

17:9A-345 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:9A-345 et al (State banks -- regulates foreign investment)

LAWS 1981 CHAPTER 484

Bill No. S1484

Sponsor(s) Hamilton and Weiss

Date Introduced Sept. 22, 1980

Committee: Assembly ---

Senate Labor, Industry and Professions

Amended during passage Yes according to Governor's recommendations ~~No~~ Amendments denoted by asterisks

Date of Passage: Assembly Nov. 23, 1981 Re-enacted 1-11-82

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Date of approval Jan. 12, 1982

Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
Senate	Yes	No
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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SENATE, No. 1484

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 22, 1980

By Senators HAMILTON and WEISS

Referred to Committee on Labor, Industry and Professions

AN ACT to amend and supplement "An act concerning the ownership of bank stock in certain cases, defining certain terms in relation thereto, imposing certain restrictions on such ownership, providing for the enforcement of the act and for punishment for violations thereof," approved June 5, 1957 (P. L. 1957, c. 70).

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

1 1. Section 1 of P. L. 1957, c. 70 (C. 17:9A-344) is amended to
2 read as follows:

3 1. As used in this act,

4 (a) "Bank" means ***[**a corporation authorized to transact the
5 business of banking in this State pursuant to the laws of this State
6 or of the United States;**]*** **an institution organized under the
6A laws of the United States, a state of the United States, the District
6B of Columbia, or a territory or possession of the United States, which
6C does business in the United States that is not incidental to the
6D institution's activities outside the United States and which (1) ac-
6E cepts deposits that the depositor has a legal right to withdraw on
6F demand and (2) engages in the business of making commercial
6G loans except that "bank" does not include an organization operating
6H under section 25 or section 25 (a) of the Federal Reserve Act (12
6I U. S. C. §§ 601-604(a) or 12 U. S. C. § 611 et seq.). A "bank lo-
6J cated outside of this State" means a bank which has its principal,
6K head or main office outside of this State. A "bank located in this
6L State" means a bank which has its principal, head or main office
6M in this State;**

7 (b) "Company" means a corporation, joint stock company, busi-
8 ness trust, investment trust, general or limited partnership, voting
9 trust, association, and any similar organized group of persons,
10 whether incorporated or not, and whether or not organized under

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

11 *the laws of this State or any other state or any territory * or pos-*
 12 *session* of the United States* [, Puerto Rico, Guam, American*
 13 *Samoa or the Virgin Islands,]* or under the laws of a foreign*
 14 *country, territory, colony or possession thereof, other than a cor-*
 15 *poration all the capital of which is owned by the United States;*
 16 *“company” includes subsidiary and parent companies;*

17 (c) *“Stock” means [every interest or right in or against a*
 18 *corporation, however evidenced and however designated, which*
 19 *confers upon the holder the right to vote at any meeting of the*
 20 *corporation] a security issued by a bank or corporation which*
 21 *presently entitles the holder thereof to vote at meetings of share-*
 22 *holders of the bank or corporation for the election of directors,*
 23 *but does not include a security which entitles the holder thereof*
 24 *to vote for the election of directors only as a result of the failure*
 25 *to pay a dividend or to fulfill an obligation or satisfy a condition*
 26 *specified by the terms of the security;*

27 (d) *“Bank stock” means stock issued by a bank;*

28 (e) *“Subsidiary” of a company means (1) a corporation more*
 29 *than 50% of whose stock is owned by such company, and (2) an*
 30 *unincorporated company in which such company directly or in-*
 31 *directly owns more than a 50% share or interest;*

32 (f) *“Parent company” means a company of which another com-*
 33 *pany is a subsidiary;*

34 (g) *“Own,” “owner,” “owned” and “ownership,” when applied*
 35 *to stock, mean direct and indirect ownership of such stock, and*
 36 *includes stock not owned, but directly controlled with power to vote;*

37 ** [(h) “Foreign bank” means a company organized under the laws*
 38 *of a foreign government which is engaged in the business of bank-*
 39 *ing and which is authorized by the laws under which it is organized*
 40 *to exercise one or more of the powers specified in the following*
 41 *sections of “The Banking Act of 1948,” P. L. 1948, c. 67: para-*
 42 *graph (4) of section 24; paragraphs (4), (5) and (13) of section*
 43 *25; and paragraphs (3), (4), (5), (6), (7), (8), and (9) of section*
 43A *28.]**

43B ** (h) “Foreign bank” means an institution organized under the*
 43C *laws of a foreign country which engages in the business of banking,*
 43D *is recognized as a banking entity by the bank supervisory or mon-*
 43E *etary authority of the country of its organization or principal*
 43F *banking operations, receives deposits to a substantial extent in the*
 43G *regular course of business and has the power to accept deposits*
 43H *which the depositor has a legal right to withdraw on demand.**

