

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1511 Session of
1990

INTRODUCED BY LOEPER, BAKER, SHUMAKER, BRIGHTBILL AND PETERSON,
MARCH 13, 1990

REFERRED TO BANKING AND INSURANCE, MARCH 13, 1990

AN ACT

1 Amending the act of December 14, 1967 (P.L.746, No.345),
2 entitled "An act relating to and regulating the business of
3 savings associations heretofore designated under other acts
4 and special charters variously as building and loan
5 associations and savings and loan associations; defining the
6 rights, powers, duties, liabilities, and immunities of such
7 associations; affecting persons engaged in the business of
8 savings associations; affecting the members, account holders
9 and borrowers of such associations; affecting Federal savings
10 and loan associations whose principal office is located in
11 the Commonwealth; prohibiting the transaction of business in
12 this Commonwealth by foreign savings associations; conferring
13 powers and imposing duties on certain departments and
14 officers of the Commonwealth and on the courts, recorders of
15 deeds; creating a Savings Association Board and defining its
16 powers and duties; prohibiting certain actions and imposing
17 penalties, and repealing certain acts," providing for
18 reciprocal interstate operations; permitting the formation of
19 mutual holding companies; further providing for acquisitions
20 of the stock of a savings association; revising proxy rules;
21 and making repeals.

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

24 Section 1. Section 114 of the act of December 14, 1967
25 (P.L.746, No.345), known as the Savings Association Code of
26 1967, amended or added December 18, 1986 (P.L.1723, No.206) and
27 December 21, 1988 (P.L.1427, No 174), is amended to read:

1 Section 114. Authorization of Reciprocal [Regional]
2 Interstate Operations of Savings Associations.--(a) The
3 following words and phrases when used in this section shall
4 have, unless the context clearly indicates otherwise, the
5 following meanings:

6 (1) "Acquire," to acquire (as defined in section 212(a)(1))
7 five percent or more of the voting stock of an entity and shall
8 also mean a merger or consolidation or a purchase of assets and
9 an assumption of liabilities, other than in the regular course
10 of business.

11 (2) "Bank holding company," the same meaning as that term
12 has under the Bank Holding Company Act of 1956, 12 U.S.C. §
13 1841(a).

14 (3) "Branch," an office which performs the functions
15 described in section 102(5).

16 (4) "Control," the power, directly or indirectly, to direct
17 the management or policies of an entity or to vote twenty-five
18 percent or more of any class of voting securities of an entity.

19 (5) "Entity," any corporation, partnership, association or
20 similar organization, including banks and thrift institutions.

21 (6) "Foreign association," a savings and loan association or
22 building and loan association located in and organized and
23 operating under the laws of a state other than Pennsylvania and
24 a Federal association, as defined in 12 U.S.C. § 1462(d), that
25 is located in a state other than Pennsylvania.

26 (7) "Foreign association holding company," an entity which
27 controls one or more foreign associations and is located in a
28 state other than Pennsylvania.

29 (8) "Foreign savings bank," a savings bank located in and
30 organized and operating under the laws of a state other than

1 Pennsylvania.

2 (9) "Foreign thrift institution," a foreign savings bank or
3 a foreign association.

4 (10) "Foreign thrift institution holding company," an entity
5 which controls one or more foreign thrift institutions and is
6 located in a state other than Pennsylvania.

7 [(6)] (11) "Pennsylvania association," an association as
8 defined in section 102(3) and a Federal association, as defined
9 in 12 U.S.C. § 1462(d), that is located in Pennsylvania.

10 [(7)] (12) "Pennsylvania association holding company," an
11 entity which controls one or more Pennsylvania associations and
12 is located in Pennsylvania.

13 [(8)] (13) "Pennsylvania savings bank," a savings bank as
14 defined in section 102(x) of the Banking Code of 1965.

15 [(9)] (14) "Pennsylvania thrift institution," a Pennsylvania
16 savings bank or a Pennsylvania association.

17 [(10)] (15) "Pennsylvania thrift institution holding
18 company," an entity which controls one or more Pennsylvania
19 thrift institutions and is located in Pennsylvania.

20 [(11)] (16) "Region," the States of Delaware, Indiana,
21 Kentucky, Maryland, New Jersey, Ohio, Virginia and West
22 Virginia, and the District of Columbia.

