proportionate part of the salary of any
27 examiner or other employe of the department [engaged in such
28 examination or investigation, and all counsel assigned by the
29 Department of Justice at the request of the Department of
30 Banking to an examination or investigation,] or third-party

1 expenses, including attorneys retained by the department, may be
2 assessed by the [Department of Banking] department upon the
3 particular institution examined or investigated.

4 B. The department shall give written notice to each
5 institution, including licensees, of the amount lawfully charged
6 against it under the provisions of this act. The institution
7 shall pay the amount of such assessment to the department within
8 [thirty] sixty days after [such] the invoice date on the notice.
9 If payment is not made by any institution or licensee within
10 [such thirty-day] the sixty-day period, the department[, through
11 the Department of Justice,] may impose in addition to the money
12 assessed a maximum penalty fee of one hundred fifty dollars
13 (\$150.00) for that sixty-day period and each successive thirty-
14 day period of delinquency. In addition, the department, through
15 the Office of Attorney General or its authorized designee may
16 institute an appropriate action at law for the amount lawfully
17 assessed against such institution, together with any additional
18 costs incurred by the Department of Banking or the [Department
19 of Justice] Office of Attorney General or its authorized
20 designee by virtue of such failure to pay.

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

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

26 (2) Neither the secretary, nor any deputy, examiner, clerk,
27 or other employe of the department, shall publish or divulge to
28 anyone any information contained in or ascertained from any
29 examination or investigation made by the department, or any
30 letter, report, or statement sent to the department, or any

1 other paper or document in the custody of the department, except
2 when the publication or divulgement of such information is made
3 by the department pursuant to the provisions of this act [or of
4 any other law of this Commonwealth], or when the production of
5 such information is required by subpoena or other legal process
6 of a court of competent jurisdiction, or when it is used in
7 deciding whether to prosecute or in prosecutions or other court
8 actions instituted by or on behalf of or at the request of the
9 department, or when referring for investigation to any Federal,
10 State or local law enforcement or any Federal or State financial
11 regulatory agency, including banking, insurance and securities
12 regulatory agencies, or when the department provides information
13 to any Federal or State financial regulatory agency, including
14 banking, insurance and securities regulatory agencies, when the
15 information pertains to an enforcement concern. The information
16 shall be provided as may be necessary or appropriate, as
17 determined in the discretion of the secretary.

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

30 (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 employee of the department, shall be sufficient ground for his removal from office. In addition the secretary, deputy, examiner, clerk, or other employee [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

1 period not exceeding one year, or a fine not exceeding one
2 thousand dollars, or both.

3 Section 8. Section 303 of the act, amended or added October
4 5, 1978 (P.L.113, No.266), and July 6, 1984 (P.L.634, No.129),
5 is amended to read:

6 Section 303. Conflicts of Interest; Penalty.--A. For
7 purposes of this section, "institution" shall [mean: a
8 Pennsylvania State-chartered or licensed bank, mutual savings
9 bank, bank and trust company, trust company, private bank,
10 savings and loan association, consumer discount company, motor
11 vehicle sales finance company, licensed self-financing
12 installment seller of motor vehicles, licensed collector-
13 reposessor, money transmitter, pawnbroker] include a licensee
14 or credit union. The term includes credit unions unless
15 specifically stated otherwise.

16 B. Except as provided in subsection E, neither the
17 [Secretary of Banking] secretary, nor any officer or employe of
18 the department, nor any deputy receiver or employe of the
19 [Secretary of Banking] secretary, as receiver, shall receive any
20 sum of money or any property as a gift or loan or otherwise,
21 directly or indirectly from any institution or from any officer,
22 director or employe thereof. This subsection shall not apply to
23 loans to employes of the [Department of Banking] department who
24 function in a clerical or nondecision making capacity with
25 regard to institutions, including, but not limited to, clerks,
26 typists and stenographers.

27 C. Neither the [Secretary of Banking] secretary, nor any
28 officer or employe of the department, nor any deputy receiver or
29 employe of the [Secretary of Banking] secretary as receiver,
30 shall hold any office or position in, have any direct or

1 indirect pecuniary interest in, or direct or indirectly own
2 shares or securities issued by an institution, except that the
3 [Secretary of Banking] secretary or any department employe or
4 officer may continue to own shares or securities issued by an
5 institution other than a credit union which are owned by [him]
6 the secretary on the date of his appointment, or by other
7 department employes on the date of commencement of employment
8 with the department, and all shares or securities distributed by
9 the institution and received by [him] any of them on account of
10 the shares or securities so owned subject to the penalty
11 provisions of this section. All department employes subject to
12 this subsection shall provide the department with written notice
13 of his or her ownership of any such shares or securities prior
14 to or upon his or her commencement of employment with the
15 department. Notwithstanding the foregoing, the department may
16 impose terms on the employe or officer, including, but not
17 necessarily limited to, requiring the employe or officer to
18 place into a blind trust, sell or divest of such shares or
19 securities as a condition of obtaining or continuing employment
20 with the department, provided such sale or divestment is deemed
21 to be reasonably necessary under the circumstances, or to recuse
22 himself or herself from being involved in any department
23 decision that pertains solely to the institution of which he or
24 she owns shares or securities.

25 D. In the event of such ownership of shares or securities by
26 the [Secretary of Banking] secretary, he shall disclose the
27 ownership, amount and date of acquisition of such shares or
28 securities in writing to the Secretary of the Commonwealth
29 immediately after his appointment and shall not during his term
30 of office participate in any decision or take any action

1 concerning an institution in which he owns such shares or
2 securities other than actions or decisions generally applicable
3 to institutions or classes of institutions. In the event of
4 disqualification of the [Secretary of Banking] secretary from
5 participation in any decision or action for such reason, all
6 authority vested in him or her by law shall, for the purpose of
7 such decision or action, be exercised by the [senior deputy
8 Secretary of Banking] appropriate deputy secretary, in
9 accordance with their jurisdictional responsibilities.

10 E. The prohibitions of subsections B and C shall not apply
11 to:

12 (1) A first lien mortgage loan upon the home of the
13 [Secretary of Banking, an officer or employe of the department,
14 a deputy receiver or an employe of the Secretary of Banking as
15 receiver, where such loan is granted upon the same terms and in
16 the same manner as provided by law for mortgage loans] secretary
17 or other employe of the department, or an indirect motor vehicle
18 loan originated under the act of June 28, 1947 (P.L.1110,
19 No.476), known as the "Motor Vehicle Sales Finance Act," in any
20 and all such mortgage loans or indirect motor vehicle loans
21 which may be originated by an institution other than a credit
22 union, where such loan is granted upon the same terms and in the
23 same manner as provided by law for mortgage loans or indirect
24 motor vehicle loans granted by such institutions. All persons
25 subject to this subsection shall provide the department with
26 written notice of any loan referenced in this subsection and its
27 terms within thirty days of receiving the loan. Notwithstanding
28 the foregoing, the department may impose terms on the employe or
29 officer, including, but not necessarily limited to, requiring
30 such person to recuse himself or herself from being involved in

1 any department decision that pertains solely to the institution
2 from which he or she received a loan.

3 (2) A deposit account with an institution other than a
4 credit union, provided that such account shall not be
5 intentionally overdrawn[; except that an examiner assigned to
6 the examination of savings associations shall not have a savings
7 account in any State-chartered savings association.] and the
8 secretary, department employe or officer does not participate in
9 any vote as a shareholder or member of such institution.