44 (i) *“Foreign bank holding company” means a company orga-*
 45 *nized under the laws of a foreign * [government] * country*, which*

46 *has one or more subsidiaries which are foreign banks and which has*
 47 *more than half of its consolidated assets located, or consolidated*
 48 *revenues derived, outside of the United States. As used in this sub-*
 49 *section, "revenues" means gross income and "consolidated" means*
 50 *consolidated in accordance with generally accepted accounting*
 51 *principles in the United States.*

52 (j) *"Bank holding company located in this State" means a*
 53 *bank holding company subject to the "Bank Holding Company Act*
 54 *of 1956" (12 U. S. C. § 1841 et seq.), which is either organized*
 55 *under the laws of this State or the operations of whose banking*
 56 *subsidiaries are principally conducted in this State within the*
 57 *meaning of the "Bank Holding Company Act of 1956."*

58 *(k) *"Foreign country" means the government of a country*
 59 *other than the United States or its territories or possessions.**

1 2. Section 2 of P. L. 1957, c. 70 (C. 17:9A-345) is amended to
 2 read as follows:

3 2. Except as otherwise provided by sections 3 and 4 of this act,

4 (a) No company which owns more than 25% of the stock of any
 5 bank *located* ****[outside]**** ****inside**** this State shall acquire
 6 ownership of more than 10% of the stock of another bank *located*
 7 ****[outside]**** ****inside**** this State if, at the time of such acquisi-
 8 tion, or if, as a result of such acquisition, the company owns, or
 9 would own, more than 10% of the stock of each of two or more
 9A banks *located* ****[outside]**** ****inside**** this State, whose
 10 aggregate average deposits exceed 20% of the aggregate average
 11 deposits of all banks other than savings banks transacting business
 12 in this State as of the two call dates for which published figures
 13 are available next preceding such acquisition; and

14 (b) No company which owns more than 25% of the stock of **[any]**
 15 *either a bank located outside of this State or a foreign bank* shall
 16 own or acquire ownership of more than 5% of the stock of a bank
 17 located in this State.

18 Acquisition of ownership of more than a stated percentage of
 19 the stock of a bank shall include any acquisition of one or more
 20 shares after which the company owns more than the stated per-
 21 centage.

22 In applying this section to a company, all bank stock owned by
 23 a subsidiary of such company and by the parent company of such
 24 company, shall be deemed to be owned by such company.*

1 ***[2.]* *3.*** (New section) A company which owns the stock of a
 2 bank holding company located in this State shall not be deemed to
 3 own any stock of a bank subsidiary of the bank holding company
 4 unless the company controls the bank holding company, in which

5 event the company shall be deemed to own ***[a]** pro rata share of
 6 the stock of each bank subsidiary owned by the bank holding com-
 7 pany equivalent to the percentage of the outstanding stock of the**]***
 8 **the same proportional share of stock of each bank subsidiary as*
 9 *the amount of stock which it owns of the bank holding company*
 10 *bears to the total outstanding stock of the** bank holding company.
 11 As used in this section "controls" means the direct or indirect
 12 power to vote 25% or more of ***[any class of stock in the election**
 13 **of directors]*** **all shares of stock entitled to vote in the election*
 14 *of directors** or the power to control the election of a majority of
 15 the directors.

1 ***[3.]*** *4.* Section 3 of P. L. 1957, c. 70 (C. 17:9A-346) is
 2 amended to read as follows:

3 3. ***[(a)]*** *a.* Nothing in this act shall apply to bank stock
 4 which a company, lawfully acting in fiduciary capacity, acquires
 5 otherwise than through investment by such company, as an incident
 6 of the discharge of its duties as (a) guardian or coguardian of the
 7 estate of any person; (b) administrator or coadministrator, with
 8 or without the will annexed, of a decedent's estate; (c) executor
 9 or coexecutor of a will; (d) original, substituted or successor
 10 trustee or cotrustee of a testamentary trust; (e) original, sub-
 11 stituted or successor trustee or cotrustee of an irrevocable non-
 12 testamentary trust created by one settlor and consisting solely
 13 of the settlor's property; (f) receiver or coreceiver; or (g) as
 14 assignee or coassignee for the benefit of creditors; nor shall any-
 15 thing in this act apply (h) to bank stock invested in by such company
 16 in administering a testamentary trust, or in administering a non-
 17 testamentary trust of the nature described in subdivision (e) above
 18 set forth in this section, if the instrument creating either such
 19 type of trust expressly authorizes investment in the bank stock so
 20 invested in; or (i) to bank stock acquired by a company in the
 21 regular course of securing a debt previously contracted in good
 22 faith, but any shares so acquired shall be disposed of within 2
 23 years after the date of such acquisition; or (j) additional stock
 24 acquired by a company in a bank a majority of whose stock was
 25 owned by such company prior to such acquisition.

