

17:9A-11

May 5, 1971

LEGISLATIVE NOTES ON R.S. 17:9A-11
17:9A-14
17:9A-23
17:9A-37
17:9A-84
17:9A-97 & 98
17:9A-114 Repealed
17:9A-12
17:9A-25
17:9A-34

Copy 3

(Revises sections of the Banking Act of 1948)

L. 1970, Chapter 155 - A684
Introduced March 9 by Evera and White.
Not amended during passage.
Bill has statement (copy enclosed).
[section by section]

No clippings located at: V.F. - H.J. - Banks & banking - 14

NC/PC

DEPOSITORY COPY
Do Not Remove From Library

ASSEMBLY, No. 684

STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1970

By Assemblymen EVERS and WHITE

Referred to Committee on Banking

AN ACT to amend "An act concerning banking and banking institutions (Revision of 1948)," approved April 29, 1948 (P. L. 1948, c. 67), and to repeal section 114 thereof.

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

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

3 11. Hearing on application for charter; approval.

4 A. At the time and place designated for the hearing, the in-
5 corporators shall file proof with the commissioner that the publica-
6 tion and mailing of the notice of application for charter have been
7 made in the manner required by section 10. If the commissioner
8 shall find that proper publication and mailing have been made,
9 he shall proceed with the hearing on the application, and shall
10 afford all those desirous thereof, an opportunity to be heard. In
11 addition to the matters presented at the hearing, the commissioner
12 shall consider such facts and circumstances as he may determine
13 to be relevant as a result of an independent investigation made or
14 caused to be made by him.

15 B. The commissioner shall, within 90 days after the hearing,
16 approve or disapprove the application and shall file a written
17 memorandum of his decision in the department in which he shall
18 state the reasons for his decision.

19 C. If the certificate of incorporation states that the proposed
20 bank or savings bank is to be authorized to exercise any of the
21 powers specified in section 28 which are permitted to it under this
22 act, the commissioner shall give special consideration to the follow-
23 ing in determining whether to approve or disapprove the applica-
24 tion for charter:

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

25 (1) The needs of the community for trust services, and the
26 probable volume of trust business which will be available to
27 the bank or savings bank;

28 (2) The nature of the supervision to be given to the proposed
29 fiduciary activities;

30 (3) Whether the bank or savings bank has available com-
31 petent legal counsel to advise and pass upon trust matters
32 whenever necessary; and

33 (4) Any other matters which in the discretion of the com-
34 missioner are relevant.

35 D. If the commissioner shall determine, as a result of the hearing
36 and of the independent investigation made or caused to be made
37 by him

38 (1) That the interest of the public will be served to advantage
39 by the establishment of the proposed bank or savings bank;

40 (2) That conditions in the locality in which the proposed
41 bank or savings bank will transact business afford reasonable
42 promise of successful operation;

43 (3) That the directors or managers designated in the cer-
44 tificate of incorporation [and the proposed officers who will
45 have control or supervision of the bank's operations, including
46 but not limited to its operations in fiduciary capacities,]
47 possess the qualifications, experience and character required
48 for the duties and responsibilities with which they will be
49 charged;

50 (4) That no fees, commissions, or other compensation have
51 been paid for the promotion of the bank or savings bank, or
52 for the sale of the stock of the bank, or for obtaining subscrip-
53 tions for the capital deposits of the savings bank; and

54 (5) That, in the case of a bank, the entire capital stock has
55 been subscribed for, and that each subscriber has undertaken
56 in writing to pay in cash, upon approval according to law of
57 the certificate of incorporation, his proportionate share of the
58 capital stock, surplus and reserve fund for organization ex-
59 pense, specified in the certificate of incorporation; or

60 (6) That, in the case of a savings bank, the capital deposits
61 have been subscribed in full, and each subscriber has under-
62 taken in writing to pay in cash, upon approval according to
63 law of the certificate of incorporation, his proportionate share
64 of the capital deposits;

65 and if the certificate of incorporation of the proposed bank or
66 savings bank states that it is to be authorized to exercise any of

67 the powers specified in section 28 which are permitted to it under
68 this act,

69 (7) That, in the case of a bank, the capital stock is not less
70 than \$500,000.00; or that, in the case of a savings bank, the
71 capital deposits are not less than \$500,000.00; and

72 (8) That, having given consideration to the matters specified
73 in subsection C of this section, the bank or savings bank should
74 be authorized to exercise such stated powers;

75 he shall approve the application.