10 F. A violation of the prohibitions of this section by the
11 [Secretary of Banking] secretary, an officer or employe of the
12 department, a deputy receiver or an employe of the [Secretary of
13 Banking] secretary as receiver shall constitute sufficient
14 ground for removal from office. In addition, any such person who
15 willfully or knowingly commits such violation shall be guilty of
16 a misdemeanor and shall, upon conviction thereof, be subject to
17 imprisonment for a period not exceeding one year, or a fine not
18 exceeding one thousand dollars (\$1,000.00), or both; and shall
19 be subject to a further fine equal to the amount of money or
20 value of the property which such individual has directly or
21 indirectly received in violation of this section.

22 Section 9. Section 401 of the act, amended July 6, 1984
23 (P.L.634, No.129), is amended to read:

24 Section 401. Examinations of Institutions.--[A. The
25 department shall examine all institutions thoroughly at least
26 once every two calendar years, and more frequently if it deems
27 such action necessary or advisable to safeguard the interests of
28 depositors, other creditors, or shareholders of such
29 institutions. This examination shall include a complete review
30 of the property, assets, and resources of the institution; the

1 loans and discounts made by it and the collateral deposited with
2 it as security for such loans; the mode of conducting its
3 affairs; the investment of its funds; the interest taken in its
4 affairs by its officers, directors, and employees if a
5 corporation, or by its employees and the partners or individuals
6 owning it if a person; its compliance with the law, and with the
7 terms of its charter or license if it has either; and any other
8 matters, bearing any relation to its condition, which the
9 department shall prescribe.

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

14 B. The department, when requested in writing by [a person
15 subject to its supervision, or by the board of directors or the
16 holders of a majority of the shares of capital stock of a
17 corporation subject to its supervision, shall] an owner of all
18 or part of an institution, credit union or licensee, including a
19 shareholder, partner or member, or a director or officer of an
20 institution, credit union or licensee subject to its
21 supervision, may at the department's discretion examine or
22 investigate the affairs and condition of such institution.

23 However, this provision shall not be construed to mean that such
24 person, directors, or shareholders shall have any greater right
25 to require the department to disclose to them the results of any
26 such examination or investigation than they have in the case of
27 any regular examination or investigation.

28 C. The department, upon the receipt of notice from the
29 Insurance Commissioner that he has become receiver of a
30 corporation or person, any branch of the business of which is

1 subject to the supervision of the [Department of Banking]
2 department, [shall] may examine or investigate the affairs and
3 condition of such institution in order to determine whether any
4 action should be taken by the [Department of Banking]
5 department, pursuant to the provisions of this act.

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

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

25 F. In connection with any examination or investigation
26 authorized by this act or any other law, the department shall
27 have, in addition to the authority provided by any other law,
28 power to issue subpoenas requiring the attendance of, or the
29 production of pertinent books [and papers by], papers,
30 electronic data or information of any kind which is in any form,

1 by, the officers, directors, agents, employees, or members,
2 respectively, of any corporation or person, including a credit
3 union or licensee, which the department is authorized, under the
4 provisions of this act or any other law of this Commonwealth, to
5 examine. The department shall have power to issue subpoenas to
6 any other person or entity of any kind whatsoever, provided that
7 the information from such person or entity is necessary for the
8 enforcement of this act or any other law within the jurisdiction
9 of the department. The department shall also have the power to
10 question such witnesses under oath or affirmation, and to
11 examine such books and papers.

12 Any witness who refuses to obey a subpoena issued under this
13 section, or who refuses to be sworn or affirmed, or to testify,
14 or who is guilty of any contempt after summons to appear, may be
15 punished as for contempt of court, and, for this purpose, an
16 application may be made to Commonwealth Court or any court of
17 common pleas within whose territorial jurisdiction the offense
18 was committed, for which purpose such court is hereby given
19 jurisdiction.

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

22 Section 402. Examination of Corporations or Persons
23 Affiliated with Institutions.--[A. The Department of Banking]
24 The department shall have the power to supervise, regulate,
25 examine, limit, or prohibit the activities of corporations or
26 persons affiliated with institutions, including credit unions,
27 to the same extent as such activities of corporations or persons
28 affiliated with national banking associations, Federal savings
29 associations or Federal credit unions, or with members of a
30 Federal Reserve Bank, are, or shall be, supervised, regulated,

1 examined, limited, or prohibited by general law, [or] by Federal
2 statutes or by regulations issued by any Federal authority
3 pursuant to law, but in no event shall the department's
4 examination and enforcement authority over affiliates be less
5 than is permissible for banking institutions under the act of
6 November 30, 1965 (P.L.847, No.356), known as the "Banking Code
7 of 1965," savings associations under the act of December 14,
8 1967 (P.L.746, No.345), known as the "Savings Association Code
9 of 1967," or credit unions under 17 Pa.C.S. (relating to credit
10 unions).

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

18 (1) It is owned directly or indirectly by such institution;
19 or

20 (2) It owns directly or indirectly such institution; or

21 (3) It is owned directly or indirectly by the same person or
22 corporation which owns directly or indirectly such institution;
23 or

24 (4) The election of a majority of its board of directors is
25 controlled directly or indirectly by any instrumentality,
26 agency, or arrangement that controls directly or indirectly the
27 election of a majority of the board of directors of such
28 institution; or

29 (5) A majority of its directors are also directors of such
30 institution; or

1 (6) Members of its board of directors constitute a majority
2 of the board of directors of such institution; or

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

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

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

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

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

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

28 Section 11. Section 403 of the act, amended July 29, 1941
29 (P.L.583, No.247) and August 14, 1963 (P.L.863, No.44), is
30 amended to read:

1 Section 403. Reports to Department; Publication;

2 Penalties.--A. Every institution[, except building and loan
3 associations, shall send to the department at least twice each
4 year, and more frequently if the department shall so order, a
5 complete report of its condition, exhibiting in detail, under
6 appropriate headings, the resources and liabilities of the
7 institution, and shall also send to the department at least once
8 each year, and more frequently if the department shall so order,
9 a complete report of its earnings setting forth in detail all
10 items of income and expense. Every building and loan association
11 shall send such reports to the department once each year, unless
12 the department orders more frequent reports.] shall maintain
13 copies of the complete reports of its condition in such form and
14 as of such dates as may be required by the department, and
15 publish copies or compilations thereof to the extent required by
16 Federal law.

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

25 B. The form of all reports, the information to be contained
26 in them, and the date on which they shall be due shall be
27 prescribed by the department. The reports shall be verified by
28 the oath or affirmation of the president, cashier, secretary,
29 treasurer, or other managing officer of a corporation, or by one
30 of the firm in the case of a partnership or other unincorporated

1 association, or by the banker if an individual or in such other
2 manner as may be provided by the department. In the case of a
3 corporation, the report shall also be attested as correct by the
4 signatures of at least three of its directors or trustees or in
5 such other manner as may be provided by the department.

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

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

27 E. (1) Any institution which fails to make or publish any
28 report, or to furnish any proof of publication, in accordance
29 with the provisions of this section, shall pay to the department
30 a penalty of one hundred dollars for each day after the time

1 fixed by the department for filing such report, making such
2 publication, or furnishing such proof of publication, but the
3 department may, in its discretion, relieve any institution from
4 the payment of such penalty, in whole or in part, if good cause
5 be shown to it for the failure of such institution to file or
6 publish the report or to furnish proof of publication thereof.
7 [If an institution] (2) Notwithstanding any licensing statute
8 to the contrary, if a licensee licensed under any respective
9 licensing statute within the department's jurisdiction to
10 enforce fails to notify the department in writing received by
11 the department within ten days of relocating the licensee's
12 licensed office that the licensee has relocated such licensed
13 office to a location stated by the licensee, then the licensee
14 shall pay to the department a fine up to a maximum of two
15 thousand dollars (\$2,000.00) per violation for failing to timely
16 notify the department of such change of licensed office
17 location. For the purposes of this subsection, the term
18 "licensing statute" means any State law pursuant to which the
19 department may grant a license.

