

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1969 Session of
2011

INTRODUCED BY HESS, FARRY, DALEY, FLECK, MARSHALL, CUTLER,
KRIEGER, STERN, STURLA, BOYD, QUINN AND YOUNGBLOOD,
NOVEMBER 9, 2011

REFERRED TO COMMITTEE ON COMMERCE, NOVEMBER 9, 2011

AN ACT

1 Amending the act of November 30, 1965 (P.L.847, No.356),
2 entitled "An act relating to and regulating the business of
3 banking and the exercise by corporations of fiduciary powers;
4 affecting persons engaged in the business of banking and
5 corporations exercising fiduciary powers and affiliates of
6 such persons; affecting the shareholders of such persons and
7 the directors, trustees, officers, attorneys and employes of
8 such persons and of the affiliates of such persons; affecting
9 national banks located in the Commonwealth; affecting persons
10 dealing with persons engaged in the business of banking,
11 corporations exercising fiduciary powers and national banks;
12 conferring powers and imposing duties on the Banking Board,
13 on certain departments and officers of the Commonwealth and
14 on courts, prothonotaries, clerks and recorders of deeds;
15 providing penalties; and repealing certain acts and parts of
16 acts," further providing for additional powers of
17 incorporated institutions related to conduct of business;
18 providing for ownership of property; and further providing
19 for names permitted to be used and for prohibition of
20 adoption, use or advertisement of certain names, titles and
21 descriptions.

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

24 Section 1. Section 202(d) and (e) of the act of November 30,
25 1965 (P.L.847, No.356), known as the Banking Code of 1965,
26 amended April 8, 1982 (P.L.262, No.79), are amended to read:
27 Section 202. Additional Powers of Incorporated Institutions

1 Related to Conduct of Business

2 An incorporated institution shall have in addition to other
3 powers granted by this act or its articles and subject to the
4 limitations and restrictions contained in this act or in its
5 articles:

6 * * *

7 (d) Stock in corporation holding realty and facilities--the
8 power to acquire and hold in an amount approved by the
9 Department, shares of stock of a corporation which owns real
10 property which the institution could acquire and hold in its own
11 name under [clauses (i), (ii) and (iii) of subsection (e) of
12 this section] section 207 and shares of stock of a corporation
13 solely for the purpose of providing data processing facilities
14 for the institution or for the institution and others;

15 [(e) Ownership of real property--the power to acquire and
16 hold such real property as it:

17 (i) occupies or intends to occupy for the transaction of
18 its business or partly so occupies and partly leases,

19 (ii) acquires for the purpose of providing parking
20 facilities for the use of its customers, officers and
21 employes, or

22 (iii) acquires solely or jointly with others for the
23 purpose of providing data processing facilities for the
24 institution or for the institution and others subject to the
25 limitation that the book value of all such real property, of
26 all furniture, fixtures and equipment acquired in connection
27 with any real property owned or leased by the institution, of
28 all alterations of buildings on real property owned or leased
29 by the institution, of all shares of stock or corporations
30 acquired under subsection (d) of this section, and

investments in obligations of or for the benefit of corporations described in subsection (d) of this section or loans upon the security of the stock of such corporations shall not exceed twenty-five percent of the aggregate of surplus, unallocated reserves, undivided profits and subordinated securities in the case of a mutual savings bank, or twenty-five percent of the aggregate of capital, surplus, undivided profits and capital securities in the case of any other institution, or such larger amount as may be approved by the department, and subject to the requirement that estimates of costs of any building on real property owned or leased by the institution shall be submitted to the department for its approval prior to the erection thereof;]

* * *

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

Section 207. Ownership of Property

(a) Investment in real estate necessary for the transaction of business--An incorporated institution may invest in real estate that is necessary for the transaction of its business.

(b) Permissible means of holding--An incorporated institution may acquire and hold real estate under this section by any reasonable and prudent means, including ownership in fee, a leasehold estate or in an interest in a cooperative, condominium or planned community. The incorporated institution may hold this real estate directly or through one or more subsidiaries.

(c) Fixed assets--An incorporated institution may own fixed assets necessary for the transaction of its business, such as fixtures, furniture and data processing equipment.

(d) Investment in bank premises--An incorporated institution

1 may invest in bank premises or in certain bank premises related
2 investments, loans or indebtedness, according to the procedures
3 under subsection (e).