23 [(12)] (17) "Regional association," a savings and loan
24 association or building and loan association located in and
25 organized and operating under the laws of a state in the region
26 and a Federal association, as defined in 12 U.S.C. § 1462(d),
27 that is located in the region.

28 [(13)] (18) "Regional association holding company," an
29 entity which controls one or more regional associations and is
30 located in a state in the region.

1 [(14)] (19) "Regional savings bank," a savings bank located
2 in and organized and operating under the laws of a state in the
3 region.

4 [(15)] (20) "Regional thrift institution," a regional
5 savings bank or a regional association.

6 [(16)] (21) "Regional thrift institution holding company,"
7 an entity which controls one or more regional thrift
8 institutions and is located in a state in the region.

9 [(17)] (22) "Savings and loan holding company," the same
10 meaning as defined in 12 U.S.C. § 1730a(a)(1)(D).

11 [(18)] (23) "State," includes the District of Columbia.

12 [(19)] (24) State in which an entity is "located":

13 (i) with regard to a thrift institution, the state in which
14 its deposits are largest; and

15 (ii) with regard to a thrift institution holding company, an
16 association holding company, a bank holding company or a savings
17 and loan holding company, the state in which the total deposits
18 of its subsidiaries, including commercial banks, are largest:

19 Provided, That an entity or its legal successor that is located
20 in Pennsylvania on the effective date of this legislation shall
21 be deemed thereafter to be located in Pennsylvania regardless of
22 the location of its deposits or the deposits of its subsidiaries
23 if said entity has not been either acquired by an entity located
24 outside of Pennsylvania or a party to a merger or consolidation
25 transaction in which the holders of its voting shares
26 immediately prior to the transaction held less than fifty
27 percent of the voting shares of any class of stock in the entity
28 surviving after, or resulting from, the merger or consolidation.

29 (b) A [regional] foreign thrift institution or a [regional]
30 foreign thrift institution holding company may acquire a

1 Pennsylvania association or a Pennsylvania association holding
2 company if:

3 (1) The law of the state where the acquiring thrift
4 institution or thrift institution holding company is located and
5 the law of the state where any bank holding company or savings
6 and loan holding company which, directly or indirectly, owns or
7 controls the power to vote five percent or more of its shares is
8 located satisfies, in each case, the reciprocity requirement of
9 subsection (e);

10 (2) The acquiring thrift institution or thrift institution
11 holding company and any bank holding company or savings and loan
12 holding company which, directly or indirectly, owns or controls
13 the power to vote five percent or more of its shares is, in each
14 case, located in a state in the region or in Pennsylvania,
15 except that the requirement of location in the region or in
16 Pennsylvania will not be applicable to an acquisition
17 consummated after March 4, 1990; and

18 (3) Approval has been received from the department. When
19 considering a proposed acquisition by a [regional] foreign
20 thrift institution or a [regional] foreign thrift institution
21 holding company, the department shall give specific attention to
22 the effects of the acquisition on the availability, in this
23 Commonwealth, of those banking and basic transaction account
24 services set forth in subsections (j) and (k).

25 (c) A [regional] foreign association may, with the prior
26 written approval of the department, maintain as a branch any
27 office acquired as part of an acquisition effected under this
28 section or section 117 of the Banking Code of 1965.

29 (d) A [regional] foreign association may establish and
30 maintain branches in this Commonwealth if:

1 (1) The state in which the association is located and the
2 state in which any bank holding company or savings and loan
3 holding company which, directly or indirectly, owns or has the
4 power to vote five percent or more of its shares is located
5 satisfies, in each case, the reciprocity requirement of
6 subsection (e);

7 (2) The association and any bank holding company or savings
8 and loan company which, directly or indirectly, owns or controls
9 the power to vote five percent or more of its shares is, in each
10 case, located in a state in the region or in Pennsylvania,
11 except that the requirement of location in the region or in
12 Pennsylvania will not be applicable with respect to a branch
13 established after March 4, 1990; and

14 (3) The branch is approved by the department in the same
15 manner, and subject to the same conditions as are applicable to,
16 de novo branches of Pennsylvania associations under sections 403
17 and 404.