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

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

27 Section 404. Disclosure of Information.--A. The department
28 may divulge to an institution, or to any officer, or any
29 director [or trustee], trustee or attorney thereof, any
30 information contained in or ascertained from an examination or

1 investigation of such institution made by the department.
2 Reports of examination issued by the department remain the sole
3 property of the department. A report of examination issued by
4 the department to an institution is strictly confidential. Any
5 copy of a report of examination is and shall remain the property
6 of the department and is furnished to the institution, subject
7 to the express condition that it shall be returned to the
8 department immediately upon a request from the secretary. If a
9 subpoena or other legal process is received calling for
10 production of such a report of examination, or any portion
11 thereof, the department shall be notified immediately by the
12 institution. Under no circumstances shall the institution or any
13 of its directors, trustees, officers, or employes make copies of
14 the report of examination or any portion thereof available to
15 any organization or person who is not officially connected with
16 such institution as a director, trustee, officer, attorney or
17 employe without the prior written approval or nonobjection of
18 the department. Notwithstanding the foregoing, an institution
19 may disclose the existence and contents of an order or other
20 enforcement action issued to it by the department to the extent
21 required by applicable Federal securities law or State
22 securities law.

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

1 C. The department, by itself and in its reasonable
2 discretion for regulatory or enforcement purposes, or on the
3 written request or consent of any institution, authorized in the
4 case of corporations by [resolution of its board of directors,
5 or its board of trustees, as the case may be] the president or
6 senior executive officer of the institution, may furnish to the
7 Federal Reserve Board, to the Federal Reserve Bank of the
8 district in which the place of business of any institution is
9 located, or to any agency or instrumentality of the United
10 States government, or of the Commonwealth of Pennsylvania, or
11 any other supervisor of financial institutions in another state,
12 any information in its possession relating to such institution.

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

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

23 F. Notwithstanding any of the foregoing provisions of this
24 section, the department may enter into such cooperative,
25 coordinating and information-sharing agreements with any other
26 Federal and State banking, insurance or securities regulatory
27 agencies or do so by, with and through any trade association of
28 such agencies, with respect to any examination, supervision,
29 enforcement, criminal referral, consumer complaints or any other
30 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 employee 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 employee 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,

1 No.249), referred to as the Money Transmission Business
2 Licensing Law, a check casher license under the act of February
3 18, 1998 (P.L.146, No.22), known as the "Check Casher Licensing
4 Act," a pawnbroker license under the act of April 6, 1937
5 (P.L.200, No.51), known as the "Pawnbrokers License Act," a
6 collector-repossessor license or installment seller license
7 under the act of June 28, 1947 (P.L.1110, No.476), known as the
8 "Motor Vehicle Sales Finance Act," a license the department may
9 grant pursuant to any other licensing statute, or the articles
10 of incorporation of a trust company under the act of November
11 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965."

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

17 D. For the purposes of this section, "non-corporate entity"
18 means an association, joint venture or joint stock company,
19 partnership, limited partnership, limited partnership
20 association, nonprofit corporation, professional corporation or
21 any other group of individuals, however organized.

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

1 F. (1) In connection with any initial application submitted
2 to the department for a covered license, a covered individual
3 shall submit his or her fingerprints to the department or to
4 such other international, Federal, State or local government
5 agency, or designee thereof, selected by the department,
6 including the Pennsylvania State Police and the Federal Bureau
7 of Investigation, in order for the department to receive
8 criminal history record information from any international,
9 Federal, State or local government agency, or designee thereof,
10 including criminal history record information from the
11 Pennsylvania State Police or national criminal history record
12 information from the Federal Bureau of Investigation. The
13 department shall send or receive such criminal history record
14 information or national criminal history record information to
15 or from the Pennsylvania State Police, the Federal Bureau of
16 Investigation or any other international, Federal, State or
17 local government agency, or designee thereof, in a manner that
18 is satisfactory to the department. National criminal history
19 record information received by the department shall be handled
20 or maintained in accordance with Federal Bureau of Investigation
21 policy.

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

1 G. During the initial or renewal license application
2 process, the department may deem the license application as
3 incomplete and therefore not commencing the review period stated
4 in the respective licensing statutes if the department has not
5 received evidence from the applicant that national criminal
6 history record information and other criminal history record
7 information required under this section has been requested from
8 the Federal Bureau of Investigation for national criminal
9 history record information, or the Pennsylvania State Police or
10 any other international, Federal, State or local governmental
11 agency or designee thereof for criminal history record
12 information.

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

27 I. Notwithstanding the foregoing provisions of this section,
28 the department's approval or denial of a covered license
29 application under a licensing statute without the department
30 receiving criminal history record information or national

1 criminal history record information regarding covered
2 individuals as required under this section shall not prohibit
3 the department from taking any action authorized by law
4 including suspension or revocation of such a license. In
5 addition, the department may deny a covered license application,
6 or suspend or revoke a covered license based on the contents of
7 criminal history record information, or the untimely receipt or
8 failure to provide criminal history record information, or
9 misleading or inaccurate information provided by the applicant
10 or covered individual, pursuant to this section, any licensing
11 statute and other applicable law including 18 Pa.C.S. Ch. 91
12 (relating to criminal history record information).

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

18 Section 14. Section 501B and C of the act, amended July 1,
19 1981 (P.L.178, No.52), are amended to read:

20 Section 501. Orders by Department.--* * *

21 B. Whenever it shall appear to the department that an
22 attorney, officer, or employe of an institution, and in the case
23 of an incorporated institution, a director or trustee thereof,
24 shall have continued to violate any law relating to such
25 institution, or shall have continued unsafe or unsound practices
26 in conducting the business of such institution, after having
27 been warned by the department to discontinue such violations of
28 law or such unsafe or unsound practices, the department may
29 issue an order directing such attorney, officer, employe,
30 director, or trustee to appear on the day fixed in such order

1 before the department and show cause why he should not be
2 removed from his office or position and such office or position
3 declared vacant. A copy of such order shall be sent to the
4 institution of which such person is an attorney, officer,
5 employe, director, or trustee.

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

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

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

27 If the institution, of which such person, ordered by the
28 department to appear is an attorney, officer, employe, director,
29 or trustee, is an interstate bank or is a member of a Federal
30 Reserve Bank, the Federal Deposit Insurance Corporation[,] or

1 the Federal Home Loan Bank, [or the Federal Savings and Loan
2 Insurance Corporation,] the department may notify such Federal
3 Reserve Bank, Federal Deposit Insurance Corporation, Federal
4 Home Loan Bank, [or Federal Savings and Loan Insurance
5 Corporation,] or other bank supervisory agencies having
6 jurisdiction over an interstate bank, as the case may be, of its
7 order directing such attorney, officer, employee, director, or
8 trustee to appear before the department and of its decisions
9 issued in such a case. At such hearing, any duly authorized
10 representative of such Federal Reserve Bank, Federal Deposit
11 Insurance Corporation, Federal Home Loan Bank or [Federal
12 Savings and Loan Insurance Corporation] other bank supervisory
13 agencies having jurisdiction over such interstate bank, as the
14 case may be, may appear as a witness [against such attorney,
15 officer, employee, director, or trustee].

