

**17:9A-20.4 et al**  
**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 1999                    **CHAPTER:** 159

**NJSA:** 17:9A-20.4 et al            (“Trust Modernization Act of 1999”)

**BILL NO:** A2804                    (Substituted for S1630)

**SPONSOR(S):** Batemand and Weingarten

**DATE INTRODUCED:** January 21, 1999

**COMMITTEE:**                    **ASSEMBLY:** Banking and Insurance

**SENATE:**            ---

**AMENDED DURING PASSAGE:**            Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** May 10, 1999    Re-enacted June 24, 1999

**SENATE:**            May 10, 1999    Re-enacted July 1, 1999

**DATE OF APPROVAL:**                    July 8, 1999

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL:](#) 1<sup>st</sup> Reprint  
(Amendments during passage denoted by superscript numbers)

**A2804**

[SPONSORS STATEMENT:](#) (Begins on page 15 of original bill)                    [Yes](#)

**COMMITTEE STATEMENT:**                    **ASSEMBLY:**                    [Yes](#)

**SENATE:**                    No

**FLOOR AMENDMENT STATEMENTS:**                    No

**LEGISLATIVE FISCAL ESTIMATE:**                    No

**S1630**

[SPONSORS STATEMENT:](#) (Begins on page 15 of original bill)                    [Yes](#)  
Bill and Sponsors Statement identical to A2804

**COMMITTEE STATEMENT:**                    **ASSEMBLY:**                    No

**SENATE:**                    [Yes](#)  
Identical to Assembly Statement for A2804

**FLOOR AMENDMENT STATEMENTS:**                    No

**LEGISLATIVE FISCAL ESTIMATE:**                    No

[VETO MESSAGE:](#)                    [Yes](#)

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

§§1,3  
C. 17:9A-20.4 &  
17:9A-20.5  
§12  
C. 3B:18-25.2  
§§13-15  
C. 46:2F-9  
To  
46:2F-11  
§16 Repealer  
§17 Note To §§1-16

P.L. 1999, CHAPTER 159, *approved July 8, 1999*  
Assembly, No. 2804 (*First Reprint*)

1 **AN ACT** concerning bank trusts and revising various parts of the  
2 Statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known as and may be cited as the "Trust  
8 Modernization Act of 1999."

9

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

12 1. As used in this act, and except as otherwise expressly provided  
13 in this act:

14 (1) "Bank" shall include the following:

15 (a) Every corporation heretofore organized pursuant to the act  
16 entitled "An act concerning banks and banking (Revision of 1899),"  
17 approved March 24, 1899;

18 (b) Every corporation heretofore organized pursuant to the act  
19 entitled "An act concerning trust companies (Revision of 1899),"  
20 approved March 24, 1899;

21 (c) Every corporation heretofore organized pursuant to chapter 4  
22 of Title 17 of the Revised Statutes;

23 (d) Every corporation, other than a savings bank, heretofore  
24 authorized by any general or special law of this State to transact  
25 business as a bank or as a trust company, or as both;

26 (e) Every corporation hereafter organized pursuant to article 2 of  
27 this act;

28 (2) "Banking institution" shall mean a bank, an out-of-State bank  
29 having a branch office in this State, an out-of-country bank having a  
30 branch office in this State, savings bank, and a national banking  
31 association having its principal or a branch office in this State;

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly amendments adopted in accordance with Governor's recommendations June 24, 1999.**

- 1 (3) "Board of managers" of a savings bank shall include the board  
2 of trustees of a savings bank;
- 3 (4) "Capital stock" shall include both common stock and preferred  
4 stock;
- 5 (5) "Certificate of incorporation," unless the context requires  
6 otherwise, shall mean:
- 7 (a) The certificate of incorporation, together with all amendments  
8 thereto, of every bank and savings bank organized pursuant to any  
9 general law of this State;
- 10 (b) The charter, together with all amendments thereto, of every  
11 bank and savings bank organized pursuant to any special law of this  
12 State;
- 13 (6) "Commissioner" shall mean the Commissioner of Banking and  
14 Insurance of New Jersey;
- 15 (7) "Department" shall mean the Department of Banking and  
16 Insurance of New Jersey;
- 17 (8) "Fiduciary" shall include trustee, executor, administrator,  
18 receiver, guardian, assignee, and every other person occupying any  
19 other lawful office or employment of trust;
- 20 (9) "Manager" of a savings bank shall include a trustee of a savings  
21 bank;
- 22 (10) "Municipality" shall mean a city, town, township, village, and  
23 borough of this State;
- 24 (11) "Population" shall mean the population as determined by the  
25 latest federal census or as determined by the commissioner from other  
26 information which he may deem reliable;
- 27 (12) "Qualified bank" shall mean:
- 28 (a) A bank or an out-of-State bank with a branch office in New  
29 Jersey which has heretofore been authorized or which shall hereafter  
30 be authorized to exercise any of the powers authorized by section 28  
31 of P.L.1948, c. 67 (C. 17:9A-28);
- 32 (b) A savings bank which has heretofore been authorized or which  
33 shall hereafter be authorized to exercise any of the powers authorized  
34 by section 28 of P.L.1948, c.67 (C.17:9A-28); and
- 35 (c) A national banking association having its principal or a branch  
36 office in this State authorized to act as a fiduciary;
- 37 (13) "Savings bank" shall include the following:
- 38 (a) Every corporation heretofore organized pursuant to the act  
39 entitled "An act concerning savings banks," approved April 12, 1876;
- 40 (b) Every corporation heretofore organized pursuant to the act  
41 entitled "An act concerning savings banks," approved May 2, 1906;
- 42 (c) Every corporation heretofore organized pursuant to chapter 6  
43 of Title 17 of the Revised Statutes;
- 44 (d) Every corporation, other than a bank, authorized by any general  
45 or special law of this State to carry on the business of a savings bank  
46 or institution or society for savings;

1 (e) Every corporation hereafter organized pursuant to article 3 of  
2 P.L.1948, c.67 (C.17:9A-7 and 17:9A-8) or P.L.1982, c.9  
3 (C.17:9A-8.1 et seq.);

4 (14) "Branch office" of a bank or savings bank shall mean an  
5 office, unit, station, facility, terminal, space or receptacle at a fixed  
6 location other than a principal office and other than a trust office,  
7 however designated, at which any business that may be conducted in  
8 a principal office of a bank or savings bank may be transacted. "Branch  
9 office" includes a full branch [offices] office , minibranch [offices]  
10 office and communication terminal branch [offices] office but shall not  
11 include a trust office;

12 (15) "Full branch office" means a branch office of a bank or savings  
13 bank not subject to the limitations or restrictions imposed upon  
14 minibranch offices or communication terminal branch offices;

15 (16) "Minibranch office" means a branch office of a bank or savings  
16 bank which does not occupy more than 500 square feet of floor space  
17 and which does not contain more than four teller stations, manned by  
18 employees of the bank or savings bank;

19 (17) "Communication terminal branch office" means a branch office  
20 of a bank or savings bank which is either manned by a bona fide third  
21 party under contract to a bank or savings bank or unmanned and which  
22 consists of equipment, structures or systems, by means of which  
23 information relating to financial services rendered to the public is  
24 transmitted and through which transactions with banks and savings  
25 banks are consummated, either instantaneously or otherwise;

26 (18) "Secondary mortgage loan" means a loan made to an  
27 individual, association, joint venture, partnership, limited partnership  
28 association, or any other group of individuals however organized,  
29 except a corporation, which is secured in whole or in part by a lien  
30 upon any interest in real property, including, but not limited to, shares  
31 of stock in a cooperative corporation, created by a security agreement,  
32 including a mortgage indenture, or any other similar instrument or  
33 document, which real property is subject to one or more prior  
34 mortgage liens and which is used as a dwelling, including a dual  
35 purpose or combination type dwelling which is also used as a business  
36 or commercial establishment, and has accommodations for not more  
37 than six families, except that a loan which: (a) is to be repaid in 90  
38 days or less; (b) is taken as security for a home repair contract  
39 executed in accordance with the provisions of P.L.1960, c.41 (C.  
40 17:16C-62 et seq.); or (c) is the result of the private sale of a  
41 dwelling, if title to the dwelling is in the name of the seller and the  
42 seller has resided in said dwelling for at least one year, if the buyer is  
43 purchasing said dwelling for his own residence and, as part of the  
44 purchase price, executes a secondary mortgage in favor of the seller,  
45 shall not be included within the definition of "secondary mortgage  
46 loan";

1 (19) With respect to savings banks, "director" and "board of  
2 directors" may be used to mean "manager" and "board of managers,"  
3 respectively;

4 (20) "Foreign bank" means a company, other than a banking  
5 institution, organized under the laws of the United States, another  
6 state, or a foreign government, which is authorized by the laws under  
7 which it is organized to exercise some or all of the powers specified in  
8 paragraph (4) of section 24 of P.L.1948, c.67 (C.17:9A-24),  
9 paragraphs (4), (5) and (13) of section 25 of P.L.1948, c.67 (C.  
10 17:9A-25), and paragraphs (3) through (9), inclusive, of section 28 of  
11 P.L.1948, c. 67 (C. 17:9A-28);

12 (21) "Home state" means:

13 (a) with respect to a national bank, the state in which the main  
14 office is located; and

15 (b) with respect to a state bank, the state by which the bank is  
16 chartered;

17 (22) "Host state" means, with respect to a bank, a state, other than  
18 the home state of the bank, in which the bank maintains, or seeks to  
19 establish and maintain, a branch office.

20 For purposes of this subsection and subsection (21), "bank" means  
21 a bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. §  
22 1813(a)(2);

23 (23) "Out-of-State bank" means a state bank, as defined in the  
24 Federal Deposit Insurance Act, 12 U.S.C. § 1813(a)(2), with a home  
25 state other than New Jersey;

26 (24) "Out-of-country bank" means a bank chartered under the laws  
27 of a country other than the United States;

28 (25) "Interstate merger transaction" means:

29 (1) The merger or consolidation of banks with different home  
30 states, and the conversion of branches of any bank involved in the  
31 merger or consolidation into branches of the resulting bank; or

32 (2) The purchase of all or substantially all of the assets, the  
33 assumption of all or substantially all of the liabilities, or both, including  
34 all or substantially all of the branches, of a bank whose home state is  
35 different from the home state of the acquiring bank;

36 (26) "State" means any state of the United States, the District of  
37 Columbia, any territory of the United States, Puerto Rico, Guam,  
38 American Samoa, the Trust Territory of the Pacific Islands, the Virgin  
39 Islands and the Northern Mariana Islands;

40 (27) "Resulting bank" means a state or federally chartered bank or  
41 state chartered savings bank that has resulted from an interstate  
42 merger transaction pursuant to P.L.1948, c.67 (C.17:9A-1 et seq.);

43 (28) "Trust office" means an office, unit, station, facility, or space  
44 at a fixed location, other than a principal office, however designated,  
45 at which business that may be conducted at the principal office may be  
46 transacted and the primary activities conducted include the transaction

1 of trust business as defined in paragraph (2) of subsection D of section  
2 316 of P.L.1948, c.67 (C.17:9A-316), but at which no deposits may  
3 be taken other than assets to be held in trust.

4 (cf: P.L.1996, c.17, s.2)

5

6 3. (New section) a. A qualified bank may establish a trust office  
7 anywhere in this State, or in any other state which permits the  
8 establishment of a trust office, if the qualified bank files a written  
9 notice with the commissioner setting forth the name of the qualified  
10 bank, the location of the proposed trust office, and furnishes a copy of  
11 the resolution adopted by its board authorizing the trust office.

12 b. A foreign bank, other than one excluded by subsection A of  
13 section 316 of P.L.1948, c.67 (C.17:9A-316), may establish a trust  
14 office in this State, if the foreign bank files with the commissioner an  
15 application to register the trust office. The application shall set forth  
16 the name of the foreign bank and the location of the proposed trust  
17 office, and the applicant shall furnish a copy of the resolution adopted  
18 by its board authorizing the establishment of the trust office. The  
19 commissioner shall register the trust office if:

20 (1) the foreign bank demonstrates that it is in good standing in its  
21 home state and submits satisfactory evidence that it has complied with  
22 any applicable requirements of its bank supervisory agency regarding  
23 the establishment and maintenance of a trust office;

24 (2) the commissioner determines that a State chartered qualified  
25 bank may establish a trust office in the home state of the foreign bank  
26 without unduly burdensome conditions or restrictions; and

27 (3) the foreign bank has obtained or obtains a certificate of  
28 authority to transact trust business in this State in accordance with the  
29 provisions of section 316 of P.L.1948, c.67 (C.17:9A-316).

30

31 4. Section 316 of P.L.1948, c.47 (C.17:9A-316) is amended to  
32 read as follows:

33 316. A. Except as otherwise provided pursuant to section 1 of  
34 P.L.1989, c.245 (C.17:9A-19.2) and sections 37 through 86 of  
35 P.L.1996, c.17 (C.17:9A-418 through C.17:9A-467), no foreign bank  
36 organized under the laws of a foreign government shall transact any  
37 business in this State.

38 B. A foreign bank [, other than one excluded by subsection A of  
39 this section,] organized under the laws of the United States or another  
40 state may not transact business in this State [only as executor or as  
41 testamentary trustee or guardian, and then only when named in a  
42 decedent's will or codicil thereto] other than a trust business . Before  
43 transacting [such] trust business in this State, a foreign bank shall  
44 secure from the commissioner a certificate of authority to transact  
45 [such] trust business. The commissioner shall not issue a certificate  
46 of authority to a foreign bank unless a qualified bank is permitted to

1 transact trust business [as executor, or as testamentary trustee or  
2 guardian, when named in a will or codicil thereto,] in the jurisdiction  
3 in which the foreign bank has its principal office without unduly  
4 burdensome conditions or restrictions.

5 C. ~~[No]~~ Except as otherwise provided pursuant to P.L. c.  
6 (C. )(pending in the Legislature as this bill), no foreign bank shall  
7 maintain an office in this State, [provided] except that a foreign bank  
8 may maintain one or more service facilities in this State, provided that  
9 the foreign bank performs only back office operations at the service  
10 facility and does not transact business with its customers or the public  
11 at the service facility. Prior to opening a service facility in this State,  
12 a foreign bank shall register the service facility with the commissioner,  
13 which registration shall include the address of the proposed service  
14 facility and the name and address of the foreign bank's agent in this  
15 State for service of process. No foreign bank organized under the laws  
16 of a foreign government which has an office licensed as a  
17 representative office pursuant to sections 55 and 56 of P.L.1996, c.17  
18 (C.17:9A-436 and C.17:9A-437), shall be required to register under  
19 this subsection as a service facility. Each service facility shall comply  
20 with the requirements and pay the fees that the commissioner  
21 establishes by regulation. Each service facility shall be subject to  
22 examination by the department to determine whether the foreign bank  
23 has operated the service facility in accordance with the provisions of  
24 this subsection, the costs of which examination shall be paid by the  
25 foreign bank at the department's per diem rate for examinations of  
26 depository institutions. The commissioner may, upon notice and a  
27 hearing, order a foreign bank to close any trust office or service  
28 facility operated in violation of the provisions of this subsection or of  
29 other any law. Any entity acting as an agent pursuant to section 1 of  
30 P.L.1989, c.245 (C.17:9A-19.2) shall not be required to register and  
31 be regulated pursuant to this subsection C.

