

17:1-25

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 195

NJSA: 17:1-25 (Concerns certain enforcement powers of Department of Banking & Insurance)

BILL NO: S2424 (Substituted for A3981)

SPONSOR(S): Lesniak and others

DATE INTRODUCED: March 21, 2005

COMMITTEE: **ASSEMBLY:** Budget
SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 30, 2005

SENATE: June 20, 2005

DATE OF APPROVAL: August 18, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

S2424

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

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

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A3981

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [5-2-2005 \(FI & Ins.\)](#)
[6-29-2005 \(Budget\)](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

IS 9/13/07

§§1-4 -
C.17:1-25 to
17:1-28
§5 - Repealer
§6 - Note to §§1-5

P.L. 2005, CHAPTER 195, *approved August 18, 2005*
Senate, No. 2424 (*First Reprint*)

1 **AN ACT** concerning certain enforcement powers of the Department of
2 Banking and Insurance, supplementing Title 17 of the Revised
3 Statutes and repealing parts of the statutory law.

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

7
8 1. The Legislature finds and declares that:

9 a. Financial institutions increasingly influence and affect the lives
10 and livelihood of consumers in this State to such a degree that the
11 actions, and the potential adverse consequences of any possible abuse
12 by those institutions, need to be diligently monitored and, when
13 appropriate, adequately constrained.

14 b. Expanding and strengthening the enforcement powers of the
15 Division of Banking within the Department of Banking and Insurance
16 is needed in order to permit the division to maintain and fulfill its duty
17 of responsible oversight of those financial institutions chartered or
18 operating under New Jersey law.

19 c. Modeling these enhanced enforcement powers on those powers
20 currently provided to and utilized by federal financial regulatory
21 agencies will facilitate a uniform approach to regulatory oversight of
22 all financial institutions and promote consistency in efficient and
23 effective regulatory enforcement.

24

25 2. As used in this act, and except as otherwise expressly provided
26 in this act:

27 "Bank" means a bank as defined in subsection (1) of section 1 of
28 P.L.1948, c.67 (C.17:9A-1).

29 "Commissioner" means the Commissioner of Banking and
30 Insurance.

31 "Control" means:

32 (1) (a) Owning, controlling or having power to vote 25% or more
33 of the outstanding shares of any class of voting securities of a covered
34 institution, directly or indirectly, or by acting through one or more
35 persons;

36 (b) Controlling in any manner the election of a majority of the

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:

¹ Senate SCM committee amendments adopted June 9, 2005.

1 directors, trustees, general partners or individuals exercising similar
2 functions of the covered institution; or

3 (c) Exercising or having the power to exercise directly or indirectly
4 a controlling influence over the management or policies of a covered
5 institution.

6 (2) A person that is a covered institution shall not be deemed to
7 control voting securities or assets of a covered institution acquired:

8 (a) in good faith, in a fiduciary capacity, except where those voting
9 securities are held in a trust that constitutes a person; or

10 (b) in the regular course of securing or collecting a debt previously
11 contracted in good faith which securities are disposed of within a
12 period of two years after the date on which they were acquired or after
13 the enactment of this act, whichever is later.

14 (3) A person is deemed to control voting securities or assets
15 owned, controlled or held directly or indirectly:

16 (a) by any subsidiary of the person;

17 (b) in a fiduciary capacity, including by pension and profit-sharing
18 trusts, for the benefit of the shareholders, members, employees or
19 individuals serving in similar capacities, of the person or of any of its
20 subsidiaries; or

21 (c) in a fiduciary capacity for the benefit of the person or any of its
22 subsidiaries.

23 "Covered institution" means a bank, savings bank or State
24 association.

25 "Department" means the Department of Banking and Insurance.

26 "Director" means a director of a bank and a manager of a mutual
27 savings bank or mutual State association.

28 "Major shareholder" means anyone who owns voting securities of
29 a covered institution and exercises control as defined in this section,
30 and shall mean a depositor of a ¹[mutual savings bank or]¹ mutual
31 ¹[state] State¹ association ¹which exercises control as defined in this
32 section¹.

33 "Savings bank" means a savings bank as defined in subsection (13)
34 of section 1 of P.L.1948, c.67 (C.17:9A-1).

35 "State association" means a State association as defined in
36 subsection (1) of section 5 of P.L.1963, c.144 (C.17:12B-5).