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

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

26 C. In connection with any hearing or investigation
27 authorized by this act or by any other law, the department shall
28 have, in addition to the authority provided by any other law,
29 power to issue subpoenas, requiring the attendance of or the
30 production of pertinent books [and], papers, electronic data or

1 information of any kind in any form, by the officers, directors,
2 agents, employes, or members, respectively, of any corporation
3 or person which the department is authorized under the
4 provisions of this act or any other law of this Commonwealth to
5 examine. The department shall also have power to issue subpoenas
6 to any person or entity provided that the information from such
7 person or entity is necessary for the enforcement of this act or
8 any other law within the jurisdiction of the department. The
9 department may, upon application of the attorney, officer,
10 employe, director, or trustee to be heard, subpoena such
11 witnesses as are set forth in such application. The department
12 shall also have the power to question such witnesses under oath
13 or affirmation, and to examine such books and papers. In the
14 event that a person fails to comply with a subpoena for
15 documents or testimony issued by the department, the department
16 may request an order from the Commonwealth Court requiring the
17 person to produce the requested information.

18 Any witness who refuses to obey a subpoena, issued under this
19 section, or who refuses to be sworn or affirmed or to testify,
20 or who is guilty of any contempt, after summons to appear, may
21 be punished as for contempt of court, and for this purpose, an
22 application may be made to the Commonwealth Court or to any
23 court of common pleas, within whose territorial jurisdiction the
24 offense was committed, for which purpose such court is hereby
25 given jurisdiction.

26 * * *

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

28 Section 502. Enforcement of Department's Order by Court.--

29 Whenever [an institution] a person, institution, credit union,
30 licensee or other entity of any kind whatsoever shall not comply

1 with the terms of an order of the department which has been
2 properly issued under the circumstances, pursuant to this act or
3 any other law, the department, upon notice to the [institution,
4 may, through the Department of Justice, petition the court of
5 common pleas, either of Dauphin County, or of the county in
6 which the institution has its principal or only place of
7 business,] person, institution, credit union, licensee or entity
8 may, in addition to the authority provided by any other law,
9 through the Office of Attorney General, petition the
10 Commonwealth Court for an order directing the institution to
11 obey the order of the department within such period as shall be
12 fixed by the court. Upon the filing of such petition, the court
13 shall allow a rule to show cause why it should not be granted.
14 Whenever, after a hearing upon the merits, it shall appear that
15 the order of the department was lawfully issued, the court shall
16 grant the petition of the department.

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

18 Section 503. Quo Warranto or Injunction Proceedings.--[A.
19 When any corporation subject to the supervision of the
20 department (1) has not had its capital, surplus, or expense fund
21 paid in as required by law, or (2) has not in any manner
22 exercised at least one of the powers conferred upon it by its
23 articles of incorporation within two years after the issuance of
24 its certificate of incorporation by the Department of State, or
25 (3) has formerly exercised any of its corporate powers but for a
26 period of two years has not exercised at least one of them, the
27 department shall notify the Department of Justice of these
28 facts, and the Department of Justice may then proceed by quo
29 warranto against such corporation, in the manner provided by
30 law, to oust it from its corporate powers and privileges.]

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

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

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

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

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

27 Section 504. Taking of Possession by Department.--A. The
28 department may take possession as receiver, which throughout
29 this act includes the authority to act as conservator, of the
30 business and property of any institution subject to its

1 supervision whenever it shall appear to it that such
2 institution--

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

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

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

10 (4) In the case of a corporation, has an impairment of its
11 capital below the minimum required by law or by its articles of
12 incorporation; and in the case of a person, has not made good a
13 depreciation in the value of the bonds or securities deposited
14 with the department below the minimum required by law; or after
15 due examination of the corporation or person, is determined to
16 be insolvent; or has a substantial dissipation of assets or
17 earnings or any unsafe or unsound practice or for any violation
18 of Federal or State financial law or pertinent regulation; or

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

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

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

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

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

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

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

28 C. In addition, whenever the secretary in his official
29 capacity is appointed receiver by any court of equity, as
30 provided by law, the department shall take possession of the

1 business and property, and the secretary shall act as receiver,
2 of the institution in the same way and with the same rights and
3 limitations as when the department takes possession in the
4 customary manner provided by this act.

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

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

1 supplement to the certificate of possession.

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

10 C. [In addition the secretary shall, as soon as possible,
11 file a certified copy of the certificate of possession, and of
12 any supplement thereto, in the office of the recorder of deeds
13 in each county in the Commonwealth, or with the proper official
14 in any other state or country, in which any real property shall
15 be situated which belongs to the institution or title to which
16 is in its name, or upon which there is a mortgage or other lien
17 which belongs to the institution or title to which is in its
18 name. Such copy shall be recorded in the current deed book, and
19 shall be indexed in the grantors' index in the name of the
20 institution and in the grantees' index in the name of the
21 secretary, or it shall be filed, indexed, or registered by
22 whatever other method is provided by the law of the particular
23 county, state, or country in which such real property is
24 located.] The certificate of possession filed with the
25 prothonotary shall constitute valid evidence that any real
26 property owned by or upon which there is a lien which belongs to
27 the institution has come into possession of the receiver as of
28 the date specified therein.

29 D. The receiver shall file with the prothonotary a
30 supplementary certificate of possession stating when the

1 receiver has transferred or surrendered possession of the
2 institution to another entity, and stating the entity's name,
3 address and telephone number.

4 Section 18. Section 606 of the act is repealed.

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

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

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

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

1 (2) He may surrender possession to the institution itself
2 when he is without funds to liquidate its business and property.
3 In such case, the secretary shall first accord to the
4 shareholders, and the depositors or other creditors of the
5 institution, a period of not less than two weeks in which to
6 advance sufficient funds for the secretary to liquidate the
7 business. Where such funds are advanced, they shall be
8 considered an expense of administration and shall be given the
9 same preference in the distribution of assets as any other
10 expenses of administration. Where possession has been
11 surrendered to an institution under such circumstances, the
12 institution may not conduct any business except the liquidation
13 of the assets. In the distribution of any moneys realized by the
14 institution on its assets, it shall follow the same order and
15 preference as is established by this act for distribution by the
16 secretary of the assets of an institution of which he is in
17 possession as receiver. Upon the approval of his account by the
18 court, and upon the filing of the supplement to the certificate
19 of possession, pursuant to the provisions of this section, the
20 secretary shall be relieved of all duties with reference to such
21 institution. However, if the department shall deem it advisable
22 to resume possession of the institution at any time, it may do
23 so in the same manner as is provided for the taking possession
24 of any institution, in which case the secretary shall again take
25 over possession and become receiver, with all the rights,
26 powers, and duties granted to, or imposed upon the secretary, as
27 receiver, by this act.

28 (3) He may surrender to the institution itself, or to any
29 other corporation or person, possession of all or part of the
30 business, property, moneys, credits, or other assets of the

1 institution of which he is in possession as receiver to permit
2 to be carried into effect a special plan of liquidation,
3 reorganization, or rehabilitation which has been approved by the
4 court and by (a) depositors and other creditors of the
5 institution, to whom is due [ninety per cent] a majority in
6 amount, regardless of the number, of the claims stated in
7 writing by the secretary to be due to depositors and other
8 creditors of such institution, and (b) the holders of a majority
9 of the shares of stock of such institution, if a corporation,
10 except that in the case of a [building and loan] savings
11 association, the approval of the holders of eighty per cent of
12 the shares of stock of such corporation shall be required.