4 (e) Application requirement for investment in bank
5 premises--An incorporated institution shall submit an
6 application to the department to invest in bank premises, or in
7 the stock, bonds, debentures or other obligations of any
8 corporation holding the premises of the incorporated
9 institution, or to make loans to or upon the security of the
10 stock of the corporation, if the aggregate of all the
11 investments and loans, together with the indebtedness incurred
12 by the corporation that is an affiliate of the incorporated
13 institution, as defined under section 221a of the Banking Act of
14 1933 (48 Stat. 162, 12 U.S.C. § 221a), will exceed the amount of
15 the capital stock of the incorporated institution.

16 (f) Contents of application--The application shall include
17 all of the following:

18 (i) A description of the incorporated institution's
19 present investment in bank premises.

20 (ii) The investment in bank premises that the
21 incorporated institution intends to make and the business
22 reason for making the investment.

23 (iii) The amount by which the incorporated institution's
24 aggregate investment will exceed the amount of the
25 incorporated institution's capital stock.

26 (g) Approval of application--An application for incorporated
27 institution investment in bank premises or in certain bank
28 premises' related investments, loans or indebtedness, as
29 described in this section, is deemed approved as of the
30 thirtieth day after the filing is received by the department,

1 unless the department notifies the incorporated institution
2 prior to that date that the filing presents a significant
3 supervisory or compliance concern or raises a significant legal
4 or policy issue. An approval for a specified amount under this
5 section remains valid up to that amount until the department
6 notifies the incorporated institution otherwise.

7 (h) Notice process--Notwithstanding subsection (e), an
8 incorporated institution that is rated 1 or 2 under the Uniform
9 Financial Institutions Rating System (CAMELS) may make an
10 aggregate investment in bank premises up to one hundred fifty
11 percent of the incorporated institution's capital and surplus
12 without the department's prior approval, provided that the
13 incorporated institution is well capitalized as defined in 12
14 CFR Pt. 325 (relating to capital maintenance) and will continue
15 to be well capitalized after the investment or loan is made.
16 However, the incorporated institution shall notify the
17 department in writing of the investment within thirty days after
18 the investment or loan is made. The written notice must include
19 a description of the incorporated institution's investment.

20 (i) Option to purchase--An unexercised option to purchase
21 bank premises or stock in a corporation holding bank premises is
22 not an investment in bank premises. An incorporated institution
23 must receive department approval to exercise the option if the
24 price of the option and the incorporated institution's other
25 investments in bank premises exceed the amount of the
26 incorporated institution's capital stock.

27 (j) Lease financing of public facilities--An incorporated
28 institution may purchase or construct a municipal building,
29 school building or other similar public facility and, as holder
30 of legal title, lease the facility to a municipality or other

public authority having resources sufficient to make all rental payments as they become due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

(k) Purchase of employee's residence--To facilitate the efficient use of incorporated institution personnel, an incorporated institution may purchase the residence of an employee who has been transferred to another area in order to spare the employee a loss in the prevailing real estate market. The incorporated institution shall arrange for early divestment of title to the property.

(l) Definitions for purpose of section--The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the following meanings:

(i) "Bank premises"--includes the following:

(A) Premises that are owned and occupied, or to be occupied, if under construction, by the incorporated institution, its branches or its consolidated subsidiaries.

(B) Capitalized leases and leasehold improvements, vaults and fixed machinery and equipment.

(C) Remodeling costs to existing premises.

(D) Real estate acquired and intended, in good faith, for use in future expansion.

(E) Parking facilities that are used by customers or employes of the incorporated institution, its branches and its consolidated subsidiaries.

(ii) "Capital and surplus"--

(A) a bank's tier 1 and tier 2 capital calculated under the risk-based capital standards set forth in

Appendix A to 12 CFR Pt. 325 (relating to capital maintenance) as reported in the bank's consolidated report of condition and income filed under section 1817(a) of the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. § 1817(a)); and

(B) The balance of a bank's allowance for loan and lease losses not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (A), as reported in the bank's consolidated report of condition and income filed under section 1817(a) of the Federal Deposit Insurance Act.

(iii) "Capital stock"--the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired.

(iv) "Real estate"--includes the following:

(A) Premises that are owned and occupied, or to be occupied, if under construction, by the incorporated institution, its branches or its consolidated subsidiaries.

