

17:12B-181 ET AL

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:12B-181 et al (Saving & loan Act--amendments concerning conduct of business mergers, etc.)

LAWS 1981 CHAPTER 287

Bill No. A3066

Sponsor(s) Bornheimer and Patero

Date Introduced February 2, 1981

Committee: Assembly Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes ~~NOX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly April 27, 1981

Senate June 22, 1981

Date of approval September 11, 1981

Following statements are attached if available:

Sponsor statement Yes ~~NOX~~

Committee Statement: Assembly Yes ~~NOX~~

Senate Yes ~~NOX~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

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ASSEMBLY, No. 3066

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1981

By Assemblymen BORNHEIMER and PATERO

Referred to Committee on Banking and Insurance

AN ACT to amend the "Savings and Loan Act (1963)," approved August 30, 1963 (P. L. 1963, c. 144).

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

1 1. Section 181 of P. L. 1963, c. 144 (C. 17:12B-181) is amended
2 to read as follows:

3 181. The commissioner may institute an action in the Superior
4 Court to restrain the State association from transacting further
5 business, or from transferring or disposing of any of its property
6 in any manner, or from paying excessive expenses of management,
7 or for the removal of any attorney, conveyance, officer, director,
8 employee or agent of the State association, or for such other relief
9 as the case may require. The court may proceed in the action in a
10 summary manner or otherwise and may make such orders or enter
11 such judgments as shall be equitable and just. *In such an action the*
12 *court may enter a temporary restraining order or preliminary in-*
13 *junction without notice to the association.* Without limiting the
14 generality of its powers, the court may, upon application by the
15 commissioner, appoint a receiver, with power to take possession,
16 manage and dispose of all of the association's real and personal
17 property, books and records and to hold and dispose of the proceeds
18 thereof, as the court shall direct.

1 2. Section 182 of P. L. 1963, c. 144 (C. 17:12B-182) is amended to
2 read as follows:

3 182. Commissioner's authority. The commissioner may forthwith
4 take charge of the State association and possession of all its real
5 and personal property, books and records, and continue the opera-
6 tion of its business until such possession and management shall be
7 returned to its board, or until such State association shall merge,
8 reorganize **[or]**, dissolve and commence liquidation, *or go into*
9 *receivership.*

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

1 3. Section 185 of P. L. 1963, c. 144 (C. 17:12B-185) is amended to
2 read as follows:

3 185. Powers of commissioner in possession. The commissioner
4 shall have full and complete powers necessary to enable him to
5 determine promptly and efficiently whether it is for the best
6 interests of the State association's creditors, members and the
7 public that it be continued as a going concern or that it be merged,
8 reorganized or dissolved and liquidated. Without limiting the
9 generality of his powers, he shall have power to:

- 10 (a) Continue the operation of the State association's business.
11 (b) Conserve its assets and business.
12 (c) Pay its debts and operating expenses.
13 (d) Collect moneys due to it.
14 (e) Compromise and settle claims by and against it.
15 (f) Exercise any power conferred by this chapter on the State
16 association or its board.
17 (g) Call meetings of its members.
18 (h) *Declare the association closed under State law or take what-*
19 *ever other action he deems necessary to assist the Federal Home*
20 *Loan Bank Board or the Federal Savings and Loan Insurance*
21 *Corporation to exercise their powers under Federal law.*

1 4. Section 199 of P. L. 1963, c. 144 (C. 17:12B-199) is amended to
2 read as follows:

3 199. **Procedure.** The boards of the State associations desiring
4 to merge, shall each pass a resolution indicating such desire by at
5 least a $\frac{2}{3}$'s vote of each of the respective boards. The directors of
6 the merging associations shall then have the power to process the
7 proposed merger. The directors of the merging associations shall
8 then file their resolutions with the commissioner for his approval.
9 Simultaneously with the submission of the resolutions to the com-
10 missioner, the boards of the merging State associations **[shall each]**
11 *may* submit their resolution to the members of their respective
12 State associations by mailing a copy of the same to their members
13 at their addresses appearing on the books of the State associations
14 ***[or]*** *and* they may, within 10 days of filing said resolutions
15 with the commissioner, publish notice of such action in form
16 approved by the commissioner, in a newspaper or newspapers
17 published in the municipalities where the principal office and
18 branches of each merging association are located or if there be no
19 such newspaper then in a newspaper published in the county having
20 a substantial circulation in said municipalities. Notice of such
21 action shall also be posted in a prominent place in each office of the
22 merging associations.