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

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

1 situated.

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

11 Section 701. Status of Secretary as Receiver.--A. Except as
12 otherwise provided in this act, the secretary, when he has taken
13 possession of the business and property of an institution, shall
14 be responsible to the court in which the certificate of
15 possession is filed[, and not to any other court]. His rights,
16 powers, and duties shall be those of a general receiver
17 appointed by any court of equity in this Commonwealth, except as
18 such rights, powers, and duties are increased or limited by the
19 provisions of this act. The secretary as receiver may act as a
20 conservator of the institution. He shall be vested, in his
21 official capacity, with all the rights, titles, privileges,
22 powers, and duties of such institution[;] and of any
23 shareholder, member, accountholder, depositor, officer or
24 director of such institution with the title or the right to
25 possession of all property to which the institution has title or
26 the right to possession, including debts due, and liens and
27 other security therefor and ownership of the books, records and
28 assets of any previous legal custodian of such institution; and
29 with the institution's rights of action or redemption. This
30 shall be so whether such property and debts due, such liens or

1 other security therefor, or such rights of action or redemption,
2 are held in the name of such institution, or in the name of some
3 other corporation or person. He shall have power to execute in
4 his name, as receiver, any instrument incident to the exercise
5 of any power granted to or any duty imposed upon him as receiver
6 of such institution.

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

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

20 Section 702. Appointment of Deputy Receivers, Counsel,
21 Independent Receivers and Other Assistants.--A. The secretary
22 may appoint one or more official agents, to be known as deputy
23 receivers, to assist him in the management, reorganization,
24 consolidation, liquidation, or distribution of the assets and
25 affairs of any institution, or administration of fiduciary
26 accounts of which he has taken possession as receiver. The
27 secretary may delegate to each deputy receiver any duty imposed
28 upon, or any right or power granted to, him as receiver. The
29 secretary may also employ such other assistants as he deems
30 necessary, including such deputy attorneys general, special

1 deputy attorneys general, assistant deputy attorneys general, or
2 other attorneys as may be appointed by the [Department of
3 Justice] Office of Attorney General and assigned to the
4 secretary for the handling of any legal business pertaining to
5 the affairs or property of such institution. The secretary may
6 also retain to assist him in the management, reorganization,
7 consolidation, liquidation, or distribution, any officer or
8 other employe of the institution of which he has taken
9 possession.

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

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

28 Section 703. Exercise of Discretion by Secretary.--A.
29 Whenever, under this act, discretion as to whether, or the
30 manner in which, to exercise a power or fulfill a duty is vested

1 in the secretary in possession of an institution as receiver, he
2 shall, after such examination or investigation as shall seem
3 appropriate under the circumstances, take such action as he
4 deems to the best interests of the depositors or other
5 creditors[, and, in the case of building and loan associations,
6 also of the shareholders of such institution].

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

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

14 Section 704. Suspension or Continuation of Business.--The
15 secretary is authorized, upon taking possession of the business
16 and property of an institution as receiver, to continue or to
17 suspend the business for such period as he may deem necessary to
18 enable him to determine whether to surrender such possession to
19 the institution, to authorize a merger or consolidation, to seek
20 bids for the purchase of assets and assumption of liabilities of
21 the institution by any State or Federal institution [whose
22 principal place of business is located in Pennsylvania], to
23 liquidate the affairs of such institution, to organize a new
24 institution or to take such other action [as is] authorized by
25 law which is in the best interests of the estate. During such
26 period, he shall take any action he deems necessary to conserve
27 the assets and business, or to protect the best interests of the
28 estate. In addition, the secretary may enter into agreements,
29 conditional or otherwise, for the purchase of assets and
30 assumption of liabilities of the institution and take related

1 actions prior to and in reasonable anticipation of such
2 institution being placed into receivership by the secretary or
3 other banking agency.

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

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

20 Section 710. Notice to Holders of Assets; Power of Court to
21 Order Transfer.--A. Upon becoming receiver of any institution,
22 the secretary shall forthwith give notice in writing of such
23 fact to all corporations and persons having custody or
24 possession of any assets or other property which the institution
25 of which he is receiver owns or to which it has the right to
26 possession or custody for any purpose whatsoever. Such notice
27 shall be given at the addresses which appear for such
28 corporations and persons upon the records of the institution or,
29 if none appear there, then at their last known addresses.
30 However, if it shall appear to be in the best interests of the

1 institution, the court may order the secretary to substitute a
2 single advertisement in a newspaper or newspapers, for the
3 individual notice to the corporations and persons.

4 * * *

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

21 However, if the assets so pledged by any such institution are
22 accompanied by the obligation of the corporation or person
23 owning them, the pledgee shall have the power to exercise all
24 the rights, powers, and privileges contained in such obligation
25 held by such pledgee, including the sale of the assets.

26 * * *

27 Section 22. Section 712B and D of the act, amended July 2,
28 1935 (P.L.525, No.202), are amended to read:

29 Section 712. Liens, Judgments, and Executions; Assignments
30 of Claims.--* * *

1 B. In the case of an institution, of which the secretary has
2 taken possession, [which, at the time of possession, was a
3 member, in the case of a bank, bank and trust company, or
4 savings bank of the Federal Deposit Insurance Corporation, and
5 in the case of a building and loan association of the Federal
6 Savings and Loan Insurance Corporation,] the claims of
7 depositors[, and of shareholders of a building and loan
8 association,] shall be subrogated in favor of the Federal
9 Deposit Insurance Corporation [or the Federal Savings and Loan
10 Insurance Corporation, as the case may be,] to the extent that
11 the Federal Deposit Insurance Corporation [or the Federal
12 Savings and Loan Insurance Corporation] makes available,
13 pursuant to applicable laws of the United States, for payment,
14 the claims of such depositors [or such shareholders]: Provided,
15 That the rights of such depositors [or of such shareholders,] to
16 participate in and receive dividends or other distributions upon
17 that portion of their claims not made available for payment[,]
18 shall not be affected by such subrogation. When the claims of
19 depositors [or of shareholders] have been made available for
20 payment, in whole or in part, by the Federal Deposit Insurance
21 Corporation [or the Federal Savings and Loan Insurance
22 Corporation, as the case may be], the secretary shall file a
23 partial or final account, in the manner required by this act, of
24 his administration of the business and property of the
25 institution.

26 * * *

27 D. No execution or attachment, pending or otherwise, shall
28 respectively issue, or be proceeded with, against any property,
29 moneys, or assets, owned by, or legally in the custody or
30 possession of, an institution of which the secretary is in

1 possession as receiver. [, except that an execution may be
2 permitted by special leave of the court. In lieu of the right to
3 issue an attachment against money or property belonging to
4 others, which is legally in the custody or possession of such
5 institution, a.] A plaintiff may proceed as follows: He may give
6 written notice of his claim to the secretary, or to the deputy
7 receiver of such institution, and he shall thereafter present
8 proof in the regular manner provided by this act for the proof
9 of the claim, which he is attempting to attach. After the filing
10 of the regular account of the secretary, the court shall
11 adjudicate the matter as in the case of other disputed claims.
12 [Where two or more plaintiffs attempt to attach the same claim
13 in this manner, the order in which they shall take, as among
14 themselves, shall be determined by the order in which written
15 notice of their claims was received by the secretary.]

