

17:9A-266 ET AL.

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:9A-266; 17:9A-269; 17:9A-272 (Insolvent or unsound bank--
Commissioner's powers)

Laws of 1976 Chapter 6

Bill No. A1401

Sponsor(s) Hamilton, Le Fante & Barbour

Date Introduced February 3, 1976

Committee: Assembly Commerce, Banking, Insurance

Senate -

Amended during passage Yes No Substituted for S1026
(which appears to be
same as A1401)

Date of passage: Assembly February 9, 1976

Senate February 9, 1976

Date of approval February 10, 1976

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

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Fiscal Note Yes No

Veto message Yes No

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Reports Yes No

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CHAPTER 6 LAWS OF N. J. 1976
APPROVED 2-10-76
ASSEMBLY, No. 1401

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1976

By Assemblymen HAMILTON, LEFANTE and BARBOUR

Referred to Committee on Commerce, Banking and Insurance

AN ACT to amend "The Banking Act of 1948," approved April 29, 1948 (P. L. 1948, c. 67), and repealing section 270 thereof.

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

1 1. Section 266 of P. L. 1948, c. 67 (C. 17:9A-166) is amended to
2 read as follows:

3 266. Definitions. For the purposes of this article:

4 (1) "Bank" shall mean a bank or savings bank;

5 (2) "Board of directors" shall include the board of directors
6 of a bank, and the board of managers of a savings bank; **[and]**

7 (3) "Director" shall include a director of a bank and a manager
8 of a savings bank;

9 (4) "Assets" or "property" shall include property held in fi-
10 duciary capacities; and

11 (5) The "business" of a bank shall include its fiduciary relation-
12 ships.

1 2. Section 269 of P. L. 1948, c. 67 (C. 17:9A-269) is amended to
2 read as follows:

3 269. Possession by the commissioner; causes; **[liquidation, re-**
4 **turn, merger, or reorganization.]** purposes; return.

5 A. The commissioner may forthwith take possession of the prop-
6 erty and business of any bank

7 (1) Which has failed or refused to comply with the provisions
8 of any order lawfully made by the commissioner; or

9 (2) Which has failed or refused to submit to an examination as
10 provided by section 260; or

11 (3) Whose officers or directors, or any of them, willfully impede
12 an examination made pursuant to section 260; or

13 (4) Which is insolvent; or

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

14 (5) Which has suspended its business for want of funds to carry
15 it on; or

16 (6) Which is, in the opinion of the commissioner, in an unsafe
17 or unsound condition to transact business.

18 B. Notwithstanding the taking by the commissioner of posses-
19 sion of the property and business of a bank,

20 (1) Title to all the property of the bank, including property held
21 in fiduciary capacities, shall remain in the bank;

22 (2) The corporate existence of the bank shall continue unless
23 terminated as provided in this article; and

24 (3) The stockholders and directors of the bank shall be entitled
25 to meet and the stockholders, directors and officers of the bank shall
26 be entitled to act upon any matter which does not infringe upon
27 the powers granted to the commissioner by this article.

28 C. The commissioner may retain possession of the property and
29 business of the bank for the purpose of (1) liquidation, (2) *merger*
30 *or reorganization, to which end he may call stockholders' meetings,*
31 *or (3) assumption of all or part of the bank's liabilities and fidu-*
32 *ciary relationships and purchase of all or any part of the bank's*
33 *assets by one or more other banking institutions. [or he may, when]*
34 *When [he] the commissioner concludes that the cause or causes for*
35 *his taking possession have been removed or remedied, he may re-*
36 *turn the property and business of the bank to the management and*
37 *control of its officers and directors. [He may also initiate proceed-*
38 *ings for the merger or reorganization of the bank, and, to that end,*
39 *may call stockholders' meetings.]*

1 3. Section 272 of P. L. 1948, c. 67 (C. 17:9A-272) is amended to
2 read as follows:

3 272. A. While in possession of the business and property of a
4 bank, the commissioner may, in the name of the bank

5 (1) Continue the business of the bank in all its aspects, including,
6 in the case of a qualified bank, the exercise of its fiduciary and
7 agency powers; except that the commissioner may not

8 (a) Make loans other than loans for which there are out-
9 standing commitments and loans wholly or partly renewing
10 obligations to the bank outstanding when possession is taken;

11 (b) Invest the funds of the bank or of any fiduciary account
12 other than in obligations of the United States or of this State,
13 or in obligations unconditionally guaranteed both as to prin-
14 cipal and interest by the United States or this State;

15 (c) Permit withdrawals from or charges against the account
16 of a depositor, except to the extent that deposits are made
17 after the commissioner takes possession; or

18 (d) Pay claims of creditors, other than depositors, arising
19 prior to the taking of possession, except as provided in sections
20 two hundred eighty-four and two hundred eighty-six;

21 (2) Demand, sue for, collect, receive, and take into his possession
22 all the bank's real and personal property, including the power to
23 sue for and recover any property transferred in fraud of the bank's
24 creditors;

25 (3) Compound and settle with any of the bank's debtors or
26 creditors, or with persons having possession of its property, or in
27 any way responsible to the bank, and extend the time for payment of
28 any obligation owing to the bank, upon such terms and conditions
29 as he shall deem just and beneficial to the bank;

30 (4) Make or allow proper set-offs;

31 (5) Sell, assign, transfer, or convey all or any part of the real
32 and personal property of the bank;

33 (6) Prosecute or defend any action or proceeding to which the
34 bank is a party;

35 (7) Execute, acknowledge, and deliver any deed, assignment,
36 release, agreement, warrant to cancel a mortgage or other lien, or
37 other instrument necessary or appropriate to effect any sale of
38 real or personal property, or to compromise or compound any
39 claim, or to restore to any person any property deposited or trans-
40 ferred as security for the payment of a debt or the performance
41 of an obligation, upon the payment of the debt or the performance
42 of the obligation, or which is necessary or appropriate to effect any
43 other power which the commissioner is authorized to exercise in
44 respect to the business and property of such bank. Any deed or
45 other instrument so executed and delivered shall be valid and
46 effectual for all purposes as though executed and delivered by the
47 officers of the bank by authority of its board of directors;

48 (8) Do all acts necessary or appropriate to conserve the property
49 and business of the bank.