37 "Subsidiary" means ¹(1)¹ any ¹[person that is controlled by another
38 person] entity, 25 percent or more of whose voting shares are directly
39 or indirectly owned or controlled by a covered institution or are held
40 by a covered institution with power to vote; (2) any entity, the election
41 of a majority of whose directors, general partners of a partnership or
42 limited partnership, or members of a limited liability company is
43 controlled in any manner by a covered institution; or (3) any entity,
44 with respect to the management of the policies of which a covered
45 institution has the power, directly or indirectly, to exercise a
46 controlling influence¹.

1 "Voting securities" means shares of common or preferred stock,
2 general or limited partnership shares or interests or similar interests if
3 the shares or interests, by statute, charter, or in any manner, entitle the
4 holder:

5 (1) To vote for or to select directors, trustees, partners or persons
6 exercising similar functions for the issuing person; or

7 (2) To vote on or to direct the conduct of the operations or other
8 significant policies of the issuing person.

9 Preferred shares, limited partnership shares or interests or similar
10 interests are not "voting securities" if:

11 (1) Any voting rights associated with the shares or interests,
12 including the right to select or vote for the selection of directors,
13 trustees or partners or persons exercising similar functions, are limited
14 solely to the type customarily provided by statute with regard to
15 matters that would significantly and adversely affect the rights or
16 preference of the security or other interest, such as the issuance of
17 additional amounts or classes of senior securities, the modification of
18 the terms of the security or interest, the dissolution of the issuing
19 person, or the payment of dividends by the issuing person when
20 preferred dividends are in arrears, or, entitle the holder thereof to vote
21 for the election of directors, trustees or partners or persons exercising
22 similar functions only as the result of the failure to pay a dividend or
23 to fulfill an obligation or satisfy a condition specified by the terms of
24 the shares or interests; and

25 (2) The shares or interests represent an essentially passive
26 investment or financing device and do not otherwise provide the
27 holder with control over the issuing person.

28

29 3. No bank, savings bank, State association, or any officer,
30 director, employee, or major shareholder thereof, shall:

31 a. Fail to comply with an order or other written instruction of the
32 commissioner or any other financial regulatory agency;

33 b. Violate a State or federal law;

34 c. Take any action, or fail to take an action, with the result that a
35 material interest of the covered institution is adversely affected;

36 d. Be convicted of a crime that would permit adverse action by a
37 governmental agency pursuant to P.L.1968, c.282 (C. 2A:168A-1 et
38 seq.);

39 e. Provide incorrect, misleading, incomplete or untrue material
40 information about the covered institution to the commissioner or any
41 federal financial regulatory agency;

42 f. Withhold material information from the commissioner or any
43 federal financial regulatory authority about the covered institution; or

44 g. Take an action, or fail to take an action, the result of which
45 poses a substantial risk to the safety and soundness of the covered
46 institution or may cause substantial damage to its reputation.

1 4. a. In addition to any other penalty provided by law, if the
2 commissioner determines that a bank, savings bank, State association,
3 or any officer, director, employee or major shareholder thereof, has
4 violated a provision of section 3 of this act, the commissioner may
5 impose any one or more of the following penalties and sanctions as he
6 deems appropriate. The commissioner may:

7 (1) Impose a civil penalty of up to \$10,000 for each violation, or up
8 to \$50,000 for each willful violation;

9 (2) Suspend, revoke or refuse to renew a license issued by the
10 department;

11 (3) Temporarily remove a person responsible for a violation of this
12 act from working in that person's present capacity or in any capacity
13 related to activities regulated by the department;

14 (4) Prohibit or bar a person responsible for a violation of this act
15 from working in that person's present capacity or in any capacity
16 related to activities regulated by the department;

17 (5) Order a person to cease and desist any violation of this act;

18 (6) Order a person to make restitution for actual damages;

19 (7) Enter an appropriate temporary order, to be effective
20 immediately and until entry of a final order, pending completion of an
21 investigation or any formal proceeding instituted pursuant to this act,
22 if the commissioner finds that the interests of the public require
23 immediate action to prevent undue harm to the covered institution
24 ¹[or],¹ depositors ¹or the public¹. Orders issued pursuant to this
25 paragraph shall be subject to an application to vacate upon two days'
26 notice, and a preliminary hearing on the temporary order shall be held,
27 in any event, within five days after it is issued, in accordance with the
28 provisions of the "Administrative Procedure Act," P.L.1968, c.410
29 (C.52:14B-1 et seq.); and

30 (8) Impose other sanctions or conditions as the commissioner
31 deems appropriate.