18 (e) (1) The law of another state is reciprocal under this
19 section to the extent the department determines it to be so. The
20 department's determination under this subsection shall include,
21 but is not limited to:

22 (i) with regard to acquisitions, whether the law of that
23 other state authorizes Pennsylvania associations and
24 Pennsylvania association holding companies to acquire [regional]
25 foreign thrift institutions and [regional] foreign thrift
26 institution holding companies located in that state on terms and
27 conditions reasonably equivalent to those applicable to
28 acquisitions by [regional] foreign thrift institutions and
29 [regional] foreign thrift institution holding companies of
30 Pennsylvania associations or Pennsylvania association holding

1 companies and whether the law of that other state imposes
2 conditions on the acquisition by Pennsylvania associations or
3 Pennsylvania association holding companies of [regional] foreign
4 thrift institutions or [regional] foreign thrift institution
5 holding companies located in that state that are substantially
6 more onerous than those imposed on the same acquisitions by
7 thrift institutions or thrift institution holding companies
8 located in that state; and

9 (ii) with regard to branching, whether the law of that other
10 state authorizes Pennsylvania associations to establish or
11 maintain branches in that state on terms and conditions
12 reasonably equivalent to those applicable to the establishment
13 or maintenance of branches in Pennsylvania by associations
14 located in that state and on terms and conditions reasonably
15 equivalent to those applicable to the establishment of branches
16 in that state by an association located in that state.

17 (2) The department need not determine that the law of
18 another state fails to meet the reciprocity requirement of this
19 section solely by reason of the fact that that law does not
20 allow Pennsylvania associations or Pennsylvania association
21 holding companies to engage in a particular type of branching or
22 acquisition or imposes conditions on such branching or
23 acquisition that are substantially more onerous than those
24 imposed on the same activities of thrift institutions or thrift
25 institution holding companies located in that state. However, in
26 such circumstances, the department shall find reciprocity only
27 after imposing on the thrift institutions and thrift institution
28 holding companies located in that state conditions and
29 limitations on branching and acquisitions in Pennsylvania
30 substantially similar to those imposed on branching and

1 acquisitions in that state by Pennsylvania associations and
2 association holding companies.

3 (3) The department may determine that the law of another
4 state is not reciprocal regarding a particular type of branching
5 or acquisition if the law of that other state does not allow all
6 Pennsylvania associations or, alternatively, all Pennsylvania
7 association holding companies to engage on equal terms with each
8 other in the particular type of branching or acquisition. The
9 department shall determine that the law of another state is not
10 reciprocal regarding a particular type of branching or
11 acquisition if the law of that other state does not allow
12 federally chartered Pennsylvania associations (or federally
13 chartered Pennsylvania associations converted from State-
14 chartered Pennsylvania associations or Pennsylvania savings
15 banks) or their holding companies to engage in the particular
16 type of branching or acquisition on equal terms with State-
17 chartered Pennsylvania associations or their holding companies.

18 (f) In addition to the powers granted elsewhere in this
19 section and in other provisions of Pennsylvania law, the
20 department is authorized to impose any conditions or
21 requirements it deems appropriate, in light of the purposes of
22 this act, on thrift institutions and thrift institution holding
23 companies acquired or operating, directly or indirectly, in
24 Pennsylvania under this section. Such conditions or requirements
25 include, but are not limited to, provisions for examinations,
26 reports and the payment of fees. The department may accept
27 examinations and other reports of Federal and state regulators
28 and may enter into agreements with Federal and state regulators
29 for the exchange of information, including examination reports.

30 (g) If a [regional] foreign thrift institution or [regional]

1 foreign thrift institution holding company [located in another
2 state] which has acquired a Pennsylvania association or a
3 Pennsylvania association holding company or has established a
4 branch in Pennsylvania under this section shall have a change of
5 circumstances so that it no longer satisfies the conditions of
6 subsections (b) and [(c)] (d) (either by reason of a change in
7 the place in which it is located or by reason of acquisition by
8 a bank holding company or a savings and loan holding company
9 located in a state which does not satisfy the conditions of
10 subsection (b) or [(c)] (d) of five percent or more of its
11 voting shares, or the power to vote those shares), said
12 [regional] foreign thrift institution or [regional] foreign
13 thrift institution holding company shall divest each
14 Pennsylvania association, association holding company and branch
15 it has acquired or established prior to entering into a
16 voluntary combination which causes such change of circumstances
17 or within one year (or such longer period of not more than an
18 additional year as the department may allow, in writing) after
19 the occurrence of an event other than a voluntary combination,
20 which causes the change in circumstances.

