

17:9A-355  
to  
17:9A-369

August 26, 1969

*Copy!*

Legislative Notes on R.S. 17:9A-355 to 17:9A-369  
(Corporation - acquire bank shares)

L. 1969, Chapter 118 - S517  
Introduced Feb. 17, 1969 by Woodcock.  
Statement was made. (Copy enclosed)  
Not amended *during passage.*

*For material -*  
*see 17:9A-369*

JH/fb

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 17, 1969

By Senator WOODCOCK

Referred to Committee on Banking and Insurance

AN ACT concerning the acquisition by a corporation of all the shares of the capital stock of one or more banks.

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

1 1. Definitions.

2 As used in this act,

3 (1) "Corporation" means a corporation organized under any  
4 law of this State heretofore, presently or hereafter in force, for a  
5 purpose or purposes for which a corporation may be organized  
6 under "An act revising the General Corporation Law and estab-  
7 lishing a new Title to be known as Title 14A, Corporations, General,  
8 of the New Jersey Statutes" approved November 21, 1968 (P. L.  
9 1968, c. 350).

10 (2) "Bank" includes

11 (a) Every bank heretofore organized pursuant to "An act  
12 concerning banks and banking (Revision of 1899)," approved  
13 March 24, 1899;

14 (b) Every trust company heretofore organized pursuant to  
15 "An act concerning trust companies (Revision of 1899),"  
16 approved March 24, 1899;

17 (c) Every bank or trust company heretofore organized  
18 pursuant to chapter 4 of Title 17 of the Revised Statutes;

19 (d) Every bank and trust company heretofore authorized  
20 by any general or special law of this State to transact business  
21 as a bank or a trust company, or as both;

22 (e) Every bank heretofore or hereafter organized pursuant  
23 to articles 2 or 22 of "An act concerning banking and banking  
24 institutions (Revision of 1948)" approved April 29, 1948  
25 (P. L. 1948, c. 67).

26 (3) "Acquiring corporation" means a corporation whose board  
27 of directors has approved, and authorized the execution of, a plan

28 of acquisition providing for the acquisition by such corporation of  
29 ownership of all the outstanding shares of capital stock of one or  
30 more banks;

31 (4) "Participating bank" means a bank whose board of directors  
32 has approved, and authorized the execution of, a plan providing  
33 for the acquisition by an acquiring corporation of ownership of all  
34 the outstanding shares of capital stock of such bank;

35 (5) "Department" means the Department of Banking and  
36 Insurance of New Jersey;

37 (6) "Commissioner" means the Commissioner of Banking and  
38 Insurance of New Jersey.

1 2. Acquisition of bank shares; denial of pre-emptive rights; act  
2 not exclusive.

3 (1) An acquiring corporation may, subject to the provisions of  
4 "An act concerning the ownership of bank stock in certain cases,  
5 defining certain terms in relation thereto, imposing certain restric-  
6 tions on such ownership, providing for the enforcement of the act  
7 and for punishment of violations thereof, approved June 5, 1957  
8 (P. L. 1957, c. 70), acquire ownership of all the outstanding shares  
9 of the capital stock of one or more banks in the manner provided  
10 by this act.

11 (2) Shares of capital stock of an acquiring corporation, or other  
12 securities convertible into such shares, may be issued or delivered  
13 in exchange for shares of capital stock of one or more participating  
14 banks pursuant to a plan of acquisition without first being offered  
15 to existing shareholders of the acquiring corporation, (i) except,  
16 in the case of an acquiring corporation organized on or after  
17 January 1, 1969, as otherwise provided in its certificate of incor-  
18 poration, or (ii) if, in the case of an acquiring corporation organized  
19 prior to January 1, 1969, its certificate of incorporation, as amended,  
20 so provides.

21 (3) The method of acquiring bank shares authorized by this act  
22 is not exclusive, but is in addition to any other lawful methods for  
23 the acquisition of bank shares by corporations.

1 3. Plan of acquisition.

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

7 (2) The plan of acquisition shall contain

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

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

10 (c) The names and addresses of the members of the board of  
11 directors of the acquiring corporation;

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

17 (e) The terms and conditions of the acquisition, and the mode  
18 of carrying it into effect, including the manner of exchanging  
19 the shares of each participating bank for shares or other  
20 securities of the acquiring corporation, and including provi-  
21 sions respecting the disposition of securities issued by a  
22 participating bank and convertible into shares of its capital  
23 stock, and options granted to officers and employees of a  
24 participating bank to purchase shares of its capital stock;

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

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

1 4. Approval of plan of acquisition by commissioner; review.