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

3 14. Certificate of authority.

4 A. When the bank or savings bank shall have proved to the
5 satisfaction of the commissioner, by affidavit of two of its officers,
6 and when the commissioner shall have verified by examination that

7 (1) The certificate of incorporation has been filed as specified
8 in section 12;

9 (2) In the case of a bank, the entire capital stock, surplus,
10 and reserve fund for organization expense, stated in the cer-
11 tificate of incorporation, have been fully paid in cash, uncon-
12 ditionally and without reservation; or

13 (3) In the case of a savings bank, the entire capital deposits
14 stated in the certificate of incorporation have been fully paid
15 in cash, unconditionally and without reservation; and

16 (4) The cash paid in for the capital stock and surplus or
17 capital deposits, as the case may be, is on deposit in a banking
18 institution in this State, without offset, claim or demand what-
19 soever, and subject to withdrawal upon demand,

20 *and when the bank or savings bank shall have proved to the satis-*
21 *faction of the commissioner that the proposed officers who will have*
22 *control or supervision of the bank's operations possess the qual-*
23 *ifications, experience and character required for the duties and*
24 *responsibilities with which they will be charged, the commissioner*
25 *shall issue a certificate of authority to the bank or savings bank*
26 *wherein it shall be stated that the bank or savings bank therein*
27 *named has complied with the provisions of this act and is autho-*
28 *rized to begin the transaction of the business specified in the cer-*
29 *tificate of incorporation. A copy of the certificate of authority*
30 *shall be filed in the department.*

31 B. Upon the issuance of the certificate of authority, the bank or
32 savings bank shall be authorized to begin the transaction of
33 business.

1 3. Section 23 of P. L. 1948, chapter 67 (C. 17:9A-23) is amended
2 to read as follows:

3 23. Interchange of principal and branch offices.

4 A bank or savings bank may, without satisfying the requirements
5 of section 22, change the location of its principal office to a location
6 then occupied by a branch office maintained by it. After such a
7 change, the bank or savings bank may maintain a branch office at
8 the location formerly occupied by its principal office, or it may dis-
9 continue business at such location. Such bank or savings bank shall
10 file a certificate of such change in the department within 1 week
11 from the date such change is made. A change in location effected
12 pursuant to this section shall not be subject to the limitations
13 imposed by subsections C or D of section 19. *No change in location*
14 *shall be made under this section without prior written approval*
15 *of the commissioner which the commissioner shall not withhold*
16 *unless he shall find that such change will not be in the public interest.*

1 4. Section 37 of P. L. 1948, chapter 67 (C. 17:9A-37) is amended
2 to 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 3 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. **¶**No investment of the funds of a common trust fund shall be
 33 made except pursuant to the prior authorization of the trust invest-
 34 ment committee noted on the bank's records. **¶** (*Deleted by amend-*
 35 *ment.*)

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

1 5. Section 84 of P. L. 1948, chapter 67 (C. 17:9A-84) is amended
 2 to read as follows:

3 84. List of stockholders.