32 D. (1) For the purposes of this section, the term "transact  
33 business" shall not include back office operations and the term "back  
34 office operations" shall include the following activities: data  
35 processing, record-keeping, accounting, check and deposit sorting and  
36 posting, computation and posting of interest, other similar clerical and  
37 statistical functions, producing and mailing correspondence or  
38 documents and such other similar activities that the commissioner  
39 approves.

40 (2) For the purposes of this section, "trust business" means holding  
41 out to the public by advertising, solicitation or other means that a  
42 person or entity is available to perform any of the services of a trustee  
43 or fiduciary in this State or another state, and includes acting as a  
44 trustee, testamentary trustee, fiduciary, executor or guardian or  
45 exercising any of the powers specified in paragraphs (3) through (9)  
46 of section 28 of P.L.1948, c.67 (C.17:9A-28).

47 E. (1) For the purposes of Article 44 of "The Banking Act of



1 1948," P.L.1948 c.67 (C.17:9A-315 through 17:9A-332), a foreign  
2 bank, including one organized under the laws of a foreign country,  
3 shall not be deemed to transact business or maintain an office in this  
4 State by virtue of conducting business in this State through an agent  
5 in this State which is an insured depository institution affiliate or other  
6 agent.

7 (2) Nothing in this section or in [the] "The Banking Act of 1948,"  
8 P.L.1948, c.67 (C.17:9A-1 et seq.) shall prohibit a foreign bank,  
9 including one organized under the laws of a foreign country, from  
10 owning and operating in this State, as a subsidiary, a State or federally  
11 chartered bank and the ownership and operation of, and the sharing of  
12 directors, officers and employees with that subsidiary shall not  
13 constitute transacting business in this State.

14 (cf: P.L.1996, c.17, s.24)

15

16 5. Section 1 of P.L.1979, c.389 (C.17:9A-316.3) is amended to  
17 read as follows:

18 1. A foreign bank authorized by section 316 of P.L.1948, c.67  
19 (C.17:9A-316) to act as trustee, fiduciary, executor, testamentary  
20 trustee or guardian may, when acting in such capacity, invest any  
21 money received and held by it in such capacity, in any common trust  
22 fund or funds maintained by it in accordance with the laws of the  
23 [State] state of its incorporation; provided, that the [will] instrument  
24 under which it is acting as trustee, fiduciary, executor, testamentary  
25 trustee or guardian does not specifically prohibit such investment and  
26 any such investment is made subject to the provisions of subsection B  
27 of section 37 of P.L.1948, c.67 (C.17:9A-37), and the provisions of  
28 section 38 of P.L.1948, c.67 (C.17:9A-38) relating to investments by  
29 a qualified bank incorporated under the laws of this State in a  
30 common trust fund; and provided that a qualified bank incorporated  
31 under the laws of this State is permitted by the laws of the state of  
32 incorporation of such foreign bank, when acting in a similar fiduciary  
33 capacity in that state to invest any moneys, received and held by it in  
34 such capacity, in any common trust fund or funds maintained by it in  
35 accordance with the laws of this State.

36 (cf: P.L.1979, c.389, s.1)

37

38 6. Section 317 of P.L.1948, c.67 (C.17:9A-317) is amended to  
39 read as follows:

40 317. As a prerequisite to its qualification in any fiduciary capacity  
41 specified in section 316, in any court of this State, a foreign bank shall  
42 present to the court a certificate of the commissioner certifying that  
43 it is authorized to transact business in this State pursuant to this  
44 article. The certificate shall be dated not earlier than thirty days  
45 prior to the foreign bank's qualification in such court] and shall  
46 furnish a bond if required by the court pursuant to the provisions of

1 N.J.S.3B:15-1 .

2 (cf: P.L.1948, c.67, s.317)

3

4 7. Section 318 of P.L.1948, c.67 (C.17:9A-318) is amended to  
5 read as follows:

6 318. A foreign bank desiring to secure a certificate of authority to  
7 transact business in this State shall make application to the  
8 commissioner therefor and file  ~~[or deposit] with [such] the~~  
9 application

10 (1) a copy of its certificate of incorporation, and all amendments  
11 thereto, certified by its president or a vice-president and attested  
12 under its corporate seal by its secretary, an assistant secretary, its  
13 cashier or an assistant cashier;

14 (2)  ~~[a statement of its financial condition as of the end of the~~  
15  ~~preceding calendar year, in such form as shall be prescribed by the~~  
16  ~~commissioner, similarly certified and attested]~~ proof of adequate  
17 insurance coverage in connection with the volume of transactions and  
18 nature of its business ;

19 (3)  ~~[an affidavit of its president or a vice-president that it has not,~~  
20  ~~subsequent to July 4, 1939, originally probated in a foreign jurisdiction~~  
21  ~~the will of any person known to it to have died domiciled in this State,~~  
22  ~~or applied in a foreign jurisdiction for original letters of administration~~  
23  ~~of the estate of any such person;]~~ (Deleted by amendment, P.L. ,  
24 c. .)

25 (4) a certificate executed by its president or a vice-president and  
26 attested under its corporate seal by its secretary, an assistant  
27 secretary, its cashier or an assistant cashier, that, so long as it shall  
28 have a certificate of authority,

29 (a) it will comply with all the requirements of the laws of this State  
30 which shall be applicable from time to time to the transaction of its  
31 business in this State;

32 (b) it will, promptly following adoption, submit to the commissioner  
33 a copy of each amendment or other change in its certificate of  
34 incorporation, certified and attested as provided in paragraph (1) of  
35 this section;

36 (c)  ~~[it will not originally probate in a foreign jurisdiction the will of~~  
37  ~~any person known to it to have died domiciled in this State, or apply~~  
38  ~~in a foreign jurisdiction for original letters of administration of the~~  
39  ~~estate of any such person;]~~ (Deleted by amendment, P.L. , c. .)

40 (5) a power of attorney, executed by its president or vice-president  
41 and attested under its corporate seal by its secretary, an assistant  
42 secretary, its cashier or an assistant cashier, authorizing the  
43 commissioner and his successors in office to accept service of process  
44 upon the foreign bank in any action or proceeding against it affecting  
45 or relating to any estate or trust administered under the laws of this  
46 State, with respect to which it shall act in a fiduciary capacity specified  
47 in section 316; such power of attorney shall provide that service of

1 any such process upon the commissioner shall have the same force  
2 and validity as if served upon the foreign bank, and that the authority  
3 therein granted shall be irrevocable and shall continue in force  
4 indefinitely, notwithstanding the expiration, revocation or surrender of  
5 the certificate of authority or renewal thereof [;] .

6 (6) [securities having an aggregate market value of not less than  
7 thirty thousand dollars, of such character as the commissioner shall  
8 prescribe, to be held by the commissioner as security for the  
9 performance by the foreign bank of its obligations with respect to  
10 estates and trusts administered under the laws of this State, with  
11 respect to which it shall act in a fiduciary capacity specified in section  
12 316.] (~~Deleted by amendment, P.L. , c. .~~)  
13 (cf: P.L.1948, c.67, s.318)  
14

15 8. Section 319 of P.L.1948, c.67 (C.17:9A-319) is amended to  
16 read as follows:

17 319. A. Within [sixty] 60 days following the receipt of the  
18 application of a foreign bank for a certificate of authority to transact  
19 business in this State, the commissioner shall issue the certificate or  
20 make an order denying the application.

21 B. The commissioner shall issue the certificate if he is satisfied  
22 from the application submitted to him, or otherwise,

23 (1) that the foreign bank is authorized by the laws under which it is  
24 incorporated to act as trustee, testamentary trustee, fiduciary,  
25 executor [of or trustee] or guardian [under wills admitted to probate  
26 in this State];

27 (2) that the foreign bank has [an unimpaired paid-in] capital  
28 [stock] and surplus of not less than one [hundred thousand] million  
29 dollars; and

30 (3) that the foreign bank has complied in good faith with all of the  
31 requirements of section 318.

32 C. Before issuing or denying a certificate of authority, the  
33 commissioner may require a foreign bank which makes application for  
34 a certificate of authority to submit to him additional information, in  
35 such form and manner as he may require.

36 (cf: P.L.1948, c.67, s.319)  
37

38 9. Section 322 of P.L.1948, c.67 (C.17:9A-322) is amended to  
39 read as follows:

40 322. A certificate of authority issued to a foreign bank shall  
41 continue in force, unless revoked by the commissioner or surrendered  
42 by the foreign bank [, until April 1 of the year following the year in  
43 which it is issued]. The commissioner may adopt regulations  
44 establishing requirements for periodic renewal of a certificate of  
45 authority, and for notification to the commissioner if a foreign bank  
46 named in a certificate of authority desires to surrender the certificate  
47 or merges with or is acquired by another financial institution or

1 company. Failure to provide any notification required by regulations  
2 promulgated by the commissioner shall be grounds for revocation of  
3 the certificate.

4 (cf: P.L.1948, c.67, s.322)

5

6 10. Section 326 of P.L.1948, c.67 (C.17:9A-326) is amended to  
7 read as follows:

8 326. The commissioner shall revoke the certificate of authority or  
9 renewal thereof of a foreign bank if:

10 (1) the foreign bank has ceased to be authorized by the laws under  
11 which it is incorporated to act as trustee, testamentary trustee,  
12 fiduciary, executor [of or as trustee] or guardian [under wills  
13 admitted to probate in this State];

14 (2) [the foreign bank, after July fourth, one thousand nine hundred  
15 and thirty-nine, originally probated in a foreign jurisdiction the will of  
16 any person known to it to have died domiciled in this State, or applied  
17 in a foreign jurisdiction for original letters of administration of the  
18 estate of any such person;] (~~Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_.~~)

19 (3) the foreign bank does not have [an unimpaired paid-in-capital  
20 stock] capital and surplus of at least one [hundred thousand dollars  
21 (\$100,000.00)] million dollars ;

22 (4) [he] the commissioner finds that its financial condition or lack  
23 of insurance coverage makes it inadvisable to permit the foreign bank  
24 to act in the fiduciary capacities specified in section [three hundred  
25 sixteen] 316 ;

26 (5) the foreign bank, its directors, officers or employees refuse to  
27 permit an examination of its securities, books, records and accounts  
28 pursuant to section [three hundred twenty-five] 325 , or if any of its  
29 directors, officers or employees refuse to be examined under oath as  
30 provided in said section;

31 (6) the foreign bank does not, within such time as the commissioner  
32 may fix, deliver to the commissioner any information required by the  
33 commissioner under section [three hundred twenty-five] 325 ;

34 (7) the foreign bank does not pay the costs of an examination made  
35 pursuant to section [three hundred twenty-five] 325 ; or

36 (8) [the foreign bank does not maintain on deposit with the  
37 commissioner securities of the kind and in the amount required by this  
38 article;] (~~Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_.~~)

39 (9) [the foreign bank does not, within such time as may be fixed by  
40 the commissioner, obey an order of the commissioner to substitute  
41 other securities for securities deposited by the foreign bank; or]  
42 (~~Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_.~~)

43 (10) the foreign bank does not, after the time for appeal has  
44 expired and no appeal is pending, satisfy a judgment against it for  
45 a breach of any fiduciary obligation with respect to any estate or trust

1 administered by it under the laws of this State.  
2 (cf: P.L.1953, c.17, s.54)

3

4 11. N.J.S. 3B:18-25 is amended to read as follows:

5 3B:18-25. a. Fiduciaries may annually, without court allowance,  
6 take commissions on corpus (including accumulated income which has  
7 been invested by the fiduciary) in the amount of \$5.00 per thousand  
8 dollars of corpus value on the first \$400,000.00 of value of corpus and  
9 \$3.00 per thousand dollars of the corpus value in excess of  
10 \$400,000.00.

11 b. Notwithstanding the provisions of subsection a. of this section,  
12 if the fiduciary is a banking institution, foreign bank or savings and  
13 loan association authorized to exercise fiduciary powers [and the  
14 corpus value is in excess of \$400,000.00], the fiduciary shall be  
15 entitled to such commissions as may be reasonable.

16 c. Notwithstanding the provisions of subsections a. of this  
17 section, a fiduciary may take a minimum commission of \$100.00  
18 annually.

19 d. The value of the corpus for the purpose of this section shall be  
20 the "presumptive value" as defined in N.J.S.3B:18-18 or, at the option  
21 of the fiduciary, the value at the end of the period.

22 e. Upon application of a person interested in the trust or  
23 guardianship, a court may review the reasonableness of the  
24 commissions of the fiduciary, provided, however, the fiduciary shall be  
25 entitled to receive at least the compensation provided for all fiduciaries  
26 as set forth in subsections a. and c. of this section.

27 (cf: P.L.1988, c.165, s.1)

28

29 12. (New section) a. Notwithstanding any law to the contrary, a  
30 qualified bank acting in any capacity authorized pursuant to section 28  
31 of P.L.1948, c.67 (C. 17:9A-28) on behalf of a trust or estate may  
32 employ and pay reasonable compensation to any person, including  
33 attorneys, auditors, investment advisers or other agents, even if they  
34 are affiliated or associated with the qualified bank, to advise or assist  
35 the qualified bank in the performance of any of its <sup>1</sup>administrative<sup>1</sup>  
36 duties <sup>1</sup>[or acts of administration]<sup>1</sup>, whether or not discretionary, and  
37 to act without independent investigation upon their recommendation,  
38 so long as the qualified bank exercises care, skill, and caution in:  
39 selecting the agent; establishing the scope and terms of the agent's  
40 duties consistent with the purpose and terms of the governing trust  
41 instrument; and periodically reviewing the agent's actions in order to  
42 monitor the agent's performance. A qualified bank that delegates  
43 investment functions to an investment adviser shall also comply with  
44 the requirements of sections 8 and 10 of P.L.1997, c.26 (C.3B:20-  
45 11.8 and 3B:20-11.10).

46 b. In performing any agency function, the agent shall owe to the  
47 qualified bank and the beneficiaries the same duties as the qualified

1 bank and shall be held to the same fiduciary standards as the qualified  
2 bank.

3 c. <sup>1</sup>In the absence of express contrary provisions in the trust  
4 instrument, a qualified bank which employs an agent other than an  
5 investment adviser or investment manager, may pay the agent from the  
6 the fiduciary fund if the qualified bank reasonably believes in the  
7 exercise of its discretion that such an arrangement is in the best  
8 interests of all interested persons and will improve the efficiency of the  
9 administration of the fiduciary fund. In the absence of express  
10 contrary provisions in the trust instrument, a qualified bank which  
11 delegates investment and trust asset management functions to an  
12 investment adviser or an investment manager shall comply with the  
13 cost control and other requirements of sections 8 and 10 of P.L.1997,  
14 c.26 (C.3B:20-11.8 and 3B:20-11.10).