2 (1) The plan of acquisition, executed by all the parties thereto,  
3 shall be submitted to the commissioner who shall, within 60 days  
4 from the date of such submission, endorse thereon his approval or  
5 disapproval. If the commissioner disapproves the plan of ac-  
6 quisition, he shall forthwith file a memorandum in the department  
7 stating the reasons for his disapproval, and shall mail a copy of  
8 the memorandum to the acquiring corporation and each partici-  
9 pating bank. The commissioner shall not withhold his approval  
10 unless he shall find that the plan of acquisition contains provisions  
11 which do not conform to law, or that the plan of acquisition is not  
12 in the public interest.

13 (2) The commissioner's disapproval of a plan of acquisition  
14 shall be subject to review, hearing and relief in the Superior Court  
15 in a proceeding in lieu of prerogative writ.

1 5. Submission of plan to stockholders; filing.

2 (1) If the commissioner approves the plan of acquisition, it  
3 shall, within 120 days after the date of such approval, be submitted  
4 to the stockholders of each of the participating banks at separate  
5 meetings called for that purpose upon at least 20 days' notice  
6 given in the manner specified in section 81 of "An act concerning  
7 banking and banking institutions (Revision of 1948), approved  
8 April 29, 1948 (P. L. 1948, c. 67)." A copy of the plan of acquisi-

9 tion shall be mailed to each stockholder of each participating bank  
10 with the notice of the stockholders' meetings.

11 (2) If the plan is approved by the stockholders of one or more  
12 of the participating banks holding at least  $\frac{2}{3}$  of the capital stock  
13 entitled to vote, that fact shall be certified as to each such bank  
14 by its president or a vice-president and the certifications shall be  
15 attached to the plan. The plan shall then be filed in the depart-  
16 ment, and thereupon it shall become effective according to its  
17 terms as to the acquiring corporation and each participating bank  
18 whose stockholders have approved the plan of acquisition as pro-  
19 vided in this section.

1 6. Notice of dissent; "dissenting stockholder" defined.

2 (1) Any stockholder of a participating bank electing to dissent  
3 from the plan of acquisition may do so by filing with the par-  
4 ticipating bank of which he is a stockholder, a written notice of  
5 such dissent, stating that he intends to demand payment for his  
6 shares if the plan of acquisition becomes effective. Such dissent  
7 shall be filed before the taking of the vote of the stockholders on  
8 the plan of acquisition pursuant to section 5.

9 (2) Within 10 days after the date on which the plan of acquisi-  
10 tion is approved by stockholders of a participating bank as pro-  
11 vided in section 5 hereof, such bank shall give notice of such ap-  
12 proval by certified mail to each stockholder who has filed written  
13 notice of dissent pursuant to subsection (1) of this section, except  
14 any who voted for or consented in writing to such plan of ac-  
15 quisition.

16 (3) Within 20 days after the mailing of such notice, any stock-  
17 holder to whom the participating bank was required to give such  
18 notice, may make written demand on the participating bank for  
19 the payment of the fair value of his shares. A stockholder who  
20 makes a demand pursuant to this subsection (3) is hereafter in  
21 this act referred to as a "dissenting stockholder." Upon making  
22 such demand, the dissenting stockholder shall cease to have any  
23 rights of a stockholder except the right to be paid the fair value  
24 of his shares and any other rights of a dissenting stockholder under  
25 this act.

26 (4) Not later than 20 days after demanding payment for his  
27 shares pursuant to this section, the stockholder shall submit the  
28 certificate or certificates representing such shares to the partici-  
29 pating bank of which he is a stockholder for notation thereon that  
30 such demand has been made, whereupon such certificate or cer-  
31 tificates shall be returned to him. If shares represented by a  
32 certificate on which such notation has been made shall be trans-

33 ferred, each new certificate issued therefor shall bear similar nota-  
34 tion, together with the name of the original dissenting holder of  
35 such shares, and a transferee of such shares shall acquire by such  
36 transfer no rights other than those which the original dissenting  
37 stockholder had after making a demand for payment of the fair  
38 value thereof.

