

17:9A-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:9A-1 et al (Banking laws--various amendments to achieve parity with national banks)

LAWS OF: 1985 CHAPTER 528

BILL NO: S2350

Sponsor(s): O'Connor and Cowan

Date Introduced: October 22, 1984

Committee: Assembly: Banking and Insurance

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 13, 1986

Senate: February 28, 1986

Date of Approval: January 21, 1986

Following statements are attached if available:

Sponsor statement: Yes

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SENATE, No. 2350

STATE OF NEW JERSEY

INTRODUCED OCTOBER 22, 1984

By Senators O'CONNOR and COWAN

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the authority, operations and investment of banks, savings banks, bank holding companies and bank subsidiary corporations, amending P. L. 1959, c. 91, P. L. 1964, c. 202, P. L. 1969, c. 118 and P. L. 1979, c. 226 and amending and supplementing P. L. 1948, c. 67.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1948, c. 67 (C. 17:9A-1) is amended to
2 read as follows:

3 1. Definitions.

4 As used in this act, and except as otherwise expressly provided
5 in this act:

6 (1) "Bank" shall include the following:

7 (a) Every corporation heretofore organized pursuant to
8 the act entitled "An act concerning banks and banking (Re-
9 vision of 1899)," approved March 24, 1899;

10 (b) Every corporation heretofore organized pursuant to the
11 act entitled "An act concerning trust companies (Revision
12 of 1899)," approved March 24, 1899;

13 (c) Every corporation heretofore organized pursuant to
14 chapter 4 of Title 17 of the Revised Statutes;

15 (d) Every corporation, other than a savings bank, hereto-
16 fore authorized by any general or special law of this State to
17 transact business as a bank or as a trust company, or as both;

18 (e) Every corporation hereafter organized pursuant to
19 article 2 of this act;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted February 4, 1985.

**—Assembly committee amendments adopted December 12, 1985.

20 (2) "Banking institution" shall mean a bank, savings bank, and
21 a national banking association having its principal office in this
22 State;

23 (3) "Board of managers" of a savings bank shall include the
24 board of trustees of a savings bank;

25 (4) "Capital stock" shall include both common stock and pre-
26 ferred stock;

27 (5) "Certificate of incorporation," unless the context requires
28 otherwise, shall mean

29 (a) The certificate of incorporation, together with all
30 amendments thereto, of every bank and savings bank organized
31 pursuant to any general law of this State;

32 (b) The charter, together with all amendments thereto, of
33 every bank and savings bank organized pursuant to any special
34 law of this State;

35 (6) "Commissioner" shall mean the Commissioner of Banking
36 of New Jersey;

37 (7) "Department" shall mean the Department of Banking of
38 New Jersey;

39 (8) "Fiduciary" shall include trustee, executor, administrator,
40 receiver, guardian, assignee, and every other person occupying
41 any other lawful office or employment of trust;

42 (9) "Manager" of a savings bank shall include a trustee of a
43 savings bank;

44 (10) "Municipality" shall mean a city, town, township, village,
45 and borough of this State;

46 (11) "Population" shall mean the population as determined
47 by the latest federal census or as determined by the commissioner
48 from other information which he may deem reliable;

49 (12) "Qualified bank" shall mean

50 (a) A bank which has heretofore been authorized or which
51 shall hereafter be authorized to exercise any of the powers
52 authorized by section 28;

53 (b) A savings bank which has heretofore been authorized
54 or which shall hereafter be authorized to exercise any of the
55 powers authorized by section 28; and

56 (c) A national banking association having its principal
57 office in this State authorized to act as a fiduciary;

58 (13) "Savings bank" shall include the following:

59 (a) Every corporation heretofore organized pursuant to the
60 act entitled "An act concerning savings banks," approved
61 April 12, 1876;

62 (b) Every corporation heretofore organized pursuant to the

63 act entitled "An act concerning savings banks," approved
64 May 2, 1906;

65 (c) Every corporation heretofore organized pursuant to
66 chapter 6 of Title 17 of the Revised Statutes;

67 (d) Every corporation, other than a bank, authorized by
68 any general or special law of this State to carry on the business
69 of a savings bank or institution or society for savings;

70 (e) Every corporation hereafter organized pursuant to
71 article 3 of this act;

72 (14) "Branch office" of a bank or savings bank shall mean an
73 office, unit, station, facility, terminal, space or receptacle at a fixed
74 location other than a principal office, however designated, at which
75 any business that may be conducted in a principal office of a bank
76 or savings bank may be transacted. "Branch office" includes full
77 branch offices, minibranch offices and communication terminal
78 branch offices;

79 (15) "Full branch office" means a branch office of a bank or
80 savings bank not subject to the limitations or restrictions imposed
81 upon minibranch offices or communication terminal branch offices;

82 (16) "Minibranch office" means a branch office of a bank or sav-
83 ings bank which does not occupy more than 500 square feet of
84 floor space and which does not contain more than four teller
85 stations, manned by employees of the bank or savings bank;

86 (17) "Communication terminal branch office" means a branch
87 office of a bank or savings bank which is either manned by a bona
88 fide third party under contract to a bank or savings bank or un-
89 manned and which consists of equipment, structure or systems, by
90 means of which information relating to financial services rendered
91 to the public is transmitted and through which transactions with
92 banks and savings banks are consummated, either instantaneously
93 or otherwise;

94 (18) "Secondary mortgage loan" means a loan made to an indi-
95 vidual, association, joint venture, partnership, limited partnership
96 association, or any other group of individuals however organized,
97 except a corporation, which is secured in whole or in part by a lien
98 upon any interest in real property, *including, but not limited to,*
99 *shares of stock in a cooperative corporation,* created by a security
100 agreement, including a mortgage indenture, or any other similar
101 instrument or document, which real property is subject to one or
102 more prior mortgage liens and which is used as a dwelling, includ-
103 ing a dual purpose or combination type dwelling which is also used
104 as a business or commercial establishment, and has accommoda-
105 tions for not more than six families, except that a loan which: (a)

106 is to be repaid in 90 days or less; (b) is taken as security for a
 107 home repair contract executed in accordance with the provisions of
 108 P. L. 1960, c. 41 (C. 17:16C-62 et seq.); or (c) is the result of the
 109 private sale of a dwelling if title to the dwelling is in the name of
 110 the seller and the seller has resided in said dwelling for at least one
 111 year if the buyer is purchasing said dwelling for his own residence
 112 and, as part of the purchase price, executes a secondary mortgage
 113 in favor of the seller, shall not be included within the definition of
 114 "secondary mortgage loan."

1 2. Section 8 of P. L. 1979, c. 226 (C. 17:9A-24.9) is amended
 2 to read as follows:

3 8. Additional powers of banks and savings banks. In addition to
 4 the powers which banks and savings banks may otherwise exercise,
 5 every bank and savings bank, as defined in section 1 of "The Bank-
 6 ing Act of 1948," P. L. 1948, c. 67 *(C. 17:9A-1 et seq.)*, shall have
 7 power (1) to subscribe for, purchase and hold stock of one or more
 8 insurance companies organized under the laws of this State which
 9 have been or may hereafter be limited to insure banks, savings
 10 banks and other depository institutions (a) against loss from the
 11 defaults of persons in positions of trust, public or private, or
 12 against loss or damage on account of neglect or breaches of duty
 13 or obligations guaranteed by the insurer; and against loss of any
 14 bills of exchange, notes, checks, drafts, acceptances of drafts, bonds,
 15 securities, evidences of debt, deeds, mortgages, documents, gold or
 16 silver, bullion, currency, money, platinum and other precious
 17 metals, refined or unrefined and articles made therefrom, jewelry,
 18 watches, necklaces, bracelets, gems, precious and semiprecious
 19 stones, and also against loss resulting from damage, except by fire,
 20 to the insured's premises, furnishings, fixtures, equipment, safes
 21 and vaults therein caused by burglary, robbery, hold-up, theft or
 22 larceny, or attempt thereat. No such indemnity indemnifying
 23 against loss of any property as specified herein shall indemnify
 24 against the loss of any such property occurring while in the mail
 25 or in the custody or possession of a carrier for hire for the purpose
 26 of transportation, except for the purpose of transportation by an
 27 armored motor vehicle accompanied by one or more armed guards;
 27A and

28 (b) Against loss or damage by burglary, theft, larceny, robbery,
 29 forgery, fraud, vandalism or malicious mischief, or any one or
 30 more of such hazards; and against any and all kinds of loss or
 31 destruction of or damage to moneys, securities, currencies, scrip,
 32 coins, bullion, bonds, notes, drafts, acceptances of drafts, bills of
 33 exchange and other valuable papers or documents, except while in

34 the custody or possession of and being transported by a carrier for
35 hire or in the mail.

36 (2) To make loans and investments as authorized for associations
37 by [], and subject to the limitations of, subsection (J) (2) of [] section
38 155 of the "Savings and Loan Act (1963)," P. L. 1963, c. 144 (C.
39 17:12B-155).

40 (3) To make loans and investments as authorized for associa-
41 tions by, and subject to the limitations of, sections 157 *through* 160
42 *and* 162 through 164 of the "Savings and Loan Act (1963)," P. L.
43 1963, c. 144 (C. 17:12B-157 *through* C. 17:12B-160 *and* C.
44 17:12B-162 through C. 17:12B-164).

45 (4) To extend credit through the use of credit cards issued by it
46 through an arrangement with participating vendors, and without
47 limitation of the generality of the foregoing, to exercise all the
48 powers permitted to associations pursuant to subsection 18 of
49 section 48 of the "Savings and Loan Act (1963)," P. L. 1963, c. 144
50 (C. 17:12B-48).

51 (5) To make any investment authorized for associations by sec-
52 tion 165 of the "Savings and Loan Act (1963)," P. L. 1963, c. 144
53 (C. 17:12B-165), provided, however, that where reference is made
54 to State associations or federal associations therein such reference
55 for purposes of this act shall be deemed to refer to banking institu-
56 tions as defined in section 1 of "The Banking Act of 1948," P. L.
57 1948, c. 67 (C. 17:9A-1).