15 d.<sup>1</sup> A qualified bank which substantially complies with the  
16 requirements of <sup>1</sup>[subsection] subsections<sup>1</sup> a. <sup>1</sup>and c.<sup>1</sup> of this section  
17 shall not be liable to the beneficiaries or to the trust or estate for the  
18 decisions or actions of the agent, and shall not <sup>1</sup>, solely by reason of  
19 the delegation,<sup>1</sup> be deemed to engage in <sup>1</sup>acts of<sup>1</sup> self-dealing or a  
20 <sup>1</sup>[fiduciary]<sup>1</sup> conflict <sup>1</sup>of interest<sup>1</sup> .

21 <sup>1</sup>[d.] e.<sup>1</sup> By accepting an appointment as agent from a qualified  
22 bank acting as a fiduciary of a trust or estate that is subject to the law  
23 of New Jersey, the agent submits to the jurisdiction of the courts of  
24 New Jersey, even if the agency agreement provides otherwise.

25  
26 13. (New section) No interest created in real or personal property  
27 shall be void by reason of any rule against perpetuities, whether the  
28 common law rule or otherwise. The common law rule against  
29 perpetuities shall not be in force in this State.

30  
31 14. (New section) a. (1) A future interest or trust is void if it  
32 suspends the power of alienation for longer than the permissible  
33 period. The power of alienation is the power to convey to another an  
34 absolute fee in possession of land, or full ownership of personalty. The  
35 permissible period is within 21 years after the death of an individual or  
36 individuals then alive.

37 (2) If the settlor of a living trust has an unlimited power to revoke,  
38 the permissible period is computed from termination of that power.

39 (3) If a future property interest or trust is created by exercise of a  
40 power of appointment, the permissible period is computed from the  
41 time the power is exercised if the power is a general power exercisable  
42 in favor of the donee, the donee's estate, the donee's creditors or the  
43 creditors of the donee's estate, whether or not it is exercisable in favor  
44 of others, and even if the general power is exercisable only by will; in  
45 the case of other powers the permissible period is computed from the  
46 time the power is created but facts at the time the power is exercised  
47 are considered in determining whether the power of alienation is

1 suspended beyond the death of an individual or individuals alive at the  
2 time of creation of the power plus 21 years.

3 b. The power of alienation is suspended when there are no persons  
4 then alive who, alone or in combination with others, can convey an  
5 absolute fee in possession of land, or full ownership of personalty.

6 c. There is no suspension of the power of alienation by a trust or  
7 by equitable interests under a trust if the trustee has power to sell,  
8 either expressed or implied, or if there is an unlimited power to  
9 terminate in one or more persons then alive.

10 d. This section does not apply to limit any of the following:

11 (1) Transfers, outright or in trust, for charitable purposes;

12 (2) Transfers to one or more charitable organizations as described  
13 in Sections 170(c), 2055(a) and 2522(a) of the United States Internal  
14 Revenue Code of 1986 (26 U.S.C. secs 170(c), 2055(a) and 2522(a),  
15 or under any similar statute;

16 (3) A future interest or a power of appointment arising out of a  
17 nondonative transfer, except a nonvested property interest or a power  
18 of appointment arising out of:

19 (a) a premarital or postmarital agreement;

20 (b) a separation or divorce settlement;

21 (c) a spouse's election;

22 (d) a similar arrangement arising out of a prospective, existing, or  
23 previous marital relationship between the parties;

24 (e) a contract to make or revoke a will or trust;

25 (f) a contract to exercise or not to exercise a power of  
26 appointment;

27 (g) a transfer in satisfaction of a duty of support; or

28 (h) a reciprocal transfer;

29 (4) Transfers to a trust or other property arrangement forming part  
30 of a pension, profit-sharing, stock bonus, health, disability, death  
31 benefit, income deferral, or other current or deferred benefit plan for  
32 one or more employees, independent contractors, or their beneficiaries  
33 or spouses, to which contributions are made for the purpose of  
34 distributing to or for the benefit of the participants or their  
35 beneficiaries or spouses the property, income, or principal in the trust  
36 or other property arrangement; or

37 (5) A property interest, power of appointment, or arrangement that  
38 was not subject to the common-law rule against perpetuities or is  
39 excluded by another statute of this State.

40

41 15. (New section) a. Except as provided in subsection b. of this  
42 section, sections 13 through 15 of this amendatory and supplementary  
43 act apply to:

44 (1) a future property interest or a power of appointment that is  
45 created on or after the effective date of this act; or

46 (2) a future property interest or a power of appointment created  
47 before the effective date of this act pursuant to the laws of any other

1 state that does not have the rule against perpetuities in force and to  
2 which, after the effective date of this act, the laws of this State are  
3 made applicable by transfer of the situs of a trust to New Jersey, by a  
4 change in the law governing a trust instrument to New Jersey law, or  
5 otherwise. For purposes of this section only, a future property interest  
6 or a power of appointment is created when the power is irrevocably  
7 exercised or when a revocable exercise becomes irrevocable.

8 b. With respect to a nonvested property interest or a power of  
9 appointment created before the effective date of this act, which is  
10 determined in a judicial proceeding commenced on or after the  
11 effective date of this act, to violate this State's rule against perpetuities  
12 as that rule existed before the effective date of this act, a court upon  
13 the petition of an interested person may reform the disposition in the  
14 manner that most closely approximates the transferor's manifested plan  
15 of distribution and is within the limits of the rule against perpetuities  
16 applicable when the nonvested property interest or power of  
17 appointment was created. The "rule against perpetuities" as used in  
18 this subsection shall mean the provisions of sections 1 through 8 of  
19 P.L.1991. c.192 (C.46:2F-1 through 42:2F-8), in effect at the time  
20 stated herein, notwithstanding the repeal of those sections by this  
21 amendatory and supplementary act.

22  
23 16. a. The following sections are repealed:

24 Section 320 of P.L. 1948, c. 67 (C. 17:9A-320);

25 Section 321 of P.L. 1948, c. 67 (C. 17:9A-321);

26 Section 323 of P.L. 1948, c. 67 (C. 17:9A-323); and

27 Section 324 of P.L. 1948, c. 67 (C. 17:9A-324).

28 b. Sections 1 through 8 of P.L. 1991, c. 192 (C. 46:2F-1 through  
29 46:2F-8) are repealed but shall continue to apply to interests created  
30 prior to the effective date of this act to the extent provided in  
31 subsection b. of section 15 of this act.

32  
33 17. This act shall take effect on the first business day following  
34 enactment.

35  
36  
37  
38  
39 Enacts the "Trust Modernization Act of 1999."



# ASSEMBLY, No. 2804

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 21, 1999

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman JOEL WEINGARTEN**

**District 21 (Essex and Union)**

**Co-Sponsored by:**

**Senators Kavanaugh and Inverso**

**SYNOPSIS**

Enacts the "Trust Modernization Act of 1999."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/11/1999)**

1 AN ACT concerning bank trusts and revising various parts of the  
2 Statutory law.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. This act shall be known as and may be cited as the "Trust  
8 Modernization Act of 1999."

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

12 1. As used in this act, and except as otherwise expressly provided  
13 in this act:

14 (1) "Bank" shall include the following:

15 (a) Every corporation heretofore organized pursuant to the act  
16 entitled "An act concerning banks and banking (Revision of 1899)," approved March 24, 1899;

17  
18 (b) Every corporation heretofore organized pursuant to the act  
19 entitled "An act concerning trust companies (Revision of 1899)," approved March 24, 1899;

20  
21 (c) Every corporation heretofore organized pursuant to chapter 4  
22 of Title 17 of the Revised Statutes;

23 (d) Every corporation, other than a savings bank, heretofore  
24 authorized by any general or special law of this State to transact  
25 business as a bank or as a trust company, or as both;

26 (e) Every corporation hereafter organized pursuant to article 2 of  
27 this act;

28 (2) "Banking institution" shall mean a bank, an out-of-State bank  
29 having a branch office in this State, an out-of-country bank having a  
30 branch office in this State, savings bank, and a national banking  
31 association having its principal or a branch office in this State;

32 (3) "Board of managers" of a savings bank shall include the board  
33 of trustees of a savings bank;

34 (4) "Capital stock" shall include both common stock and preferred  
35 stock;

36 (5) "Certificate of incorporation," unless the context requires  
37 otherwise, shall mean:

38 (a) The certificate of incorporation, together with all amendments  
39 thereto, of every bank and savings bank organized pursuant to any  
40 general law of this State;

41 (b) The charter, together with all amendments thereto, of every  
42 bank and savings bank organized pursuant to any special law of this  
43 State;

44 (6) "Commissioner" shall mean the Commissioner of Banking and  
45 Insurance of New Jersey;

46 (7) "Department" shall mean the Department of Banking and

1 Insurance of New Jersey;

2 (8) "Fiduciary" shall include trustee, executor, administrator,  
3 receiver, guardian, assignee, and every other person occupying any  
4 other lawful office or employment of trust;

5 (9) "Manager" of a savings bank shall include a trustee of a savings  
6 bank;

7 (10) "Municipality" shall mean a city, town, township, village, and  
8 borough of this State;

9 (11) "Population" shall mean the population as determined by the  
10 latest federal census or as determined by the commissioner from other  
11 information which he may deem reliable;

12 (12) "Qualified bank" shall mean:

13 (a) A bank or an out-of-State bank with a branch office in New  
14 Jersey which has heretofore been authorized or which shall hereafter  
15 be authorized to exercise any of the powers authorized by section 28  
16 of P.L.1948, c. 67 (C. 17:9A-28);

17 (b) A savings bank which has heretofore been authorized or which  
18 shall hereafter be authorized to exercise any of the powers authorized  
19 by section 28 of P.L.1948, c.67 (C.17:9A-28); and

20 (c) A national banking association having its principal or a branch  
21 office in this State authorized to act as a fiduciary;

22 (13) "Savings bank" shall include the following:

23 (a) Every corporation heretofore organized pursuant to the act  
24 entitled "An act concerning savings banks," approved April 12, 1876;

25 (b) Every corporation heretofore organized pursuant to the act  
26 entitled "An act concerning savings banks," approved May 2, 1906;

27 (c) Every corporation heretofore organized pursuant to chapter 6  
28 of Title 17 of the Revised Statutes;

29 (d) Every corporation, other than a bank, authorized by any general  
30 or special law of this State to carry on the business of a savings bank  
31 or institution or society for savings;

32 (e) Every corporation hereafter organized pursuant to article 3 of  
33 P.L.1948, c.67 (C.17:9A-7 and 17:9A-8) or P.L.1982, c.9  
34 (C.17:9A-8.1 et seq.);

35 (14) "Branch office" of a bank or savings bank shall mean an  
36 office, unit, station, facility, terminal, space or receptacle at a fixed  
37 location other than a principal office and other than a trust office,  
38 however designated, at which any business that may be conducted in  
39 a principal office of a bank or savings bank may be transacted. "Branch  
40 office" includes a full branch **[offices]** office , minibranch **[offices]**  
41 office and communication terminal branch **[offices]** office but shall not  
42 include a trust office;

43 (15) "Full branch office" means a branch office of a bank or savings  
44 bank not subject to the limitations or restrictions imposed upon  
45 minibranch offices or communication terminal branch offices;

46 (16) "Minibranch office" means a branch office of a bank or savings

1 bank which does not occupy more than 500 square feet of floor space  
2 and which does not contain more than four teller stations, manned by  
3 employees of the bank or savings bank;

4 (17) "Communication terminal branch office" means a branch office  
5 of a bank or savings bank which is either manned by a bona fide third  
6 party under contract to a bank or savings bank or unmanned and which  
7 consists of equipment, structures or systems, by means of which  
8 information relating to financial services rendered to the public is  
9 transmitted and through which transactions with banks and savings  
10 banks are consummated, either instantaneously or otherwise;

11 (18) "Secondary mortgage loan" means a loan made to an  
12 individual, association, joint venture, partnership, limited partnership  
13 association, or any other group of individuals however organized,  
14 except a corporation, which is secured in whole or in part by a lien  
15 upon any interest in real property, including, but not limited to, shares  
16 of stock in a cooperative corporation, created by a security agreement,  
17 including a mortgage indenture, or any other similar instrument or  
18 document, which real property is subject to one or more prior  
19 mortgage liens and which is used as a dwelling, including a dual  
20 purpose or combination type dwelling which is also used as a business  
21 or commercial establishment, and has accommodations for not more  
22 than six families, except that a loan which: (a) is to be repaid in 90  
23 days or less; (b) is taken as security for a home repair contract  
24 executed in accordance with the provisions of P.L.1960, c.41 (C.  
25 17:16C-62 et seq.); or (c) is the result of the private sale of a  
26 dwelling, if title to the dwelling is in the name of the seller and the  
27 seller has resided in said dwelling for at least one year, if the buyer is  
28 purchasing said dwelling for his own residence and, as part of the  
29 purchase price, executes a secondary mortgage in favor of the seller,  
30 shall not be included within the definition of "secondary mortgage  
31 loan";

32 (19) With respect to savings banks, "director" and "board of  
33 directors" may be used to mean "manager" and "board of managers,"  
34 respectively;

35 (20) "Foreign bank" means a company, other than a banking  
36 institution, organized under the laws of the United States, another  
37 state, or a foreign government, which is authorized by the laws under  
38 which it is organized to exercise some or all of the powers specified in  
39 paragraph (4) of section 24 of P.L.1948, c.67 (C.17:9A-24),  
40 paragraphs (4), (5) and (13) of section 25 of P.L.1948, c.67 (C.  
41 17:9A-25), and paragraphs (3) through (9), inclusive, of section 28 of  
42 P.L.1948, c. 67 (C. 17:9A-28);

43 (21) "Home state" means:

44 (a) with respect to a national bank, the state in which the main  
45 office is located; and

46 (b) with respect to a state bank, the state by which the bank is

1 chartered;

2 (22) "Host state" means, with respect to a bank, a state, other than  
3 the home state of the bank, in which the bank maintains, or seeks to  
4 establish and maintain, a branch office.

5 For purposes of this subsection and subsection (21), "bank" means  
6 a bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. §  
7 1813(a)(2);

8 (23) "Out-of-State bank" means a state bank, as defined in the  
9 Federal Deposit Insurance Act, 12 U.S.C. § 1813(a)(2), with a home  
10 state other than New Jersey;

11 (24) "Out-of-country bank" means a bank chartered under the laws  
12 of a country other than the United States;

13 (25) "Interstate merger transaction" means:

14 (1) The merger or consolidation of banks with different home  
15 states, and the conversion of branches of any bank involved in the  
16 merger or consolidation into branches of the resulting bank; or

17 (2) The purchase of all or substantially all of the assets, the  
18 assumption of all or substantially all of the liabilities, or both, including  
19 all or substantially all of the branches, of a bank whose home state is  
20 different from the home state of the acquiring bank;

21 (26) "State" means any state of the United States, the District of  
22 Columbia, any territory of the United States, Puerto Rico, Guam,  
23 American Samoa, the Trust Territory of the Pacific Islands, the Virgin  
24 Islands and the Northern Mariana Islands;

25 (27) "Resulting bank" means a state or federally chartered bank or  
26 state chartered savings bank that has resulted from an interstate  
27 merger transaction pursuant to P.L.1948, c.67 (C.17:9A-1 et seq.);

28 (28) "Trust office" means an office, unit, station, facility, or space  
29 at a fixed location, other than a principal office, however designated,  
30 at which business that may be conducted at the principal office may be  
31 transacted and the primary activities conducted include the transaction  
32 of trust business as defined in paragraph (2) of subsection D of section  
33 316 of P.L.1948, c.67 (C.17:9A-316), but at which no deposits may  
34 be taken other than assets to be held in trust.