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

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

26 The secretary shall give notice to the depositors or other
27 creditors of the institution[, and, in the case of building and
28 loan associations, to the shareholders,] of the filing of the
29 petition for leave to transfer or convey such property pursuant
30 to the provisions of this section. Such notice shall be given at

1 the addresses which appear for such depositors[,] or other
2 creditors[, or shareholders] upon the books or other records of
3 the institution, or if none appear there, then at their last
4 known addresses. However, the court may, if it shall appear to
5 be in the best interests of the estate, order the secretary to
6 substitute a single advertisement in a newspaper or newspapers,
7 for the individual notice to the depositors and other
8 creditors[, and in the case of a building and loan association,
9 the shareholders]. The court shall grant at least ten days for
10 the filing of objections by the depositors or other creditors of
11 the institution [and, in the case of a building and loan
12 association, the shareholders of such institution].

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

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

1 the real property may be located.

2 [Where the order of the court provides for advertisement, it
3 shall in no case require that there be more than a single
4 insertion in one newspaper of general circulation in the county,
5 and, in first-class counties, in one legal newspaper. Where real
6 property which is to be sold is situated in a county other than
7 the one in which the institution is located, the court may also
8 authorize a single insertion in a newspaper of general
9 circulation in such other county, and, in first-class counties,
10 in one legal newspaper.]

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

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

1 the prothonotary of the court in which the certificate of
2 possession is filed.]

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

10 * * *

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

15 * * *

16 Section 24.1. Section 723 of the act is repealed.

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

19 Section 725. Rights of Subrogation.--When a public body of
20 the United States or this Commonwealth has made payment to any
21 depositor, it shall become subrogated to all rights of the
22 depositor against the institution in possession to the extent of
23 such payment.

24 Section 26. The act is amended by adding sections to read:

25 Section 726. Additional Powers of the Receiver.--In addition
26 to any other power, right, privilege, immunity, ability or other
27 authority conferred upon the secretary by this act, the
28 secretary, as receiver of any institution, shall have any power,
29 right, privilege, immunity, ability or other authority conferred
30 upon the Federal Deposit Insurance Corporation by Federal law

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

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

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

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

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

8 ARTICLE VIII

9 SECRETARY IN POSSESSION OF

10 TRUST COMPANY OR TRUST DEPARTMENT

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

13 Section 801. Institution as Fiduciary.--References in this
14 act to funds, property, or investments held in a fiduciary
15 capacity by an institution of which the secretary has taken
16 possession, shall apply only to funds, property, or investments
17 held in such fiduciary capacity by the trust company or trust
18 department of such institution, and shall not apply to funds,
19 property or investments which were held by the commercial
20 department of such institution.

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

27 B. The secretary, when in possession of an institution as
28 receiver, shall have all the rights, powers, and duties which
29 such institution had in its fiduciary capacity. He shall have
30 title to all the assets, including debts due, liens and other

1 security therefor, and all rights of action or redemption, of
2 all estates of which the institution, either alone or jointly
3 with someone else, was trustee, executor, administrator,
4 guardian, assignee, or other similar fiduciary, and shall have
5 the power to administer such estates. In pursuance of this
6 power, the secretary may institute any action at law or in
7 equity, or execute and sign any written instruments, which the
8 institution itself could have instituted, executed, or signed.

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

23 Except where otherwise specifically provided, references in
24 this act to the court which has exercised jurisdiction over an
25 estate of which an institution in possession of the secretary
26 was fiduciary, shall be construed to refer, in cases in which
27 the institution was executor or administrator, to the orphans'
28 court of the county of which the register of wills issued the
29 letters testamentary or letters of administration respectively,
30 and in all other cases, to the court of common pleas or the

1 orphans' court in which an account of the estate has been filed,
2 or which has, in any manner, exercised control or supervision
3 over the administration of such estate by the institution as
4 fiduciary.

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

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

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

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

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

26 Section 804. Appointment of Substituted Fiduciaries.--A.
27 Upon filing a supplement to the certificate of possession,
28 setting forth his determination to liquidate the affairs of the
29 institution, the secretary shall forthwith give written notice,
30 in so far as the giving of such notice is practicable, to [all

1 parties of whom he has notice, who are interested in any funds,
2 property, or investments held by such institution in a fiduciary
3 capacity.] settlers of the account that has not been assigned,
4 sold, or transferred to a successor trustee under section 802.1,
5 or if the settlor is deceased, to persons who are readily
6 ascertainable as beneficiaries of the account by their receipt
7 of statements of the account, and any co-fiduciary of the
8 account, of whom the secretary has notice. Such notice shall be
9 given at the addresses which appear for such parties upon the
10 books or records of the institution, or if none appears there,
11 then at their last known address. Such notice shall require such
12 parties, within thirty days after the giving of notice, to apply
13 for the appointment of substituted fiduciaries[.], and shall
14 notify such parties that the receiver is statutorily stayed from
15 taking any action regarding the administration of the trust
16 accounts unless otherwise ordered by the court except for
17 transferring the trust account to a successor trustee or a
18 substituted fiduciary. Such application shall be made as
19 follows, with a copy of the application being mailed or
20 delivered to the secretary upon the filing of the application:
21 In any case in which the institution was executor or
22 administrator, application shall be made to the register of
23 wills having jurisdiction to grant new letters in such form as
24 the case shall require; in any other case, application shall be
25 made to any court which has exercised jurisdiction over the
26 estate, or if no court has exercised such jurisdiction, then to
27 the court of common pleas, or the orphans' court, of the county
28 in which the institution has its place of business. However, if
29 the instrument under which the fiduciary relationship was
30 established provides a particular method for the selection of

1 fiduciaries, such method shall be followed.

2 B. The court may, if it shall appear to be in the best
3 interests of the estate, order the secretary to substitute a
4 single advertisement in a newspaper or newspapers for the
5 individual notice to all such parties. Such notice shall require
6 such parties, within thirty days after the giving of notice, to
7 apply for the appointment of substituted fiduciaries, and shall
8 notify such parties that the receiver is statutorily stayed from
9 taking any action regarding the administration of the trust
10 accounts unless otherwise ordered by the court. The stay shall
11 not apply to transferring the trust account to a successor
12 trustee or a substituted fiduciary.

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

25 Section 805. [Transfer of Assets to Substituted Fiduciary
26 without Filing Account.--If a substituted fiduciary has been
27 appointed in accordance with the provisions of this act, and if
28 there is no dispute as to the amount or identity of the funds,
29 property, or investments of the particular estate, and as to the
30 fees, commissions, and expenses due either to the institution

1 before the secretary took possession or to the secretary as
2 receiver since the taking of possession, and if all the parties
3 in interest, being sui juris, agree in writing to waive an
4 accounting in court, the secretary in possession of an
5 institution as receiver, may transfer to such substituted
6 fiduciary all the funds, property, and investments of the
7 particular estate without filing an account in any court. Upon
8 such transfer, he shall procure from all the parties in interest
9 and from the substituted fiduciary a receipt and release in
10 full, which shall discharge the secretary and the institution
11 from any further duty or liability with reference to such
12 estate.] Notice of Transfer; Filing of Disputes.--Within thirty
13 days, or another period of time designated by the department, of
14 the sale, assignment or transfer of a trust account to a
15 successor trustee pursuant to section 802.1.A, or of the
16 appointment of a substituted fiduciary pursuant to section 804,
17 the successor trustee or substituted fiduciary shall provide
18 notice to settlors of the account, or if the settlor is
19 deceased, to persons who are readily ascertainable as
20 beneficiaries of the trust account by their receipt of
21 statements of the account, and any co-fiduciary of the account,
22 of whom the secretary has notice. With respect to trust accounts
23 that have not been transferred, assigned, or sold, the secretary
24 as receiver shall provide the notice required in this section.
25 The notice to such parties shall indicate that the account has
26 been sold, assigned or transferred to the successor trustee or
27 transferred to the substituted fiduciary. Such notice shall
28 require such parties within thirty days of receipt of the notice
29 to notify the receiver and the successor trustee or substituted
30 fiduciary if there is any dispute as to the amount or identity