58 (6) *To exercise any powers and activities that have been or are*
59 *hereafter approved by regulation of the Board of Governors of the*
60 *Federal Reserve System as being so closely related to banking or*
61 *managing or controlling banks as to be a proper activity for a bank*
62 *holding company pursuant to the "Bank Holding Company Act of*
63 *1956," 70 Stat. 133 (12 U. S. C. § 1841 et seq.) and regulations*
64 *thereunder.*

65 (7) *To apply to the commissioner for authority, and if granted,*
66 *to exercise any power or activity that has been or is hereafter*
67 *deemed to be closely related to banking under the "Bank Holding*
68 *Company Act of 1956," 70 Stat. 133 (12 U. S. C. § 1841 et seq.)*
69 *and which has been permitted on an individual basis by order of*
70 *the Board of Governors of the Federal Reserve System.*

71 *(8) *To make loans, as defined in this subsection, pursuant to*
72 *which the parties may contract for and the bank or savings bank*
73 *may receive interest or other compensation at a rate **or rates***
74 *or in an amount that the bank or savings bank and the borrower*
75 *may agree upon, notwithstanding the provisions of any other law*
76 *of this State, except N. J. S. 2C:21-19, which limits the interest*
77 *rate or finance charge which would otherwise be applicable to the*

78 *loan. A loan, for the purposes of this subsection, includes loans in*
 79 *the amount of \$5,000.00 or more, payable on demand or in install-*
 80 *ments, and (a) which is for the purpose of acquiring or is secured*
 81 *by equipment used for business or commercial purposes or (b) is*
 82 *secured by (i) an interest in warehouse receipts, bills of lading, or*
 83 *other documents of title which are subject to chapter 7 of Title*
 84 *12A of the New Jersey Statutes, or (ii) by an interest in negotiable*
 85 *instruments or commercial paper which are subject to chapter 3 of*
 86 *Title 12A of the New Jersey Statutes, or (iii) by an interest in*
 87 *stocks, bonds, certificates of deposit or other securities which are*
 88 *subject to chapter 8 of Title 12A of the New Jersey Statutes, or*
 89 *(iv) by an interest in any combination of the foregoing.*

90 *(9) To engage in the business of providing data processing and*
 91 *computer services.*

92 *(10) To acquire, by purchase or otherwise, and to sell warrants,*
 93 *options or other similar rights to any class or classes of equity*
 94 *securities issued or to be issued by a corporation, if, at the time the*
 95 *warrants, options or other similar rights are acquired, the issuer,*
 96 *or its parent company, affiliate or subsidiary, is a borrower of*
 97 *funds loaned by the bank or savings bank, and if the acquisition*
 98 *by purchase or otherwise, and the sale of the warrants, options*
 99 *or other similar rights neither adds to the bank's or saving bank's*
 100 *credit risk nor increases the bank's or savings bank's financial*
 101 *liabilities.**

102 *The commissioner may, by regulation, prescribe the manner in*
 103 *which and the extent to which the powers enumerated in this*
 104 *section may be exercised, including whether they are to be*
 105 *exercised through a subsidiary corporation and may, by regula-*
 106 *tion, prescribe other powers, not otherwise expressly authorized*
 107 *or prohibited by law, which banks *and savings banks* may*
 108 ***[evercise]** **exercise**.*

1 3. Section 25 of P. L. 1948, c. 67 (C. 17:9A-25) is amended to
 2 read as follows:

3 25. Additional powers of banks.

4 In addition to the powers specified in section 24, every bank
 5 shall, subject to the provisions of this act, have the following
 6 powers, whether or not such powers are specifically set forth in its
 7 certificate of incorporation:

8 (1) To discount, buy, invest in, hold, assign, transfer, sell, and
 9 negotiate promissory notes, drafts, bills of exchange, mortgages,
 10 trade acceptances, bankers' acceptances, bonds, debentures, bonds
 11 or notes secured by mortgages, installment obligations, balances
 12 due on conditional sales, and other evidences of debt for its own
 13 account, or for the account of customers;

14 (2) To accept for payment at future dates drafts drawn upon
15 it by its customers;

16 (3) To issue letters of credit authorizing holders thereof to
17 draw drafts upon it or upon its correspondents at sight or on
18 time [not exceeding one year]; to guarantee[, for a period not
19 exceeding one year from the date of such guarantee,] the payment
20 by its customers of amounts due or to become due upon the pur-
21 chase by such customers of real or personal property;

22 (4) To receive interest and noninterest bearing demand and
23 time deposits to be repaid on such terms as may be agreed upon
24 between the depositors and the bank, and to furnish security for
25 such deposits when required by the laws of this State or of the
26 United States, or by rules or orders of any court of this State or
27 of the United States or by the regulations of an officer or agency
28 of this State or of the United States, made pursuant to such law;
29 provided, that, no bank shall be required to give security for de-
30 posits made by this State, or any political subdivision thereof, or
31 any other body politic existing under the laws of this State, to the
32 extent that such deposits are insured under any federal legislation
33 providing for the insurance of bank deposits;

34 (5) To maintain savings departments for the receipt of interest
35 and noninterest bearing deposits to be repaid on such terms as may
36 be agreed upon between the depositors and the bank, and to com-
37 mingle such deposits with deposits otherwise received;

38 (6) During hours other than the bank's usual hours for receipt
39 of deposits, to provide the equipment for receiving, and to receive
40 containers purporting to contain moneys or instruments for the
41 payment of money;

42 (7) To make loans, secured or unsecured, including loans to its
43 stockholders;

44 (8) To extend credit by honoring overdrafts upon deposit ac-
45 counts, but no credit shall be so extended except pursuant to written
46 agreement made in advance;

47 (9) To buy and sell gold and silver bullion, foreign coin, and
48 exchange;

49 (10) To purchase and sell [stocks] *debt and equity securities* of
50 other corporations, without recourse, solely upon order and for the
51 account of customers. This paragraph shall not limit the power
52 of a bank to take [stocks] *securities* of other corporations as col-
53 lateral security for loans, discounts, or other extensions of credit,
54 or to acquire [such stocks] *those securities* when their acquisition
55 is necessary to prevent or minimize loss upon debts previously
56 contracted in good faith. [Stocks] *Equity securities* acquired pur-

57 suant to this paragraph shall be sold within five years after their
58 acquisition, except that the commissioner may, by order, extend the
59 time within which sales of **stocks** *equity securities* described in
60 such order shall be made; but this paragraph shall not invalidate
61 the holding of any **stocks** *equity securities* lawfully acquired on
62 or before the effective date of this act. This paragraph shall not
63 apply to any case in which, pursuant to any other provision of this
64 act, or pursuant to any other act, a bank is expressly authorized to
65 subscribe for, purchase or otherwise acquire or hold **stocks**
66 *securities*;

67 (11) To receive any tangible personal property for safekeeping
68 and storage on the terms provided by chapter 7 of Title 12A of the
69 New Jersey Statutes, and to keep, maintain, and rent out for hire,
70 space for the storage and safekeeping of personal property of such
71 kind and description, or represented by the depositor thereof to be
72 of such kind and description, as the commissioner may by regula-
73 tion from time to time prescribe; but nothing herein contained shall
74 limit the power of a bank to let space for the storage and safe-
75 keeping of personal property to which the bank has security title
76 or in which it has a lien interest;

77 (12) To avail itself of the provisions of any federal legislation
78 providing for the extension of any lawful banking activity in the
79 making of loans or the extension of credit to individuals, or for the
80 financing of business enterprises, or in such other banking activity
81 as may be specified in such legislation and made available for
82 participation by banks; except that the power by this paragraph
83 conferred shall not be exercised unless the commissioner shall make
84 a general order authorizing such participation upon such terms and
85 conditions as may in such order be prescribed;

86 (13) To act as the fiscal agent of the United States, and of any
87 corporation, and of any State, county, municipality, board, commis-
88 sion or other body politic, and to perform all duties as such fiscal
89 agent as may lawfully be required of it;

90 (14) To assist customers or act for customers in the prepara-
91 tion, handling and disbursement of payrolls and payroll deductions
92 and in the preparation, maintenance and furnishing of records and
93 statistical information in connection therewith***;**

94 (15) *To make loans, as defined in this subsection, pursuant to*
95 *which the parties may contract for and the bank may receive interest*
96 *or other compensation at a rate or in an amount that the bank and*
97 *the borrower may agree upon, notwithstanding the provisions of*
98 *any other law of this State, except N. J. S. 2C:21-19, which limits*
99 *the interest rate or finance charge which would otherwise be ap-*

100 plicable to the loan. A loan, for the purposes of this subsection, in-
 101 cludes loans in the amount of \$5,000.00 or more, payable on demand
 102 or in installments, and (a) which is for the purpose of acquiring
 103 or is secured by equipment used for business or commercial pur-
 104 poses or (b) is secured by (i) an interest in warehouse receipts,
 105 bills of lading, or other documents of title which are subject to
 106 chapter 7 of Title 12A of the New Jersey Statutes, or (ii) by an
 107 interest in negotiable instruments or commercial paper which are
 108 subject to chapter 3 of Title 12A of the New Jersey Statutes, or
 109 (iii) by an interest in stocks, bonds, certificates of deposit or other
 110 securities which are subject to chapter 8 of Title 12A of the New
 111 Jersey Statutes, or (iv) by an interest in any combination of the
 112 foregoing;

113 (16) To engage in the business of providing data processing and
 114 computer services;

115 (17) To acquire, by purchase or otherwise, and to sell warrants,
 116 options or other similar rights to any class or classes of equity
 117 securities issued or to be issued by a corporation, if, at the time the
 118 warrants, options or other similar rights are acquired, the issuer,
 119 or its parent company, affiliate or subsidiary, is a borrower of funds
 120 loaned by the bank, and if the acquisition by purchase or otherwise,
 121 and the sale of the warrants, options or other similar rights neither
 122 adds to the bank's credit risk nor increases the bank's financial
 123 liabilities]*.

1 **[4. Section 28 of P. L. 1948, c. 67 (C. 17:9A-28) is amended to
 2 read as follows:

3 28. Agency and fiduciary powers. A bank which is a qualified
 4 bank shall have the following agency and fiduciary powers in
 5 addition to the powers specified in sections 24 and 25, whether or
 6 not such agency and fiduciary powers are specifically set forth in
 7 its certificate of incorporation, and a savings bank which is a
 8 qualified bank shall have such of the following agency and fiduciary
 9 powers, in addition to the powers specified in sections 24 and 26,
 10 as are not inconsistent with the law authorizing it to exercise the
 11 powers of a fiduciary:

12 (1) To act as custodian or escrow agent of personal property for
 13 any person or corporation;

14 (2) As agent, to receive, hold, manage and dispose of by sale or
 15 otherwise personal and real property; to act as agent of any person
 16 or corporation for any other purpose not prohibited by law;

17 (3) To act as the transfer agent or registrar, or both, of any
 18 State, county, municipality, board, commission, or other body
 19 politic, or of any foreign or domestic corporation and, in such]**

20 ******[capacity to transfer, register, and countersign stock certificates
21 and bonds or other evidences of indebtedness;

22 (4) To act as trustee of or with respect to any security or instru-
23 ments of indebtedness or of security issued by any State, county,
24 municipality, other body politic, or corporation, foreign or domes-
25 tic, and to accept any other public or corporate trust not incon-
26 sistent with the laws of this State;

27 (5) To be appointed and to act under the order of appointment
28 of any court of competent jurisdiction as guardian, custodian,
29 trustee or administrator, or by whatever other title it may thereby
30 be designated, of the person or estate, or both, of any person for
31 whom or for whose estate such an appointment may be made;

32 (6) To be appointed and to act as executor, trustee, or guardian
33 under any last will and testament, or as administrator with the will
34 annexed, or as substituted administrator with the will annexed, or
35 as administrator, or as substituted trustee or as substituted admin-
36 istrator of the estate of any deceased person;

37 (7) To be appointed and to act as assignee or trustee for the
38 benefit of creditors under any statute providing for such assign-
39 ment or otherwise;

40 (8) To be appointed and to act as receiver or trustee on appoint-
41 ment by any State or federal court of competent jurisdiction;

42 (9) To receive from any person and hold in trust and dispose of,
43 by sale or otherwise, personal and real property, upon such terms
44 as may be specified;

45 (10) To accept, administer, and execute all other trusts and to act
46 in all other fiduciary capacities not herein specifically enumerated,
47 not inconsistent with law;

48 (11) All fiduciary powers permitted to associations pursuant to
49 subsection (19) of section 48 of the "Savings and Loan Act
50 (1963)," P. L. 1963, c. 144 (C. 17:12B-48);

51 *(12) Upon application to and approval by the commissioner, to*
52 *establish, trade in and sell *mutual funds and* common trust funds*
53 *established by it or others, in accordance with regulations promul-*
54 *gated by the commissioner.***]********

1 ******[*5.]****** ****4.**** Section 35 of P. L. 1948, c. 67 (C. 17:9A-35) is
2 amended to read as follows:

3 35. Trust funds.