35 (cf: P.L.1996, c.17, s.2)

36

37 3. (New section) a. A qualified bank may establish a trust office  
38 anywhere in this State, or in any other state which permits the  
39 establishment of a trust office, if the qualified bank files a written  
40 notice with the commissioner setting forth the name of the qualified  
41 bank, the location of the proposed trust office, and furnishes a copy of  
42 the resolution adopted by its board authorizing the trust office.

43 b. A foreign bank, other than one excluded by subsection A of  
44 section 316 of P.L.1948, c.67 (C.17:9A-316), may establish a trust  
45 office in this State, if the foreign bank files with the commissioner an  
46 application to register the trust office. The application shall set forth

1 the name of the foreign bank and the location of the proposed trust  
2 office, and the applicant shall furnish a copy of the resolution adopted  
3 by its board authorizing the establishment of the trust office. The  
4 commissioner shall register the trust office if:

5 (1) the foreign bank demonstrates that it is in good standing in its  
6 home state and submits satisfactory evidence that it has complied with  
7 any applicable requirements of its bank supervisory agency regarding  
8 the establishment and maintenance of a trust office;

9 (2) the commissioner determines that a State chartered qualified  
10 bank may establish a trust office in the home state of the foreign bank  
11 without unduly burdensome conditions or restrictions; and

12 (3) the foreign bank has obtained or obtains a certificate of  
13 authority to transact trust business in this State in accordance with the  
14 provisions of section 316 of P.L.1948, c.67 (C.17:9A-316).

15  
16 4. Section 316 of P.L.1948, c.47 (C.17:9A-316) is amended to  
17 read as follows:

18 316. A. Except as otherwise provided pursuant to section 1 of  
19 P.L.1989, c.245 (C.17:9A-19.2) and sections 37 through 86 of  
20 P.L.1996, c.17 (C.17:9A-418 through C.17:9A-467), no foreign bank  
21 organized under the laws of a foreign government shall transact any  
22 business in this State.

23 B. A foreign bank **],** other than one excluded by subsection A of  
24 this section, **]** organized under the laws of the United States or another  
25 state may not transact business in this State **]** only as executor or as  
26 testamentary trustee or guardian, and then only when named in a  
27 decendent's will or codicil thereto] other than a trust business . Before  
28 transacting **]** such] trust business in this State, a foreign bank shall  
29 secure from the commissioner a certificate of authority to transact  
30 **]** such] trust business. The commissioner shall not issue a certificate  
31 of authority to a foreign bank unless a qualified bank is permitted to  
32 transact trust business **]** as executor, or as testamentary trustee or  
33 guardian, when named in a will or codicil thereto,] in the jurisdiction  
34 in which the foreign bank has its principal office without unduly  
35 burdensome conditions or restrictions.

36 C. **]** No] Except as otherwise provided pursuant to P.L. c.  
37 (C. )(pending in the Legislature as this bill), no foreign bank shall  
38 maintain an office in this State, **]** provided] except that a foreign bank  
39 may maintain one or more service facilities in this State, provided that  
40 the foreign bank performs only back office operations at the service  
41 facility and does not transact business with its customers or the public  
42 at the service facility. Prior to opening a service facility in this State,  
43 a foreign bank shall register the service facility with the commissioner,  
44 which registration shall include the address of the proposed service  
45 facility and the name and address of the foreign bank's agent in this

1 State for service of process. No foreign bank organized under the laws  
2 of a foreign government which has an office licensed as a  
3 representative office pursuant to sections 55 and 56 of P.L.1996, c.17  
4 (C.17:9A-436 and C.17:9A-437), shall be required to register under  
5 this subsection as a service facility. Each service facility shall comply  
6 with the requirements and pay the fees that the commissioner  
7 establishes by regulation. Each service facility shall be subject to  
8 examination by the department to determine whether the foreign bank  
9 has operated the service facility in accordance with the provisions of  
10 this subsection, the costs of which examination shall be paid by the  
11 foreign bank at the department's per diem rate for examinations of  
12 depository institutions. The commissioner may, upon notice and a  
13 hearing, order a foreign bank to close any trust office or service  
14 facility operated in violation of the provisions of this subsection or of  
15 other any law. Any entity acting as an agent pursuant to section 1 of  
16 P.L.1989, c.245 (C.17:9A-19.2) shall not be required to register and  
17 be regulated pursuant to this subsection C.

18 D. (1) For the purposes of this section, the term "transact  
19 business" shall not include back office operations and the term "back  
20 office operations" shall include the following activities: data  
21 processing, record-keeping, accounting, check and deposit sorting and  
22 posting, computation and posting of interest, other similar clerical and  
23 statistical functions, producing and mailing correspondence or  
24 documents and such other similar activities that the commissioner  
25 approves.

26 (2) For the purposes of this section, "trust business" means holding  
27 out to the public by advertising, solicitation or other means that a  
28 person or entity is available to perform any of the services of a trustee  
29 or fiduciary in this State or another state, and includes acting as a  
30 trustee, testamentary trustee, fiduciary, executor or guardian or  
31 exercising any of the powers specified in paragraphs (3) through (9)  
32 of section 28 of P.L.1948, c.67 (C.17:9A-28).

33 E. (1) For the purposes of Article 44 of "The Banking Act of  
34 1948," P.L.1948 c.67 (C.17:9A-315 through 17:9A-332), a foreign  
35 bank, including one organized under the laws of a foreign country,  
36 shall not be deemed to transact business or maintain an office in this  
37 State by virtue of conducting business in this State through an agent  
38 in this State which is an insured depository institution affiliate or other  
39 agent.

40 (2) Nothing in this section or in **the** "The Banking Act of 1948,"  
41 P.L.1948, c.67 (C.17:9A-1 et seq.) shall prohibit a foreign bank,  
42 including one organized under the laws of a foreign country, from  
43 owning and operating in this State, as a subsidiary, a State or federally  
44 chartered bank and the ownership and operation of, and the sharing of  
45 directors, officers and employees with that subsidiary shall not  
46 constitute transacting business in this State.  
47 (cf: P.L.1996, c.17, s.24)

1       5. Section 1 of P.L.1979, c.389 (C.17:9A-316.3) is amended to  
2 read as follows:

3       1. A foreign bank authorized by section 316 of P.L.1948, c.67  
4 (C.17:9A-316) to act as trustee, fiduciary, executor, testamentary  
5 trustee or guardian may, when acting in such capacity, invest any  
6 money received and held by it in such capacity, in any common trust  
7 fund or funds maintained by it in accordance with the laws of the  
8 **【State】** state of its incorporation; provided, that the **【will】** instrument  
9 under which it is acting as trustee, fiduciary, executor, testamentary  
10 trustee or guardian does not specifically prohibit such investment and  
11 any such investment is made subject to the provisions of subsection B  
12 of section 37 of P.L.1948, c.67 (C.17:9A-37), and the provisions of  
13 section 38 of P.L.1948, c.67 (C.17:9A-38) relating to investments by  
14 a qualified bank incorporated under the laws of this State in a  
15 common trust fund; and provided that a qualified bank incorporated  
16 under the laws of this State is permitted by the laws of the state of  
17 incorporation of such foreign bank, when acting in a similar fiduciary  
18 capacity in that state to invest any moneys, received and held by it in  
19 such capacity, in any common trust fund or funds maintained by it in  
20 accordance with the laws of this State.

21 (cf: P.L.1979, c.389, s.1)

22

23       6. Section 317 of P.L.1948, c.67 (C.17:9A-317) is amended to  
24 read as follows:

25       317. As a prerequisite to its qualification in any fiduciary capacity  
26 specified in section 316, in any court of this State, a foreign bank shall  
27 present to the court a certificate of the commissioner certifying that  
28 it is authorized to transact business in this State pursuant to this  
29 article**【**. The certificate shall be dated not earlier than thirty days prior  
30 to the foreign bank's qualification in such court**】** and shall furnish a  
31 bond if required by the court pursuant to the provisions of  
32 N.J.S.3B:15-1 .

33 (cf: P.L.1948, c.67, s.317)

34

35       7. Section 318 of P.L.1948, c.67 (C.17:9A-318) is amended to  
36 read as follows:

37       318. A foreign bank desiring to secure a certificate of authority to  
38 transact business in this State shall make application to the  
39 commissioner therefor and file **【or deposit】** with **【such】** the  
40 application

41       (1) a copy of its certificate of incorporation, and all amendments  
42 thereto, certified by its president or a vice-president and attested  
43 under its corporate seal by its secretary, an assistant secretary, its  
44 cashier or an assistant cashier;

45       (2) **【a statement of its financial condition as of the end of the**  
46 **preceding calendar year, in such form as shall be prescribed by the**  
47 **commissioner, similarly certified and attested】** proof of adequate



1 insurance coverage in connection with the volume of transactions and  
2 nature of its business ;

3 (3) **【**an affidavit of its president or a vice-president that it has not,  
4 subsequent to July 4, 1939, originally probated in a foreign jurisdiction  
5 the will of any person known to it to have died domiciled in this State,  
6 or applied in a foreign jurisdiction for original letters of administration  
7 of the estate of any such person;**】** (Deleted by amendment, P.L. ,  
8 c. .)

9 (4) a certificate executed by its president or a vice-president and  
10 attested under its corporate seal by its secretary, an assistant  
11 secretary, its cashier or an assistant cashier, that, so long as it shall  
12 have a certificate of authority,

13 (a) it will comply with all the requirements of the laws of this State  
14 which shall be applicable from time to time to the transaction of its  
15 business in this State;

16 (b) it will, promptly following adoption, submit to the commissioner  
17 a copy of each amendment or other change in its certificate of  
18 incorporation, certified and attested as provided in paragraph (1) of  
19 this section;

20 (c)**【**it will not originally probate in a foreign jurisdiction the will of  
21 any person known to it to have died domiciled in this State, or apply  
22 in a foreign jurisdiction for original letters of administration of the  
23 estate of any such person;**】** (Deleted by amendment, P.L. , c. .)

24 (5) a power of attorney, executed by its president or vice-president  
25 and attested under its corporate seal by its secretary, an assistant  
26 secretary, its cashier or an assistant cashier, authorizing the  
27 commissioner and his successors in office to accept service of process  
28 upon the foreign bank in any action or proceeding against it affecting  
29 or relating to any estate or trust administered under the laws of this  
30 State, with respect to which it shall act in a fiduciary capacity specified  
31 in section 316; such power of attorney shall provide that service of  
32 any such process upon the commissioner shall have the same force  
33 and validity as if served upon the foreign bank, and that the authority  
34 therein granted shall be irrevocable and shall continue in force  
35 indefinitely, notwithstanding the expiration, revocation or surrender of  
36 the certificate of authority or renewal thereof **【;】** .

37 (6) **【**securities having an aggregate market value of not less than  
38 thirty thousand dollars, of such character as the commissioner shall  
39 prescribe, to be held by the commissioner as security for the  
40 performance by the foreign bank of its obligations with respect to  
41 estates and trusts administered under the laws of this State, with  
42 respect to which it shall act in a fiduciary capacity specified in section  
43 316.**】** (Deleted by amendment, P.L. , c. .)

44 (cf: P.L.1948, c.67, s.318)

45

46 8. Section 319 of P.L.1948, c.67 (C.17:9A-319) is amended to  
47 read as follows:

1       319. A. Within ~~【sixty】~~ 60 days following the receipt of the  
2 application of a foreign bank for a certificate of authority to transact  
3 business in this State, the commissioner shall issue the certificate or  
4 make an order denying the application.

5       B. The commissioner shall issue the certificate if he is satisfied  
6 from the application submitted to him, or otherwise,

7       (1) that the foreign bank is authorized by the laws under which it is  
8 incorporated to act as trustee, testamentary trustee, fiduciary,  
9 executor ~~【of or trustee】~~ or guardian ~~【under wills admitted to probate~~  
10 ~~in this State】~~;

11       (2) that the foreign bank has ~~【an unimpaired paid-in】~~ capital  
12 ~~【stock】~~ and surplus of not less than one ~~【hundred thousand】~~ million  
13 dollars; and

14       (3) that the foreign bank has complied in good faith with all of the  
15 requirements of section 318.

16       C. Before issuing or denying a certificate of authority, the  
17 commissioner may require a foreign bank which makes application for  
18 a certificate of authority to submit to him additional information, in  
19 such form and manner as he may require.

20 (cf: P.L.1948, c.67, s.319)

21  
22       9. Section 322 of P.L.1948, c.67 (C.17:9A-322) is amended to  
23 read as follows:

24       322. A certificate of authority issued to a foreign bank shall  
25 continue in force, unless revoked by the commissioner or surrendered  
26 by the foreign bank ~~【, until April 1 of the year following the year in~~  
27 ~~which it is issued】~~. The commissioner may adopt regulations  
28 establishing requirements for periodic renewal of a certificate of  
29 authority, and for notification to the commissioner if a foreign bank  
30 named in a certificate of authority desires to surrender the certificate  
31 or merges with or is acquired by another financial institution or  
32 company. Failure to provide any notification required by regulations  
33 promulgated by the commissioner shall be grounds for revocation of  
34 the certificate.