4 **¶**A. The officer of each bank having charge of its transfer and
 5-15 stock books shall make, or cause to be made, at least 10 days before
 16 each meeting of the stockholders after the first meeting, a complete
 17 list in alphabetical order of all the stockholders of the bank entitled
 18 to vote at the ensuing meeting, with their addresses of record as
 19 they appear on the books of the bank. **¶**

20 **¶**B. Such list shall be kept on file at the principal office of the
 21 bank and shall be available for examination by any stockholder
 22 during usual business hours until such meeting. **¶**

23 **¶**C. The stock and transfer books of the bank and such list of
 23A stockholders shall be produced by the directors at the time and
 24 place of the meeting to remain there during such meeting available
 25 for inspection by any stockholder. Such books shall be the only
 26 evidence as to the stockholders entitled to examine such books and
 27 such list and to vote at such meeting. In case of a discrepancy
 28 between such books, the transfer books shall control. **¶** (*Deleted by*
 29 *amendment.*)

30 **¶**D. If any such officer having charge of such books shall fail to
 31 prepare such list, or fail to cause such list to be prepared, or if he
 32 shall refuse upon demand by any stockholder to exhibit such books
 33 or list or submit them to examination as provided in subsections

34 B and C of this section, he shall for every such offense forfeit the
 35 sum of \$200.00 to be recovered with costs by the State in any court
 36 of competent jurisdiction in a civil action prosecuted by the Attor-
 37 ney General.】 (*Deleted by amendment.*)

38 【E. The neglect or refusal of any director to produce such books
 39 and list at the time and place of the meeting, or to cause such books
 40 and list to remain there during the meeting, or to permit examina-
 41 tion thereof by any stockholder shall render such director ineligible
 42 for election to any office at such meeting.】 (*Deleted by amendment.*)

43 A. *The officer having charge of the stock transfer books for*
 44 *shares of stock of a bank shall make, or cause to be made, and*
 45 *certify a complete list of the stockholders entitled to vote at a*
 46 *stockholder's meeting or any adjournment thereof. Such list shall*

47 (1) *Be arranged alphabetically, within each class and series,*
 48 *with the address of, and the number of shares held by, each*
 49 *stockholder;*

50 (2) *Be produced at the time and place of the meeting;*

51 (3) *Be subject to the inspection of any stockholder during the*
 52 *whole time of the meeting; and*

53 (4) *Be prima facie evidence as to who are the stockholders*
 54 *entitled to examine such list or to vote at any meeting.*

55 B. *If the requirements of this section have not been complied*
 56 *with, the meeting shall, on demand of any stockholder in person or*
 57 *by proxy, be adjourned until the requirements are complied with.*
 58 *Failure to comply with the requirements of this section shall not*
 59 *affect the validity of any action taken at such meeting prior to the*
 60 *making of any such demand.*

1 6. Section 97 of P. L. 1948, chapter 67 (C. 17:9A-97) is amended
 2 to read as follows:

3 97. Inspection of 【stock and transfer】 books *and records.*

4 【A. Every bank shall keep at its principal office the transfer
 5 books in which the transfer of stock shall be registered, and the
 6 stock books, which shall contain the names and addresses of the
 7 stockholders and the number of shares held by each. Any stock-
 8 holder may at any time during business hours apply to the bank
 9 for permission to inspect such books or to make a transcript of such
 9A information therefrom as the stockholder may desire.】

10 A. *Every bank shall keep books and records of account and*
 11 *minutes of the proceedings of its stockholders, board of directors,*
 12 *and executive committee if any. The bank shall keep at its princi-*
 13 *pal office, or at the office of its transfer agent in this State, a record*
 14 *or records containing the names and addresses of all stockholders,*
 15 *the number class and series of shares held by each and the dates*

16 *when they respectively became the owners of record thereof. Any*
17 *of the foregoing books, minutes or records may be in written form*
18 *or in any other form capable of being converted into written form*
19 *within a reasonable time. A bank shall convert into written form*
20 *without charge any such records not in such form at the written*
21 *request of any person entitled to inspect them. Any person who*
22 *has been a stockholder of record of a bank for at least 6 months*
23 *immediately preceding his demand, or any person holding, or so*
24 *authorized in writing by the holders of, at least 5% of the out-*
25 *standing stock of a bank, upon at least 5 days' written demand shall*
26 *have the right for any proper purpose to examine in person or by*
27 *agent or attorney, during usual business hours, its minutes of the*
28 *proceedings of its stockholders and record of stockholders and to*
29 *make extracts therefrom at the place where such minutes and record*
30 *are kept.*