32 b. Penalties and other sanctions shall be reasonable, based on the
33 nature, extent and frequency of the violation, and the risk to the
34 covered institution, depositors and the public. In addition to these
35 factors, the commissioner shall consider, when determining the amount
36 of a monetary penalty against an institution pursuant to paragraph
37 (1) of subsection a. of this section, the amount of other monetary
38 penalties, if any, imposed, or to be imposed, by another regulatory
39 agency or through other legal process, and the impact of the total
40 penalties on the institution.

41 c. A decision of the commissioner shall be a final order of the
42 department and shall be enforceable in a court of competent
43 jurisdiction.

44 d. The department shall publish the final adjudication issued in
45 accordance with this section, subject to redaction or modification to
46 preserve confidentiality.

1 e. Orders may be appealed as a final administrative action pursuant
2 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
3 et seq.).

4

5 5. ¹[Sections] Section¹ 249 ¹[, 267 and 268]¹ of P.L.1948, c.67
6 (C.17:9A-249 ¹[, C.17:9A-267 and C.17:9A-268] ¹) [~~are~~] is ¹
7 repealed.

8

9 6. This act shall take effect on the 60th day following enactment
10 and shall apply to all actions occurring or continuing on or after that
11 date.

12

13

14

15

16 Strengthens enforcement powers of Department of Banking and
17 Insurance with respect to certain regulated financial institutions.

SENATE, No. 2424

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 21, 2005

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator GERALD CARDINALE

District 39 (Bergen)

SYNOPSIS

Strengthens enforcement powers of Department of Banking and Insurance with respect to certain regulated financial institutions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/22/2005)

1 AN ACT concerning certain enforcement powers of the Department of
2 Banking and Insurance, supplementing Title 17 of the Revised
3 Statutes and repealing parts of the statutory law.

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

7
8 1. The Legislature finds and declares that:

9 a. Financial institutions increasingly influence and affect the lives
10 and livelihood of consumers in this State to such a degree that the
11 actions, and the potential adverse consequences of any possible abuse
12 by those institutions, need to be diligently monitored and, when
13 appropriate, adequately constrained.

14 b. Expanding and strengthening the enforcement powers of the
15 Division of Banking within the Department of Banking and Insurance
16 is needed in order to permit the division to maintain and fulfill its duty
17 of responsible oversight of those financial institutions chartered or
18 operating under New Jersey law.

19 c. Modeling these enhanced enforcement powers on those powers
20 currently provided to and utilized by federal financial regulatory
21 agencies will facilitate a uniform approach to regulatory oversight of
22 all financial institutions and promote consistency in efficient and
23 effective regulatory enforcement.

24

25 2. As used in this act, and except as otherwise expressly provided
26 in this act:

27 "Bank" means a bank as defined in subsection (1) of section 1 of
28 P.L.1948, c.67 (C.17:9A-1).

29 "Commissioner" means the Commissioner of Banking and
30 Insurance.

31 "Control" means:

32 (1) (a) Owning, controlling or having power to vote 25% or more
33 of the outstanding shares of any class of voting securities of a covered
34 institution, directly or indirectly, or by acting through one or more
35 persons;

36 (b) Controlling in any manner the election of a majority of the
37 directors, trustees, general partners or individuals exercising similar
38 functions of the covered institution; or

39 (c) Exercising or having the power to exercise directly or indirectly
40 a controlling influence over the management or policies of a covered
41 institution.

42 (2) A person that is a covered institution shall not be deemed to
43 control voting securities or assets of a covered institution acquired:

44 (a) in good faith, in a fiduciary capacity, except where those voting
45 securities are held in a trust that constitutes a person; or

1 (b) in the regular course of securing or collecting a debt previously
2 contracted in good faith which securities are disposed of within a
3 period of two years after the date on which they were acquired or after
4 the enactment of this act, whichever is later.