1 of the funds, property, or investments of the estate, and as to
2 the fees, commissions, and expenses due either the institution
3 before the secretary took possession or to the secretary as
4 receiver since the taking of possession. If such parties do not
5 notify the secretary as receiver and the successor trustee or
6 substituted fiduciary of any dispute, no accounting in court
7 shall be required and the secretary and the institution in
8 receivership shall be discharged and released in full from any
9 further duty or liability with regard to such trust account.

10 Section 806. Filing of Account; Transfer of Assets to
11 Substituted Fiduciary.--A. Except in cases in which the
12 secretary is authorized by the provisions of this act to
13 transfer to a successor trustee or a substituted fiduciary,
14 without filing an account, the funds, property, or investments
15 of an estate of which the institution was fiduciary, he shall
16 file an account for every estate of which such institution was
17 fiduciary and of which the secretary received notice of a
18 dispute under section 805. The secretary, with the assistance of
19 the successor trustee or the substituted fiduciary, shall file
20 each such account upon the date fixed by the instrument creating
21 the fiduciary relationship, or if there is no such date fixed,
22 then as soon as expedient after the filing of a supplement to
23 the certificate of possession, setting forth his determination
24 to liquidate the affairs of the institution. Such account shall
25 be filed in the court which has exercised jurisdiction over the
26 particular estate, or if no court has yet exercised
27 jurisdiction, then in the court of common pleas, or the orphans'
28 court, of the county in which the place of business of the
29 institution is situated. [The secretary shall then transfer or
30 pay to the substituted fiduciary, appointed pursuant to the

1 provisions of this act, any funds, property, or investments in
2 his possession which belong to such estate. Such transfer or
3 payment shall be made in accordance with the order of the court
4 in which the account for such estate is filed. The court, in
5 directing such transfer or payment, may reserve for future
6 determination any question of surcharge.]

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

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

23 Section 807. Deficiencies in Assets Held by Institution as
24 Fiduciary.--Whenever the court, in which the secretary has filed
25 the account of an estate of which an institution in his
26 possession was fiduciary, shall, in the manner provided by law,
27 rule that there is a deficiency in the funds, property, or
28 investments of such estate, or that the institution is liable to
29 surcharge in respect thereto, the amount determined by such
30 court to be due shall constitute a claim against the institution

1 and shall be presented in the same manner as other claims,
2 except that it may be presented at any time within six months
3 after the appointment of a successor trustee or a substituted
4 fiduciary of the estate and the adjudication of the account of
5 such estate by the competent court. Such order or decree of such
6 court shall be conclusive as to the amount due, except for the
7 right of appeal provided by law. Any dispute as to the
8 classification or order of payment of such claim, as
9 distinguished from the amount, shall be adjudicated by the court
10 in which the certificate of possession is filed.

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

21 Section 30. Article IX of the act is repealed.

22 Section 31. Sections 1001, 1002, 1003A, 1004, 1006, 1007 and
23 1010 of the act are amended to read:

24 Section 1001. Notice to Depositors[, Shareholders,] and
25 Other Creditors.--After filing a supplement to the certificate
26 of possession, setting forth his determination to liquidate the
27 affairs of an institution of which he has taken possession as
28 receiver, the secretary shall forthwith give notice of such fact
29 to all corporations or persons who appear upon the books of the
30 institution as, or who are otherwise known to the secretary to

1 be or claim to be, depositors or other creditors [and, in the
2 case of a building and loan association, shareholders of such
3 institution]. He shall likewise give notice to any corporation
4 or person who, pursuant to the provisions of this act, has given
5 the secretary notice of his claim to the right of execution or
6 attachment against any assets, owned by, or legally in the
7 custody or possession of, the secretary as receiver of the
8 institution. Such notice shall be given at the addresses which
9 appear for such corporations or persons upon the books or other
10 records of the institution or, if none appear there, then at
11 their last known addresses. However, if it appears to be in the
12 best interests of the estate, the court may order the secretary
13 to substitute a single advertisement in a newspaper or
14 newspapers, for the individual notice to the corporations or
15 persons.

16 The notice to each depositor[, or, in the case of a building
17 and loan association, to each shareholder,] shall state the
18 amount which the books or other records of the institution show
19 to be due to such depositor [or shareholder]. It shall also
20 state that unless such depositor [or shareholder] shall, within
21 a specified time, present to the secretary for settlement, his
22 deposit or pass book, or other evidence of his account, showing
23 a different amount to be due, or unless such depositor [or
24 shareholder] shall, within a specified time from the date of
25 such notice, prove in the manner provided by this act that a
26 different amount is due, the amount shown to be due by the books
27 of the institution will be conclusively presumed to be correct,
28 unless the court, pursuant to the provisions of this act, grants
29 him an extension of time.

30 The notice to each creditor other than a depositor[, or in

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

8 The secretary shall also advertise in a newspaper or
9 newspapers, as provided in this act, the fact that he has
10 determined to liquidate the affairs of the institution, and that
11 he has filed an inventory and appraisal in the office of the
12 prothonotary. Such advertisement shall state that all
13 depositors[, or in the case of building and loan associations,
14 all shareholders,] must prove their claims within a specified
15 period or be bound by the amount shown by the books or records
16 of the institution to be due them, and that any corporation or
17 person not appearing upon the books of the institution to be a
18 depositor[, or in the case of a building and loan association, a
19 shareholder,] and not presenting his pass book, or other
20 evidence of the state of his account, or otherwise presenting
21 his claim, will be permanently barred from sharing in any
22 distribution of the assets of the institution, unless the court,
23 pursuant to the provisions of this act, grants him an extension
24 of time. It shall also state that all creditors, other than
25 depositors[, or in the case of building and loan associations,
26 other than shareholders,] not proving their claims in the manner
27 provided by this act and within a specified period will likewise
28 be permanently barred from sharing in any distribution of the
29 assets of the institution, except where the court, pursuant to
30 the provisions of this act, grants to a creditor an extension of

1 time.

2 The secretary shall specify as the last day upon which
3 depositors[, and creditors[, and in the case of a building and
4 loan association, shareholders,] can present their claims, a
5 date not less than [one hundred twenty] sixty days after the
6 taking of possession of the institution by him as receiver,
7 provided that such date shall be at least thirty days after the
8 date of the sending of such notice. However, claims based upon
9 deficiencies in, or surcharges with respect to funds, property,
10 or investments which such institution held in a fiduciary
11 capacity may be presented at any time within [six months] sixty
12 days after the appointment of a substituted fiduciary of the
13 estate of which such funds, property, or investments were a part
14 and the adjudication of the account of such estate by the
15 competent court.

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

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

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

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

1 to such depositor [or shareholder].