31 B. A stockholder whose **[application]** *demand* has been refused
32 by a bank may apply to the commissioner for an order directing the
33 bank to permit such an **[inspection]** *examination* or the making of
34 such **[a transcript]** *an extract*. The application to the commis-
35 sioner shall be in duplicate, shall be verified, and shall state the
36 stockholder's name and address; the number of shares held by
37 him; the name and address of counsel representing him, if any; the
38 name and address of the principal office of the bank; and the reason
39 for the **[request]** *demand* for such **[inspection]** *examination* or
40 for the making of such **[transcript]** *extract*. If, upon reading the
41 application, the commissioner shall be satisfied that the purpose
42 for which it is made is **[germane to the applicant's status as a**
43 **stockholder]** *a proper one* and is made in good faith, he shall,
44 within 5 days after the receipt of the **[application,]** *demand*, mail a
45 copy thereof to the bank, together with an order directing the bank
46 to show cause why the **[application]** *demand* should not be allowed.
47 The commissioner shall, within the same period, mail a copy of the
48 order to show cause to the **[applying]** *demanding* stockholder.

49 C. The order to show cause shall be returnable before the com-
50 missioner not less than 5 and not more than 10 days after its date,
51 and, upon the return day, the commissioner shall hear such evidence
52 and consider such arguments of the parties or their counsel as he
53 shall deem necessary to a fair and equitable determination. The
54 commissioner shall, within 5 days from the return day of the order
55 to show cause, make an order allowing or denying the **[application,]**
56 *demand*, as the case may be, and he shall, within the same period,
57 mail a copy of his order to the stockholder and to the bank. If,
58 from an inspection of the **[application,]** *demand*, the commissioner

59 shall be satisfied that it is not made for a *proper* purpose [germane
60 to the applicant's status as a stockholder,] or is not made in good
61 faith, he shall forthwith make and mail to the stockholder an order
62 denying the [application,] *demand*, stating his reasons for such
63 denial.

64 D. The commissioner may, in his discretion, in lieu of ordering
65 the bank to permit such [inspection] *examination* or the making of
66 such [transcript,] *extract*, require the bank to prepare envelopes
67 addressed to the stockholders, to be mailed by the bank after the
68 insertion therein of such matters as the stockholder shall furnish
69 the bank after first having obtained approval by the commissioner
70 of the sending of such matter. The cost of the preparation of such
71 matter and the expense of mailing shall be borne by the stockholder
72 unless the commissioner shall, in his discretion, and upon good
73 cause shown, direct that the expense be borne by the bank.

74 E. Any order of the commissioner other than an order to show
75 cause, made pursuant to this section, shall be subject to review,
76 hearing and relief in the Superior Court in a proceeding in lieu of
77 prerogative writ. The commissioner's failure to act within the
78 periods limited by this section shall be deemed to be a final order
79 denying the application.

80 *F. Nothing herein contained shall impair the power of any court,*
81 *upon proof by a stockholder of proper purpose, irrespective of the*
82 *period of time during which said stockholder shall have been a*
83 *stockholder of record, and irrespective of the number of shares*
84 *held by him, to compel the production for examination by such*
85 *stockholder of the books and records of account, minutes and record*
86 *of stockholders of a bank.*

1 7. Section 98 of P. L. 1948, chapter 67 (C. 17:9A-98) is amended
2 to read as follows:

3 98. Stock certificates; transfers of stock; *facsimile signatures*.

4 [A. Every bank shall issue to each of its stockholders a certifi-
5 cate or certificates signed by the president or a vice-president and
6 by the cashier or an assistant cashier or the secretary or an as-
7 sistant secretary, evidencing the number of shares of the capital
8 stock of the bank held by him. If a certificate is signed on behalf of
9 the bank by a transfer clerk or transfer agent, the signature of the
10 president or a vice-president may be a facsimile.]