5 (3) A person is deemed to control voting securities or assets
6 owned, controlled or held directly or indirectly:

7 (a) by any subsidiary of the person;

8 (b) in a fiduciary capacity, including by pension and profit-sharing
9 trusts, for the benefit of the shareholders, members, employees or
10 individuals serving in similar capacities, of the person or of any of its
11 subsidiaries; or

12 (c) in a fiduciary capacity for the benefit of the person or any of its
13 subsidiaries.

14 "Covered institution" means a bank, savings bank or State
15 association.

16 "Department" means the Department of Banking and Insurance.

17 "Director" means a director of a bank and a manager of a mutual
18 savings bank or mutual State association.

19 "Major shareholder" means anyone who owns voting securities of
20 a covered institution and exercises control as defined in this section,
21 and shall mean a depositor of a mutual savings bank or mutual state
22 association.

23 "Savings bank" means a savings bank as defined in subsection (13)
24 of section 1 of P.L.1948, c.67 (C.17:9A-1).

25 "State association" means a State association as defined in
26 subsection (1) of section 5 of P.L.1963, c.144 (C.17:12B-5).

27 "Subsidiary" means any person that is controlled by another person.

28 "Voting securities" means shares of common or preferred stock,
29 general or limited partnership shares or interests or similar interests if
30 the shares or interests, by statute, charter, or in any manner, entitle the
31 holder:

32 (1) To vote for or to select directors, trustees, partners or persons
33 exercising similar functions for the issuing person; or

34 (2) To vote on or to direct the conduct of the operations or other
35 significant policies of the issuing person.

36 Preferred shares, limited partnership shares or interests or similar
37 interests are not "voting securities" if:

38 (1) Any voting rights associated with the shares or interests,
39 including the right to select or vote for the selection of directors,
40 trustees or partners or persons exercising similar functions, are limited
41 solely to the type customarily provided by statute with regard to
42 matters that would significantly and adversely affect the rights or
43 preference of the security or other interest, such as the issuance of
44 additional amounts or classes of senior securities, the modification of
45 the terms of the security or interest, the dissolution of the issuing
46 person, or the payment of dividends by the issuing person when

1 preferred dividends are in arrears, or, entitle the holder thereof to vote
2 for the election of directors, trustees or partners or persons exercising
3 similar functions only as the result of the failure to pay a dividend or
4 to fulfill an obligation or satisfy a condition specified by the terms of
5 the shares or interests; and

6 (2) The shares or interests represent an essentially passive
7 investment or financing device and do not otherwise provide the
8 holder with control over the issuing person.

9
10 3. No bank, savings bank, State association, or any officer,
11 director, employee, or major shareholder thereof, shall:

12 a. Fail to comply with an order or other written instruction of the
13 commissioner or any other financial regulatory agency;

14 b. Violate a State or federal law;

15 c. Take any action, or fail to take an action, with the result that a
16 material interest of the covered institution is adversely affected;

17 d. Be convicted of a crime that would permit adverse action by a
18 governmental agency pursuant to P.L.1968, c.282 (C. 2A:168A-1 et
19 seq.);

20 e. Provide incorrect, misleading, incomplete or untrue material
21 information about the covered institution to the commissioner or any
22 federal financial regulatory agency;

23 f. Withhold material information from the commissioner or any
24 federal financial regulatory authority about the covered institution; or

25 g. Take an action, or fail to take an action, the result of which
26 poses a substantial risk to the safety and soundness of the covered
27 institution or may cause substantial damage to its reputation.

28
29 4. a. In addition to any other penalty provided by law, if the
30 commissioner determines that a bank, savings bank, State association,
31 or any officer, director, employee or major shareholder thereof, has
32 violated a provision of section 3 of this act, the commissioner may
33 impose any one or more of the following penalties and sanctions as he
34 deems appropriate. The commissioner may:

35 (1) Impose a civil penalty of up to \$10,000 for each violation, or up
36 to \$50,000 for each willful violation;

37 (2) Suspend, revoke or refuse to renew a license issued by the
38 department;

39 (3) Temporarily remove a person responsible for a violation of this
40 act from working in that person's present capacity or in any capacity
41 related to activities regulated by the department;

42 (4) Prohibit or bar a person responsible for a violation of this act
43 from working in that person's present capacity or in any capacity
44 related to activities regulated by the department;

45 (5) Order a person to cease and desist any violation of this act;

46 (6) Order a person to make restitution for actual damages;

1 (7) Enter an appropriate temporary order, to be effective
2 immediately and until entry of a final order, pending completion of an
3 investigation or any formal proceeding instituted pursuant to this act,
4 if the commissioner finds that the interests of the public require
5 immediate action to prevent undue harm to the covered institution or
6 depositors. Orders issued pursuant to this paragraph shall be subject
7 to an application to vacate upon two days' notice, and a preliminary
8 hearing on the temporary order shall be held, in any event, within five
9 days after it is issued, in accordance with the provisions of the
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.); and

12 (8) Impose other sanctions or conditions as the commissioner
13 deems appropriate.