35 (cf: P.L.1948, c.67, s.322)

36  
37       10. Section 326 of P.L.1948, c.67 (C.17:9A-326) is amended to  
38 read as follows:

39       326. The commissioner shall revoke the certificate of authority or  
40 renewal thereof of a foreign bank if:

41       (1) the foreign bank has ceased to be authorized by the laws under  
42 which it is incorporated to act as trustee, testamentary trustee,  
43 fiduciary, executor ~~【of or as trustee】~~ or guardian ~~【under wills~~  
44 ~~admitted to probate in this State】~~;

45       (2) ~~【the foreign bank, after July fourth, one thousand nine hundred~~  
46 ~~and thirty-nine, originally probated in a foreign jurisdiction the will of~~  
47 ~~any person known to it to have died domiciled in this State, or applied~~

- 1 in a foreign jurisdiction for original letters of administration of the  
2 estate of any such person;】 (Deleted by amendment, P.L. , c. .)
- 3 (3) the foreign bank does not have 【an unimpaired paid-in-capital  
4 stock】 capital and surplus of at least one 【hundred thousand dollars  
5 (\$100,000.00)】 million dollars ;
- 6 (4) 【he】 the commissioner finds that its financial condition or lack  
7 of insurance coverage makes it inadvisable to permit the foreign bank  
8 to act in the fiduciary capacities specified in section 【three hundred  
9 sixteen】 316 ;
- 10 (5) the foreign bank, its directors, officers or employees refuse to  
11 permit an examination of its securities, books, records and accounts  
12 pursuant to section 【three hundred twenty-five】 325 , or if any of its  
13 directors, officers or employees refuse to be examined under oath as  
14 provided in said section;
- 15 (6) the foreign bank does not, within such time as the commissioner  
16 may fix, deliver to the commissioner any information required by the  
17 commissioner under section 【three hundred twenty-five】 325 ;
- 18 (7) the foreign bank does not pay the costs of an examination made  
19 pursuant to section 【three hundred twenty-five】 325 ; or
- 20 (8) 【the foreign bank does not maintain on deposit with the  
21 commissioner securities of the kind and in the amount required by this  
22 article;】 (Deleted by amendment, P.L. , c. .)
- 23 (9) 【the foreign bank does not, within such time as may be fixed by  
24 the commissioner, obey an order of the commissioner to substitute  
25 other securities for securities deposited by the foreign bank; or】  
26 (Deleted by amendment, P.L. , c. .)
- 27 (10) the foreign bank does not, after the time for appeal has expired  
28 and no appeal is pending, satisfy a judgment against it for a breach of  
29 any fiduciary obligation with respect to any estate or trust  
30 administered by it under the laws of this State.  
31 (cf: P.L.1953, c.17, s.54)

32

33 11. N.J.S. 3B:18-25 is amended to read as follows:

34 3B:18-25. a. Fiduciaries may annually, without court allowance,  
35 take commissions on corpus (including accumulated income which has  
36 been invested by the fiduciary) in the amount of \$5.00 per thousand  
37 dollars of corpus value on the first \$400,000.00 of value of corpus and  
38 \$3.00 per thousand dollars of the corpus value in excess of  
39 \$400,000.00.

40 b. Notwithstanding the provisions of subsection a. of this section,  
41 if the fiduciary is a banking institution , foreign bank or savings and  
42 loan association authorized to exercise fiduciary powers 【and the  
43 corpus value is in excess of \$400,000.00】, the fiduciary shall be  
44 entitled to such commissions as may be reasonable.

45 c. Notwithstanding the provisions of subsections a. of this  
46 section, a fiduciary may take a minimum commission of \$100.00

1 annually.

2 d. The value of the corpus for the purpose of this section shall be  
3 the "presumptive value" as defined in N.J.S.3B:18-18 or, at the option  
4 of the fiduciary, the value at the end of the period.

5 e. Upon application of a person interested in the trust or  
6 guardianship, a court may review the reasonableness of the  
7 commissions of the fiduciary, provided, however, the fiduciary shall be  
8 entitled to receive at least the compensation provided for all fiduciaries  
9 as set forth in subsections a. and c. of this section.

10 (cf: P.L.1988, c.165, s.1)

11

12 12. (New section) a. Notwithstanding any law to the contrary, a  
13 qualified bank acting in any capacity authorized pursuant to section 28  
14 of P.L.1948, c.67 (C. 17:9A-28) on behalf of a trust or estate may  
15 employ and pay reasonable compensation to any person, including  
16 attorneys, auditors, investment advisers or other agents, even if they  
17 are affiliated or associated with the qualified bank, to advise or assist  
18 the qualified bank in the performance of any of its duties or acts of  
19 administration, whether or not discretionary, and to act without  
20 independent investigation upon their recommendation, so long as the  
21 qualified bank exercises care, skill, and caution in: selecting the agent;  
22 establishing the scope and terms of the agent's duties consistent with  
23 the purpose and terms of the governing trust instrument; and  
24 periodically reviewing the agent's actions in order to monitor the  
25 agent's performance. A qualified bank that delegates investment  
26 functions to an investment adviser shall also comply with the  
27 requirements of sections 8 and 10 of P.L.1997, c.26 (C.3B:20-11.8  
28 and 3B:20-11.10).

29 b. In performing any agency function, the agent shall owe to the  
30 qualified bank and the beneficiaries the same duties as the qualified  
31 bank and shall be held to the same fiduciary standards as the qualified  
32 bank.

33 c. A qualified bank which substantially complies with the  
34 requirements of subsection a. of this section shall not be liable to the  
35 beneficiaries or to the trust or estate for the decisions or actions of the  
36 agent, and shall not be deemed to engage in self-dealing or a fiduciary  
37 conflict.

38 d. By accepting an appointment as agent from a qualified bank  
39 acting as a fiduciary of a trust or estate that is subject to the law of  
40 New Jersey, the agent submits to the jurisdiction of the courts of New  
41 Jersey, even if the agency agreement provides otherwise.

42

43 13. (New section) No interest created in real or personal property  
44 shall be void by reason of any rule against perpetuities, whether the  
45 common law rule or otherwise. The common law rule against  
46 perpetuities shall not be in force in this State.

1       14. (New section) a. (1) A future interest or trust is void if it  
2 suspends the power of alienation for longer than the permissible  
3 period. The power of alienation is the power to convey to another an  
4 absolute fee in possession of land, or full ownership of personalty. The  
5 permissible period is within 21 years after the death of an individual or  
6 individuals then alive.

7       (2) If the settlor of a living trust has an unlimited power to revoke,  
8 the permissible period is computed from termination of that power.

9       (3) If a future property interest or trust is created by exercise of a  
10 power of appointment, the permissible period is computed from the  
11 time the power is exercised if the power is a general power exercisable  
12 in favor of the donee, the donee's estate, the donee's creditors or the  
13 creditors of the donee's estate, whether or not it is exercisable in favor  
14 of others, and even if the general power is exercisable only by will; in  
15 the case of other powers the permissible period is computed from the  
16 time the power is created but facts at the time the power is exercised  
17 are considered in determining whether the power of alienation is  
18 suspended beyond the death of an individual or individuals alive at the  
19 time of creation of the power plus 21 years.

20       b. The power of alienation is suspended when there are no persons  
21 then alive who, alone or in combination with others, can convey an  
22 absolute fee in possession of land, or full ownership of personalty.

23       c. There is no suspension of the power of alienation by a trust or  
24 by equitable interests under a trust if the trustee has power to sell,  
25 either expressed or implied, or if there is an unlimited power to  
26 terminate in one or more persons then alive.

27       d. This section does not apply to limit any of the following:

28       (1) Transfers, outright or in trust, for charitable purposes;

29       (2) Transfers to one or more charitable organizations as described  
30 in Sections 170(c), 2055(a) and 2522(a) of the United States Internal  
31 Revenue Code of 1986 (26 U.S.C. secs 170(c), 2055(a) and 2522(a),  
32 or under any similar statute;

33       (3) A future interest or a power of appointment arising out of a  
34 nondonative transfer, except a nonvested property interest or a power  
35 of appointment arising out of:

36           (a) a premarital or postmarital agreement;

37           (b) a separation or divorce settlement;

38           (c) a spouse's election;

39           (d) a similar arrangement arising out of a prospective, existing,  
40 or previous marital relationship between the parties;

41           (e) a contract to make or revoke a will or trust;

42           (f) a contract to exercise or not to exercise a power of  
43 appointment;

44           (g) a transfer in satisfaction of a duty of support; or

45           (h) a reciprocal transfer;

46       (4) Transfers to a trust or other property arrangement forming part  
47 of a pension, profit-sharing, stock bonus, health, disability, death

1 benefit, income deferral, or other current or deferred benefit plan for  
2 one or more employees, independent contractors, or their beneficiaries  
3 or spouses, to which contributions are made for the purpose of  
4 distributing to or for the benefit of the participants or their  
5 beneficiaries or spouses the property, income, or principal in the trust  
6 or other property arrangement; or

7 (5) A property interest, power of appointment, or arrangement that  
8 was not subject to the common-law rule against perpetuities or is  
9 excluded by another statute of this State.

10

11 15. (New section) a. Except as provided in subsection b. of this  
12 section, sections 13 through 15 of this amendatory and supplementary  
13 act apply to:

14 (1) a future property interest or a power of appointment that is  
15 created on or after the effective date of this act; or

16 (2) a future property interest or a power of appointment created  
17 before the effective date of this act pursuant to the laws of any other  
18 state that does not have the rule against perpetuities in force and to  
19 which, after the effective date of this act, the laws of this State are  
20 made applicable by transfer of the situs of a trust to New Jersey, by a  
21 change in the law governing a trust instrument to New Jersey law, or  
22 otherwise. For purposes of this section only, a future property interest  
23 or a power of appointment is created when the power is irrevocably  
24 exercised or when a revocable exercise becomes irrevocable.

25 b. With respect to a nonvested property interest or a power of  
26 appointment created before the effective date of this act, which is  
27 determined in a judicial proceeding commenced on or after the  
28 effective date of this act, to violate this State's rule against perpetuities  
29 as that rule existed before the effective date of this act, a court upon  
30 the petition of an interested person may reform the disposition in the  
31 manner that most closely approximates the transferor's manifested plan  
32 of distribution and is within the limits of the rule against perpetuities  
33 applicable when the nonvested property interest or power of  
34 appointment was created. The "rule against perpetuities" as used in  
35 this subsection shall mean the provisions of sections 1 through 8 of  
36 P.L.1991. c.192 (C.46:2F-1 through 42:2F-8), in effect at the time  
37 stated herein, notwithstanding the repeal of those sections by this  
38 amendatory and supplementary act.

39

40 16. a. The following sections are repealed:

41 Section 320 of P.L. 1948, c. 67 (C. 17:9A-320);

42 Section 321 of P.L. 1948, c. 67 (C. 17:9A-321);

43 Section 323 of P.L. 1948, c. 67 (C. 17:9A-323); and

44 Section 324 of P.L. 1948, c. 67 (C. 17:9A-324).

45 b. Sections 1 through 8 of P.L. 1991, c. 192 (C. 46:2F-1 through  
46 46:2F-8) are repealed but shall continue to apply to interests created  
47 prior to the effective date of this act to the extent provided in

1 subsection b. of section 15 of this act.

2

3 17. This act shall take effect on the first business day following  
4 enactment.

5

6

7

STATEMENT

8

9 This bill updates certain of New Jersey's banking and trust laws.  
10 The bill permits, under certain conditions, in-State banks to open trust  
11 offices in New Jersey without applying for branch office approval by  
12 the Commissioner of Banking and Insurance. Under section 3 of the  
13 bill, a qualified in-State bank is required to adopt a board resolution  
14 to establish a trust office, and must file a notice with the commissioner  
15 of its intention to establish the office. The bill permits, under certain  
16 conditions, an out-of-State bank to establish a trust office, de novo, in  
17 this State. Under sections 4 through 10 of the bill, an out-of-State  
18 bank with or without an office in this State can exercise trust powers  
19 in New Jersey if it meets certain requirements, including demonstrating  
20 that it has trust powers in its home state, has complied with its home  
21 state rules for establishing the office, and has obtained a certificate of  
22 authority from the commissioner. In order for the commissioner to  
23 issue a certificate of authority to an out-of-State bank, the  
24 commissioner must find that the out-of-State bank has adequate  
25 capitalization, at least \$1 million in capital and surplus, and adequate  
26 insurance coverage and that a State chartered bank or trust company  
27 authorized to exercise trust powers in this State is permitted to  
28 exercise trust powers and establish a trust office without unduly  
29 burdensome conditions or restrictions in the home state of the out-of-  
30 State bank seeking the certificate of authority.

31 The bill permits banks serving as fiduciaries to obtain reasonable  
32 commissions regardless of the size of the trust account. The bill  
33 further establishes statutory conditions for fiduciary banks dealing with  
34 affiliates and permits these banks to employ affiliates and others as  
35 agents and to act on their recommendations without independent  
36 investigation, provided the bank exercises care, skill and caution in  
37 selecting the agent, in establishing the agent's duties consistent with  
38 the purposes of the trust instrument or will and in periodically  
39 reviewing the agent's actions. The bill also provides that the agent  
40 employed by the bank owes to the qualified bank and the beneficiaries  
41 of a trust or estate the same duties as the qualified bank owes to the  
42 beneficiaries of the trust or estate and that the agent shall be held to  
43 the same fiduciary standards as the qualified bank.

44 The bill repeals the Uniform Statutory Rule Against Perpetuities,  
45 P.L.1991,c.192 (C.46:2F-1 et seq.) and supersedes the common law  
46 with respect to the rule against perpetuities. Under the bill, a trust can  
47 endure forever as long as the trust documents allow the trustee to sell

1 an absolute ownership interest in the trust assets within a specified  
2 period, generally 21 years after the death of an individual or  
3 individuals alive at the time the trust is created. The effect of this  
4 repeal and supersession is to permit banks and trust companies to offer  
5 "dynasty trusts" to their customers, such as those that are being  
6 offered by banks and trust companies located in other states.



# ASSEMBLY BANKING AND INSURANCE COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2804

# STATE OF NEW JERSEY

DATED: MARCH 18, 1999

The Assembly Banking and Insurance Committee reports favorably Assembly Bill No. 2804.

This bill updates certain of New Jersey's banking and trust laws. The bill permits, under certain conditions, in-State banks to open trust offices in New Jersey without applying for branch office approval by the Commissioner of Banking and Insurance. Under section 3 of the bill, a qualified in-State bank is required to adopt a board resolution to establish a trust office, and must file a notice with the commissioner of its intention to establish the office. The bill permits, under certain conditions, an out-of-State bank to establish a trust office, de novo, in this State. Under sections 4 through 10 of the bill, an out-of-State bank with or without an office in this State can exercise trust powers in New Jersey if it meets certain requirements, including demonstrating that it has trust powers in its home state, has complied with its home state rules for establishing the office, and has obtained a certificate of authority from the commissioner. In order for the commissioner to issue a certificate of authority to an out-of-State bank, the commissioner must find that the out-of-State bank has adequate capitalization, at least \$1 million in capital and surplus, and adequate insurance coverage and that a State chartered bank or trust company authorized to exercise trust powers in this State is permitted to exercise trust powers and establish a trust office without unduly burdensome conditions or restrictions in the home state of the out-of-State bank seeking the certificate of authority.

The bill permits banks serving as fiduciaries to obtain reasonable commissions regardless of the size of the trust account. The bill further establishes statutory conditions for fiduciary banks dealing with affiliates and permits these banks to employ affiliates and others as agents and to act on their recommendations without independent investigation, provided the bank exercises care, skill and caution in selecting the agent, in establishing the agent's duties consistent with the purposes of the trust instrument or will and in periodically reviewing the agent's actions. The bill also provides that the agent employed by the bank owes to the qualified bank and the beneficiaries of a trust or estate the same duties as the qualified bank owes to the beneficiaries of the trust or estate and that the agent shall be held to the same fiduciary standards as the qualified bank.

The bill repeals the Uniform Statutory Rule Against Perpetuities, P.L.1991,c.192 (C.46:2F-1 et seq.) and supersedes the common law with respect to the rule against perpetuities. Under the bill, a trust can endure forever as long as the trust documents allow the trustee to sell an absolute ownership interest in the trust assets within a specified period, generally 21 years after the death of an individual or individuals alive at the time the trust is created. The effect of this repeal and supersession is to permit banks and trust companies to offer "dynasty trusts" to their customers, such as those that are being offered by banks and trust companies located in other states.