21 (h) The purpose of this section is solely to authorize
22 [regional,] reciprocal interstate operations by associations and
23 savings banks, and this section shall not be construed to
24 authorize any acquisition or the establishment of any branch by
25 any entity located in another state except as expressly provided
26 in this section. In the event that any limitation on the
27 geographical location of entities granted acquisition or
28 branching powers by this section is held to be invalid by a
29 final order of a court which is not subject to further review or
30 appeal, the authorization of this section shall terminate

1 immediately. Any acquisition or branch establishment consummated
2 pursuant to this section prior to such termination shall not be
3 affected thereby.

4 (i) A Pennsylvania association or Pennsylvania association
5 holding company which proposes to acquire a thrift institution
6 or thrift institution holding company located in another state
7 shall file an application for approval by the department in such
8 form and upon payment of such fee as the department shall
9 prescribe and shall supplement such application with such
10 additional information as the department may reasonably request.
11 The department shall conduct such investigation as it deems
12 necessary to determine whether to approve or disapprove the
13 application. The investigation shall include consideration of
14 the effects the proposed acquisition would have on the
15 availability, in this Commonwealth, of those banking services
16 and basic transaction account services set forth in subsections
17 (j) and (k). Within sixty days after receipt of the application
18 or within a longer period, not in excess of thirty days, after
19 receipt from the applicant of additional information requested
20 by the department, the department shall approve or disapprove
21 the proposed acquisition and give written notice of its decision
22 to the applicant. In approving an acquisition under this
23 section, the department may place conditions upon such approval
24 and incorporate such terms and agreements as are deemed
25 necessary to effect the purposes of this act.

26 (j) The department shall have the authority to assure that
27 interstate thrift acquisitions authorized by this section will
28 not diminish reasonable availability of banking services to all
29 segments of the public and economy of this Commonwealth, with
30 special emphasis on economic development and the financing of

1 enterprises to the end that employment opportunities will be
2 either increased or, where there is the prospect of reduction,
3 retained. Upon receipt of an application for approval of an
4 acquisition by a company located in another state under
5 subsection (b) or approval of an acquisition in another state by
6 a Pennsylvania association or Pennsylvania association holding
7 company under subsection (i), the department shall review the
8 credit practices and policies of each Pennsylvania association
9 or Pennsylvania association holding company which is involved in
10 the proposed transaction. Such review shall determine the
11 overall performance of such company or institution in providing
12 credit and financial services to individuals and business
13 enterprises in the communities which it serves in the light of
14 its role as a thrift institution, its resources, its capital and
15 its income, the particular needs of such communities,
16 competition and alternative sources of credit. With respect to
17 individuals, there shall be a review of consumer loans,
18 residential mortgages, home improvement loans and student loans,
19 particularly to residents of low-income and moderate-income
20 neighborhoods. With respect to business enterprises, there shall
21 be a review of extensions of credit and investments intended to
22 promote economic development and creation, or retention where
23 there is the prospect of reduction, of employment opportunities,
24 including, without limitation, Small Business Administration and
25 other small business loans, industrial development loans,
26 financing of employe stock option plans and leveraged buy-outs
27 of businesses by employes, financing of non-profit community
28 development projects, loans and investments intended to maintain
29 existing businesses and to encourage economic expansion and job
30 opportunities, and loans and investments to promote

1 participation by businesses in this Commonwealth in
2 international trade and to increase exports. The review by the
3 department shall also include all other activities of the
4 institution or company deemed to be suitable to its particular
5 circumstances and the communities served. If the department
6 determines that the overall performance of the institution or
7 company has not been materially deficient and that it justifies
8 the conclusion that the institution or company does and will
9 provide suitable credit and financial services to its
10 communities, it may approve the application without imposing any
11 terms or conditions but otherwise may impose such terms and
12 conditions as it deems appropriate to improve such overall
13 performance over a stated period of time. The department shall,
14 from time to time, review the continuing overall performance of
15 each such institution or company after an acquisition and, if it
16 finds that its overall performance has not continued to be
17 satisfactory, shall issue such order to the applicant as it
18 deems appropriate.

19 (k) The department shall have the authority to assure that
20 thrift institution holding companies and thrift institutions
21 that become part of interstate banking organizations by reason
22 of acquisitions requiring approval under this section make basic
23 transaction account services available to the public. For this
24 purpose the department shall obtain, from all sources available
25 to it or through such studies as it may commission, adequate
26 information to determine:

27 (1) The needs of the public and, in particular, individuals
28 with low or moderate income, for a basic checking or other
29 transaction account.