4 A. All moneys, securities and other property held by a quali-
5 fied bank in fiduciary capacities pursuant to paragraphs (5), (6),
6 (7), (8), (9) and (10) of section 28, shall be kept separate and
7 apart from the moneys, securities and other property belonging
8 to such bank, and such moneys, securities and other property shall

9 not be liable for the debts or obligations of the bank; except that
10 moneys held by a qualified bank in one or more such fiduciary
11 capacities, awaiting investment or disbursement, may be deposited
12 in a single account or in separate accounts with itself or with any
13 other banking institution or with any bank, trust company or na-
14 tional banking association having its principal office in [a contigu-
15 ous State] *any other state*. Moneys so deposited with itself may be
16 used by the bank in the conduct of its business. Securities held by
17 a qualified bank in fiduciary capacities may also be deposited with
18 any other banking institution, or with any bank, trust company or
19 national banking association having its principal office in [a con-
20 tiguous] *any other state*. The duties of the depository in respect
21 to securities so deposited with it shall be confined to the safekeep-
22 ing thereof, the collection of interest thereon for the account of the
23 depositing qualified bank, and the performance of such other clerical
24 or ministerial acts as the depositing qualified bank may from time
25 to time request. Nothing herein contained shall be construed as
26 relieving the depositing qualified bank from the duty to account
27 for all securities deposited as authorized by this subsection.

28 B. In the event of the insolvency of a qualified bank which has
29 deposited such moneys with itself, such bank in such fiduciary
30 capacities shall have claims against the assets of the bank for
31 moneys so deposited, preferred over claims not otherwise entitled
32 to preference, but subordinate to all other claims which shall be
33 entitled to preference. In the event of the insolvency of any other
34 banking institution or of any bank, trust company or national bank-
35 ing association having its principal office in [a contiguous] *any*
36 *other state*, in which such moneys shall have been deposited, a
37 qualified bank which shall have made such deposits shall be liable
38 for the amount of such deposits as if such deposits had been made
39 with it, and shall be subrogated to its claims as fiduciary against
40 the insolvent banking institution, bank, trust company or national
41 banking association, in which such deposits shall have been made.

42 C. Notwithstanding any other provisions of law, any qualified
43 bank holding securities in a trust estate, or any banking institution
44 holding securities as a custodian or managing agent, or as custo-
45 dian for a fiduciary, is authorized to deposit or arrange for the
46 deposit with the federal reserve bank in its district, any securities
47 so held the principal and interest of which the United States of
48 America or any department, agency or instrumentality thereof has
49 agreed to pay, or has guaranteed payment. Securities so deposited
50 shall be credited to one or more accounts on the books of such
51 federal reserve bank in the name of such qualified bank or such

52 banking institution, to be designated fiduciary or safekeeping
 53 accounts, to which other similar securities may be deposited. The
 54 records of such qualified bank and the records of a banking institu-
 55 tion acting as custodian, as managing agent or as custodian for a
 56 fiduciary, shall at all times show the name of the party for whose
 57 account the securities are so deposited. Ownership of, and other
 58 interests in, such securities may be transferred by bookkeeping
 59 entry on the books of such federal reserve bank without physical
 60 delivery of certificates representing such securities. A qualified
 61 bank or banking institution depositing securities pursuant to this
 62 section shall be subject to such rules and regulations as, in the case
 63 of State-chartered institutions the commissioner, and in the case
 64 of national banks, the comptroller of the currency, may from time
 65 to time issue. A qualified bank or banking institution acting as
 66 custodian for a fiduciary shall, on demand by the fiduciary, certify
 67 in writing to the fiduciary the securities so deposited by such
 68 qualified bank or banking institution with such federal reserve
 69 bank for the account of such fiduciary. A qualified bank shall, on
 70 demand by any party to a judicial proceeding for the settlement of
 71 such qualified bank's account as fiduciary, or on demand by the
 72 attorney for such party, certify in writing to such party the
 73 securities deposited by such qualified bank with such federal
 74 reserve bank for its account as fiduciary. This subsection shall
 75 apply to any qualified bank or banking institution holding securities
 76 in a fiduciary, custodial or management capacity, acting on the
 77 effective date of this act or who thereafter may act regardless of
 78 the date of the agreement, instrument or court order pursuant to
 79 which such qualified bank or banking institution is acting. Nothing
 80 contained in this subsection shall be construed as relieving a
 81 qualified bank or banking institution depositing securities as autho-
 82 rized by this subsection from the duty to account for all securities
 83 so deposited.*

1 **5. a. (New section) *A bank may, without order or judgment of*
 2 *a court or officer, merge or combine two or more of its own or its*
 3 *affiliate banks' common trust funds, into a single common trust*
 4 *fund, which single common trust fund may be administered by the*
 5 *bank or by its affiliate bank located in this State provided that:*

6 (1) *The combination or merger does not contravene the terms of*
 7 *the written plan for each of the funds to be merged or combined.*

8 (2) *There is a written plan governing the merger or combination*
 9 *of the funds which has been approved by the board of directors, or*
 10 *by a duly authorized committee of the bank or banks, which plan*
 11 *shall contain provisions, including, but not limited to, a designation*

12 of which of the merging or combining common trust funds shall be
 13 the surviving common trust fund, a specification of any amend-
 14 ments or changes in the plan of operation of the surviving common
 15 trust fund, and a provision governing the conversion of units of
 16 participation in the funds to be merged or combined into units of
 17 participation in the surviving common trust funds, including the
 18 payment of cash for fractional units.

19 (3) Each trust estate having a participation in the common trust
 20 funds to be merged or combined shall receive units in the surviving
 21 common trust fund based on its pro rata interest in the value of
 22 the assets of the merging or combining common trust funds as
 23 determined according to subsection b. of section 40 of P. L. 1948,
 24 c. 67 (C. 17:9A-40).

25 b. As used in this section, "common trust fund," "bank,"
 26 "participation," "trust estate," and "affiliate bank" shall have
 27 the same meaning as set forth in section 36 of P. L. 1948, c. 67
 28 (C. 17:9A-36).**

1 ***[5.]*** *6.* Section 65 of P. L. 1948, c. 67 (C. 17:9A-65) is
 2 amended to read as follows:

3 65. Real property mortgages. A. No bank shall make a mortgage
 4 loan secured by a mortgage upon real property unless

5 (1) **[**The mortgaged property is located within this State, or, if
 6 outside this State, the mortgaged property is located within 50
 7 miles of the border of this State; or if the mortgaged property is
 8 located outside this State and is more than 50 miles from the border
 9 of this State, the payment of the mortgage loan is insured or
 10 guaranteed, or is the subject of an unconditional commitment for
 11 such insurance or guarantee, to the extent provided for in sub-
 12 section A of section 68, by the federal Housing Commissioner or
 13 by the United States, or by this State; or the mortgaged property
 14 is located as permitted for associations pursuant to section 146 of
 15 the "Savings and Loan Act (1963)," P. L. 1963, c. 144 (C.
 16 17:12B-146);**]** (*Deleted by amendment; P. L. . . . , c. . . .*)

17 (2) The mortgaged property shall consist of improved real
 18 property, including farmlands, or unimproved real property if the
 19 proceeds of such loan shall be used for the purpose of erecting
 20 improvements thereon;

21 (3) The mortgage securing such loan shall constitute a first lien
 22 on a fee; a mortgage shall be deemed a first lien notwithstanding
 23 the existence of a prior mortgage or mortgages held by the bank,
 24 or liens of taxes which are not delinquent, building restrictions
 25 or other restrictive covenants or conditions, leases or tenancies
 26 whereby rents or profits are reserved to the owner, joint drive-
 27 ways, sewer rights, rights in walls, rights-of-way or other ease-

28 ments, or encroachments, which the persons signing the certificate
29 provided for in section 67 report in their opinion do not materially
30 affect the security for the mortgage loan. Every mortgage shall
31 be certified to be such a first lien by an attorney-at-law of the State
32 in which the real property is located, or certified or guaranteed
33 to be such a first lien by a corporation authorized to guarantee
34 titles to land in such state;

35 (4) No such loan shall be made for a period longer than 40 years
36 from its date, and no such loan shall exceed 80% of the appraised
37 value of the mortgaged property; provided, that there shall be
38 included in the appraised value of the mortgaged property, for the
39 purpose of this paragraph (4), the value of the improvements to
40 be erected upon the mortgaged property wholly or partly with the
41 proceeds of such loan; and

42 (5) The instrument evidencing the loan shall require payment
43 to be made during each year on account of the principal amount
44 of the loan at a rate not less than 1% per annum of the original
45 amount of the loan, if the original amount of the loan does not
46 exceed 50% of the appraised value of the mortgaged property;
47 or 2% per annum of the original amount of the loan, if the loan
48 exceeds 50% but does not exceed $66\frac{2}{3}\%$ of such appraised value;
49 or 4% per annum of the original amount of the loan, if the loan
50 exceeds $66\frac{2}{3}\%$ of such appraised value; provided, that, in lieu
51 of such principal payments, the instrument evidencing any mort-
52 gage loan may require equal monthly payments, each applicable
53 to principal and interest, in an amount sufficient to pay current
54 interest and to repay the amount of the loan in not more than 40
55 years from its date; and provided further, that when the proceeds
56 of any such loan are to be used to pay, in whole or in part, the
57 cost of constructing a building or buildings on the mortgaged
58 property, and such proceeds are paid by the bank from time to
59 time, final payment being made at or after completion, the instru-
60 ment evidencing such loan need not require that any payment be
61 made on account of the principal amount of the loan during the
62 period from the date of such loan to a date not more than 18 months
63 from the date of such loan; and such date marking the end of the
64 period during which no payments are required to be made on
65 account of the principal amount of the loan, shall be deemed to
66 be the date of such loan for the purpose of reckoning the 40-year
67 period limited for the payment of such loan by this paragraph
68 (5), and by paragraph (4) of this section.

69 B. The commissioner may, from time to time, with the concur-
70 rence of the banking advisory board, make, alter and rescind regu-
71 lations:

72 (1) Authorizing banks to make mortgage loans, or specified
73 types or classes of mortgage loans, (a) which exceed 80% of the
74 appraised value of the mortgaged property; (b) which mature
75 in more than 25 years from their date; (c) which require smaller
76 annual payments on account of the principal amounts thereof
77 than those specified in paragraph (5) of subsection A of this
78 section; (d) which provide for equal monthly payments, each
79 applicable to principal and interest, in amounts sufficient to pay
80 current interest on and to repay the amount of the loan in such
81 number of years, more than 40 but not more than 45, as the regu-
82 lation may specify; or (e) which substantially conform to the terms
83 and conditions of mortgage loans authorized to be made by associa-
84 tions pursuant to the "Savings and Loan Act (1963)," P. L. 1963,
85 c. 144 (C. 17:12B-1 et seq.);

86 (2) Defining "improved real property" for the purposes of para-
87 graph (2) of subsection A of this section;

88 (3) Increasing the percentage of the time deposits or the aggre-
89 gate of the unimpaired capital stock and surplus of banks which
90 banks may invest in mortgage loans beyond the limitation ex-
91 pressed in subsection A of section 69;

92 (4) Increasing the percentage of the principal balances owing
93 on mortgage loans of the kind referred to in section 68 which
94 shall not be included in the total of all principal balances owing
95 on mortgage loans for the purposes of subsection A of section 69,
96 or eliminating entirely the principal balances owing on such mort-
97 gage loans from such total of all principal balances.