39 (5) A stockholder may not dissent as to less than all of the  
40 shares owned beneficially by him. A nominee or fiduciary may not  
41 dissent on behalf of any beneficial owner as to less than all of the  
42 shares of such owner.

1 7. Valuation date of fair value.

2 For the purposes of this act, the fair value of the shares of a  
3 participating bank shall be determined as of the day before the day  
4 on which the vote of stockholders of such bank was taken as pro-  
5 vided in section 5. In determining fair value, there shall be excluded  
6 any appreciation or depreciation in value resulting from the con-  
7 summation of the plan of acquisition.

1 8. Termination of right of stockholder to be paid the fair value  
2 of his shares.

3 (1) The right of a dissenting stockholder to be paid the fair  
4 value of his shares shall cease if

5 (a) He has failed to present his certificates for notation as  
6 provided by subsection (4) of section 6, unless a court having  
7 jurisdiction, for good and sufficient cause shown, shall other-  
8 wise direct;

9 (b) His demand for payment is withdrawn with the written  
10 consent of the participating bank;

11 (c) The fair value of the shares is not agreed upon as pro-  
12 vided in this act, and no action for the determination of fair  
13 value by the Superior Court is commenced within the time pro-  
14 vided in this act;

15 (d) The Superior Court determines that the stockholder is  
16 not entitled to payment for his shares;

17 (e) The plan of acquisition of shares is abandoned, rescinded,  
18 or otherwise terminated in respect to the participating bank  
19 of which he is a stockholder; or

20 (f) A court having jurisdiction permanently enjoins or sets  
21 aside the acquisition of shares.

22 (2) In any case provided for in subsection (1) of this section  
23 the rights of the dissenting stockholder as a stockholder shall be  
24 reinstated as of the date of the making of a demand for payment  
25 pursuant to section 6 without prejudice to any corporate action  
26 which has taken place during the interim period. In such event, he

27 shall be entitled to any intervening pre-emptive rights and the right  
28 to payment of any intervening dividend or other distribution, or  
29 if any such rights have expired or any such dividend or distribution  
30 other than in cash has been completed, in lieu thereof, at the election  
31 of the participating bank, the fair value thereof in cash as of the  
32 time of such expiration or completion.

1 9. Rights of dissenting stockholder.

2 (1) A dissenting stockholder may not withdraw his demand for  
3 payment of the fair value of his shares without the written consent  
4 of the participating bank.

5 (2) The enforcement by a dissenting stockholder of his right to  
6 receive payment for his shares shall exclude the enforcement by  
7 such dissenting stockholder of any other right to which he might  
8 otherwise be entitled by virtue of share ownership, except as pro-  
9 vided in subsection (2) of section 8 and except that this subsection  
10 shall not exclude the right of such dissenting stockholder to bring  
11 or maintain an appropriate action to obtain relief on the ground  
12 that consummation of the plan of acquisition will be or is ultra  
13 vires, unlawful or fraudulent as to such dissenting stockholder.

1 10. Determination of fair value by agreement.

2 (1) Within 10 days after the expiration of the period within  
3 which stockholders may make written demand to be paid the fair  
4 value of their shares, or within 10 days after the plan of acquisition  
5 becomes effective, whichever is later, the participating bank shall  
6 mail to each dissenting stockholder the balance sheet and the sur-  
7 plus statement of the participating bank as of the latest available  
8 date, which shall not be earlier than 12 months prior to the making  
9 of the offer of payment hereinafter referred to in this subsection,  
10 and a profit and loss statement or statements for not less than a  
11 12-month period ended on the date of such balance sheet or, if the  
12 participating bank was not in existence for such 12-month period,  
13 for the portion thereof during which it was in existence. The par-  
14 ticipating bank may accompany such mailing with a written offer  
15 to pay each dissenting stockholder for his shares at a specified  
16 price deemed by such bank to be the fair value thereof. Such offer  
17 shall be made at the same price per share to all dissenting stock-  
18 holders of the same class, or, if divided into series, of the same  
19 series.

20 (2) If, not later than 30 days after the expiration of the 10-day  
21 period limited by subsection (1) of this section, the fair value of the  
22 shares is agreed upon between any dissenting stockholder and the  
23 participating bank, payment therefor shall be made upon surrender  
24 of the certificate or certificates representing such shares.