26 ***[(b)]*** *b.* *Nothing in this act shall prohibit a company from*
 27 *acquiring ownership of and owning bank stock in excess of the*
 28 *limitations imposed by subsection (b) of section ***[2(b)]*** *2* of*
 29 *this act (C. 17:9A-345) provided:*

30 (1) *The acquiring company at the time the bank stock is acquired*
 31 *is a foreign bank or a foreign bank holding company, which is not*
 32 *a subsidiary of a company organized under the laws of the United*

33 *States, a territory or possession of the United States, any state*
 34 *of the United States or Puerto Rico, Guam, American Samoa or*
 35 *the Virgin Islands; and*

36 *(2) The stock acquired is stock of a bank or a bank holding*
 37 *company located in this State which (i) immediately preceding the*
 38 *acquisition belonged to the bank or bank holding company in other*
 39 *than a fiduciary capacity or (ii) was issued by the bank or bank*
 40 *holding company for the specific purpose of being acquired by the*
 41 *company.*

41A **(3) The stock of a bank located in this State or a bank holding*
 41B *company located in this State acquired by the company, together*
 41C *with the stock of the bank or bank holding company then owned by*
 41D *the company, shall not exceed 49% of the stock of the bank or bank*
 41E *holding company which would be outstanding after any new issue*
 41F *of stock made pursuant to subsection (2) of this section;*

41G *(4) The acquisition of the stock of a State chartered bank by a*
 41H *foreign bank or foreign bank holding company, or a subsidiary of*
 41I *a foreign bank holding company, shall have received the prior ap-*
 41J *proval of the commissioner after an application for that approval*
 41K *has been filed with the commissioner, who shall approve the appli-*
 41L *cation unless he finds that the acquisition does not conform to law*
 41M *or is not in the public interest; and**

42 **~~[(3)]~~* (5)* The bank or bank holding company whose stock*
 43 *is acquired pursuant to the provisions of paragraphs (1) and (2)*
 44 *of this subsection shall give notice thereof to the Commissioner of*
 45 *Banking within 30 days after the acquisition, and the commissioner*
 46 *shall summarize the notice in the annual report of the Department*
 47 *of Banking.*

48 **~~[(c)]~~ Nothing in this act shall prohibit a bank or a parent com-*
 49 *pany of a bank or a subsidiary of a bank or parent company from*
 50 *acquiring ownership of and owning:*

51 *(1) The stock of a company which at the time such stock is*
 52 *acquired is a foreign bank or a foreign bank holding company, or*

53 *(2) The stock of a corporation organized under section 25(a)*
 54 *of the Federal Reserve Act (12 U.S.C. § 611 et seq.), or a corpora-*
 55 *tion having an agreement or undertaking with the Board of Gov-*
 56 *ernors of the Federal Reserve System under section 25 of the*
 57 *Federal Reserve Act (12 U.S.C. §§ 601-604(a)).~~]~~**

57A **(c) Nothing in this act shall prohibit a bank or a parent company*
 57B *of a bank or a subsidiary of a bank or parent company from acquir-*
 57C *ing ownership of and owning the stock of a company which at the*
 57D *time the stock is acquired is a foreign bank or a foreign bank hold-*
 57E *ing company so long as the foreign bank or bank holding company*
 57F *does not control a bank located in this State.**

58 (d) A company acquiring bank stock in the manner expressed in
 59 this section shall be exempt from all the provisions of this act
 59A **except as provided in subsection b of this section** in respect
 60 to all such stock so acquired, and the stock shall not be deemed to
 61 be owned by the company within the meaning of this act.

62 (e) Nothing in this section shall be construed as authorizing any
 63 fiduciary to make any investment not otherwise authorized by law.

1 ***[4.]*** *5.* Section 5 of P. L. 1957, c. 70 (C. 17:9A-348) is
 2 amended to read as follows:

3 5. Any corporation which willfully acquires ownership of bank
 4 stock, contrary to the provisions of this act, or which otherwise
 5 violates any provision of this act, shall be guilty of a **[misdemeanor**
 6 and, upon conviction, shall be punished by a fine of not more than
 7 \$1,000.00] *disorderly persons offense*.

8 Any individual officer or director of a corporation knowingly
 9 ordering, or doing, or permitting a corporation, whereof he is such
 10 an officer or director, to acquire ownership of bank stock contrary
 11 to the provisions of this act or to otherwise violate any provision
 12 of this act, shall be guilty of a **[misdemeanor and, upon conviction**
 13 shall be punished by a fine of not more than \$1,000.00 or imprison-
 14 ment for not more than 3 years, or both] *disorderly persons offense*.