98 C. In making, altering and rescinding regulations pursuant to
99 subsection B of this section, the commissioner and the banking
100 advisory board shall consider the statutes and regulations applica-
101 ble to national banks in the making or acquiring of loans secured
102 by interests in real property and the practices followed by national
103 banks in the making or acquiring of such loans. The regulations
104 so made shall, so far as the commissioner and the banking advisory
105 board deem to be warranted by the state of the economy and to
106 be consistent with sound banking practices, be directed toward the
107 creation and maintenance of a substantial parity between banks
108 and national banks in all matters relating to the making and ac-
109 quiring of loans secured by interests in real property. The power
110 to regulate as provided in subsection B of this section may be
111 exercised by the commissioner and the banking advisory board
112 within the standards established by this subsection, notwithstand-
113 ing that the subject of such regulation is not expressly set forth in
114 subsection B of this section.

115 D. A bank may make a mortgage loan in excess of the ratio be-
 116 tween appraised value and the amount of the loan as established
 117 by subsection A(4) of this section, provided that the amount of
 118 such excess is secured by other collateral having a value at all times
 119 at least equal to the amount of the principal balance in excess of
 120 that amount permitted by subsection A(4) or as established by
 121 regulation of the Commissioner of Banking.

1 ***[6.]*** *7.* Section 71 of P. L. 1948, c. 67 (C. 17:9A-71) is
 2 amended to read as follows:

3 71. Definitions.

4 A. For the purposes of this article:

5 (1) "Controlling interest" means ownership or control of a
 6 majority of the issued and outstanding capital stock or securities
 7 of a corporation, having voting rights;

8 (2) "Corporation" means a corporation in which a director or
 9 an executive officer of a bank has a controlling interest or in which
 10 a director or an executive officer of a bank together with one or
 11 more other directors or executive officers of the bank has a control-
 12 ing interest; "corporation" includes all subsidiaries of a corpora-
 13 tion in which the corporation has a controlling interest;

14 (3) "Executive officer" means only those officers of a bank who
 15 participate in major policy-making functions of the bank otherwise
 16 than in the capacity of a director of the bank;

17 (4) "Partnership" means a partnership in which a director or
 18 an executive officer of a bank is a general or limited partner;

19 (5) "Liability" means indebtedness and liability to a bank of
 20 every kind and in every capacity, other than liability in a fiduciary
 21 capacity in which the fiduciary may lawfully incur such liability
 22 without personal responsibility therefore; "liable" means obli-
 23 gated for a liability;

24 (6) "Board of directors" means at least a majority of the
 25 members of the board of directors of a bank, and "executive com-
 26 mittee" means at least a majority of the members of the executive
 27 committee of the board of directors;

28 (7) "Application" means a written, signed request by a director
 29 or an executive officer of a bank, or by a corporation or part-
 30 nership, to be permitted to incur liability to the bank, and "appli-
 31 cant" means the signer of an application;

32 (8) Liability to a bank, payable on demand, shall be deemed to
 33 have a maturity six months from the date of incurring such
 34 liability;

35 (9) Any whole or part renewal or extension of any liability to a
 36 bank incurred pursuant to this article shall be deemed to be an
 37 initial incurring or liability to the bank.

38 (10) "Officer" means any officer other than an executive officer
39 who participates in the operating management of a bank.

40 B. The commissioner may, from time to time, make, amend and
41 repeal regulations, including (1) prescribing what constitutes
42 "policy-making" within the meaning of paragraph (3) of subsec-
43 tion A of this section; and (2) increasing or decreasing the total
44 amount in which [an] a *director* or executive officer of a bank may
45 become liable to the bank as prescribed by paragraph [(2)] (5)
46 of subsection B of section 72 (C. 17:9A-72); and (3) prescribing
47 limitations on the liabilities to a bank which an officer who is not
48 an executive officer of such bank may be permitted to incur to such
49 bank. Regulations made pursuant to this article shall be directed
50 toward creating and maintaining a substantial parity between
51 banks and national banks in prescribing the amount in which a
52 bank may permit an executive or other officer to become liable to it.

1 ***[7.]*** *s.* Section 72 of P. L. 1948, c. 67 (C. 17:9A-72) is
2 amended to read as follows:

3 72. Prerequisites to incurring liability; amounts.

4 A. No bank shall permit a director or an executive officer of the
5 bank or a corporation or partnership to become liable to the bank,
6 and no such director, executive officer, corporation or partnership
7 shall become liable to a bank, except as authorized by this article.

8 B. A bank may permit a director or an executive officer of the
9 bank or a corporation or a partnership to become liable to the bank
10 provided that:

11 (1) An application for the incurring of the proposed liability,
12 containing such information as the commissioner may by regulation
13 require, shall first be approved by resolution of the board of
14 directors or of the executive committee; such resolution and the
15 vote of each person thereon shall be recorded in the minutes of
16 the meeting;

17 (2) If the applicant is an executive officer, the proposed liability
18 will not cause the total of all liabilities of such officer to the bank
19 to exceed \$10,000.00, or such amount as is permitted by the Com-
20 missioner of Banking pursuant to subsection B. of section 71 of
21 P. L. 1948, c. 67 (C. 17:9A-71); provided, however, that such
22 amount is consonant with the amount fixed by federal law for
23 national banks and establishes a substantial parity between those
24 banks and State-chartered banks];

25 (3) If the applicant is a director, corporation or partnership,
26 the bank shall be offered security having an ascertainable market
27 value at least 20% greater than the amount of the proposed lia-
28 bility, or, if no such security or only partial security is offered, the

29 proposed unsecured liability or the portion thereof for which no
30 security is offered is, in the opinion of the board of directors or
31 the executive committee, warranted by a written statement of the
32 financial condition of the applicant;

33 (4) The proposed liability will not cause the total of

34 (a) The liabilities of a director or an executive officer, and

35 (b) The liabilities of each corporation in which such director
36 or executive officer has a controlling interest, or in which such
37 director or executive officer together with one or more other
38 directors or executive officers has a controlling interest, and

39 (c) The liabilities of each partnership in which such director
40 or executive officer is a partner, to exceed 10% of the amount
41 of the capital funds of the bank, as defined in section 60 of
42 *P. L. 1948, c. 67 (C. 17:9A-60)*;

43 (5) *Notwithstanding the limitations of paragraphs (2), (3) and*
44 *(4) of this subsection, the proposed liability of the director or ex-*
45 *ecutive officer may be up to or equal to an amount that is permitted*
46 *by the commissioner by regulation, or by separate regulations for*
47 *directors and for executive officers, which regulations shall be di-*
48 *rected toward creating and maintaining a substantial parity between*
49 *banks and national banks.*

50 C. When an application is made by a director of a bank or by a
51 corporation or partnership, the applying director and any director
52 who alone or with any one or more other directors or executive
53 officers of the bank has a controlling interest in the corporation,
54 and any director who is a general or limited partner in the partner-
55 ship shall not vote to grant such application.

56 D. When an application is approved by the executive committee,
57 the application shall be presented and the approving resolution of
58 the executive committee shall be read at the next meeting of the
59 board of directors, and such presentation and reading shall be
60 noted in the minutes of such meeting.

1 *§. (New section) Notwithstanding the provisions of R. S.
2 19:34-45 or any other law of this State to the contrary:

3 a. Employees of a bank, bank service corporation or other cor-
4 poration owned by a bank or bank holding company, who are
5 eligible to be solicited, may, with the consent of the employer,
6 authorize their employer to deduct amounts from their pay for the
7 purpose of contributing the amount to a political action committee
8 organized by the employer or a parent of a subsidiary of the
9 employer.

10 b. A bank, bank service corporation or other corporation owned
11 by a bank or bank holding company, may pay for or contribute

12 money, property or use of property to a political action committee
 13 organized by the employer or a parent or a subsidiary of the
 14 employer solely for the purpose of establishing, administering or
 15 soliciting contributions to the political action committee.】*

1 9. Section 1 of P. L. 1959, c. 91 (C. 17:9A-59.1) is amended to
 2 read as follows:

3 1. A. Subject to the provisions of this act, a bank may lend
 4 money to a borrower by advancing funds to or for the account of
 5 the borrower pursuant to the borrower's written authorizations.
 6 Such authorizations may take the form of checks drawn on the bank
 7 by the borrower, notwithstanding that the borrower has no funds,
 8 or has insufficient funds on deposit in the bank out of which such
 9 checks may be paid, *may take the form of credit card agreements*
 10 or they may take such other form as the bank and the borrower
 11 agree upon. Loans made pursuant to this act are referred to in
 12 this act as "advance loans" and persons to whom advance loans
 13 are made are referred to as "advance loan borrowers." Account-
 14 ing periods, referred to in this act as "billing cycles," shall not
 15 vary more than four days from one month in duration and the
 16 billing date shall not vary more than four days from the billing
 17 date of the immediately preceding billing cycle. The term
 18 "monthly" shall refer in this act to the billing cycle and need not
 19 refer to a calendar month.

20 B. Nothing in this act shall apply to loans otherwise authorized
 21 by law or enforceable at law, *and *except for the provisions of the*
 22 *criminal usury law, N. J. S. 2C:21-19,* the provisions of any other*
 23 *loan or credit law of this State with respect to limitations on inter-*
 24 *est rate, charges, costs, fees, term of loan or collateral shall not*
 24A *apply to loans made hereunder.*

25 C. A borrower may at any time prepay in part or in full the
 26 amount owing on advance loans, without penalty or prepayment
 27 charge.

1 10. Section 105 of P. L. 1948, c. 67 (C. 17:9A-105) is amended
 2 to read as follows:

3 105. Directors; quorum; *actions.*

4 *a.* A majority of the members of the board of directors shall
 5 constitute a quorum for the transaction of business. Except as
 6 otherwise provided by this act, action taken by a majority of a
 7 quorum shall be the action of the board.

8 *b.* *Unless otherwise provided by the certificate of incorporation*
 9 *or bylaws, any action required or permitted to be taken pursuant*
 10 *to authorization voted at a meeting of the board or any committee*
 11 *thereof, may be taken without a meeting if, prior or subsequent to*

12 *that action, all members of the board or of the committee, as the*
 13 *case may be, consent thereto in writing and those written consents*
 14 *are filed with the minutes of the proceedings of the board or com-*
 15 *mittee. The consent shall have the same effect as a unanimous vote*
 16 *of the board or committee for all purposes, and may be stated as*
 17 *a unanimous vote of the board or committee in any certificate or*
 18 *other document filed with the commissioner.*

19 *c. Any or all directors may participate in a meeting of the board*
 20 *or a committee of the board by means of conference telephone or*
 21 *any means of communication by which all persons participating in*
 22 *the meeting are able to hear each other, unless otherwise provided*
 23 *in the certificate of incorporation or the bylaws.*

1 11. Section 212 of P. L. 1948, c. 67 (C. 17:9A-212) is amended
 2 to read as follows:

3 212. Acquisition of own stock.