1 11. Procedure on failure to agree upon fair value; commencement  
2 of action to determine fair value.

3 (1) If the fair value of the shares is not agreed upon within the  
4 30-day period limited by subsection (2) of section 10, the dissenting  
5 stockholder may serve upon the participating bank a written  
6 demand that it commence an action in the Superior Court for the  
7 determination of such fair value. Such demand shall be served not  
8 later than 30 days after the expiration of the 30-day period so  
9 limited and such action shall be commenced by the participating  
10 bank not later than 30 days after receipt by such bank of such de-  
11 mand, but nothing herein shall prevent such bank from commencing  
12 such action at any earlier time.

13 (2) If a participating bank fails to commence the action as pro-  
14 vided in subsection (1) of this section, a dissenting stockholder may  
15 do so in the name of such bank, not later than 60 days after the  
16 expiration of the time limited by subsection (1) of this section in  
17 which such bank may commence such an action.

1 12. Action to determine fair value; jurisdiction of court; appoint-  
2 ment of appraiser.

3 In any action to determine the fair value of shares pursuant to  
4 this act:

5 (a) The Superior Court shall have jurisdiction and may proceed  
6 in the action in a summary manner or otherwise;

7 (b) All dissenting stockholders, wherever residing, except those  
8 who have agreed with the participating bank upon the price to be  
9 paid for their shares, shall be made parties thereto as an action  
10 against their shares quasi in rem;

11 (c) The court in its discretion may appoint an appraiser to re-  
12 ceive evidence and report to the court on the question of fair value,  
13 who shall have such power and authority as shall be specified in  
14 the order of his appointment; and

15 (d) The court shall render judgment against the participating  
16 bank and in favor of each stockholder who is a party to the action  
17 for the amount of the fair value of his shares.

1 13. Judgment in action to determine fair value.

2 (1) A judgment for the payment of the fair value of shares shall  
3 be payable upon surrender to the participating bank of the cer-  
4 tificate or certificates representing such shares.

5 (2) The judgment shall include an allowance for interest at such  
6 rate as the court finds to be equitable, from the day of the meeting  
7 of stockholders of the participating bank at which the plan of  
8 acquisition was approved to the day of payment. If the court finds  
9 that the refusal of any dissenting stockholder to accept any offer of



10 payment made by the participating bank under section 10 was  
11 arbitrary, vexatious or otherwise not in good faith, no interest shall  
12 be allowed to him.

1 14. Costs and expenses of action.

2 The costs and expenses of bringing an action pursuant to section  
3 11 shall be determined by the court and shall be apportioned and  
4 assessed as the court may find equitable upon the parties or any of  
5 them. Such expenses shall include reasonable compensation for and  
6 reasonable expenses of the appraiser, if any, but shall exclude the  
7 fees and expenses of counsel for and experts employed by any  
8 party; but if the court finds that the offer of payment made by the  
9 participating bank under section 10 was not made in good faith, or  
10 if no such offer was made, the court in its discretion may award to  
11 any dissenting stockholder who is a party to the action reasonable  
12 fees and expenses of his counsel and of any experts employed by the  
13 dissenting stockholder.

1 15. Disposition of shares.

2 Upon payment for shares pursuant to subsection (2) of section  
3 10, or upon payment of a judgment pursuant to subsection (1) of  
4 section 13, the participating bank making such payment shall  
5 acquire all the right, title and interest in and to such shares, not-  
6 withstanding any other provision of law. Shares so acquired by the  
7 participating bank shall be disposed of as a stock dividend as pro-  
8 vided by section 212 of the Banking Act of 1948, P. L. 1948, chapter  
9 67.

1 16. This act shall take effect immediately.

---

#### STATEMENT

This bill implements P. L. 1968, chapter 416, concerning bank holding companies. It provides the procedure for the acquisition by a corporation, subject to the New Jersey bank holding company law, of the shares of a bank pursuant to resolution of the bank's directors, and with the approval of the holders of not less than  $\frac{2}{3}$  of the issued and outstanding shares of stock of the bank. Provision is made for the payment to dissenting shareholders of the fair value of their shares. The procedure is patterned after that provided for general business corporations by chapter 11 of Title 14A, Corporations, General, of the New Jersey Statutes. The banking laws of New York have a similar provision.