14 b. Penalties and other sanctions shall be reasonable, based on the
15 nature, extent and frequency of the violation, and the risk to the
16 covered institution, depositors and the public. In addition to these
17 factors, the commissioner shall consider, when determining the amount
18 of a monetary penalty against an institution pursuant to paragraph
19 (1) of subsection a. of this section, the amount of other monetary
20 penalties, if any, imposed, or to be imposed, by another regulatory
21 agency or through other legal process, and the impact of the total
22 penalties on the institution.

23 c. A decision of the commissioner shall be a final order of the
24 department and shall be enforceable in a court of competent
25 jurisdiction.

26 d. The department shall publish the final adjudication issued in
27 accordance with this section, subject to redaction or modification to
28 preserve confidentiality.

29 e. Orders may be appealed as a final administrative action pursuant
30 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
31 et seq.).

32
33 5. Sections 249, 267 and 268 of P.L.1948, c.67 (C.17:9A-249,
34 C.17:9A-267 and C.17:9A-268) are repealed.

35
36 6. This act shall take effect on the 60th day following enactment
37 and shall apply to all actions occurring or continuing on or after that
38 date.

39
40

41 STATEMENT

42

43 This bill strengthens the enforcement powers of the Department of
44 Banking and Insurance with respect to State-chartered banks, savings
45 banks and savings and loans and provides for more consistent
46 enforcement authority across charter types. In so doing, the bill

1 provides the department with regulatory authority which corresponds
2 more closely to that of its federal regulatory counterparts.

3 Under the bill, the department may take enforcement action if any
4 person: (1) Fails to comply with an order of the Commissioner of
5 Banking and Insurance or any other financial regulatory agency;
6 (2) Violates a State or federal law; (3) Takes any action, or fails to
7 take an action, the result of which adversely affects a material interest
8 of the covered institution; (4) Is convicted of a crime that would
9 permit adverse action by a governmental agency pursuant to the law
10 concerning rehabilitated offenders, P.L.1968, c.282 (C.2A:168A-1 et
11 seq.); (5) Provides incorrect, misleading, incomplete or untrue material
12 information to the commissioner or any federal financial regulatory
13 agency about the covered institution; (6) Withholds material
14 information about the affairs of the covered institution; or (7) Takes
15 an action, or fails to take an action, the result of which poses a
16 substantial risk to the safety and soundness of the covered institution
17 or may cause substantial damage to its reputation.

18 Once a violation has occurred, the commissioner may impose a civil
19 penalty of up to \$10,000 for each violation, or up to \$50,000 for each
20 willful violation. The commissioner may also take other action as he
21 deems appropriate, such as: suspending, revoking, or refusing to
22 renew a license; temporarily or permanently removing an individual
23 responsible for a violation from working in any capacity related to
24 activities regulated by the department; ordering a person to cease and
25 desist any violation; ordering a person to make restitution for actual
26 damages; and entering an appropriate temporary order pending
27 completion of an investigation or proceeding if the interests of the
28 public require immediate action to prevent undue harm to the covered
29 institution

30 The bill applies to all State-chartered banks, savings banks and
31 savings and loan associations, and to the directors, officers, employees
32 and major stockholders of those depositories. Some of the
33 department's current enforcement powers vary depending on type of
34 charter (bank, savings bank or savings and loan association).

35 The bill also repeals the specific enforcement provisions in current
36 law that will be redundant once the enforcement provisions in the bill
37 take effect.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2424

STATE OF NEW JERSEY

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably Senate Bill No. 2424 (1R).

Senate Bill No. 2424 (1R) strengthens the enforcement powers of the Department of Banking and Insurance with respect to State-chartered banks, savings banks and savings and loans and provides for more consistent enforcement authority across charter types. In so doing, the bill provides the department with regulatory authority which corresponds more closely to that of its federal regulatory counterparts.