30 (2) The principal characteristics that such an account

1 should have, such as the number of checks, deposits and other
2 items for which a minimum charge may be made, the amount or rate
3 of such minimum charge, and the forms of identification that may
4 be required for opening and using such an account.

5 (3) The existing availability of basic accounts with some or
6 all of such principal characteristics currently offered by
7 depository institutions, including applicants under this
8 section, in separate communities of the Commonwealth.

9 An applicant shall, at the request of the department, supply
10 information to the department with respect to such accounts
11 offered by the applicant and by each institution which is a
12 subsidiary of the applicant. The department may approve an
13 application prior to the time it has acquired the information
14 required by this section, but the applicant and each institution
15 which is a subsidiary of the applicant shall be subject, both
16 before and after an approval of the acquisition under this
17 section, to requirements imposed by the department, from time to
18 time, to assure to the public, in the communities served by the
19 institution, the continuing availability of the basic
20 transaction account services which the department has determined
21 the public needs.

22 (1) For the purpose of advising the department in the
23 conduct of its functions under subsections (j) and (k), the
24 advisory commission established by section 116(k) of the act of
25 November 30, 1965 (P.L.847, No.356), known as the "Banking Code
26 of 1965," is empowered and directed to provide information,
27 opinions and recommendations as to guidelines the department may
28 establish, from time to time, for the purpose of determining the
29 overall performance of an institution or company under
30 subsection (j) and the availability of basic transaction account

1 services under subsection (k). All decisions and determinations
2 made under this section shall be made by the department.

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

4 Section 116. Mutual Holding Companies.--(a) Notwithstanding
5 any other provision of this act, an association organized under
6 this act in mutual form may reorganize so as to become a holding
7 company by:

8 (1) chartering a subsidiary stock association, the stock of
9 which is wholly owned by the mutual association at the time of
10 the reorganization; and

11 (2) transferring the substantial part of its assets and
12 liabilities, including all of its liabilities which are insured
13 by any deposit insurance corporation, to the subsidiary stock
14 association.

15 (b) A reorganization is not authorized under this section
16 unless:

17 (1) a plan providing for such reorganization has been
18 approved by the affirmative vote of a majority of the board of
19 directors of the mutual association; and

20 (2) the plan has been submitted to and approved by the
21 affirmative vote of a majority of the members of the association
22 present and voting, in person or by proxy, at a meeting held on
23 not less than ten days' notice to all members.

24 (c) (1) At least sixty days prior to taking any action
25 described in subsection (a), a mutual association seeking to
26 establish a mutual holding company shall provide written notice
27 to the department. The notice shall contain such relevant
28 information as the department shall require by regulation or by
29 specific request in connection with any particular notice.

30 (2) Upon receipt of an application for approval of a plan of

1 reorganization authorized by this section, the department shall
2 conduct such investigation as it may deem necessary to determine
3 whether:

4 (i) the plan satisfies the requirements of this act; and
5 (ii) the plan adequately protects the interests of members
6 and creditors.

7 (3) Within sixty days after receipt of the application, the
8 department shall approve or disapprove the application on the
9 basis of its investigation and shall immediately give to the
10 association written notice of its decision, and in the event of
11 disapproval, a statement in detail of such grounds therefor as
12 are permitted by clause (4).

13 (4) The department may disapprove any proposed holding
14 company formation only if:

15 (i) the plan providing for such reorganization fails to
16 comply, or as implemented would fail to comply, with such
17 regulations as the department may promulgate from time to time;

18 (ii) such disapproval is necessary to prevent unsafe or
19 unsound practices;

20 (iii) the financial or management resources of the resulting
21 mutual holding company or the resulting association warrant
22 disapproval; or

23 (iv) the association fails to furnish the information
24 required under subsection (c)(1).

25 (5) At the time of the transaction described in subsection
26 (a), an association may, with the approval of the department,
27 retain capital assets at the holding company level to the extent
28 that such capital assets are not needed by the subsidiary stock
29 association in order for the subsidiary to satisfy applicable
30 regulatory requirements.