11 *A. Every bank shall issue to each of its stockholders a certificate*
12 *or certificates signed by, or in the name of the bank by, the chairman*
13 *or vice-chairman of the board, or the president or a vice-president,*
14 *and by the treasurer or an assistant treasurer, or the secretary or*
15 *an assistant secretary, or by the cashier or an assistant cashier,*

16 *and may be sealed with the seal of the bank or a facsimile thereof.*
 17 *If the certificate is countersigned by a transfer agent or registrar,*
 18 *who is not an officer or employee of the bank, any and all other signa-*
 19 *tures may be facsimiles. In case any officer, transfer agent or*
 20 *registrar who has signed or whose facsimile signature has been*
 21 *placed upon such certificate shall have ceased to be such officer,*
 22 *transfer agent, or registrar before such certificate is issued, it may*
 23 *issued by the bank with the same effect as if he were such officer,*
 24 *transfer agent or registrar at the date of its issue.*

25 B. Shares of the capital stock of a bank shall be personal prop-
 26 erty and shall be held and transferred as provided in chapter 8 of
 27 Title 12A of the New Jersey Statutes.

1 8. Section 114 of "An act concerning banking and banking insti-
 2 tutions (Revision of 1948)," approved April 29, 1948 (P. L. 1948,
 3 c. 67) is repealed.

1 9. Section 137, of P. L. 1948, chapter 67 (C. 17:9A-137) is
 2 amended to read as follows:

3 137. Submission of agreement to stockholders; filing.

4 A. If the commissioner approves the merger agreement, it shall,
 5 within **[60]** 180 days after the date of such approval, be submitted
 6 to the stockholders of each of the banks which are parties to the
 7 agreement, at separate meetings called for that purpose upon at
 8 least 20 days' notice given in the manner specified in section 81.
 9 A copy of the merger agreement shall be mailed to each stock-
 10 holder of each of the banks which are parties to the agreement with
 11 the notice of the stockholders' meetings.

12 B. If the agreement is approved by the stockholders of each bank
 13 holding at least $\frac{2}{3}$ of the capital stock entitled to vote, that fact
 14 shall be certified as to each bank by its president or a vice-president
 15 and the certifications shall be attached to the agreement. The agree-
 16 ment shall then be filed in the department, and thereupon it shall
 17 become effective.

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

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

5 **[A.** Any person made a party to any action or proceeding by
 6 reason of the fact that he is or was, or that a decedent for whose
 7 estate such person is acting as fiduciary was, a director, manager,
 8 officer or employee of a bank or savings bank, or of any corporation
 9 which he serves or served or which such decedent served as a
 10 director, manager, officer or employee at the request of the bank
 11 or savings bank, because of its interest in such corporation, shall

12 be indemnified by the bank or savings bank against reasonable
13 costs, expenses and counsel fees paid or incurred in connection
14 with such action or proceeding, or in connection with any appeal
15 therein, and against all sums paid, other than to the bank or savings
16 bank, in settlement or compromise of such action or proceeding,
17 provided that

18 (1) The action or proceeding, insofar as it affects such per-
19 son, is abandoned, settled or compromised or is prosecuted to
20 a final determination wherein it shall not be finally adjudged
21 that such person or such decedent, was derelict in the perform-
22 ance of his duties, and

23 (2) A majority of all the members of the board of directors
24 or board of managers shall (a) determine that such person or
25 such decedent was not derelict in any substantial way as
26 charged in the action or proceeding, and (b) fix the amount,
27 if any, for which such person shall be indemnified.】