Under the bill, the department may take enforcement action if any person: (1) fails to comply with an order of the Commissioner of Banking and Insurance or any other financial regulatory agency; (2) violates a State or federal law; (3) takes any action, or fails to take an action, the result of which adversely affects a material interest of the covered institution; (4) is convicted of a crime that would permit adverse action by a governmental agency pursuant to the law concerning rehabilitated offenders, P.L.1968, c.282 (C.2A:168A-1 et seq.); (5) provides incorrect, misleading, incomplete or untrue material information to the commissioner or any federal financial regulatory agency about the covered institution; (6) withholds material information about the affairs of the covered institution; or (7) takes an action, or fails to take an action, the result of which poses a substantial risk to the safety and soundness of the covered institution or may cause substantial damage to its reputation.

Once a violation has occurred, the commissioner may impose a civil penalty of up to \$10,000 for each violation, or up to \$50,000 for each willful violation. The commissioner may also take other action as he deems appropriate, such as: suspending, revoking, or refusing to renew a license; temporarily or permanently removing an individual responsible for a violation from working in any capacity related to activities regulated by the department; ordering a person to cease and desist any violation; ordering a person to make restitution for actual damages; and entering an appropriate temporary order pending completion of an investigation or proceeding if the interests of the public require immediate action to prevent undue harm to the covered institution, depositors or the public.

The bill applies to all State-chartered banks, savings banks and savings and loan associations, and to the directors, officers, employees and major stockholders of those depositories. Some of the department's current enforcement powers vary depending on type of charter (bank, savings bank or savings and loan association).

The committee amended the bill to: (1) revise the definition of a subsidiary to coincide with the definition used in the corresponding federal law; (2) expand the scope of the commissioner's powers to issue a temporary order to prevent undue harm to the public; and (3) repeal only that section of the current law pertaining to enforcement powers as to removing bank directors, officers or managers and to eliminate the repeal of certain other sections of law repealed by the bill as introduced.

As reported, this bill is identical to Assembly Bill No. 3981 (1R) also as reported.

FISCAL IMPACT

No fiscal information has been provided concerning this legislation.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2424

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 26, 2005

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2424.

As amended, this bill strengthens the enforcement powers of the Department of Banking and Insurance with respect to State-chartered banks, savings banks and savings and loans and provides for more consistent enforcement authority across charter types. In so doing, the bill provides the department with regulatory authority which corresponds more closely to that of its federal regulatory counterparts.

Under the bill, the department may take enforcement action if any person: (1) fails to comply with an order of the Commissioner of Banking and Insurance or any other financial regulatory agency; (2) violates a State or federal law; (3) takes any action, or fails to take an action, the result of which adversely affects a material interest of the covered institution; (4) is convicted of a crime that would permit adverse action by a governmental agency pursuant to the law concerning rehabilitated offenders, P.L.1968, c.282 (C.2A:168A-1 et seq.); (5) provides incorrect, misleading, incomplete or untrue material information to the commissioner or any federal financial regulatory agency about the covered institution; (6) withholds material information about the affairs of the covered institution; or (7) takes an action, or fails to take an action, the result of which poses a substantial risk to the safety and soundness of the covered institution or may cause substantial damage to its reputation.

Once a violation has occurred, the commissioner may impose a civil penalty of up to \$10,000 for each violation, or up to \$50,000 for each willful violation. The commissioner may also take other action as he deems appropriate, such as: suspending, revoking, or refusing to renew a license; temporarily or permanently removing an individual responsible for a violation from working in any capacity related to activities regulated by the department; ordering a person to cease and desist any violation; ordering a person to make restitution for actual damages; and entering an appropriate temporary order pending completion of an investigation or proceeding if the interests of the public require immediate action to prevent undue harm to the covered

institution, depositors or the public.

The bill applies to all State-chartered banks, savings banks and savings and loan associations, and to the directors, officers, employees and major stockholders of those depositories. Some of the department's current enforcement powers vary depending on type of charter (bank, savings bank or savings and loan association).

The committee amended the bill to: (1) revise the definition of a subsidiary to coincide with the definition used in the corresponding federal law; (2) expand the scope of the commissioner's powers to issue a temporary order to prevent undue harm to the public; and (3) repeal only that section of the current law pertaining to enforcement powers as to removing bank directors, officers or managers and to eliminate the repeal of certain other sections of law repealed by the bill as introduced.