# SENATE, No. 1630

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 12, 1999

**Sponsored by:**

**Senator WALTER J. KAVANAUGH**

**District 16 (Morris and Somerset)**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Enacts the "Trust Modernization Act of 1999."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/26/1999)**

S1630 KAVANAUGH, INVERSO

2

1 AN ACT concerning bank trusts and revising various parts of the  
2 Statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known as and may be cited as the "Trust  
8 Modernization Act of 1999."

9

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

12 1. As used in this act, and except as otherwise expressly provided  
13 in this act:

14 (1) "Bank" shall include the following:

15 (a) Every corporation heretofore organized pursuant to the act  
16 entitled "An act concerning banks and banking (Revision of 1899)," approved March 24, 1899;

18 (b) Every corporation heretofore organized pursuant to the act  
19 entitled "An act concerning trust companies (Revision of 1899)," approved March 24, 1899;

21 (c) Every corporation heretofore organized pursuant to chapter 4  
22 of Title 17 of the Revised Statutes;

23 (d) Every corporation, other than a savings bank, heretofore  
24 authorized by any general or special law of this State to transact  
25 business as a bank or as a trust company, or as both;

26 (e) Every corporation hereafter organized pursuant to article 2 of  
27 this act;

28 (2) "Banking institution" shall mean a bank, an out-of-State bank  
29 having a branch office in this State, an out-of-country bank having a  
30 branch office in this State, savings bank, and a national banking  
31 association having its principal or a branch office in this State;

32 (3) "Board of managers" of a savings bank shall include the board  
33 of trustees of a savings bank;

34 (4) "Capital stock" shall include both common stock and preferred  
35 stock;

36 (5) "Certificate of incorporation," unless the context requires  
37 otherwise, shall mean:

38 (a) The certificate of incorporation, together with all amendments  
39 thereto, of every bank and savings bank organized pursuant to any  
40 general law of this State;

41 (b) The charter, together with all amendments thereto, of every  
42 bank and savings bank organized pursuant to any special law of this  
43 State;

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

**Matter underlined thus is new matter.**

1 (6) "Commissioner" shall mean the Commissioner of Banking and  
2 Insurance of New Jersey;

3 (7) "Department" shall mean the Department of Banking and  
4 Insurance of New Jersey;

5 (8) "Fiduciary" shall include trustee, executor, administrator,  
6 receiver, guardian, assignee, and every other person occupying any  
7 other lawful office or employment of trust;

8 (9) "Manager" of a savings bank shall include a trustee of a savings  
9 bank;

10 (10) "Municipality" shall mean a city, town, township, village, and  
11 borough of this State;

12 (11) "Population" shall mean the population as determined by the  
13 latest federal census or as determined by the commissioner from other  
14 information which he may deem reliable;

15 (12) "Qualified bank" shall mean:

16 (a) A bank or an out-of-State bank with a branch office in New  
17 Jersey which has heretofore been authorized or which shall hereafter  
18 be authorized to exercise any of the powers authorized by section 28  
19 of P.L.1948, c. 67 (C. 17:9A-28);

20 (b) A savings bank which has heretofore been authorized or which  
21 shall hereafter be authorized to exercise any of the powers authorized  
22 by section 28 of P.L.1948, c. 67 (C. 17:9A-28); and

23 (c) A national banking association having its principal or a branch  
24 office in this State authorized to act as a fiduciary;

25 (13) "Savings bank" shall include the following:

26 (a) Every corporation heretofore organized pursuant to the act  
27 entitled "An act concerning savings banks," approved April 12, 1876;

28 (b) Every corporation heretofore organized pursuant to the act  
29 entitled "An act concerning savings banks," approved May 2, 1906;

30 (c) Every corporation heretofore organized pursuant to chapter 6  
31 of Title 17 of the Revised Statutes;

32 (d) Every corporation, other than a bank, authorized by any general  
33 or special law of this State to carry on the business of a savings bank  
34 or institution or society for savings;

35 (e) Every corporation hereafter organized pursuant to article 3 of  
36 P.L.1948, c.67 (C.17:9A-7 and 17:9A-8) or P.L.1982, c.9  
37 (C.17:9A-8.1 et seq.);

38 (14) "Branch office" of a bank or savings bank shall mean an  
39 office, unit, station, facility, terminal, space or receptacle at a fixed  
40 location other than a principal office and other than a trust office,  
41 however designated, at which any business that may be conducted in  
42 a principal office of a bank or savings bank may be transacted. "Branch  
43 office" includes a full branch **[offices]** office , minibranch **[offices]**  
44 office and communication terminal branch **[offices]** office but shall not  
45 include a trust office;

46 (15) "Full branch office" means a branch office of a bank or savings

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1 bank not subject to the limitations or restrictions imposed upon  
2 minibranch offices or communication terminal branch offices;

3 (16) "Minibranch office" means a branch office of a bank or savings  
4 bank which does not occupy more than 500 square feet of floor space  
5 and which does not contain more than four teller stations, manned by  
6 employees of the bank or savings bank;

7 (17) "Communication terminal branch office" means a branch office  
8 of a bank or savings bank which is either manned by a bona fide third  
9 party under contract to a bank or savings bank or unmanned and which  
10 consists of equipment, structures or systems, by means of which  
11 information relating to financial services rendered to the public is  
12 transmitted and through which transactions with banks and savings  
13 banks are consummated, either instantaneously or otherwise;

14 (18) "Secondary mortgage loan" means a loan made to an  
15 individual, association, joint venture, partnership, limited partnership  
16 association, or any other group of individuals however organized,  
17 except a corporation, which is secured in whole or in part by a lien  
18 upon any interest in real property, including, but not limited to, shares  
19 of stock in a cooperative corporation, created by a security agreement,  
20 including a mortgage indenture, or any other similar instrument or  
21 document, which real property is subject to one or more prior  
22 mortgage liens and which is used as a dwelling, including a dual  
23 purpose or combination type dwelling which is also used as a business  
24 or commercial establishment, and has accommodations for not more  
25 than six families, except that a loan which: (a) is to be repaid in 90  
26 days or less; (b) is taken as security for a home repair contract  
27 executed in accordance with the provisions of P.L.1960, c.41  
28 (C.17:16C-62 et seq.); or (c) is the result of the private sale of a  
29 dwelling, if title to the dwelling is in the name of the seller and the  
30 seller has resided in said dwelling for at least one year, if the buyer is  
31 purchasing said dwelling for his own residence and, as part of the  
32 purchase price, executes a secondary mortgage in favor of the seller,  
33 shall not be included within the definition of "secondary mortgage  
34 loan";

35 (19) With respect to savings banks, "director" and "board of  
36 directors" may be used to mean "manager" and "board of managers,"  
37 respectively;

38 (20) "Foreign bank" means a company, other than a banking  
39 institution, organized under the laws of the United States, another  
40 state, or a foreign government, which is authorized by the laws under  
41 which it is organized to exercise some or all of the powers specified in  
42 paragraph (4) of section 24 of P.L.1948, c.67 (C.17:9A-24),  
43 paragraphs (4), (5) and (13) of section 25 of P.L.1948, c.67  
44 (C.17:9A-25), and paragraphs (3) through (9), inclusive, of section 28  
45 of P.L.1948, c.67 (C.17:9A-28);

46 (21) "Home state" means:

1 (a) with respect to a national bank, the state in which the main  
2 office is located; and

3 (b) with respect to a state bank, the state by which the bank is  
4 chartered;

5 (22) "Host state" means, with respect to a bank, a state, other than  
6 the home state of the bank, in which the bank maintains, or seeks to  
7 establish and maintain, a branch office.

8 For purposes of this subsection and subsection (21), "bank" means  
9 a bank as defined in the Federal Deposit Insurance Act, 12  
10 U.S.C. §1813(a)(2);

11 (23) "Out-of-State bank" means a state bank, as defined in the  
12 Federal Deposit Insurance Act, 12 U.S.C. §1813(a)(2), with a home  
13 state other than New Jersey;

14 (24) "Out-of-country bank" means a bank chartered under the laws  
15 of a country other than the United States;

16 (25) "Interstate merger transaction" means:

17 (1) The merger or consolidation of banks with different home  
18 states, and the conversion of branches of any bank involved in the  
19 merger or consolidation into branches of the resulting bank; or

20 (2) The purchase of all or substantially all of the assets, the  
21 assumption of all or substantially all of the liabilities, or both, including  
22 all or substantially all of the branches, of a bank whose home state is  
23 different from the home state of the acquiring bank;

24 (26) "State" means any state of the United States, the District of  
25 Columbia, any territory of the United States, Puerto Rico, Guam,  
26 American Samoa, the Trust Territory of the Pacific Islands, the Virgin  
27 Islands and the Northern Mariana Islands;

28 (27) "Resulting bank" means a state or federally chartered bank or  
29 state chartered savings bank that has resulted from an interstate  
30 merger transaction pursuant to P.L.1948, c.67 (C.17:9A-1 et seq.);

31 (28) "Trust office" means an office, unit, station, facility, or space  
32 at a fixed location, other than a principal office, however designated,  
33 at which business that may be conducted at the principal office may be  
34 transacted and the primary activities conducted include the transaction  
35 of trust business as defined in paragraph (2) of subsection D of section  
36 316 of P.L.1948, c.67 (C.17:9A-316), but at which no deposits may  
37 be taken other than assets to be held in trust.

38 (cf: P.L.1996, c.17, s.2)

39

40 3. (New section) a. A qualified bank may establish a trust office  
41 anywhere in this State, or in any other state which permits the  
42 establishment of a trust office, if the qualified bank files a written  
43 notice with the commissioner setting forth the name of the qualified  
44 bank, the location of the proposed trust office, and furnishes a copy of  
45 the resolution adopted by its board authorizing the trust office.

46 b. A foreign bank, other than one excluded by subsection A of

1 section 316 of P.L.1948, c.67 (C.17:9A-316), may establish a trust  
2 office in this State, if the foreign bank files with the commissioner an  
3 application to register the trust office. The application shall set forth  
4 the name of the foreign bank and the location of the proposed trust  
5 office, and the applicant shall furnish a copy of the resolution adopted  
6 by its board authorizing the establishment of the trust office. The  
7 commissioner shall register the trust office if:

8 (1) the foreign bank demonstrates that it is in good standing in its  
9 home state and submits satisfactory evidence that it has complied with  
10 any applicable requirements of its bank supervisory agency regarding  
11 the establishment and maintenance of a trust office;

12 (2) the commissioner determines that a State chartered qualified  
13 bank may establish a trust office in the home state of the foreign bank  
14 without unduly burdensome conditions or restrictions; and

15 (3) the foreign bank has obtained or obtains a certificate of  
16 authority to transact trust business in this State in accordance with the  
17 provisions of section 316 of P.L.1948, c.67 (C.17:9A-316).

18

19 4. Section 316 of P.L.1948, c.47 (C.17:9A-316) is amended to  
20 read as follows:

21 316. A. Except as otherwise provided pursuant to section 1 of  
22 P.L.1989, c.245 (C.17:9A-19.2) and sections 37 through 86 of  
23 P.L.1996, c.17 (C.17:9A-418 through C.17:9A-467), no foreign bank  
24 organized under the laws of a foreign government shall transact any  
25 business in this State.

26 B. A foreign bank **[**, other than one excluded by subsection A of  
27 this section,**]** organized under the laws of the United States or another  
28 state may not transact business in this State **[**only as executor or as  
29 testamentary trustee or guardian, and then only when named in a  
30 decedent's will or codicil thereto**]** other than a trust business . Before  
31 transacting **[**such**]** trust business in this State, a foreign bank shall  
32 secure from the commissioner a certificate of authority to transact  
33 **[**such**]** trust business. The commissioner shall not issue a certificate  
34 of authority to a foreign bank unless a qualified bank is permitted to  
35 transact trust business **[**as executor, or as testamentary trustee or  
36 guardian, when named in a will or codicil thereto,**]** in the jurisdiction  
37 in which the foreign bank has its principal office without unduly  
38 burdensome conditions or restrictions.

39 C. **[**No**]** Except as otherwise provided pursuant to P.L. c.  
40 C. \_\_\_\_\_)(pending in the Legislature as this bill), no foreign bank shall  
41 maintain an office in this State, **[**provided**]** except that a foreign bank  
42 may maintain one or more service facilities in this State, provided that  
43 the foreign bank performs only back office operations at the service  
44 facility and does not transact business with its customers or the public  
45 at the service facility. Prior to opening a service facility in this State,



1 a foreign bank shall register the service facility with the commissioner,  
2 which registration shall include the address of the proposed service  
3 facility and the name and address of the foreign bank's agent in this  
4 State for service of process. No foreign bank organized under the laws  
5 of a foreign government which has an office licensed as a  
6 representative office pursuant to sections 55 and 56 of P.L.1996, c.17  
7 (C.17:9A-436 and C.17:9A-437), shall be required to register under  
8 this subsection as a service facility. Each service facility shall comply  
9 with the requirements and pay the fees that the commissioner  
10 establishes by regulation. Each service facility shall be subject to  
11 examination by the department to determine whether the foreign bank  
12 has operated the service facility in accordance with the provisions of  
13 this subsection, the costs of which examination shall be paid by the  
14 foreign bank at the department's per diem rate for examinations of  
15 depository institutions. The commissioner may, upon notice and a  
16 hearing, order a foreign bank to close any trust office or service  
17 facility operated in violation of the provisions of this subsection or of  
18 other any law. Any entity acting as an agent pursuant to section 1 of  
19 P.L.1989, c.245 (C.17:9A-19.2) shall not be required to register and  
20 be regulated pursuant to this subsection C.

21 D. (1) For the purposes of this section, the term "transact  
22 business" shall not include back office operations and the term "back  
23 office operations" shall include the following activities: data  
24 processing, record-keeping, accounting, check and deposit sorting and  
25 posting, computation and posting of interest, other similar clerical and  
26 statistical functions, producing and mailing correspondence or  
27 documents and such other similar activities that the commissioner  
28 approves.

29 (2) For the purposes of this section, "trust business" means holding  
30 out to the public by advertising, solicitation or other means that a  
31 person or entity is available to perform any of the services of a trustee  
32 or fiduciary in this State or another state, and includes acting as a  
33 trustee, testamentary trustee, fiduciary, executor or guardian or  
34 exercising any of the powers specified in paragraphs (3) through (9)  
35 of section 28 of P.L.1948, c.67 (C.17:9A-28).

36 E. (1) For the purposes of Article 44 of "The Banking Act of  
37 1948," P.L.1948 c.67 (C.17:9A-315 through 17:9A-332), a foreign  
38 bank, including one organized under the laws of a foreign country,  
39 shall not be deemed to transact business or maintain an office in this  
40 State by virtue of conducting business in this State through an agent  
41 in this State which is an insured depository institution affiliate or other  
42 agent.

43 (2) Nothing in this section or in **[the]** "The Banking Act of 1948,"  
44 P.L.1948, c.67 (C.17:9A-1 et seq.) shall prohibit a foreign bank,  
45 including one organized under the laws of a foreign country, from  
46 owning and operating in this State, as a subsidiary, a State or federally

1 chartered bank and the ownership and operation of, and the sharing of  
2 directors, officers and employees with that subsidiary shall not  
3 constitute transacting business in this State.