28 【B. No director of a bank or manager of a savings bank shall
29 vote for indemnification of any person, as provided in this section,
30 if such director or manager is or shall have been a party to the
31 action or proceeding. If, in the case of a bank, a majority of the
32 board of directors shall be so disqualified, the stockholders of the
33 bank shall determine whether such person or such decedent has
34 been derelict in any substantial way as charged in the action or
35 proceeding, and shall fix the amount of indemnity, if any, to be
36 paid to such person. If, in the case of a savings bank, a majority
37 of the board of managers shall be so disqualified, a majority in
38 number of the depositors of the savings bank present in person
39 or by proxy at a meeting called upon 10 days' notice addressed
40 to each depositor at his address as it appears upon the records of
41 the savings bank, shall determine whether such person or such
42 decedent has been so derelict, and shall fix the amount of the in-
43 demnity, if any, to be paid to such person. Notwithstanding that
44 a majority of such board of directors or board of managers shall
45 not be so disqualified, such board may delegate to the stockholders
46 of the bank or to the depositors of the savings bank, at a meeting
47 of such depositors called as hereinbefore in this subsection pro-
48 vided, the power (1) to determine whether such person or such
49 decedent was so derelict and (2) to fix the amount of indemnity,
50 if any, to be paid to such person.】

51 【C. The provisions of this section shall enlarge but in no way
52 limit the powers of a bank or savings bank to indemnify any such
53 person.】

54 A. *As used in this section*

55 (1) *“Corporate agent” means any person who is or was a*
 56 *director, officer, employee or agent of the indemnifying bank*
 57 *and any person who is or was a director, officer, trustee, em-*
 58 *ployee or agent of any other enterprise, serving as such at the*
 59 *request of the indemnifying bank, or the legal representative*
 60 *of any such director, officer, trustee, employee or agent;*

61 (2) *“Other enterprise” means any domestic or foreign cor-*
 62 *poration, other than the indemnifying bank, and any partner-*
 63 *ship, joint venture, sole proprietorship, trust or other enter-*
 64 *prise, whether or not for profit, served by a corporate agent;*

65 (3) *“Expenses” means reasonable costs, disbursements and*
 66 *counsel fees;*

67 (4) *“Liabilities” means amounts paid or incurred in satis-*
 68 *faction of settlements, judgments, fines and penalties;*

69 (5) *“Proceeding” means any pending, threatened or com-*
 70 *pleted civil, criminal, administrative or arbitrative action, suit*
 71 *or proceeding, and any appeal therein and any inquiry or in-*
 72 *vestigation which could lead to such action, suit or proceeding;*

73 (6) *“Bank” except as otherwise expressly provided, includes*
 74 *savings bank;*

75 (7) *“Directors” includes directors of a bank other than a*
 76 *savings bank and managers of a savings bank.*

77 B. *Any bank of this State shall have the power to indemnify a*
 78 *corporate agent against his expenses and liabilities in connection*
 79 *with any proceeding involving the corporate agent by reason of*
 80 *his being or having been such a corporate agent, other than a pro-*
 81 *ceeding by or in the right of the bank, if*

82 (1) *Such corporate agent acted in good faith and in a manner*
 83 *he reasonably believed to be in or not opposed to the best*
 84 *interests of the bank;*

85 (2) *With respect to any criminal proceeding, such corporate*
 86 *agent had no reasonable cause to believe his conduct was*
 87 *unlawful.*

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

93 C. *Any bank of this State shall have the power to indemnify a*
 94 *corporate agent against his expenses in connection with any pro-*
 95 *ceeding by or in the right of the bank to procure a judgment in its*
 96 *favor which involves the corporate agent by reason of his being*

97 or having been such corporate agent, if he acted in good faith and
98 in a manner he reasonably believed to be in or not opposed to the
99 best interests of the bank. However, in such proceeding no in-
100 demnification shall be provided in respect of any claim, issue or
101 matter as to which such corporate agent shall have been adjudged
102 to be liable for negligence or misconduct, unless and only to the
103 extent that the court in which such proceeding was brought shall
104 determine upon application that despite the adjudication of liabil-
105 ity, but in view of all circumstances of the case, such corporate
106 agent is fairly and reasonably entitled to indemnity for such ex-
107 penses as the court shall deem proper.