1 (d) A mutual holding company may engage only in the
2 following activities:

3 (1) investing in the stock of one or more financial
4 institution subsidiaries;

5 (2) acquiring one or more additional financial institution
6 subsidiaries through the merger of such financial institution
7 subsidiaries into a subsidiary of the holding company;

8 (3) subject to subsection (e), merging with or acquiring
9 another holding company, one of whose subsidiaries is a
10 financial institution subsidiary;

11 (4) investing in a corporation the capital stock of which is
12 available for purchase by an association under Federal law or
13 under this act;

14 (5) Engaging in such activities as are permitted, by statute
15 or regulation, to a holding company of a federally chartered
16 insured mutual institution under Federal law; and

17 (6) Engaging in such other activities as may be permitted by
18 the department.

19 (e) (1) If a mutual holding company acquires or merges with
20 another holding company pursuant to subsection (d)(3), the
21 holding company acquired or the holding company resulting from
22 such merger or acquisition may invest in only those assets and
23 engage in only those activities which are authorized under
24 subsection (d).

25 (2) Not later than two years following a merger or
26 acquisition described in subsection (d)(3), the acquired holding
27 company or the holding company resulting from such merger or
28 acquisition shall:

29 (i) dispose of any asset which is an asset in which a mutual
30 holding company may not invest under subsection (d); and

1 (ii) cease any activity which is an activity in which a
2 mutual holding company may not engage under subsection (d).

3 (f) The department shall have the authority to issue rules,
4 regulations and orders as may be necessary to properly
5 administer this section. Until the department has adopted
6 regulations pursuant to this section, the department shall not
7 approve any application by an association for approval of a plan
8 of reorganization into a mutual holding company.

9 (g) The following words and phrases when used in this
10 section shall have, unless the context clearly indicates
11 otherwise, the following meanings:

12 (1) "Mutual holding company," a corporation organized as a
13 holding company under this section.

14 (2) "Financial institution subsidiary," an association, a
15 bank, a bank and trust company, a trust company, a Federal
16 savings and loan association or savings bank which is located in
17 Pennsylvania, a savings bank, a regional thrift institution, or,
18 after March 4, 1990, a foreign thrift institution.

19 Section 3. Section 212 of the act, added April 9, 1982
20 (P.L.334, No.94), is amended to read:

21 Section 212. Acquisitions and Offers to Acquire Shares of
22 Permanent Reserve Fund Stock of Association.--(a) The following
23 words and phrases when used in this section shall have, unless
24 the context clearly indicates otherwise, the following meanings:

25 (1) "Acquire," obtaining legal or beneficial ownership of
26 shares, or voting rights of shares, whether obtained directly or
27 indirectly, through an intermediary or otherwise; beneficial
28 ownership by a person shall be deemed to include ownership by
29 another person which controls, is controlled by or is under
30 common control with such person and to include ownership by a

1 spouse or member of the family of such person; the acquisition
2 of options, warrants and rights to subscribe for, or to
3 purchase, shares and the acquisition of rights to obtain shares
4 through conversion or exchange shall be deemed an acquisition of
5 such shares.

6 (2) "Control," the power to elect a majority of the board of
7 directors of an institution or corporation.

8 (3) "Institution," a permanent reserve fund stock
9 association.

10 (4) "Ownership change," the same meaning as in section 382
11 of the Internal Revenue Code of 1986 (Public Law 99-514, 26
12 U.S.C. § 1 et seq.), as amended.

13 ~~[(4)]~~ (5) "Proposal to acquire," any offer or attempt to buy
14 or solicitation of an offer to sell or other attempt or offer to
15 acquire by any means, directly or indirectly, through an
16 intermediary or otherwise.

17 (b) Except as provided in subsection (i), it shall be
18 unlawful, without the prior written approval of the department
19 pursuant to this section, for any person to acquire, or to make
20 a proposal to acquire, shares of an institution or shares of a
21 corporation which controls an institution if the aggregate
22 number of shares held after such acquisition, whether or not any
23 prior acquisition had been approved by the department pursuant
24 to this section, would total more than:

25 (1) ten percent of any class of the outstanding shares of
26 such institution; or

27 (2) five percent of any such class, if such institution or
28 corporation had net operating loss carryforwards (as defined in
29 the Internal Revenue Code of 1986) in excess of twenty percent
30 of its total stockholders' equity, as reported in its most

1 recent publicly available annual financial statements.[, whether
2 or not any prior acquisition had been approved by the department
3 pursuant to this section.]