4 *a. [No] Except as otherwise provided in this section, no bank*
 5 **or capital stock savings bank* shall purchase or otherwise acquire*
 6 *shares of its own capital stock, except as a result of a merger or to*
 7 *prevent or minimize loss upon a debt previously contracted in good*
 8 *faith; shares of stock so purchased or acquired shall, not later than*
 9 *one year after the date of purchase or acquisition, be sold or be*
 10 *paid as a stock dividend, or be disposed of in part by sale and in*
 11 *part by payment of a stock dividend, as the board of directors may*
 12 *determine. The commissioner may, prior or subsequent to the ex-*
 13 *piration of the one year period or prior or subsequent to the ex-*
 14 *piration of any extended period, extend or further extend the time*
 15 *within which the actions required by this [section] subsection may*
 16 *be done.*

17 *b. A bank *or capital stock savings bank* may, with the approval*
 18 *of the commissioner, provide in its original or amended certificate*
 19 *of incorporation for the acquisition, through purchase, of shares*
 20 *of its own capital stock. Shares so purchased or shares which the*
 21 *bank *or capital stock savings bank* may otherwise be authorized*
 22 *to issue may, with the approval of the commissioner, be sold by the*
 23 *bank *or capital stock savings bank* to those of the bank's *or*
 24 *capital stock savings bank's* stockholders who pay therefor with*
 25 *cash dividends declared by the bank *or capital stock savings bank**
 26 *on its capital stock. These shares may with the approval of the*
 27 *commissioner, be purchased by the bank *or capital stock savings*
 28 *bank* for such other uses and purposes, not contrary to law or*
 29 *sound banking principles, and for such consideration as the board*
 30 *of directors may from time to time determine. All shares acquired*
 31 *pursuant to this subsection shall be designated as "treasury stock,"*

32 *and, so long as they remain the property of the bank *or capital*
 33 *stock savings bank*, they shall not constitute capital stock for the*
 34 *purposes of P. L. 1948, c. 67 (C. 17:9A-1 et seq.).*

1 12. Section 250 of P. L. 1948, c. 67 (C. 17:9A-250) is amended
 2 to read as follows:

3 250. Actions against directors, managers, officers, or employees;
 4 indemnification.

5 A. As used in this section

6 (1) "Corporate agent" means any person who is or was a
 7 director, officer, employee or agent of the indemnifying bank
 8 *or of any constituent banking institution or corporation ab-*
 9 *sorbed by the indemnifying bank in a consolidation or merger*
 10 *or created by or owned by the indemnifying bank* and any
 11 person who is or was a director, officer, trustee, employee or
 12 agent of any other enterprise, serving as such at the request
 13 of the indemnifying bank, *or of any constituent banking institu-*
 14 *tion or corporation* or the legal representative of any such
 15 director, officer, trustee, employee or agent;

16 (2) "Other enterprise" means any domestic or foreign cor-
 17 poration, other than the indemnifying bank, and any partner-
 18 ship, joint venture, sole proprietorship, trust or other enter-
 19 prise, whether or not for profit, served by a corporate agent;

20 (3) "Expenses" means reasonable costs, disbursements and
 21 counsel fees;

22 (4) "Liabilities" means amounts paid or incurred in satis-
 23 faction of settlements, judgments, fines and penalties;

24 (5) "Proceeding" means any pending, threatened or com-
 25 pleted civil, criminal, administrative or arbitrate action, suit
 26 or proceeding, and any appeal therein and any inquiry or in-
 27 vestigation which could lead to such action, suit or proceeding;

28 (6) "Bank" ***[except as otherwise expressly provided,]***
 29 includes savings bank;

30 (7) "Directors" includes directors of a bank ***[other than**
 31 **a]** **and capital stock** savings bank and managers of a savings
 31A bank.

32 B. Any bank of this State shall have the power to indemnify a
 33 corporate agent against his expenses and liabilities in connection
 34 with any proceeding involving the corporate agent by reason of
 35 his being or having been such a corporate agent, other than a pro-
 36 ceeding by or in the right of the bank, if

37 (1) Such corporate agent acted in good faith and in a man-
 38 ner he reasonably believed to be in or not opposed to the best
 39 interests of the bank;

40 (2) With respect to any criminal proceeding, such corporate
41 agent had no reasonable cause to believe his conduct was
42 unlawful.

43 The termination of any proceeding by judgment, order, settle-
44 ment, conviction or upon a plea of nolo contendere or its equivalent,
45 shall not of itself create a presumption that such corporate agent
46 did not meet the applicable standards of conduct set forth in sub-
47 divisions (1) and (2) of this subsection.

48 C. Any bank of this State shall have the power to indemnify a
49 corporate agent against his expenses in connection with any pro-
50 ceeding by or in the right of the bank to procure a judgment in its
51 favor which involves the corporate agent by reason of his being
52 or having been such corporate agent, if he acted in good faith and
53 in a manner he reasonably believed to be in or not opposed to the
54 best interests of the bank. However, in such proceeding no in-
55 demnification shall be provided in respect of any claim, issue or
56 matter as to which such corporate agent shall have been adjudged
57 to be liable for negligence or misconduct, unless and only to the
58 extent that the *Superior Court or other* court in which such pro-
59 ceeding was brought shall determine upon application that despite
60 the adjudication of liability, but in view of all circumstances of the
61 case, such corporate agent is fairly and reasonably entitled to
62 indemnity for such expenses as the *Superior Court or other* court
63 shall deem proper.

64 D. Any bank of this State shall indemnify a corporate agent
65 against expenses to the extent that such corporate agent has been
66 successful on the merits or otherwise in any proceeding referred
67 to in subsections B and C of this section or in defense of any claim,
68 issue or matter therein.

69 E. Any indemnification under subsection B of this section, and,
70 unless ordered by a court, under subsection C of this section, may
71 be made by the bank only as authorized in a specific case upon a
72 determination that indemnification is proper in the circumstances
73 because the corporate agent met the applicable standard of conduct
74 set forth in subsection B of this section or subsection C of this
75 section. **[Such]** *Unless otherwise provided in the certificate of in-*
76 *corporation or bylaws, the determination shall be made*

77 (a) By the board of directors *or a committee thereof* acting
78 by a quorum consisting of directors who were not parties to,
79 *or otherwise involved in, the proceeding; or*

80 (b) If such a quorum is not obtainable, or, even if obtainable
81 and **[a]** *that quorum of the board of directors or committee by*
82 *a majority vote of the disinterested directors so directs, by in-*

83 dependent legal counsel in a written opinion, *that independent*
84 *legal counsel to be designated by the board of directors; or*

85 (e) By the stockholders, *if the certificate of incorporation*
86 *or bylaws or a resolution of the board of directors or of the*
87 *shareholders so directs*, in the case of a bank which is not
88 a savings bank, and by the commissioner, in the case of a
89 savings bank.

90 F. Expenses incurred by a corporate agent in connection with a
91 proceeding may be paid by the bank in advance of the final dis-
92 position of the proceeding, *if authorized in the manner provided in*
93 *subsection D of this section*, upon receipt of an undertaking by or
94 on behalf of the corporate agent to repay such amount unless it
95 shall ultimately be determined that he is entitled to be indemnified
96 as provided in this section.

97 G. (1) If a bank upon application of a corporate agent has failed
98 or refused to provide indemnification as required under subsection
99 D of this section or permitted under subsections B, C and F of this
100 section, a corporate agent may apply to a court for an award of
101 indemnification by the bank, and such court

102 (2) May award indemnification to the extent authorized under
103 subsections B and C of this section and shall award indemnification
104 to the extent required under subsection D of this section, notwith-
105 standing any contrary determination which may have been made
106 under subsection E of this section; and

107 (3) May allow reasonable expenses to the extent authorized by,
108 and subject to the provisions of, subsection F of this section, if
109 the court shall find that the corporate agent has by his pleadings
110 or during the course of the proceeding raised genuine issues of
111 fact or law.

112 (4) Application for such indemnification may be made

113 (a) In the civil action in which the expenses were or are to
114 be incurred or other amounts were or are to be paid; or

115 (b) To the Superior Court in a separate proceeding. If the
116 application is for indemnification arising out of a civil action,
117 it shall set forth reasonable cause for the failure to make appli-
118 cation for such relief in the action or proceeding in which the
119 expenses were or are to be incurred or other amounts were or
120 are to be paid.

121 (5) The application shall set forth the disposition of any previous
122 application for indemnification and shall be made in such manner
123 and form as may be required by the applicable rules of court or,
124 in the absence thereof, by direction of the court to which it is made.
125 Such application shall be upon notice to the bank. The court may
126 also direct that notice shall be given at the expense of the bank to

127 the stockholders of a bank other than a savings bank and such other
128 persons as it may designate in such manner as it may require.

129 H. The indemnification provided by this section shall not exclude
130 any other rights to which a corporate agent may be entitled under
131 a certificate of incorporation, bylaw, agreement, vote of stock-
132 holders of a bank other than a savings bank, or otherwise.

133 I. Any bank of this State shall have the power to purchase and
134 maintain insurance on behalf of any corporate agent against any
135 expenses incurred in any proceeding and any liabilities asserted
136 against him [in his capacity as] *by reason of his being or having*
137 *been a corporate agent, whether or not the bank would have the*
138 *power to indemnify him against [such liability] those expenses*
139 *and liabilities under the provisions of this section.*

139A ***J. The powers granted by this section may be exercised by a*
139B *bank notwithstanding the absence of any provision in its certifi-*
139C *cate of incorporation or bylaws authorizing the exercise of such*
139D *powers.***

140 K. *Except as required by subsection D of this section, no indem-*
141 *nification shall be made or expenses advanced by a corporation*
142 *under this section, and none shall be ordered by the Superior Court*
143 *or other court, if that action would be inconsistent with a provision*
144 *of the certificate of incorporation, a bylaw, a resolution of the board*
145 *of directors or of the shareholders, or an agreement or other proper*
146 *corporate action, in effect at the time of the accrual of the alleged*
147 *cause of action asserted in the proceeding, which prohibits, limits*
148 *or otherwise conditions the exercise of indemnification powers by*
149 *the corporation or the rights of indemnification to which a corporate*
150 *agent may be entitled.*

1 13. Section 18 of P. L. 1948, c. 67 (C. 17:9A-18) is amended to
2 read as follows:

3 18. Names of banks and savings banks.

4 A. The name of every bank shall contain the word "bank" or
5 "banking" or "trust," or a combination of the words "bank" or
6 "banking" and "trust," except that no bank which is not qualified
7 to exercise any of the powers specified in section 28 shall use the
8 word "trust" as part of its name. Any bank which, immediately
9 prior to the effective date of this act, lawfully used the word
10 "savings" as part of its name, may continue the use thereof, but
11 no other bank shall hereafter use such word as part of its name.

12 B. The name of every savings bank shall contain the words
13 "savings bank" or "savings fund society" or "savings institu-
14 tion" or "institution for savings" or "bank for savings." Any
15 savings bank which, immediately prior to the effective date of this
16 act, lawfully used the word "trust" as part of its name, may con-

17 tinue the use thereof, but no other savings bank shall hereafter use
18 such word as part of its name.

19 C. No bank or savings bank shall assume a name identical with
20 that of an existing banking institution, or so similar thereto that
21 confusion may result therefrom; except that, if a bank or savings
22 bank is organized to succeed another bank or savings bank pur-
23 suant to section 16, it may adopt the name of the bank or savings
24 bank which it succeeds.

25 D. No person, other than a banking institution *or bank holding*
26 *company*, shall use the words "bank" or "banker" or "banking"
27 or "trust" or "savings" or any of them, as part of his or its name,
28 or in any representations describing his or its powers, services or
29 functions, except as otherwise permitted by law. A violation of the
30 provisions of this subsection shall be a misdemeanor, and the Su-
31 perior Court shall have jurisdiction to enjoin such violation at the
32 suit of the commissioner.

33 E. The provisions of subsection D of this section shall not apply
34 to any corporation or association formed for the purpose of pro-
35 moting the interests of banking institutions, the membership of
36 which is comprised of banking institutions, their officers or other
37 representatives; nor shall the said subsection apply to any partner-
38 ship, association, or corporation, which, on the effective date of this
39 act, lawfully used the words "bank," "banker," "banking,"
40 "trust," or "savings," or any of them, as part of its name.