4 (cf: P.L.1996, c.17, s.24)

5

6 5. Section 1 of P.L.1979, c.389 (C.17:9A-316.3) is amended to  
7 read as follows:

8 1. A foreign bank authorized by section 316 of P.L.1948, c. 67  
9 (C.17:9A-316) to act as trustee, fiduciary, executor, testamentary  
10 trustee or guardian may, when acting in such capacity, invest any  
11 money received and held by it in such capacity, in any common trust  
12 fund or funds maintained by it in accordance with the laws of the  
13 **[State]** state of its incorporation; provided, that the **[will]** instrument  
14 under which it is acting as trustee, fiduciary, executor, testamentary  
15 trustee or guardian does not specifically prohibit such investment and  
16 any such investment is made subject to the provisions of subsection B  
17 of section 37 of P.L.1948, c.67 (C.17:9A-37), and the provisions of  
18 section 38 of P.L.1948, c.67 (C.17:9A-38) relating to investments by  
19 a qualified bank incorporated under the laws of this State in a  
20 common trust fund; and provided that a qualified bank incorporated  
21 under the laws of this State is permitted by the laws of the state of  
22 incorporation of such foreign bank, when acting in a similar fiduciary  
23 capacity in that state to invest any moneys, received and held by it in  
24 such capacity, in any common trust fund or funds maintained by it in  
25 accordance with the laws of this State.

26 (cf: P.L.1979, c.389, s.1)

27

28 6. Section 317 of P.L.1948, c.67 (C.17:9A-317) is amended to  
29 read as follows:

30 317. As a prerequisite to its qualification in any fiduciary capacity  
31 specified in section 316, in any court of this State, a foreign bank shall  
32 present to the court a certificate of the commissioner certifying that  
33 it is authorized to transact business in this State pursuant to this  
34 article~~].~~ The certificate shall be dated not earlier than thirty days prior  
35 to the foreign bank's qualification in such court **]** and shall furnish a  
36 bond if required by the court pursuant to the provisions of  
37 N.J.S.3B:15-1 .

38 (cf: P.L.1948, c.67, s.317)

39

40 7. Section 318 of P.L.1948, c.67 (C.17:9A-318) is amended to  
41 read as follows:

42 318. A foreign bank desiring to secure a certificate of authority to  
43 transact business in this State shall make application to the  
44 commissioner therefor and file **[or deposit]** with **[such]** the  
45 application

46 (1) a copy of its certificate of incorporation, and all amendments

1 thereto, certified by its president or a vice-president and attested  
2 under its corporate seal by its secretary, an assistant secretary, its  
3 cashier or an assistant cashier;

4 (2) **[a statement of its financial condition as of the end of the**  
5 **preceding calendar year, in such form as shall be prescribed by the**  
6 **commissioner, similarly certified and attested]** proof of adequate  
7 insurance coverage in connection with the volume of transactions and  
8 nature of its business ;

9 (3) **[an affidavit of its president or a vice-president that it has not,**  
10 **subsequent to July 4, 1939, originally probated in a foreign jurisdiction**  
11 **the will of any person known to it to have died domiciled in this State,**  
12 **or applied in a foreign jurisdiction for original letters of administration**  
13 **of the estate of any such person;]** (Deleted by amendment, P.L. ,  
14 c. .)

15 (4) a certificate executed by its president or a vice-president and  
16 attested under its corporate seal by its secretary, an assistant  
17 secretary, its cashier or an assistant cashier, that, so long as it shall  
18 have a certificate of authority,

19 (a) it will comply with all the requirements of the laws of this State  
20 which shall be applicable from time to time to the transaction of its  
21 business in this State;

22 (b) it will, promptly following adoption, submit to the commissioner  
23 a copy of each amendment or other change in its certificate of  
24 incorporation, certified and attested as provided in paragraph (1) of  
25 this section;

26 (c)**[ it will not originally probate in a foreign jurisdiction the will of**  
27 **any person known to it to have died domiciled in this State, or apply**  
28 **in a foreign jurisdiction for original letters of administration of the**  
29 **estate of any such person;]** (Deleted by amendment, P.L. , c. .)

30 (5) a power of attorney, executed by its president or vice-president  
31 and attested under its corporate seal by its secretary, an assistant  
32 secretary, its cashier or an assistant cashier, authorizing the  
33 commissioner and his successors in office to accept service of process  
34 upon the foreign bank in any action or proceeding against it affecting  
35 or relating to any estate or trust administered under the laws of this  
36 State, with respect to which it shall act in a fiduciary capacity specified  
37 in section 316; such power of attorney shall provide that service of  
38 any such process upon the commissioner shall have the same force  
39 and validity as if served upon the foreign bank, and that the authority  
40 therein granted shall be irrevocable and shall continue in force  
41 indefinitely, notwithstanding the expiration, revocation or surrender of  
42 the certificate of authority or renewal thereof **[:]** .

43 (6) **[securities having an aggregate market value of not less than**  
44 **thirty thousand dollars, of such character as the commissioner shall**  
45 **prescribe, to be held by the commissioner as security for the**  
46 **performance by the foreign bank of its obligations with respect to**

1 estates and trusts administered under the laws of this State, with  
2 respect to which it shall act in a fiduciary capacity specified in section  
3 316. ] (~~Deleted by amendment, P.L. , c. .~~)  
4 (cf: P.L.1948, c.67, s.318)

5  
6 8. Section 319 of P.L.1948, c.67 (C.17:9A-319) is amended to  
7 read as follows:

8 319. A. Within ~~sixty~~ 60 days following the receipt of the  
9 application of a foreign bank for a certificate of authority to transact  
10 business in this State, the commissioner shall issue the certificate or  
11 make an order denying the application.

12 B. The commissioner shall issue the certificate if he is satisfied  
13 from the application submitted to him, or otherwise,

14 (1) that the foreign bank is authorized by the laws under which it is  
15 incorporated to act as trustee, testamentary trustee, fiduciary,  
16 executor ~~[of or trustee]~~ or guardian ~~[under wills admitted to probate~~  
17 ~~in this State]~~;

18 (2) that the foreign bank has ~~[an unimpaired paid-in]~~ capital  
19 ~~[stock]~~ and surplus of not less than one ~~[hundred thousand]~~ million  
20 dollars; and

21 (3) that the foreign bank has complied in good faith with all of the  
22 requirements of section 318.

23 C. Before issuing or denying a certificate of authority, the  
24 commissioner may require a foreign bank which makes application for  
25 a certificate of authority to submit to him additional information, in  
26 such form and manner as he may require.

27 (cf: P.L.1948, c.67, s.319)

28  
29 9. Section 322 of P.L.1948, c.67 (C.17:9A-322) is amended to  
30 read as follows:

31 322. A certificate of authority issued to a foreign bank shall  
32 continue in force, unless revoked by the commissioner or surrendered  
33 by the foreign bank ~~], until April 1 of the year following the year in~~  
34 ~~which it is issued].~~ The commissioner may adopt regulations  
35 establishing requirements for periodic renewal of a certificate of  
36 authority, and for notification to the commissioner if a foreign bank  
37 named in a certificate of authority desires to surrender the certificate  
38 or merges with or is acquired by another financial institution or  
39 company. Failure to provide any notification required by regulations  
40 promulgated by the commissioner shall be grounds for revocation of  
41 the certificate.

42 (cf: P.L.1948, c.67, s.322)

43  
44 10. Section 326 of P.L.1948, c.67 (C.17:9A-326) is amended to  
45 read as follows:

46 326. The commissioner shall revoke the certificate of authority or

1 renewal thereof of a foreign bank if:

2 (1) the foreign bank has ceased to be authorized by the laws under  
3 which it is incorporated to act as trustee, testamentary trustee,  
4 fiduciary, executor **[of or as trustee]** or guardian **[under wills**  
5 **admitted to probate in this State];**

6 (2) **[the foreign bank, after July fourth, one thousand nine hundred**  
7 **and thirty-nine, originally probated in a foreign jurisdiction the will of**  
8 **any person known to it to have died domiciled in this State, or applied**  
9 **in a foreign jurisdiction for original letters of administration of the**  
10 **estate of any such person;]** (Deleted by amendment, P.L. \_\_\_\_\_,  
11 c. \_\_\_\_\_.)

12 (3) the foreign bank does not have **[an unimpaired paid-in-capital**  
13 **stock]** capital and surplus of at least one **[hundred thousand dollars**  
14 **(\$100,000.00)]** million dollars ;

15 (4) **[he]** the commissioner finds that its financial condition or lack  
16 of insurance coverage makes it inadvisable to permit the foreign bank  
17 to act in the fiduciary capacities specified in section **[three hundred**  
18 **sixteen]** 316 ;

19 (5) the foreign bank, its directors, officers or employees refuse to  
20 permit an examination of its securities, books, records and accounts  
21 pursuant to section **[three hundred twenty-five]** 325 , or if any of its  
22 directors, officers or employees refuse to be examined under oath as  
23 provided in said section;

24 (6) the foreign bank does not, within such time as the commissioner  
25 may fix, deliver to the commissioner any information required by the  
26 commissioner under section **[three hundred twenty-five]** 325 ;

27 (7) the foreign bank does not pay the costs of an examination made  
28 pursuant to section **[three hundred twenty-five]** 325 ; or

29 (8) **[the foreign bank does not maintain on deposit with the**  
30 **commissioner securities of the kind and in the amount required by this**  
31 **article;]** (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_.)

32 (9) **[the foreign bank does not, within such time as may be fixed by**  
33 **the commissioner, obey an order of the commissioner to substitute**  
34 **other securities for securities deposited by the foreign bank; or]**  
35 (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_.)

36 (10) the foreign bank does not, after the time for appeal has expired  
37 and no appeal is pending, satisfy a judgment against it for a breach of  
38 any fiduciary obligation with respect to any estate or trust  
39 administered by it under the laws of this State.

40 (cf: P.L.1953, c.17, s.54)

41

42 11. N.J.S.3B:18-25 is amended to read as follows:

43 3B:18-25. a. Fiduciaries may annually, without court allowance,  
44 take commissions on corpus (including accumulated income which has  
45 been invested by the fiduciary) in the amount of \$5.00 per thousand

1 dollars of corpus value on the first \$400,000.00 of value of corpus and  
2 \$3.00 per thousand dollars of the corpus value in excess of  
3 \$400,000.00.

4 b. Notwithstanding the provisions of subsection a. of this section,  
5 if the fiduciary is a banking institution, foreign bank or savings and  
6 loan association authorized to exercise fiduciary powers [and the  
7 corpus value is in excess of \$400,000.00], the fiduciary shall be  
8 entitled to such commissions as may be reasonable.

9 c. Notwithstanding the provisions of subsections a. of this  
10 section, a fiduciary may take a minimum commission of \$100.00  
11 annually.

12 d. The value of the corpus for the purpose of this section shall be  
13 the "presumptive value" as defined in N.J.S.3B:18-18 or, at the option  
14 of the fiduciary, the value at the end of the period.

15 e. Upon application of a person interested in the trust or  
16 guardianship, a court may review the reasonableness of the  
17 commissions of the fiduciary, provided, however, the fiduciary shall be  
18 entitled to receive at least the compensation provided for all fiduciaries  
19 as set forth in subsections a. and c. of this section.

20 (cf: P.L.1988, c.165, s.1)

21

22 12. (New section) a. Notwithstanding any law to the contrary, a  
23 qualified bank acting in any capacity authorized pursuant to section 28  
24 of P.L.1948, c.67 (C.17:9A-28) on behalf of a trust or estate may  
25 employ and pay reasonable compensation to any person, including  
26 attorneys, auditors, investment advisers or other agents, even if they  
27 are affiliated or associated with the qualified bank, to advise or assist  
28 the qualified bank in the performance of any of its duties or acts of  
29 administration, whether or not discretionary, and to act without  
30 independent investigation upon their recommendation, so long as the  
31 qualified bank exercises care, skill, and caution in: selecting the agent;  
32 establishing the scope and terms of the agent's duties consistent with  
33 the purpose and terms of the governing trust instrument; and  
34 periodically reviewing the agent's actions in order to monitor the  
35 agent's performance. A qualified bank that delegates investment  
36 functions to an investment adviser shall also comply with the  
37 requirements of sections 8 and 10 of P.L.1997, c.26 (C.3B:20-11.8  
38 and 3B:20-11.10).

39 b. In performing any agency function, the agent shall owe to the  
40 qualified bank and the beneficiaries the same duties as the qualified  
41 bank and shall be held to the same fiduciary standards as the qualified  
42 bank.

43 c. A qualified bank which substantially complies with the  
44 requirements of subsection a. of this section shall not be liable to the  
45 beneficiaries or to the trust or estate for the decisions or actions of the

1 agent, and shall not be deemed to engage in self-dealing or a fiduciary  
2 conflict.

3 d. By accepting an appointment as agent from a qualified bank  
4 acting as a fiduciary of a trust or estate that is subject to the law of  
5 New Jersey, the agent submits to the jurisdiction of the courts of New  
6 Jersey, even if the agency agreement provides otherwise.

7

8 13. (New section) No interest created in real or personal property  
9 shall be void by reason of any rule against perpetuities, whether the  
10 common law rule or otherwise. The common law rule against  
11 perpetuities shall not be in force in this State.

12

13 14. (New section) a. (1) A future interest or trust is void if it  
14 suspends the power of alienation for longer than the permissible  
15 period. The power of alienation is the power to convey to another an  
16 absolute fee in possession of land, or full ownership of personalty. The  
17 permissible period is within 21 years after the death of an individual or  
18 individuals then alive.

19 (2) If the settlor of a living trust has an unlimited power to revoke,  
20 the permissible period is computed from termination of that power.

21 (3) If a future property interest or trust is created by exercise of a  
22 power of appointment, the permissible period is computed from the  
23 time the power is exercised if the power is a general power exercisable  
24 in favor of the donee, the donee's estate, the donee's creditors or the  
25 creditors of the donee's estate, whether or not it is exercisable in favor  
26 of others, and even if the general power is exercisable only by will; in  
27 the case of other powers the permissible period is computed from the  
28 time the power is created but facts at the time the power is exercised  
29 are considered in determining whether the power of alienation is  
30 suspended beyond the death of an individual or individuals alive at the  
31 time of creation of the power plus 21 years.

32 b. The power of alienation is suspended when there are no persons  
33 then alive who, alone or in combination with others, can convey an  
34 absolute fee in possession of land, or full ownership of personalty.

35 c. There is no suspension of the power of alienation by a trust or  
36 by equitable interests under a trust if the trustee has power to sell,  
37 either expressed or implied, or if there is an unlimited power to  
38 terminate in one or more persons then alive.