4 (c) If the approval of the department is required under
5 subsection (b), a person who intends to acquire, or to make a
6 proposal to acquire, shares of an institution or of a
7 corporation which controls an institution shall:

8 (1) File an application for approval in such form as the
9 department may prescribe,

10 (2) Deliver to the department from time to time such other
11 information as the department may require with such
12 certification of financial information and such verification by
13 oath or affirmation of other data as the department may specify,

14 (3) Pay such investigation fee as the department may
15 specify, and

16 (4) Except in the case of an applicant which is a domestic
17 corporation or a foreign corporation qualified to do business in
18 Pennsylvania, deliver to the department a written consent to
19 service of process in any action or suit arising out of or in
20 connection with the proposed acquisition through service of
21 process on the Secretary of Banking.

22 (d) Upon receipt of an application for approval and other
23 items required under subsection (c) the department shall conduct
24 an investigation to determine whether the acquisition, its
25 purposes and probable effects would be consistent with the
26 purposes of this act set forth in section 103(a), whether the
27 applicant, or its directors and officers in the case of a
28 corporation, and any proposed new officers or directors of the
29 institution involved would satisfy the test for incorporators,
30 directors and officers of a new institution under section

1 206(a), and whether the proposed acquisition would be
2 prejudicial to the interests of the depositors, creditors,
3 beneficiaries of fiduciary accounts or shareholders of the
4 institution or corporation involved. As part of its
5 investigation, the department shall transmit to the institution
6 or the corporation whose shares are proposed to be acquired a
7 copy of the application and all other information received from
8 the applicant, except such information which the department
9 determines should be kept confidential, for the purpose of
10 receiving such comments thereon as such institution or
11 corporation shall transmit to the department upon its request.

12 (e) Within sixty days after receipt of an application under
13 subsection (c) or within a longer period not in excess of thirty
14 days after receipt from the applicant of additional information
15 required by the department, the department shall approve or
16 disapprove the proposed acquisition and give written notice of
17 its decision to the applicant and the institution or corporation
18 whose shares are proposed to be acquired. If the department
19 approves a proposed acquisition which may result in a change of
20 control or ownership change of such institution or corporation
21 it may impose conditions to be observed after such acquisition
22 with respect to transactions between the institution involved
23 and the applicant or affiliate of the applicant, with respect to
24 dividends or distributions by such institutions, with respect to
25 employe relations, with respect to reimbursement for any loss
26 occasioned by such ownership change or with respect to such
27 other matters as the department may deem advisable on the basis
28 of the purposes of this act set forth in section 103(a). The
29 decision of the department shall be subject to review by the
30 Commonwealth Court in the manner provided by law.

1 (f) A proposal to acquire shares which is made to all or
2 substantially all of the shareholders of an institution or a
3 corporation which controls an institution shall, to the extent
4 required by the department in approving the proposal, provide
5 that the proposal will remain open for a specified minimum
6 period of time, that shares may be withdrawn from deposit prior
7 to the time the person making the proposal becomes bound to
8 acquire them and that there will be pro rata acceptance of
9 shares offered or deposited if they exceed the number proposed
10 to be acquired.

11 (g) It shall be unlawful for any person directly or
12 indirectly to make any untrue statement of a material fact or to
13 omit to state a material fact necessary in order to make the
14 statements made, in the light of the circumstances in which they
15 were made, not misleading in connection with any acquisition of,
16 or proposal to acquire, shares within the scope of this section
17 or in any application or submission of information to the
18 department under subsection (c).

19 (h) The enforcement and implementation of this section shall
20 be subject to regulation by the department.

21 (i) No approval under this section shall be required for an
22 acquisition or proposal to acquire shares in the case of either:

23 (1) An acquisition or proposal to acquire shares by the
24 issuer thereof or by a person who at the time controls the
25 institution or corporation whose shares are proposed to be
26 acquired,

27 (2) A merger or consolidation which requires the approval of
28 the department or the Federal Home Loan Bank Board,

29 (3) A transaction by a broker-dealer who does no more than
30 perform the customary broker's function in transactions on a

1 stock exchange or in the over-the-counter market, who receives
2 no more than the customary broker's commission and who does not
3 solicit, or arrange for the solicitation of orders, or

4 (4) A transaction of a type exempted by regulation of the
5 department in the light of the purposes of this act set forth in
6 section 103(a).

7 (5) An acquisition or proposal to acquire shares by the
8 issuers tax qualified employe benefit program.