2 Section 1003. Proof of Claims of Creditors.--A. Creditors
3 other than depositors[, or in the case of a building and loan
4 association, other than shareholders,] shall not share in any
5 distribution of the assets of the institution, unless the
6 creditor, or someone for him, shall, within the time specified
7 by the secretary, pursuant to the provisions of this act,
8 present to the secretary a statement of his claim, together with
9 a copy of any book entries pertaining thereto, any note or other
10 instrument received as evidence thereof, and a list of any
11 collateral or agreement of pledge received in connection
12 therewith.

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

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

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

30 If the creditor shall be a corporation, such affidavit shall

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

4 * * *

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

18 Section 1006. Expenses of Administration.--Any reasonable
19 expenditure made by the secretary as receiver of an institution,
20 including any expense incurred in the management,
21 reorganization, consolidation, liquidation, or distribution of
22 the assets and affairs of the institution, and any compensation
23 paid to the deputy receiver or any other person employed to
24 assist the secretary in such management, reorganization,
25 consolidation, liquidation, or distribution, and to any deputy
26 attorney general, special deputy attorney general, assistant
27 deputy attorney general, or other attorney who has been assigned
28 by the [Department of Justice] Office of Attorney General to the
29 secretary to handle for him any legal business pertaining to the
30 affairs or property of such institution, shall be paid out of

1 the assets of the institution, provided it is included in any
2 partial or final account filed by the secretary, pursuant to the
3 provisions of this act, and is approved by the court in which
4 such account is filed.

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

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

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

24 The account shall present his administration of the estate,
25 including a statement of all receipts or expenditures by the
26 secretary, as receiver, a list of all claims which have been
27 allowed and a separate list of claims which have been objected
28 to or are disputed, showing as to all depositors[, and other
29 creditors[, and, in the case of a building and loan association,
30 shareholders,] their names and addresses, the amounts due or

1 claimed to be due to them, and any priorities in the order of
2 distribution granted to or claimed by them.

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

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

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

29 The secretary shall forthwith file with the court, under oath
30 or affirmation, a statement that he has, in the manner provided

1 by this act, sent both the notice of his determination to
2 liquidate and the notice of his filing of an account to all
3 corporations or persons entitled thereto, whose names appear in
4 the account, at the addresses stated therein. He shall also file
5 the proofs of publication of the advertisements which he has
6 inserted, pursuant to the provisions of this act, which
7 respectively set forth his determination to liquidate and his
8 filing of an account.

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

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

24 If the secretary has rejected any such deposit or claim, or
25 if any such exception has been filed, the court shall confirm
26 the account as to all other matters and claims. The secretary
27 may then declare and pay out of the funds available for
28 distribution, if any, a dividend, according to the priorities
29 established by law. The dividend shall be calculated as if all
30 deposits and other claims were valid and approved. The

1 secretary, before paying any such dividend, shall set apart the
2 proportion of such dividend which would be properly
3 apportionable to any claim which has been rejected by the
4 secretary, or to which an exception has been filed, if the
5 amount and the priority claimed were sustained by the court. If
6 any such claim shall be determined by the court to be valid, the
7 secretary shall pay to the corporation or person entitled
8 thereto the dividend which has been set apart in the manner
9 provided by this section. If any such claim shall be determined
10 by the court to be invalid, the dividend which has been set
11 apart in the manner provided by this section shall be
12 distributed in the order of the priorities established by law,
13 to those whose claims have been approved by the court.

14 B. The confirmation of any account after the adjudication of
15 all claims therein which have been rejected by the secretary, or
16 to which exceptions have been filed, and of all other exceptions
17 to such account, shall be conclusive as to all matters therein.
18 Except as otherwise provided in this act, no claim of any
19 depositor [or other creditor or, in the case of a building and
20 loan association, any shareholder,] shall be valid if not listed
21 and approved in the first account which has been filed.

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

28 C. If the receiver in all other respects is in a position to
29 close the receivership proceeding, the proposed closing is
30 sufficient grounds for the rejection of any remaining claim

1 based on an unliquidated or undetermined demand. The receiver
2 shall notify the claimant of the intention to close the
3 proceeding. If the demand is not liquidated or determined before
4 the sixty-first day after the date of the notice, the receiver
5 may reject the claim.

6 Section 32. Section 1011 of the act is repealed.

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

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

23 The secretary shall call a meeting of all the shareholders of
24 the institution by giving them written notice at least thirty
25 days before the day fixed for the meeting. At such meeting, the
26 shareholders shall elect by ballot a trustee or trustees, who
27 shall complete the liquidation. A majority of the shares present
28 in person or by proxy shall be necessary to elect such trustee
29 or trustees. The secretary shall file one copy of the
30 proceedings of such shareholders' meeting in his office, and one

1 in the office of the prothonotary. Both copies shall be prepared
2 by him under oath or affirmation.

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

7 The trustee or trustees who are thus elected by the
8 shareholders or appointed by the court shall give bond to the
9 Commonwealth, in such amount, with such surety and under such
10 conditions as the court may direct. The secretary shall then
11 transfer to such trustee or trustees all the assets of the
12 institution which are still in his possession.

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

20 Section 1013. Unclaimed Dividends.--Whenever, upon the audit
21 or adjudication of the final account of the secretary in
22 possession of an institution as receiver, there shall be and
23 remain in his possession any dividends which shall have been
24 awarded to any depositor or other creditor the whereabouts of
25 whom or of whose legal representatives the secretary has been
26 unable to ascertain, or any dividends which otherwise are by law
27 escheatable to the Commonwealth, he shall file in the court the
28 sworn statement required by law, and shall thereupon pay the
29 dividends into the State Treasury, through the Department of
30 Revenue, in accordance with the provisions of law, such moneys

1 to be subject to refund to any corporation or person entitled
2 thereto, pursuant to the provisions of law.

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

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

14 SECTION 34. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

15 SECTION 1104. PROTECTION OF EMPLOYES.--A. NO LICENSEE MAY
16 DISCHARGE, THREATEN OR OTHERWISE DISCRIMINATE OR RETALIATE
17 AGAINST AN EMPLOYEE REGARDING THE EMPLOYEE'S COMPENSATION, TERMS,
18 CONDITIONS, LOCATION OR PRIVILEGES OF EMPLOYMENT BECAUSE THE
19 EMPLOYEE OR A PERSON ACTING ON BEHALF OF THE EMPLOYEE MAKES A GOOD
20 FAITH REPORT OR IS ABOUT TO REPORT, VERBALLY OR IN WRITING, TO
21 THE EMPLOYER OR APPROPRIATE AUTHORITY A VIOLATION OF THIS ACT.

22 B. NO LICENSEE MAY DISCHARGE, THREATEN OR OTHERWISE
23 DISCRIMINATE OR RETALIATE AGAINST AN EMPLOYEE REGARDING THE
24 EMPLOYEE'S COMPENSATION, TERMS, CONDITIONS, LOCATION OR
25 PRIVILEGES OF EMPLOYMENT BECAUSE THE EMPLOYEE IS REQUESTED BY AN
26 APPROPRIATE AUTHORITY TO PARTICIPATE IN AN INVESTIGATION,
27 HEARING OR INQUIRY HELD BY AN APPROPRIATE AUTHORITY OR IN A
28 COURT ACTION RELATING TO A VIOLATION OF THIS ACT.

29 Section ~~34~~ 35. The Department of Banking shall have <—
30 authority to promulgate regulations to implement and administer

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

4 Section ~~35~~ 36. This act shall take effect immediately.

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