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

113 E. Any indemnification under subsection B of this section, and,
114 unless ordered by a court, under subsection C of this section, may
115 be made by the bank only as authorized in a specific case upon a
116 determination that indemnification is proper in the circumstances
117 because the corporate agent met the applicable standard of conduct
118 set forth in subsection B of this section or subsection C of this
119 section. Such determination shall be made

120 (a) By the board of directors acting by a quorum consisting
121 of directors who were not parties to the proceeding; or

122 (b) If such a quorum is not obtainable, or, even if obtainable
123 and a quorum of the disinterested directors so directs, by in-
124 dependent legal counsel in a written opinion; or

125 (c) By the stockholders, in the case of a bank which is not
126 a savings bank, and by the commissioner, in the case of a
127 savings bank.

128 F. Expenses incurred by a corporate agent in connection with a
129 proceeding may be paid by the bank in advance of the final dis-
130 position of the proceeding upon receipt of an undertaking by or on
131 behalf of the corporate agent to repay such amount unless it shall
132 ultimately be determined that he is entitled to be indemnified as
133 provided in this section.

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

139 (2) *May award indemnification to the extent authorized under*
 140 *subsections B and C of this section and shall award indemnification*
 141 *to the extent required under subsection D of this section, notwith-*
 142 *standing any contrary determination which may have been made*
 143 *under subsection E of this section; and*

144 (3) *May allow reasonable expenses to the extent authorized by,*
 145 *and subject to the provisions of, subsection F of this section, if*
 146 *the court shall find that the corporate agent has by his pleadings*
 147 *or during the course of the proceeding raised genuine issues of*
 148 *fact or law.*

149 (4) *Application for such indemnification may be made*

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

152 (b) *To the Superior Court in a separate proceeding. If the*
 153 *application is for indemnification arising out of a civil action,*
 154 *it shall set forth reasonable cause for the failure to make appli-*
 155 *cation for such relief in the action or proceeding in which the*
 156 *expenses were or are to be incurred or other amounts were or*
 157 *are to be paid.*

158 (5) *The application shall set forth the disposition of any previous*
 159 *application for indemnification and shall be made in such manner*
 160 *and form as may be required by the applicable rules of court or,*
 161 *in the absence thereof, by direction of the court to which it is made.*
 162 *Such application shall be upon notice to the bank. The court may*
 163 *also direct that notice shall be given at the expense of the bank to*
 164 *the stockholders of a bank other than a savings bank and such other*
 165 *persons as it may designate in such manner as it may require.*

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

170 I. *Any bank of this State shall have the power to purchase and*
 171 *maintain insurance on behalf of any corporate agent against any*
 172 *expenses incurred in any proceeding and any liabilities asserted*
 173 *against him in his capacity as corporate agent, whether or not the*
 174 *bank would have the power to indemnify him against such liability*
 175 *under the provisions of this section.*

176 J. *The powers granted by this section may be exercised by a bank*
 177 *notwithstanding the absence of any provision in its certificate of*
 178 *incorporation or bylaws authorizing the exercise of such powers.*

1 11. Section 34 of P. L. 1948, chapter 67 (C. 17:9A-34) is amended
 2 to read as follows:

3 34. Proof of qualification and security.

4 A. As a prerequisite to its appointment as a fiduciary by any
 5 court or officer of this State, a qualified bank shall **[(1)]** present
 6 to the court or officer **[a certificate of the commissioner certifying**
 7 **that it is a qualified bank, but such certificate need not be filed in**
 8 **such court or with such officer; and]** *an affidavit made by its presi-*
 9 *dent or a vice-president and its trust officer or an assistant trust*
 10 *officer that the bank is a qualified bank authorized to exercise the*
 11 *powers specified in section 28, and that its authority so to act has*
 12 *not been revoked and that there is no action pending in any court*
 13 *or before any officer to revoke it.*

14 **[(2) in]** B. *In those cases in which a qualified bank shall be re-*
 15 *quired to give security and a fund maintained pursuant to section*
 16 *31 shall be offered by the bank as such security, [file with such*
 17 *court or officer an affidavit of its president, vice-president, trust*
 18 *officer or assistant trust officer, setting forth]* *the affidavit presented*
 19 *pursuant to subsection A of this section shall also set forth*