23 Any member shall have the right to file his objection to the pro-
24 posed merger with the commissioner within 15 days from the date
25 such resolution is filed with the commissioner *and mailed to them,*
26 *or if newspaper publication is utilized within 15 days from the date*
27 *of such publication, and this right of the members shall be made*
28 *part of whatever notice method is used.* Not less than 30 days nor
29 more than 45 days, after the resolutions are filed with the commis-
30 sioner *or newspaper publication is accomplished,* the commissioner
31 shall approve or disapprove the application. The commissioner
32 shall give due consideration to any objections filed by members of
33 the merging State associations and he shall determine whether the
34 proposed merger is in the interest of the public and of the members
35 of the merging State associations in reaching his decision. The
36 commissioner shall mail a written copy of his opinion, approving
37 or disapproving any applications submitted under this section, to
38 the applying State associations.

39 *Notwithstanding any of the above requirements, upon finding*
40 *that the interest of the public and the members of the merging in-*
41 *stitutions will be served by expedited approval of a plan of merger,*
42 *the commissioner may approve the proposed plan of merger on such*
43 *an expedited basis. If approval is reached by the commissioner on*
44 *such an expedited basis, notice to members of the merged institu-*
45 *tions shall be given in a manner specified by the commissioner.*

1 5. This act shall take effect immediately.

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STATEMENT

This bill is designed to make certain provisions of the New Jersey Savings and Loan Act more flexible and more precisely integrated with complementary Federal law. The bill would do this in three ways.

First, in an action under N. J. S. 17:12B-181, brought by the Commissioner of Banking to restrain an association from transacting business, transferring property, as well as to obtain other relief, the court is given the power to enter a temporary restraining order or preliminary injunction without notice to the association. Often when dealing with a fiscally troubled institution, swift, unpublicized judicial action is needed to protect the public and business community.

Secondly, the bill gives the Commissioner of Banking, when in possession of the association's assets, the power to declare an association "closed" and to take any necessary action to assist the Federal Home Loan Bank Board or the Federal Savings and Loan

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Insurance Corporation to exercise their powers under Federal law. This amendment is necessary to enable the commissioner to trigger 12 USC § 1729 which under certain conditions permits the Federal Savings and Loan Insurance Corporation to serve as receiver for the association.

Finally, the bill would permit the Commissioner of Banking to approve a merger prior to the expiration of the present 30 days statutory waiting period if expedited approval is in the interest of the public and members of the merging institutions. Where a financially troubled institution seeks to merge with a healthier one, it is often imperative that the merger be approved as quickly as possible. The bill also would permit notice of a merger to association members by newspaper publication as an alternative to notice by mail.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3066

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 2, 1981

This legislation expands the powers of the Commissioner of Banking with respect to the actions which may be taken in the event that the commissioner institutes a suit against a savings and loan association or in the event that an association is in danger of failing.

The bill would permit a court to issue a restraining order or preliminary injunction without notice to the association if a suit is instituted. At present, the commissioner has the power to take charge of and operate the association in the event that an association in danger of failure is to be merged with another association, reorganized, or liquidated; this authority would be extended to cases in which an association is to go into receivership. The commissioner would also be given the authority to declare the association closed, or take whatever action he deems necessary to assist the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation in the closing or rehabilitation of an association.

As originally drafted, the legislation would have amended the law to permit associations planning a merger to notify their members by published notice in a newspaper rather than mailing written notice to each member. The Assembly Banking and Insurance Committee has amended the legislation to permit publication of notice in a newspaper as an option, but not an alternative to mailed written notification.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3066

STATE OF NEW JERSEY

DATED: JUNE 8, 1981

This legislation would permit a court to issue a restraining order or preliminary injunction without notice to the association in cases in which the Commissioner of Banking institutes a suit against a savings and loan association. The power of the commissioner to operate the association would be extended to include any period prior to its going into receivership, as well as merger, reorganization, and liquidation, which are not provided for by law. The commissioner would also have the authority to declare the association closed, or take whatever action he deems necessary to assist the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation. The legislation would also permit associations planning a merger to publish notification of such merger in a newspaper in addition to mailing a copy of the notification to the members of the association. Notice of such action would be required to be posted in a prominent place in each office of the merging associations. The commissioner would be permitted to expedite mergers.

This legislation facilitates the closing and merging of savings and loan associations, and gives the Commissioner of Banking more flexibility in this regard than is presently permitted by law.