15 Any person who willfully participates in a violation of any
 16 provision of this act as an officer, director, manager, or agent,
 17 or as a member of a partnership, business trust, investment trust,
 18 voting trust, association or similar organized group of persons,
 19 or otherwise, shall be guilty of a **[misdemeanor and, upon convic-**
 20 tion, shall be punished by a fine of not more than \$1,000.00, or by
 21 imprisonment of not more than 3 years, or both] *disorderly persons*
 22 *offense*.

1 *6. (New section) The commissioner may promulgate such rules
 2 and regulations as he deems necessary to effectuate the purposes
 3 of this act.

1 7. Section 3 of P. L. 1968, c. 426 (C. 17:9A-345.1) is repealed.*

1 ***[5.]*** *7.* This act shall take effect immediately.

19 or otherwise, shall be guilty of a [misdemeanor and, upon convic-
 20 tion, shall be punished by a fine of not more than \$1,000.00, or by
 21 imprisonment of not more than 3 years, or both] *disorderly persons*
 22 *offense*.

1 5. This act shall take effect immediately.

STATEMENT

Across the nation there is an increasing shortage of available capital for financial institutions. Under Federal and State law and regulation, the amount of bank capital limits the amount of loans a bank may make — total loans, types of loans, and loans to one borrower. The amount of capital also indicates the basic strength of banks and their ability to withstand adversity.

Present New Jersey law provides that any company which controls over 25% of a bank outside of New Jersey cannot own over 5% of a bank, directly or indirectly, inside New Jersey. Many other states have more liberal provisions and many attract foreign investors.

This bill is designed to permit limited foreign investments in New Jersey banks and bank holding companies to increase their capital to serve the New Jersey economy, while insuring that they remain New Jersey institutions. This is accomplished by permitting foreign companies (foreign to the U.S.A.) to invest *only* in new issues of stock of New Jersey banks and bank holding companies. Such new issues must be proposed by the bank or bank holding company's board of directors, must be approved by the stockholders by affirmative vote, and must be approved by the New Jersey Department of Banking and the Federal Deposit Insurance Corporation or Federal Reserve Board or Comptroller of the Currency, depending on the type of charter, *before* the new stock is issued. This bill would open up a new source of bank capital for supporting New Jersey growth while retaining the essential New Jersey nature of the institution.

51484(1980)

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1484

with Senate committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 12, 1981

Senate Bill No. 1484, as amended by the Senate Labor, Industry and Professions Committee, modifies present law with respect to the purchase of stock in New Jersey banks or banks holding companies by foreign banks and with respect to the authority of New Jersey banks or their holding companies to acquire subsidiaries in other states.

The bill as amended by the committee defines the term "bank" as any institution which accepts demand deposits and which engages in the business of making commercial loans. Therefore, the prohibitions of existing law which serve to limit the right of New Jersey institutions to acquire stock or controlling interest in banking-related entities out of state would be liberalized to permit New Jersey institutions to expand their activities beyond New Jersey.

The legislation would permit foreign banks or bank holding companies to acquire up to 49% of the stock of a New Jersey bank or bank holding company. Such stock as might be acquired by a foreign interest would have to be either a new issue of the stock, or stock which is directly held by the bank or bank holding company itself. The Commissioner of Banking would be required to be notified of the planned acquisition, and would either approve or disapprove the acquisition based on its conformity to law and to the public interest.

The legislation provides that any company, including a foreign bank, which owns the stock of a bank holding company should not be deemed to own any stock in a subsidiary of the bank holding company unless the company controls the bank holding company. In the latter case, the company which controls the bank holding company is deemed to control the same proportional share of stock of each bank subsidiary as the amount of stock which it owns of the holding company bears to the total outstanding stock of the holding company. On the latter point, the committee has defined the language of the original bill to clarify the relationship between the acquiring company's controlling interest in the holding company and in its subsidiaries.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 4, 1982

SENATE BILL NO. 1484 (OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1484 (OCR) with my objections and recommendations for amendment.

This bill makes certain changes in our law concerning stock ownership of New Jersey banks by permitting foreign banks and holding companies to purchase up to 49 percent of newly issued stock or stock held by the bank. The Commissioner of Banking would have to receive advance notice of the purchase and approve it.

These changes will provide a new source of capital for the State's banks. Unfortunately, the bill contains several clerical errors that would subvert the bill's intent.

Therefore, I herewith return Senate Bill No. 1484 (OCR) and recommend that it be amended as follows:

Page 3, Section 2, Line 5: Delete "outside" and insert "inside"

Page 3, Section 2, Line 6: Delete "outside" and insert "inside"

Page 3, Section 2, Line 9: Delete "outside" and insert "inside"

Page 6, Section 4, Line 59: Insert "except as provided in subsection b of this section"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

Chief of Staff, Secretary