41 F. The provisions of subsection D of this section shall not pre-
42 vent the use of the word "savings" by a building and loan associa-
43 tion or a savings and loan association, or by a corporation or asso-
44 ciation formed for the purpose of promoting the interests of
45 building and loan associations or savings and loan associations, the
46 membership of which is comprised of building and loan or savings
47 and loan associations, their officers or other representatives.

1 14. Section 24 of P. L. 1948, c. 67 (C. 17:9A-24) is amended to
2 read as follows:

3 24. Powers of banks and savings banks. Every bank and savings
4 bank shall, subject to the provisions of this act, have the following
5 powers, whether or not such powers are specifically set forth in
6 its certificate of incorporation:

7 (1) To adopt a corporate seal, and to sue and be sued;

8 (2) To issue cashier's checks, treasurer's checks, and money
9 orders; to transmit funds; to guarantee signatures and endorse-
10 ments;

11 (3) To borrow money, and to pledge, mortgage or hypothecate
12 its real or personal property as security therefor, and to execute

13 and deliver all such instruments as may be necessary to evidence
14 such borrowing, pledge, mortgage, or hypothecation;

15 (4) To keep, maintain, and rent out for hire, at any location
16 occupied by its principal office or any branch office, safe deposit
17 boxes or other receptacles for the safekeeping of personal property.
18 In exercising the powers authorized by this paragraph, the bank
19 or savings bank shall have, but shall not be confined to, the same
20 rights and remedies conferred upon safe deposit companies***[**, and
21 *the bank shall not be subject to the provisions and obligations of*
22 *P. L. 1983, c. 566 (C. 17:14A-1 et seq.)**;

23 (5) To invest in real property as purchaser of the fee or as
24 lessee, and to hold, lease and convey such real property, or any
25 interest therein, for the following purposes and no others:

26 (a) Such as may be necessary or convenient for the use,
27 operation, or housing of its principal office or any branch office,
28 or an auxiliary office, or for the storage of records or other
29 personal property, or for office space for use by its officers or
30 employees, or which may be reasonably necessary for future
31 expansion of its business, or which is otherwise reasonably
32 incidental to the conduct of its business; and which may in-
33 clude, in addition to the space required for the transaction of
34 its business, other space which may be let as a source of
35 income. In exercising the powers conferred by this subpara-
36 graph, the bank or savings bank shall be subject to the limita-
37 tions imposed by paragraph (13) of this section;

38 (b) Such as may be conveyed to it in whole or part satis-
39 faction of debts previously contracted in the course of its
40 dealings;

41 (c) Such as it shall purchase at sale under judgments and
42 decrees in its favor, and on foreclosure of mortgages held by
43 it;

44 (d) Such as it shall purchase or acquire to minimize or
45 prevent the loss or destruction of any lien or interest therein;
46 and

47 (e) Such as may be permitted for associations pursuant to
48 subsections (4) and (21) of section 48 of the "Savings and
49 Loan Act (1963)," P. L. 1963, c. 144 (C. 17:12B-48);

50 provided, that all real property not held for any purpose specified
51 in subparagraph (a) of this paragraph, shall be sold within five
52 years of its acquisition, or within five years after the time it ceases
53 to be held for any purpose specified in subparagraph (a) of this
54 paragraph, unless the commissioner shall extend the time within
55 which such sale shall be made;

56 (6) To be a member of the Federal Reserve System; to subscribe
57 for, purchase, hold, and surrender such amounts of the capital
58 stock of the Federal Reserve Bank organized within the district
59 in which such bank or savings bank is located as may be required or
60 as may be deemed advisable by such bank or savings bank; and
61 to have and exercise all powers, privileges and options which are
62 conferred by law upon such members; to comply with all require-
63 ments of federal legislation and the rules and regulations lawfully
64 promulgated thereunder governing such membership as such legis-
65 lation and such rules and regulations may provide at the time of
66 inception of such membership, and as the same may from time to
67 time thereafter be amended or supplemented; and to assume and
68 discharge all liabilities and obligations which may be required by
69 reason of such membership;

70 (7) To be a member of Federal Deposit Insurance Corporation,
71 or of any successor corporation having for its purpose the insur-
72 ance of deposits, and to do all things, and assume and discharge
73 all liabilities and obligations imposed upon such members by federal
74 legislation or by rules and regulations lawfully promulgated pur-
75 suant thereto, as the same may provide at the inception of such
76 membership, or as the same may thereafter be amended or sup-
77 plemented;

78 (8) To be a member of any federal agency hereafter created,
79 membership in which is open to banking institutions, and the pur-
80 pose of which is to afford advantages or safeguards to banking
81 institutions, or to their depositors, and to comply with all the re-
82 quirements and conditions imposed upon such members, except
83 that the power by this paragraph conferred shall not be exercised
84 unless the commissioner, with the concurrence of the banking ad-
85 visory board, shall make a general order authorizing banks or
86 savings banks, or both, to become and be such members, upon such
87 terms and conditions as may in such order be prescribed;

88 (9) To subscribe for, purchase and hold stock of one or more
89 safe deposit companies which have been or may be organized to
90 do business on or adjacent to premises occupied by the principal
91 office or a branch office of the bank or savings bank; provided, that

92 (a) In the case of a savings bank, the amount so invested
93 shall not exceed 5% of its surplus; and

94 (b) In the case of a bank, the amount so invested shall not
95 exceed 10% of its capital stock and surplus; and

96 (c) Each purchase of such stock shall first have been autho-
97 rized by a resolution, stating the number of shares to be pur-
98 chased and the amount to be paid therefor, adopted by its

99 board of directors or board of managers, and, in the case of
100 a bank, approved by a majority in interest of its stockholders
101 at any annual or special meeting; and

102 (d) Each purchase of such stock by a bank or savings bank
103 shall have been approved in writing by the commissioner;

104 (10) To subscribe for, purchase and hold stock of not more than
105 one fiduciary institution organized under any law of this State
106 hereafter enacted; provided, that

107 (a) In the case of a savings bank, the amount so invested
108 shall not exceed 10% of its surplus; and

109 (b) In the case of a bank, the amount so invested shall not
110 exceed 20% of its capital stock and surplus; and

111 (c) Each purchase of such stock shall first have been autho-
112 rized by a resolution, stating the number of shares to be pur-
113 chased and the amount to be paid therefor, adopted by its board
114 of directors or board of managers, and, in the case of a bank,
115 approved by a majority in interest of its stockholders at any
116 annual or special meeting; and

117 (d) Each purchase of such stock by a bank or savings bank
118 shall have been approved in writing by the commissioner;

119 (11) To contribute to community funds, or to charitable, philan-
120 thropic, or benevolent instrumentalities conducive to public welfare,
121 or civic betterment, or the economic advantage of the community,
122 and to instrumentalities for the protection or advancement of the
123 interests of banking institutions, such sums as its board of directors
124 or board of managers may deem expedient and in the interests of
125 such bank or savings bank;

126 (12) To exercise all incidental powers, not specifically enumer-
127 ated in this act, which shall be necessary or convenient to carry on
128 the business of the bank or savings bank;

129 (13) To invest in stock of a subsidiary of such bank or savings
130 bank which holds title to real property of the kind in which such
131 bank or savings bank could itself invest pursuant to subparagraph
132 (a) of paragraph (5) of this section, and to make secured or
133 unsecured loans to such subsidiary, without regard to the limita-
134 tions imposed by Article 13; but no bank or savings bank shall,
135 except with the prior approval of the commissioner (1) invest in
136 real property including all capital leases, pursuant to subpara-
137 graph (a) of paragraph (5) of this section; or (2) invest in the
138 stock or other securities of such subsidiary; or (3) make a loan to
139 such subsidiary, if the aggregate of all such investments and loans,
140 when added to any indebtedness otherwise owing by the subsidiary,
141 will exceed the greater of (1) 50% of the capital funds of the bank
142 or savings bank, or (2) the amount permitted to national banks for
143 such investments. As used in this paragraph, "subsidiary" of a

144 bank or savings bank means a corporation all of whose capital stock
145 and other securities having voting rights are owned by such bank or
146 savings bank, and whose powers are limited by its certificate of in-
147 corporation, to the acquiring, holding, managing, selling, leasing,
148 mortgaging, altering, improving and otherwise dealing in and with
149 real property of the kind in which the bank or savings bank could
150 itself invest pursuant to subparagraph (a) of paragraph (5) of this
151 section; and "capital funds" means the aggregate of the capital
152 stock, the principal amount owing on all capital notes, surplus and
153 undivided profits of a bank, and the aggregate of the capital de-
154 posits, if any, and the surplus of a savings bank. Every subsidiary
155 of a bank or savings banks shall be subject to examination by the
156 commissioner as provided in the case of banks and savings banks
157 pursuant to sections 260, 261, 262, 263 and 335, and the ultra vires
158 or unlawful act of a subsidiary of a bank or savings bank shall be
159 deemed to be the ultra vires or unlawful act of such bank or savings
160 bank for the purposes of Article 42. In determining whether to
161 give or withhold approval of an investment or loan in excess
162 of the limitation imposed by this paragraph, the commissioner
163 shall consider whether the making of such loan or investment is
164 consistent with sound banking practice, having regard to (1) the
165 ratio between the aggregate of such loans and investments and the
166 capital funds of the bank or savings bank; (2) the benefits to the
167 bank or savings bank reasonably to be anticipated from such
168 investment or such loan; (3) the ratio between such aggregate
169 capital funds and total deposits; and (4) such other factors as the
170 commissioner shall consider germane to the protection of deposits.
171 A violation of any provision of this paragraph by any bank,
172 savings bank, or subsidiary of a bank or savings bank, shall not
173 impair the validity or sufficiency of any deed of conveyance, mort-
174 gage, or lease made by such bank, savings bank, or subsidiary,
175 of real property owned by it; nor shall any other interest in such
176 real property, acquired by or vested in any person claiming
177 through or under such bank, savings bank, or subsidiary, or to
178 which such person may be entitled, be impaired by reason of such
179 violation;

180 (14) To make or invest in any secondary mortgage loan as defined
181 in section 1 of P. L. 1948, c. 67 (C. 17:9A-1). Secondary mortgage
182 loans shall be repayable in installments under the same terms and
183 conditions as provided for secondary mortgage loan licenses under
184 the "Secondary Mortgage Loan Act," P. L. 1970, c. 205 (C.
185 17:11A-34 et seq.) only with respect to maximum term, maximum
186 loan amount and maximum annual percentage rate of interest.
187 The Commissioner of Banking shall have the power, in relation to
188 a "secondary mortgage loan," to adopt, amend, alter or rescind

189 regulations, the requirements of which, in his judgment, are neces-
190 sary for the implementation of this paragraph;

191 *(15) To purchase, hold and invest in mortgages, obligations or*
192 *other securities which are or have been sold by the Federal Home*
193 *Loan Mortgage Corporation pursuant to sections 305 or 306 of the*
194 *“Federal Home Loan Mortgage Corporation Act,” Pub. L. 91-351*
195 *(12 U. S. C. § 1454 or 12 U. S. C. § 1455) to the same extent that*
196 *the bank or savings bank may purchase, hold or invest in obliga-*
197 *tions issued by or guaranteed as to principal and interest by the*
198 *United States or any agency or instrumentality thereof.*

1 15. Section 1 of P. L. 1964, c. 202 (C. 17:9A-27.50) is amended
2 to read as follows:

3 1. *a.* Subject to the limitations prescribed by this act, a bank may
4 grant options to purchase shares of its capital stock to its officers
5 and employees, and to the officers and employees of any subsidiary,
6 without first offering the same to its stockholders, for a considera-
7 tion in cash of not less than the higher of par value or 85% of the
8 fair market value of the shares at the time the options are granted,
9 pursuant to the terms of a stock option plan which has been pre-
10 viously adopted by its board of directors and approved by the
11 holders of two-thirds of the capital stock of the bank entitled to
12 vote. A stock option plan adopted and approved as provided herein
13 may contain any provisions which the bank may choose to make
14 and which are not prohibited by law. The number of shares which
15 may be issued or purchased pursuant to any one stock option plan
16 shall not exceed 5% of the amount of outstanding shares of the
17 capital stock of the bank at the time of the adoption of the plan,
18 but there may be more than one stock option plan in effect at the
19 same time, provided that the total number of shares of stock sub-
20 ject to all existing stock option plans may not exceed 10% of the
21 amount of the outstanding shares of the capital stock of the bank.
22 In the absence of actual fraud in the transactions, and within the
23 limits of the particular stock option plan under which a stock
24 option is issued, the judgment of the board of director as to the
25 consideration for the issuance of such options and the sufficiency
26 thereof, and as to the recipients of the options, shall be conclusive.