39 d. This section does not apply to limit any of the following:

40 (1) Transfers, outright or in trust, for charitable purposes;

41 (2) Transfers to one or more charitable organizations as described  
42 in Sections 170(c), 2055(a) and 2522(a) of the United States Internal  
43 Revenue Code of 1986 (26 U.S.C. secs 170(c), 2055(a) and 2522(a),  
44 or under any similar statute;

45 (3) A future interest or a power of appointment arising out of a  
46 nondonative transfer, except a nonvested property interest or a power

1 of appointment arising out of:

2 (a) a premarital or postmarital agreement;

3 (b) a separation or divorce settlement;

4 (c) a spouse's election;

5 (d) a similar arrangement arising out of a prospective, existing,  
6 or previous marital relationship between the parties;

7 (e) a contract to make or revoke a will or trust;

8 (f) a contract to exercise or not to exercise a power of  
9 appointment;

10 (g) a transfer in satisfaction of a duty of support; or

11 (h) a reciprocal transfer;

12 (4) Transfers to a trust or other property arrangement forming part  
13 of a pension, profit-sharing, stock bonus, health, disability, death  
14 benefit, income deferral, or other current or deferred benefit plan for  
15 one or more employees, independent contractors, or their beneficiaries  
16 or spouses, to which contributions are made for the purpose of  
17 distributing to or for the benefit of the participants or their  
18 beneficiaries or spouses the property, income, or principal in the trust  
19 or other property arrangement; or

20 (5) A property interest, power of appointment, or arrangement that  
21 was not subject to the common-law rule against perpetuities or is  
22 excluded by another statute of this State.

23

24 15. (New section) a. Except as provided in subsection b. of this  
25 section, sections 13 through 15 of this amendatory and supplementary  
26 act apply to:

27 (1) a future property interest or a power of appointment that is  
28 created on or after the effective date of this act; or

29 (2) a future property interest or a power of appointment created  
30 before the effective date of this act pursuant to the laws of any other  
31 state that does not have the rule against perpetuities in force and to  
32 which, after the effective date of this act, the laws of this State are  
33 made applicable by transfer of the situs of a trust to New Jersey, by a  
34 change in the law governing a trust instrument to New Jersey law, or  
35 otherwise. For purposes of this section only, a future property interest  
36 or a power of appointment is created when the power is irrevocably  
37 exercised or when a revocable exercise becomes irrevocable.

38 b. With respect to a nonvested property interest or a power of  
39 appointment created before the effective date of this act, which is  
40 determined in a judicial proceeding commenced on or after the  
41 effective date of this act, to violate this State's rule against perpetuities  
42 as that rule existed before the effective date of this act, a court upon  
43 the petition of an interested person may reform the disposition in the  
44 manner that most closely approximates the transferor's manifested plan  
45 of distribution and is within the limits of the rule against perpetuities  
46 applicable when the nonvested property interest or power of



1 appointment was created. The "rule against perpetuities" as used in  
2 this subsection shall mean the provisions of sections 1 through 8 of  
3 P.L.1991. c.192 (C.46:2F-1 through 42:2F-8), in effect at the time  
4 stated herein, notwithstanding the repeal of those sections by this  
5 amendatory and supplementary act.

6  
7 16. a. The following sections are repealed:

8 Section 320 of P.L.1948, c.67 (C.17:9A-320);

9 Section 321 of P.L.1948, c.67 (C.17:9A-321);

10 Section 323 of P.L.1948, c.67 (C.17:9A-323); and

11 Section 324 of P.L.1948, c.67 (C.17:9A-324).

12 b. Sections 1 through 8 of P.L.1991, c.192 (C.46:2F-1 through  
13 46:2F-8) are repealed but shall continue to apply to interests created  
14 prior to the effective date of this act to the extent provided in  
15 subsection b. of section 15 of this act.

16  
17 17. This act shall take effect on the first business day following  
18 enactment.

19  
20  
21 STATEMENT

22  
23 This bill updates certain of New Jersey's banking and trust laws.  
24 The bill permits, under certain conditions, in-State banks to open trust  
25 offices in New Jersey without applying for branch office approval by  
26 the Commissioner of Banking and Insurance. Under section 3 of the  
27 bill, a qualified in-State bank is required to adopt a board resolution  
28 to establish a trust office, and must file a notice with the commissioner  
29 of its intention to establish the office. The bill permits, under certain  
30 conditions, an out-of-State bank to establish a trust office, de novo, in  
31 this State. Under sections 4 through 10 of the bill, an out-of-State  
32 bank with or without an office in this State can exercise trust powers  
33 in New Jersey if it meets certain requirements, including demonstrating  
34 that it has trust powers in its home state, has complied with its home  
35 state rules for establishing the office, and has obtained a certificate of  
36 authority from the commissioner. In order for the commissioner to  
37 issue a certificate of authority to an out-of-State bank, the  
38 commissioner must find that the out-of-State bank has adequate  
39 capitalization, at least \$1 million in capital and surplus, and adequate  
40 insurance coverage and that a State chartered bank or trust company  
41 authorized to exercise trust powers in this State is permitted to  
42 exercise trust powers and establish a trust office without unduly  
43 burdensome conditions or restrictions in the home state of the out-of-  
44 State bank seeking the certificate of authority.

45 The bill permits banks serving as fiduciaries to obtain reasonable  
46 commissions regardless of the size of the trust account. The bill

1 further establishes statutory conditions for fiduciary banks dealing with  
2 affiliates and permits these banks to employ affiliates and others as  
3 agents and to act on their recommendations without independent  
4 investigation, provided the bank exercises care, skill and caution in  
5 selecting the agent, in establishing the agent's duties consistent with  
6 the purposes of the trust instrument or will and in periodically  
7 reviewing the agent's actions. The bill also provides that the agent  
8 employed by the bank owes to the qualified bank and the beneficiaries  
9 of a trust or estate the same duties as the qualified bank owes to the  
10 beneficiaries of the trust or estate and that the agent shall be held to  
11 the same fiduciary standards as the qualified bank.

12 The bill repeals the Uniform Statutory Rule Against Perpetuities,  
13 P.L.1991,c.192 (C.46:2F-1 et seq.) and supersedes the common law  
14 with respect to the rule against perpetuities. Under the bill, a trust can  
15 endure forever as long as the trust documents allow the trustee to sell  
16 an absolute ownership interest in the trust assets within a specified  
17 period, generally 21 years after the death of an individual or  
18 individuals alive at the time the trust is created. The effect of this  
19 repeal and supersession is to permit banks and trust companies to offer  
20 "dynasty trusts" to their customers, such as those that are being  
21 offered by banks and trust companies located in other states.

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL  
INSTITUTIONS COMMITTEE

STATEMENT TO

**SENATE, No. 1630**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 25, 1999

The Senate State Government, Banking and Financial Institutions Committee reports favorably Senate Bill No. 1630.

This bill updates certain sections of New Jersey's banking and trust laws. The bill permits, under certain conditions, in-State banks to open trust offices in New Jersey without applying for branch office approval by the Commissioner of Banking and Insurance. Under section 3 of the bill, a qualified in-State bank is required to adopt a board resolution to establish a trust office, and must file a notice with the commissioner of its intention to establish the office. The bill permits, under certain conditions, an out-of-State bank to establish a trust office, de novo, in this State. Under sections 4 through 10 of the bill, an out-of-State bank with or without an office in this State can exercise trust powers in New Jersey if it meets certain requirements, including demonstrating that it has trust powers in its home state, has complied with its home state rules for establishing the office, and has obtained a certificate of authority from the commissioner. In order for the commissioner to issue a certificate of authority to an out-of-State bank, the commissioner must find that the out-of-State bank has adequate capitalization, at least \$1 million in capital and surplus, and adequate insurance coverage and that a State chartered bank or trust company authorized to exercise trust powers in this State is permitted to exercise trust powers and establish a trust office without undue burdensome conditions or restrictions in the home state of the out-of-State bank seeking the certificate of authority.

The bill permits banks serving as fiduciaries to obtain reasonable commissions regardless of the size of the trust account. The bill further establishes statutory conditions for fiduciary banks dealing with affiliates and permits these banks to employ affiliates and others as agents and to act on their recommendations without independent investigation, provided the bank exercises care, skill and caution in selecting the agent, in establishing the agent's duties consistent with the purposes of the trust instrument or will and in periodically reviewing the agent's actions. The bill also provides that the agent employed by the bank owes to the qualified bank and the beneficiaries

of a trust or estate the same duties as the qualified bank owes to the beneficiaries of the trust or estate and that the agent shall be held to the same fiduciary standards as the qualified bank.

The bill repeals the Uniform Statutory Rule Against Perpetuities, P.L.1991,c.192 (C.46:2F-1 et seq.) and supersedes the common law with respect to the rule against perpetuities. Under the bill, a trust can endure forever as long as the trust documents do not suspend the ability of the trustee to sell an absolute ownership interest in the trust assets for more than 21 years after the death of an individual or individuals alive at the time the trust is created. The effect of this repeal and supersession is to permit banks and trust companies to offer "dynasty trusts" to their customers, such as those that are being offered by banks and trust companies located in other states.

## **ASSEMBLY BILL NO. 2804**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2804 with my recommendations for reconsideration.

### **A.SUMMARY OF THE BILL**

This bill modernizes New Jersey's trust laws by permitting interstate trust banking and allowing New Jersey-based institutions to offer new trust products. Specifically, this bill would allow in-State banks to open trust offices in New Jersey by filing a notice of intent to establish a trust office with the Commissioner of Banking and Insurance. Out-of-state banks also would be allowed to establish trust offices in New Jersey and would be allowed to conduct trust business in this State, but these out-of-state banks would have to receive a certificate of authority from the Commissioner. In issuing a certificate of authority, the Commissioner must examine the capitalization of the out-of-state bank; ascertain that the capital and surplus of the bank is at least \$1,000,000; and verify the adequacy of its insurance coverage.

The bill authorizes banks to serve as fiduciaries and to charge any reasonable commissions for managing trust assets. Agents of the bank are held to the same fiduciary standards as the bank. The bill also allows banks to delegate duties to trust companies and receive commissions for their services. A bank must comply with the standards set forth in two sections of the Prudent Investor Act, N.J.S.A. 3B:20.11.8 and 3B:20-11.1, if it chooses to delegate investment duties. The bill does not, however, specify standards with which a bank must comply if it delegates non-investment duties.

The bill also repeals the Rule Against Perpetuities in New Jersey. Thus, a trust could now last forever (instead of for 21 years after the life of the last beneficiary named in the trust, plus applicable gestation periods) as long as the trust documents allow the trustee to sell an absolute ownership interest in the trust assets within a specific period, typically 21 years after the death of any individual alive when the trust was created. The effect of this repeal is to allow banks and trust companies to offer "dynasty" trusts or

“wealth building” trusts to their customers.

#### B.RECOMMENDED ACTION

This bill serves a valuable purpose by modernizing the trust laws of the State of New Jersey and I approve of the majority of the language in this bill. Attracting trust business to this State is a worthy objective and is consistent with previous legislative efforts to modernize laws governing financial institutions. I am concerned, however, with the language in Section 12 of the bill as it concerns the delegation of trust duties by qualified banks. The New Jersey State Bar Association and several trust and estate attorneys throughout the State have raised concerns about the provisions in this bill regarding the delegation of trust duties by qualified banks. Specifically, these parties are concerned that banks may delegate fundamental trust powers without requiring any adjustment in the commissions charged by the bank. As stated in the bill, if a bank delegates investment functions, the bank is required to comply with certain sections of the Prudent Investor Act, N.J.S.A. 3B:20-11.1. However, as currently written, this bill does not apply the standards of the Prudent Investor Act to non-investment functions delegated to a third party by a qualified bank. Accordingly, the State Bar Association and representatives of the banking community have collaborated on language, which I support, that addresses this issue. This language will modify Section 12 of the bill to set forth an appropriate standard by which a qualified bank can address the issue of compensating third parties to which the bank delegates non-investment trust duties. In addition, beneficiaries of trusts will remain protected by a body of case law that allows a court to disapprove any portion of a trustee’s or a fiduciary’s commission.

Therefore, I herewith return Assembly Bill No. 2804 and recommend that it be amended as follows:

Page 12, Section 12, Line 18: After “its” insert “administrative”

Page 12, Section 12, Lines 18-19: Delete “or acts of administration”

Page 12, Section 12, Line 33:

After “c.” Insert “In the absence of express contrary provisions in the trust instrument, a qualified bank which employs an agent other than an investment adviser or investment manager, may pay the agent from the fiduciary fund if the qualified bank reasonably believes in the exercise of its discretion that such an arrangement is in the best interests of all interested persons and will improve the efficiency of the administration of the fiduciary fund. In the absence of express contrary provisions in the trust instrument, a qualified bank which delegates investment and trust asset management functions to an investment adviser or an investment manager shall comply with the cost control and other requirements of sections 8 and 10 of P.L. 1997, c.26 (C. 3B:20-11.8 and 3B:20-11.10). d.”

Page 12, section 12, Line 34:

Delete “subsection” and insert “subsections”; after “a.” insert “and c.”

Page 12, Section 12, Line 36:

After “not” insert “, solely by reason of the delegation,”

Page 12, Section 12, Line 36:

After “in” insert “acts of”

Page 12, Section 12, Line 36:

Delete “fiduciary”

Page 12, Section 12, Line 37:

After “conflict” insert “of interest”

Page 12, Section 12, Line 38:

Delete “d.” and insert “e.”

Respectfully,

Christine Todd Whitman  
Governor

Attest:

Richard S. Mroz  
Chief Counsel to the Governor

PO BOX 004  
TRENTON, NJ 08625

*Office of the Governor*  
**NEWS RELEASE**

CONTACT: Jayne O'Connor  
Wendi Patella  
609-777-2600

RELEASE: July 13, 1999

Gov. Christie Whitman today signed the following bills, which had been previously conditionally vetoed and returned to the Legislature with the Governor's recommended changes.

**A-2804**, sponsored by Assembly Members Christopher Bateman (R-Morris/Somerset) and Joel Weingarten (R-Essex/Union) and Senators Walter Kavanaugh (R-Morris/Somerset) and Peter Inverso (R-Mercer/Middlesex), modernizes New Jersey's trust laws by permitting interstate trust banking and allowing New Jersey-based institutions to offer new trust products, including dynasty trusts. The bill allows banks to delegate fundamental trust powers without requiring any adjustment in the commissions charged by the bank. The bill also repeals the Rule Against Perpetuities so that a trust could last forever as long as the trust documents allow the trustee to sell an absolute ownership interest in the trust assets. Currently the trust lasts for 21 years after the life of the last beneficiary. The Governor's recommended changes set forth an appropriate standard by which a bank can compensate third parties that are delegated non-investment trust duties.

**A-994**, sponsored by Assembly Members Kenneth LeFevre (R-Atlantic) and Neil Cohen (D-Union) makes it a fourth degree crime to solicit or recruit members into a criminal street gang. The Legislature accepted the Governor's conditional veto changes to the definition of criminal street gang member. As passed, the bill defined a criminal street gang as having at least two prior "convictions" within the last three years for certain crimes committed while engaged in gang activity. The Governor recommended changing the standard to gang members who have "committed, conspired, or attempted to commit" two or more of the enumerated offenses because technically juveniles who commit crimes are not convicted. The Governor pointed out that gangs often target juveniles because they are less likely to have charges against them adjudicated in adult court.