9 (j) (1) Any person who acquires or proposes to acquire
10 shares of an institution or of a corporation which controls an
11 institution in violation of this section or who violates
12 subsection (g) shall be guilty of a misdemeanor and shall upon
13 conviction be subject, in the case of an individual, to
14 imprisonment for a period not exceeding five years or a fine not
15 exceeding five thousand dollars (\$5,000), or both, and, in the
16 case of any other person, to a fine not exceeding fifty thousand
17 dollars (\$50,000).

18 (2) Any person who violates any provision of this section
19 shall be liable to any institution or corporation or shareholder
20 thereof damaged thereby and, in the discretion of the court, for
21 punitive damages. The provisions of this section shall be
22 enforceable in any administrative action, action or suit
23 instituted by the department or by any such institution,
24 corporation or shareholder to enjoin or restrain any violation
25 or threatened violation of that section.

26 Section 4. Section 502(b) of the act is amended to read:

27 Section 502. Number and Qualifications of Directors.--* * *

28 (b) Each director shall be a citizen of the United States
29 [and at least two-thirds of the directors shall be residents of
30 Pennsylvania].

1 Section 5. Section 513 of the act is repealed.

2 Section 6. Section 604(b) of the act is amended to read:

3 Section 604. Voting Rights of Members.--* * *

4 (b) A proxy:

5 (1) Shall be in writing and filed with the secretary of the
6 association. Except as otherwise provided in the association's
7 bylaws, a proxy shall be filed with the secretary not less than
8 five days prior to the meeting at which the proxy is to be
9 exercised.

10 (2) Shall, unless coupled with an interest, be revocable at
11 will notwithstanding any agreement to the contrary, but the
12 revocation of a proxy shall not be effective until written
13 notice thereof has been given to the association,

14 (3) Shall not be revoked by the death or incompetency of the
15 maker unless, before the vote is counted or the authority
16 exercised written notice of such death or of an adjudication of
17 such incompetence is received by the secretary.

18 Section 7. Section 816 of the act, amended December 21, 1988
19 (P.L.1427, No.174), is amended to read:

20 Section 816. Authorizing Payment of Earnings or Interest on
21 Savings Accounts.--The board of directors shall determine the
22 earnings or interest, if any, to be credited not less frequently
23 than annually to savings accounts on the books of the
24 association unless a savings account holder shall have requested
25 and the association shall have agreed to pay earnings or
26 interest on such savings account in cash. Earnings or interest
27 payable in cash may be paid by check or bank draft. [All
28 accounts of the same type and class shall be paid the same rate
29 of earnings or interest.]

30 Section 8. Section 922(n) and (s) of the act, amended or

1 added December 18, 1986 (P.L.1723, No.206) and December 21, 1988
2 (P.L.1427, No.174), are amended to read:

3 Section 922. Securities and Obligations.--An association may
4 invest its funds:

5 * * *

6 (n) In capital stock obligations or other securities of any
7 service corporation if the entire capital stock of such
8 corporation is available for purchase only by savings
9 associations and savings banks organized and existing under the
10 laws of the Commonwealth of Pennsylvania, by Federal savings and
11 loan associations having their home offices in the Commonwealth
12 of Pennsylvania, [and] by regional thrift institutions, as that
13 term is defined in section 114, and, after March 4, 1990, by
14 foreign thrift institutions, as that term is defined in section
15 114. The department shall have the right to define service
16 corporations and the activities thereof. An association may make
17 investments in service corporations up to three percent of its
18 assets plus such additional percentage of assets as the
19 department may by regulation authorize,

20 * * *

21 (s) With the prior approval of the department, in up to one
22 hundred percent of the stock of a bank, a bank and trust
23 company, a trust company, a bank holding company, a savings
24 bank, a regional thrift institution [or], a regional thrift
25 institution holding company, or, after March 4, 1990, a foreign
26 thrift institution or a foreign thrift institution holding
27 company, as those terms are defined in the Banking Code of 1965
28 and in section 114.

29 Section 9. Section 1101(b.1) of the act, added December 18,
30 1986 (P.L.1723, No.206), is amended to read:

1 Section 1101. Mergers, Consolidations and Conversions.--* *

2 *

3 (b.1) Upon compliance with the requirements of this article,
4 one or more associations may merge or consolidate with a
5 regional thrift institution and, after March 4, 1990, with a
6 foreign thrift institution, as those terms are defined in, and
7 subject to any applicable limits of, section 114.

8 * * *

9 Section 10. This act shall take effect immediately.