27 *b.* *In addition to, or as an alternative to adopting a stock option*
28 *plan pursuant to paragraph a. of this section, a bank may adopt*
29 *any form of stock option plan which is an Incentive Stock Option*
30 *as defined in Section 422A of the Internal Revenue Code or an*
31 *Employee Stock Purchase Plan as defined in Section 423 of the*
32 *Internal Revenue Code, provided that the additional or alternate*
33 *plan shall be adopted by the board of directors and approved by*
34 *the holders of two-thirds of the capital stock of the bank entitled*
35 *to vote.*

1 16. Section 36 of P. L. 1948, c. 67 (C. 17:9A-36) is amended to
2 read as follows:

3 36. Definitions.

4 As used in this article, and except as the context otherwise
5 requires,

6 (1) "Common trust fund" means a fund established and main-
7 tained by a bank exclusively for the collective investment and re-
8 investment of moneys contributed thereto by the bank *or any of its*
9 *affiliate banks* in any fiduciary capacity specified in paragraphs (5),
10 (6), (9) and (10) of section 28;

11 (2) "Bank" means a qualified bank which is empowered to in-
12 vest moneys entrusted to it in any capacity specified in paragraphs
13 (5), (6), (9) and (10) of section 28;

14 (3) "Cofiduciary" means one or more individuals or corpora-
15 tions, or both, lawfully acting or entitled to act jointly with a bank
16 in the exercise of the powers referred to in the next preceding
17 paragraph;

18 (4) "Trust instrument" means the will, deed, agreement, court
19 order or other instrument pursuant to which money or other prop-
20 erty is entrusted to a bank as sole fiduciary or jointly with a
21 cofiduciary;

22 (5) "Trust estate" means money or other property entrusted to
23 a bank solely or jointly with a cofiduciary pursuant to a trust
24 instrument;

25 (6) "Participation" means the undivided share in a common
26 trust fund which accrues to a trust estate as the result of a bank's
27 investment of funds of such trust estate in such common trust
28 fund;

29 (7) "*Affiliate banks*" means banks, including out-of-State banks,
30 at least 90% of whose issued and outstanding stock is owned by
31 the same in-State or out-of-State corporation;

32 (8) "*Out-of-State bank*" means a corporation organized as a
33 bank under the laws of a state other than New Jersey or a national
34 banking association having its principal office outside of New
35 Jersey.

1 17. Section 37 of P. L. 1948, c. 67 (C. 17:9A-37) is amended to
2 read as follows:

3 37. Participations in common trust fund.

4 A. Subject to the limitations of this article, a bank may create
5 and maintain one or more common trust funds, and may, without
6 order or judgment of any court or officer, invest in cash all or any
7 part of the funds of any one or more trust estates in any one or more
8 **[such]** common trust funds.

9 B. Where there is a cofiduciary, the bank shall acquire no parti-
 10 cipation in a common trust fund without the prior written consent
 11 of the cofiduciary, who is hereby authorized to give such consent.
 12 Such participation shall be withdrawn within three months after the
 13 written request of a cofiduciary for such withdrawal.

14 C. Investment of funds of a trust estate in a common trust fund
 15 or funds may be made as provided in this article, notwithstanding
 16 that the trust instrument became operative before the effective
 17 date of this act, and notwithstanding that the trust instrument,
 18 regardless of the date of its effectiveness, does not specifically
 19 authorize such an investment; but no investment shall be made
 20 in a common trust fund contrary to the express provisions of the
 21 trust instrument.

22 D. No bank shall invest any of its own funds in a common trust
 23 fund.

24 E. Each common trust fund shall be established and maintained
 25 in accordance with a written plan, so as to qualify as a common
 26 trust fund under federal revenue laws, and, to that end, each bank
 27 in establishing and maintaining a common trust fund shall conform
 28 with and be subject to the rules and regulations, prevailing from
 29 time to time, of the Board of Governors of the Federal Reserve
 30 System or the Comptroller of the Currency pertaining to the col-
 31 lective investment of trust funds by national banks.

32 F. (Deleted by amendment.)

33 G. [When two or more banks are subsidiaries of the same cor-
 34 poration, any such bank may, without order or judgment of any
 35 court or officer, invest in cash all or any part of the funds of
 36 any one or more trust estates in any one or more common trust
 37 funds created and maintained pursuant to this article by any one
 38 or more such other subsidiary banks. All the provisions of this arti-
 39 cle shall apply to the banks making and receiving investments
 40 pursuant to this subsection as though such banks were a single
 41 corporate entity. "Subsidiary" as used in this section means a
 42 bank at least 90% of whose issued and outstanding stock is owned
 43 by a corporation organized under the laws of this State.] *(Deleted*
 44 *by amendment, P. L. . . . , c. . . .)*

1 18. Section 247 of P. L. 1948, c. 67 (C. 17:9A-247) is amended
 2 to read as follows:

3 247. Banking records.

4 a. Any banking institution may cause to have copied or repro-
 5 duced by any photostatic, photographic or miniature photographic
 6 process which correctly and accurately copies or reproduces, or
 7 forms a medium of copying or reproducing, all or any part of its
 8 documents and records relating to the accounts of its depositors

9 and the operation of its business, other than its notes, bonds, mort-
 10 gages and other securities and investments, and may substitute
 11 the copy or reproduction, in either positive or negative form, for
 12 the original thereof. Thereafter, the copy or reproduction in the
 13 form of a positive print thereof, shall be deemed for all purposes
 14 to be an original counterpart of the original thereof and shall have
 15 the same force and effect as the original thereof, and the banking
 16 institution may destroy or otherwise dispose of the original.

17 *For the purposes of this section, open-end line-of-credit agree-*
 18 *ments, including, but not limited to, advance loan contracts made*
 19 *pursuant to P. L. 1959, c. 91 (C. 17:9A-59.1 et seq.) and revolving*
 20 *credit equity loans pursuant to regulation of the commissioner, are*
 21 *not deemed to be notes, bonds, mortgages or other securities or in-*
 22 *vestments and their copies shall be deemed to have the same force*
 23 *and effect as the originals as set forth in this section.*

24 *b. The commissioner may adopt rules and regulations permitting*
 25 *the destruction of originals and copies of books, records, certifi-*
 26 *cates, documents, reports, correspondence and other instruments,*
 27 *papers and writings of a banking institution, which, because of age*
 28 *or other reasons, need not be preserved.*

1 ****[19.** (New section) a. Notwithstanding the provisions of sub-
 2 section (5) of section 24 of P. L. 1948, c. 67 (C. 17:9A-24) or any
 3 other law which may prohibit or limit powers, a bank, savings bank,
 4 bank holding company or a subsidiary of a bank or bank holding
 5 company, in addition to other powers granted by applicable
 6 statute or regulation, may engage in the business of real estate
 7 investment and development.

8 b. Any bank, savings bank, bank holding company or subsidiary
 9 seeking to exercise any of the powers granted by subsection a. of
 10 this section shall make application to the commissioner on forms
 11 provided by him for that purpose. The commissioner, within 90
 12 days from the date of the submission, shall approve or deny the
 13 exercise of these powers by the applying institution.

14 c. In making his determination whether to approve the exercise
 15 of these powers by a bank, savings bank, bank holding company
 16 or subsidiary under this section, the commissioner shall consider:

17 (1) The financial condition and managerial resources of the
 18 applicant;

19 (2) The adequacy of the financial resources of the applicant,
 20 including capital adequacy;

21 (3) Any material adverse effect on the safety and soundness or
 22 financial condition of the applicant, or an affiliated bank; and

23 (4) Any other conditions he shall establish by regulation.

24 d. Approval by the commissioner shall exempt the bank, savings
25 bank, bank holding company, or subsidiary of a bank or bank hold-
26 ing company from the requirements of obtaining any license or
27 other approval otherwise necessary to commence and continue to
28 conduct the approved business. The commissioner shall have the
29 sole authority to oversee and regulate the approved business.

30 e. The commissioner shall promulgate rules and regulations as
31 necessary to effectuate the purpose of this section.】**

1 **[20.]** **19.** (New section) Notwithstanding any other law
2 of this State, a *[bank]* *banking institution* which makes a
3 charge or imposes a fee in excess of that permitted by P. L. 1948,
4 c. 67 (C. 17:9A-1 et seq.), R. S. 31:1-1 et seq. or any other appli-
5 cable law, shall have no liability for that charge or imposition if,
6 within 60 days after discovering the excess charge or imposition
7 either through its own procedures or through an examination, and
8 prior to any action being commenced or written notice being
9 received from the obligor, the *[bank]* *banking institution*
10 notifies the person or entity concerned of the error and makes
11 whatever adjustments are necessary to assure that the person or
12 entity will not be required to pay any amount in excess of the
13 amount permitted to be charged or imposed.

1 **[21.]** **20.** Section 3 of P. L. 1969, c. 118 (C. 17:9A-357)
2 is amended to read as follows:

3 3. Plan of acquisition.

4 (1) The boards of directors of the corporation which seeks to
5 become an acquiring corporation and of each bank which seeks to
6 become a participating bank shall authorize the execution of a plan
7 for the acquisition by such corporation of ownership of all the
8 outstanding shares of the capital stock of each such bank.

9 (2) The plan of acquisition shall contain

10 (a) The name and address of the acquiring corporation;

11 (b) The name and address of each participating bank;

12 (c) The names and addresses of the members of the board of
13 directors of the acquiring corporation;

14 (d) The names and addresses of all banks some or all of
15 whose shares of capital stock are owned by the acquiring
16 corporation, with the total number of shares of each such bank
17 issued and outstanding, and the number of shares of each such
18 bank owned by the acquiring corporation;

19 (e) The terms and conditions of the acquisition, and the mode
20 of carrying it into effect, including the manner of exchanging
21 the shares of each participating bank for *cash or shares or*

22 other securities of the acquiring corporation, and including
23 provisions respecting the disposition of securities issued by a
24 participating bank and convertible into shares of its capital
25 stock, and options granted to officers and employees of a
26 participating bank to purchase shares of its capital stock;

27 (f) The effective date of the plan of acquisition;

28 (g) Such other provisions, including the payment of cash in
29 lieu of the issuance of fractional shares, as may be necessary
30 or appropriate to carry the plan of acquisition into effect.

31 *(3) The plan of acquisition may provide that the shares of the*
32 *participating bank be exchanged solely for cash or solely for shares*
33 *or securities of the acquiring corporation or be exchanged for both*
34 *cash and ***[stock]*** *shares* or other securities.*

1 ****[22.]** **21.**** This act shall take effect immediately.