(B) Real estate acquired and intended, in good faith, for use in future expansion.

(C) Parking facilities that are used by customers or employees of the incorporated institution, its branches and its consolidated subsidiaries.

Section 3. Section 802 of the act, amended July 6, 1984 (P.L.621, No.128) and repealed in part May 21, 1980 (P.L.173, No.51), is amended to read:

Section 802. Names Permitted to Be Used

(a) The name of an institution:

(i) may be in any language but shall be expressed in

English letters or characters;

(ii) in the case of a bank, bank and trust company or savings bank, shall contain in English the word "bank" or "banking" and [shall not contain either of the words "trust" or "savings"] may contain the word "trust" if the bank, bank and trust company or savings bank acts in a fiduciary or other representative capacity as authorized under Chapter 4;

[(iii) in the case of a bank and trust company, shall contain in English one or more of the words "bank", "banking", "trust" or "trusts", and shall not contain the word "savings";]

(iv) in the case of a trust company, shall contain in English the words "trust company" or "company for trusts" and shall not contain any of the words "bank", "banking" or "savings";

[(v) in the case of a savings bank, shall contain in English the words "savings bank" or "savings" and may contain the word "trust" if the savings bank acts in a fiduciary or other representative capacity as authorized in Chapter 4 of this act;]

(vi) in the case of a private bank, shall contain in English the words "private bank" or "unincorporated bank" and shall not contain either of the words "trust" or "savings";

(viii) shall not contain any word which may deceptively lead to the conclusion that the institution is authorized to perform any act or conduct any business which it is not authorized to perform or conduct or which is forbidden to it by law, its articles or otherwise;

(ix) shall not contain any of the words "Government",

1 "Official", "Federal", "National" or "United States" [or any
2 abbreviation of any such word]; and

3 (x) shall not be a name which would be unavailable for
4 use by a business corporation under section 202(B) of the
5 Business Corporation Law (dealing with names the same as, or
6 deceptively similar to, certain other names).

7 (b) An institution may, without regard to the provisions of
8 subsection (a) of this section, use:

9 (i) its name legally in use on the effective date of
10 this act, or

11 (ii) a name legally in use on the effective date of this
12 act by another institution which is adopted by:

13 (A) an institution which is the resulting
14 institution in a plan of merger or consolidation to which
15 the institution using the name is a party, or

16 (B) an institution which is incorporated under this
17 act in pursuance of a plan of segregating the banking
18 business and the trust business of the institution using
19 the name.

20 (C) An institution may adopt fictitious names
21 permitted under 54 Pa.C.S. Ch. 3 (relating to fictitious
22 names), provided that the fictitious names do not violate
23 subsection (a)(viii) or (ix).

24 Section 4. Section 805 of the act, amended July 6, 1984
25 (P.L.621, No.128), is amended to read:

26 Section 805. Prohibition of Adoption, Use or Advertisement of
27 Certain Names, Titles and Descriptions

28 (a) Deceptive names--No person shall adopt, use or advertise
29 any name, title or description which is deceptively similar to
30 the name of an institution subject to this act.

(b) Use of "bank", "banking" or "trust"--No person engaged in a financial business and having an office located in Pennsylvania shall adopt, use or advertise any name, title or description which contains any of the words "bank", "banking", "banker" or "trust" or the plural of any of such words except:

- (i) an institution subject to this act,
- (ii) a Federal Reserve Bank,
- (iii) a national bank,
- (iv) a Federal Intermediate Credit Bank, Federal Land Bank, Federal Home Loan Bank or a Bank for Cooperatives,
- (v) the International Bank for Reconstruction and Development,
- (vi) the Inter-American Development Bank, or
- (vii) a Pennsylvania bank holding company.

(c) Names in prior use--A person may, without regard to the provisions of subsections (a) and (b) of this section, use:

- (i) its name legally in use on the effective date of this act, or
- (ii) in the case of a corporation, a name legally in use on the effective date of this act by another corporation which is adopted by the resulting corporation in a plan of merger or consolidation to which the corporation using the name is a party.

(d) Duty of Department of State--The Department of State shall not approve as a corporate name, or register as a fictitious name, any name which would violate the provisions of this [section] chapter.

Section 5. This act shall take effect in 60 days.