50 B. The commissioner shall have the power, while in possession of
51 the property and business of a bank, to subpoena any person to
52 testify concerning the property and business of the bank, as in the
53 manner provided in sections two hundred sixty and two hundred
54 sixty-one. Any person so subpoenaed shall be subject to the provi-
55 sions of sections two hundred sixty-two and two hundred sixty-
56 three.

57 C. *While in possession of the business and property of a bank*
58 *pursuant to Section 269, subsection A of this act, the commissioner*
59 *may, upon application to the Superior Court, Chancery Division,*

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60 *and without notice to or approval of the stockholders of said bank,*
61 *enter into a plan or agreement in the name of said bank whereby*
62 *all or any part of said bank's liabilities and fiduciary relationships*
63 *would be assumed by one or more banking institutions and all or*
64 *any part of said bank's assets and business would be purchased by*
65 *one or more banking institutions. To facilitate the consummation*
66 *of such plan or agreement, the commissioner may, in the name of*
67 *said bank, borrow money from the Federal Deposit Insurance*
68 *Corporation and pledge or assign all or any part of said bank's*
69 *assets as security for the money so borrowed; sell all or any part*
70 *of said bank's assets, real or personal, to one or more banking*
71 *institutions or to the Federal Deposit Insurance Corporation; and*
72 *transfer to another banking institution all or any part of the money*
73 *borrowed from the Federal Deposit Insurance Corporation in*
74 *consideration of such banking institution's agreement to assume*
75 *and pay the liabilities and fiduciary relationships of the bank in*
76 *whose name the commissioner is acting.*

77 *D. While in possession of the property and business of a bank, the*
78 *commissioner may offer to the Federal Deposit Insurance Corpora-*
79 *tion, or its successor, appointment as receiver of such bank. In the*
80 *event the Federal Deposit Insurance Corporation, or its successor,*
81 *accepts such appointment, it shall have and be authorized to exer-*
82 *cise all rights, powers and privileges now possessed or hereafter*
83 *granted to the commissioner by this article; it shall have all rights,*
84 *powers and privileges now possessed or hereafter granted to a*
85 *receiver by the laws of this State; and it shall be under the exclusive*
86 *jurisdiction of the Superior Court.*

1 4. Section 270 of P. L. 1948, c. 67 (C. 17:9A-270) is repealed.

1 5. This act shall take effect immediately.

STATEMENT

This bill amends "The Banking Act of 1948" to increase the options of the Commissioner of Banking in dealing with a situation involving a bank which is either insolvent or otherwise incapable of continued operation. The bill permits the commissioner to arrange for the expeditious assumption of liabilities and purchase of assets of any such bank. The bill also provides for procedures which will allow the commissioner to coordinate his actions with those of the Federal Deposit Insurance Corporation.

ASSEMBLY COMMERCE, BANKING AND
INSURANCE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1401

—◆—
STATE OF NEW JERSEY
—◆—

DATED: FEBRUARY 3, 1976

This bill amends the Banking Act of 1948 (P. L. 1948, c. 67) to broaden the discretionary power of Commissioner of Banking when a bank is determined to be unsafe and unsound or insolvent. The bill includes property held in fiduciary capacities within the definition of assets.

The commissioner would be permitted to arrange the assumption of all or part of the bank's liabilities and fiduciary relationships and the purchase of all or part of the bank's assets by another banking institution. The bill would permit the commissioner to arrange assumption of an unsafe and unsound or insolvent bank's liabilities and sale of its assets after application to the Superior Court and without notice to or approval by the stockholders. The commissioner also would be permitted by the legislation to borrow funds from the Federal Deposit Insurance Corporation in the name of the insolvent bank and to pledge the bank's assets as security.

This bill would facilitate transfer of an unsafe, unsound or insolvent bank's assets and liabilities to another institution or institutions without disruption in its services to its customers. This procedure would be utilized in lieu of a liquidation in which the commissioner appoints the F.D.I.C. as a receiver, in which case the insured depositors are paid from the insurance fund and the assets of the bank are disposed of by the F.D.I.C. In a liquidation of this nature, uninsured deposits (large certificates of deposit and accounts over \$40,000) are sometimes not paid bank in full. In the case of the purchase and assumption method permitted by this legislation, all deposit liabilities are assumed by the purchasing bank.

The repeal of Section 27 of the Banking Act of 1948 does not take away the right of the stockholders to challenge the action of the commissioner in taking control of the bank; rather, it removes the 10-day limitation on such action which exists under present law. Under a purchase and assumption arrangement, stockholders are likely to get a larger portion of their investment bank than under a liquidation.



The committee believes that this legislation makes an appropriate modification of New Jersey law to enable the Commissioner of Banking to utilize the normal purchase and assumption procedures currently used by regulatory agencies and the Federal Deposit Insurance Corporation in other states, and in doing so, to protect the interests of depositors and of other citizens who would be adversely affected by an institution's insolvency or closing.