Sponsor STATEMENT

This is an omnibus bill which amends and supplements various banking laws concerning bank, bank holding company and savings bank operations and investments. This bill will increase bank operational efficiency, permit additional parity of State chartered banks with national banks, and allow banks to better serve consumers in New Jersey.

S 2350 (1981)

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 2350

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 1985

This bill, as amended by the Assembly Banking and Insurance Committee, provides the following:

Section 1 permits, by definition, State banks and savings banks to make secondary mortgage loans secured by stock in a cooperative association.

Section 2 allows State banks and savings banks to exercise powers which are as "closely related to banking" as to be a proper activity for a bank holding company pursuant to the federal "Bank Holding Company Act" and the regulations thereunder (subsection (6)). This section allows, with the Banking Commissioner's approval, banks and savings banks to exercise any power or activity permitted bank holding companies on an individual basis by the Federal Reserve under the federal "Bankholding Company Act" (subsection (7)). Subsection (8) allows banks and savings banks to make, at an agreed upon interest rate between the borrower and lender, a loan in the amount of \$5,000.00 or more, payable on demand or in installments, which is used to acquire or is secured by business equipment, or which is secured by an interest in a warehouse receipt, negotiable instrument or commercial paper, or stocks, bonds, certificates of deposits, or certain other securities. Subsection (9) allows banks and savings banks to engage in the business of providing data processing and computer services. Subsection (10) gives banks and savings banks the authority to purchase and sell warrants and options issued by a corporation if the issuer is a borrower of funds loaned by the bank or savings bank. The commissioner may, by regulation, prescribe the manner in which and the extent to which the powers enumerated in this section may be exercised, including whether they must be exercised through a subsidiary. The commissioner may prescribe by regulation, other powers, not otherwise expressly authorized or prohibited by law, which banks and savings banks may exercise.

Section 3 permits banks to buy and sell debt instruments, such as bonds, in addition to stocks for the accounts of their customers. It

clarifies that bonds may be taken as collateral for loans. It also allows banks to issue letters of credit for periods longer than a year and to guarantee payments of its customers for more than a year.

Section 4 expands the depository institutions in which a qualified bank may deposit trust funds awaiting investment or disbursement by including a banking institution, trust company or national banking association having its principal office in any state, not just in a contiguous state.

Section 5 was added by the committee. It gives banks the authority to merge or combine common trust funds into a single common trust fund.

Section 6 clarifies that banks may make mortgage loans on property more than 50 miles from the border of this State. Banks currently have no limitation on the location of the property.

Sections 7 and 8 provide for regulations by the Commissioner of Banking for limits on loans by a bank to its directors and executive officers to achieve parity with such lending limits for national banks.

Section 9 specifically provides that the advance loan law applies to purchases of goods or services, as well as cash advances, under credit card agreements operated under that law. Additionally, the section specifies that certain loan restrictions in other New Jersey laws will not apply to the advance loan law, with the exception of the criminal usury law.

Section 10 provides that, unless otherwise prohibited by the certificate of incorporation or bylaws, the board of directors of a bank or any committee thereof may take action without a meeting if, prior or subsequent to that action, all members of the board or of the committee consent thereto in writing. The section also allows a meeting of the board or committee by means of conference telephone, unless otherwise prohibited by the certificate of incorporation or bylaws.

Section 11 permits banks or capital stock savings banks to purchase shares of their own stock. These shares and shares it is authorized to issue may, with the approval of the Commissioner of Banking, be used for the purposes of establishing a dividend reinvestment plan. The acquired shares may also be used for other purposes approved by the commissioner, provided that the alternative uses are not contrary to law or sound banking principles. These shares are required to be designated as "treasury stock," and would not constitute capital stock for the purposes of the Banking Act of 1948.

Section 12 provides that, except as required by subsection D of this section, a director, officer, trustee, manager, employee or agent of a bank or savings bank shall not receive indemnification or expenses

advanced in regard thereto by the corporation, and none shall be ordered by the court, if such action would be inconsistent with a provision of the certificate of incorporation, a bylaw, a resolution of the board of directors or of the shareholders, or an agreement or other proper corporate action in effect at the time of the alleged wrong.

Section 13 clarifies that a bank holding company may use the word "bank" in its name.

Section 14 provides that a bank or savings bank may invest in obligations of the Federal Home Loan Mortgage Corporation to the same extent that the bank or savings bank may invest in obligations issued by or guaranteed as to principal and interest by the United States government.

Section 15 allows a bank to adopt a stock option plan which is an Incentive Stock Option Plan or an Employee Stock Purchase Plan as refined in the Internal Revenue Code, provided the plan is approved by the board of directors and holders of two-thirds of the bank's voting stock.

Sections 16 and 17 permit out-of-state "sister" banks to use a common trust fund established by a New Jersey bank which is owned by the same holding company as the out-of-state bank, which practice is currently permitted between "sister" banks in this State.

Section 18 provides that copies of open-end line-of-credit agreements (advance loan contracts and revolving equity loans) of banks or savings banks shall have the same force and effect as the originals. This section also authorizes the Commissioner of Banking to adopt regulations permitting the destruction of originals and copies of books, records, documents and writings of a bank or savings bank which, because of age or other reasons, need not be preserved.

Section 19 provides that a bank which makes a charge or imposes a fee in excess of that permitted by the banking law, interest limitations in R. S. 31:1-1 or other applicable laws, would have no liability for the charge or imposition if the bank notifies the person of the error and makes the necessary adjustments within 60 days of discovering the error. However, this provision would not apply if the obligor notifies the bank in writing of the error or commences an action in regard thereto prior to the bank giving notice of the error.

Section 20 clarifies that an acquisition of bank shares may be made by cash as well as by an exchange of shares or other securities, or both.

The committee deleted section 4 (granting banks the power to trade in mutual funds with the commissioner's approval and section 19 granting banks the power to invest in real estate with the commissioner's approval) from the Senate version of the bill.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2350

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 4, 1985

This bill, as amended at the request of the sponsor, provides the following:

Section 1 permits, by definition, State banks and savings banks to make secondary mortgage loans secured by stock in a cooperative association.

Section 2 allows State banks and savings banks to exercise powers which are as "closely related to banking" as to be a proper activity for a bank holding company pursuant to the federal "Bank Holding Company Act" and the regulations thereunder (subsection (6)). This section allows, with the Banking Commissioner's approval, banks and savings banks to exercise any power or activity permitted bank holding companies on an individual basis by the Federal Reserve under the federal "Bank Holding Company Act" (subsection (7)). Subsection (8) allows banks and savings banks to make, at an agreed upon interest rate between the borrower and lender, a loan in the amount of \$5,000.00 or more, payable on demand or in installments, which is used to acquire or is secured by business equipment, or which is secured by an interest in a warehouse receipt, negotiable instrument or commercial paper, or stocks, bonds, certificates of deposits, or certain other securities. Subsection (9) allows banks and savings banks to engage in the business of providing data processing and computer services. Subsection (10) gives banks and savings banks the authority to purchase and sell warrants and options issued by a corporation if the issuer is a borrower of funds loaned by the bank or savings bank. The commissioner may, by regulation, prescribe the manner in which and the extent to which the powers enumerated in this section may be exercised, including whether they must be exercised through a subsidiary. The commissioner may prescribe by regulation, other powers, not otherwise expressly authorized or prohibited by law, which banks and savings banks may exercise.

Section 3 permits banks to buy and sell debt instruments, such as bonds, in addition to stocks for the accounts of their customers. It

clarifies that bonds may be taken as collateral for loans. It also allows banks to issue letters of credit for periods longer than a year and to guarantee payments of its customers for more than a year.

Section 4 provides that a bank may establish, trade in and sell mutual funds and common trust funds established by it or others if it has the approval of the commissioner and it does so in accordance with the regulations promulgated by the commissioner.

Section 5 expands the depository institutions in which a qualified bank may deposit trust funds awaiting investment or disbursement by including a banking institution, trust company or national banking association having its principal office in any state, not just in a contiguous state.

Section 6 clarifies that banks may make mortgage loans on property more than 50 miles from the border of this State. Banks currently have no limitation on the location of the property.

Sections 7 and 8 provide for regulations by the Commissioner of Banking for limits on loans by a bank to its directors and executive officers to achieve parity with such lending limits for national banks.

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Section 10 provides that, unless otherwise prohibited by the certificate of incorporation or bylaws, the board of directors of a bank or any committee thereof may take action without a meeting if, prior or subsequent to that action, all members of the board or of the committee consent thereto in writing. The section also allows a meeting of the board or committee by means of conference telephone, unless otherwise prohibited by the certificate of incorporation or bylaws.

Section 11 permits banks or capital stock savings banks to purchase shares of their own stock. These shares and shares it is authorized to issue may, with the approval of the Commissioner of Banking, be used for the purposes of establishing a dividend reinvestment plan. The acquired shares may also be used for other purposes approved by the Commissioner, provided that the alternative uses are not contrary to law or sound banking principles. These shares are required to be designated as "treasury stock," and would not constitute capital stock for the purposes of the Banking Act of 1948.

Section 12 provides that, except as required by subsection D of this section, a director, officer, trustee, manager, employee or agent of a bank or savings bank shall not receive indemnification or expenses

advanced in regard thereto by the corporation, and none shall be ordered by the court, if such action would be inconsistent with a provision of the certificate of incorporation, a bylaw, a resolution of the board of directors or of the shareholders, or an agreement or other proper corporate action in effect at the time of the alleged wrong.

Section 13 clarifies that a bank holding company may use the word "bank" in its name.

Section 14 provides that a bank or savings bank may invest in obligations of the Federal Home Loan Mortgage Corporation to the same extent that the bank or savings bank may invest in obligations issued by or guaranteed as to principal and interest by the United States Government.

Section 15 allows a bank to adopt a stock option plan which is an Incentive Stock Option Plan or an Employee Stock Purchase Plan as defined in the Internal Revenue Code, provided the plan is approved by the board of directors and holders of two-thirds of the bank's voting stock.

Sections 16 and 17 permit out-of-state "sister" banks to use a common trust fund established by a New Jersey bank which is owned by the same holding company as the out-of-state bank, which practice is currently permitted between "sister" banks in this State.

Section 18 provides that copies of open-end line-of-credit agreements (advance loan contracts and revolving equity loans) of banks or savings banks shall have the same force and effect as the originals. This section also authorizes the Commissioner of Banking to adopt regulations permitting the destruction of originals and copies of books, records, documents and writings of a bank or savings bank which, because of age or other reasons, need not be preserved.

Section 19 permits banks, savings banks, bank holding companies and certain subsidiaries thereof to engage in the business of real estate investment and development, subject to the approval and regulation by the Commissioner of Banking. In making a determination to allow the exercise of this power, the commissioner must consider the financial condition and managerial resources of the applicant; the adequacy of the financial resources of the applicant; any material adverse effect on the safety and soundness or financial condition of the applicant; and any other conditions established by regulation. An approved applicant is exempt from the requirements of obtaining any license or other approval otherwise necessary to commence and continue business. This section does not allow these institutions to become real estate brokers.

Section 20 provides that a bank which makes a charge or imposes a fee in excess of that permitted by the banking law, interest limitations in R. S. 31:1-1 or other applicable laws, would have no liability for the

charge or imposition if the bank notifies the person of the error and makes the necessary adjustments within 60 days of discovering the error. However, this provision would not apply if the obligor notifies the bank in writing of the error or commences an action in regard thereto prior to the bank giving notice of the error.

Section 21 clarifies that an acquisition of the bank shares may be made by cash as well as by an exchange of shares or other securities, or both.