20 **[(a)]** (1) The value of the investments included in the fund
 21 created and deposited pursuant to section 31 as of a date not
 22 more than 30 days prior to the date of such affidavit;

23 **[(b)]** (2) The maximum amount which the said fund so
 24 deposited will secure, as provided in subsection A of section
 25 31; and

26 **[(c)]** (3) That the aggregate value on the books of the quali-
 27 fied bank of all the assets administered by the bank in fiduciary
 28 capacities under appointment by a court or officer of this State
 29 with respect to which its fiduciary obligations are secured by
 30 said fund, including the value of the assets to be administered
 31 following the pending appointment, will not exceed the amount
 32 specified in the next preceding paragraph**[:];**.

33 **[to which affidavit shall be annexed]** *There shall be annexed to*
 34 *such affidavit a statement of the assets and liabilities of the bank,*
 35 *which shall be a copy of the last such statement published pursuant*
 36 *to law. In lieu of items [(a), (b) and (c)] (1), (2) and (3), such*
 37 *affidavit may state that the value of the investments included in*
 38 *the fund created and deposited pursuant to section 31 is \$500,000.00*
 39 *or more.*

1 12. This act shall take effect on the thirtieth day following its
 2 approval.

STATEMENT

Sections 1 and 2. These sections would amend sections 11 and 14 of the Banking Act of 1948. Their purpose is to change the point in time when the Commissioner of Banking and Insurance is required to pass upon the qualifications of the officer who will be in charge of the running of a new bank. Under present law, this must be done in the course of the hearings on the application for charter. This presents practical difficulties because it requires a candidate for the position of chief executive officer, who is in almost every case employed by another bank, to make known the fact that he is applying for another position when he is by no means sure that the commissioner will approve the application for charter. The amendment would permit the commissioner to postpone his inquiry into the prospective officer's qualifications until he has concluded to grant the application for charter.

Section 3. This section would amend section 23 of the Banking Act of 1948. Under present law, a state bank may, without approval of any supervisory authority, change the location of its principal office to a location occupied by a branch office. After the change, the former principal office may be continued as a branch office. The amendment would require the approval of the Commissioner of Banking and Insurance before the change could be made, and would make State law consistent with Federal law, under which a national bank desiring to make such a change must have the prior approval of the Comptroller.

Section 4. This section would amend section 37 of the Banking Act of 1948. It provides that, when two or more banks which have trust powers and which maintain common trust funds are subsidiaries of the same holding company (90% stock ownership), they may maintain one or more pooled common trust funds. Similar law is in effect in New York. The amendment would also delete subsection F of this section which is inconsistent with paramount federal regulations.

Sections 5, 6, 7, and 10. These sections would amend, respectively, sections 84, 97, 98 and 250 of the Banking Act of 1948 to make them consistent with the recently revised Title 14A, Corporations, General, of the New Jersey Statutes, which became effective January 1, 1969.

Section 8. This section would repeal section 114 of the Banking Act of 1948, which requires every vice-president of a bank to be the owner of not less than \$500.00 par value unpledged shares of the stock of the bank. The spread between market value and par value

of bank shares is so great in many instances that many young officers of banks, who would otherwise qualify as vice-presidents, cannot do so because they do not have the means to buy the required shares of stock. There is no similar requirement in Federal law applicable to vice-presidents of national banks.

Section 9. This section would amend section 137 of the Banking Act of 1948. Present law requires that merger agreements be submitted to stockholders for approval within 60 days after the commissioner has approved them. The 60-day limitation has proved far too short in many cases to enable banks to comply with the requirements of Federal supervisory agencies such as the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System. The amendment would allow ample time.

Section 11. This section would amend section 34 of the Banking Act of 1948. When a bank makes application for appointment as a fiduciary, it must furnish proof that it is lawfully empowered to act in fiduciary capacity. The amendment would substitute an affidavit by bank officers for the certificate of the Commissioner of Banking and Insurance required under present law. The present law creates an anomolous situation in respect to national banks, since the Commissioner of Banking and Insurance has no jurisdiction over them.