ASSEMBLY, No. 3981

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED MAY 2, 2005

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

SYNOPSIS

Strengthens enforcement powers of Department of Banking and Insurance with respect to certain regulated financial institutions.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain enforcement powers of the Department of
2 Banking and Insurance, supplementing Title 17 of the Revised
3 Statutes and repealing parts of the statutory law.

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

7
8 1. The Legislature finds and declares that:

9 a. Financial institutions increasingly influence and affect the lives
10 and livelihood of consumers in this State to such a degree that the
11 actions, and the potential adverse consequences of any possible abuse
12 by those institutions, need to be diligently monitored and, when
13 appropriate, adequately constrained.

14 b. Expanding and strengthening the enforcement powers of the
15 Division of Banking within the Department of Banking and Insurance
16 is needed in order to permit the division to maintain and fulfill its duty
17 of responsible oversight of those financial institutions chartered or
18 operating under New Jersey law.

19 c. Modeling these enhanced enforcement powers on those powers
20 currently provided to and utilized by federal financial regulatory
21 agencies will facilitate a uniform approach to regulatory oversight of
22 all financial institutions and promote consistency in efficient and
23 effective regulatory enforcement.

24

25 2. As used in this act, and except as otherwise expressly provided
26 in this act:

27 "Bank" means a bank as defined in subsection (1) of section 1 of
28 P.L.1948, c.67 (C.17:9A-1).

29 "Commissioner" means the Commissioner of Banking and
30 Insurance.

31 "Control" means:

32 (1) (a) Owning, controlling or having power to vote 25% or more
33 of the outstanding shares of any class of voting securities of a covered
34 institution, directly or indirectly, or by acting through one or more
35 persons;

36 (b) Controlling in any manner the election of a majority of the
37 directors, trustees, general partners or individuals exercising similar
38 functions of the covered institution; or

39 (c) Exercising or having the power to exercise directly or indirectly
40 a controlling influence over the management or policies of a covered
41 institution.

42 (2) A person that is a covered institution shall not be deemed to
43 control voting securities or assets of a covered institution acquired:

44 (a) in good faith, in a fiduciary capacity, except where those voting
45 securities are held in a trust that constitutes a person; or

46 (b) in the regular course of securing or collecting a debt previously

1 contracted in good faith which securities are disposed of within a
2 period of two years after the date on which they were acquired or after
3 the enactment of this act, whichever is later.

4 (3) A person is deemed to control voting securities or assets
5 owned, controlled or held directly or indirectly:

6 (a) by any subsidiary of the person;

7 (b) in a fiduciary capacity, including by pension and profit-sharing
8 trusts, for the benefit of the shareholders, members, employees or
9 individuals serving in similar capacities, of the person or of any of its
10 subsidiaries; or

11 (c) in a fiduciary capacity for the benefit of the person or any of its
12 subsidiaries.

13 "Covered institution" means a bank, savings bank or State
14 association.

15 "Department" means the Department of Banking and Insurance.

16 "Director" means a director of a bank and a manager of a mutual
17 savings bank or mutual State association.

18 "Major shareholder" means anyone who owns voting securities of
19 a covered institution and exercises control as defined in this section,
20 and shall mean a depositor of a mutual savings bank or mutual state
21 association.

22 "Savings bank" means a savings bank as defined in subsection (13)
23 of section 1 of P.L.1948, c.67 (C.17:9A-1).

24 "State association" means a State association as defined in
25 subsection (1) of section 5 of P.L.1963, c.144 (C.17:12B-5).

26 "Subsidiary" means any person that is controlled by another person.

27 "Voting securities" means shares of common or preferred stock,
28 general or limited partnership shares or interests or similar interests if
29 the shares or interests, by statute, charter, or in any manner, entitle the
30 holder:

31 (1) To vote for or to select directors, trustees, partners or persons
32 exercising similar functions for the issuing person; or

33 (2) To vote on or to direct the conduct of the operations or other
34 significant policies of the issuing person.

35 Preferred shares, limited partnership shares or interests or similar
36 interests are not "voting securities" if:

37 (1) Any voting rights associated with the shares or interests,
38 including the right to select or vote for the selection of directors,
39 trustees or partners or persons exercising similar functions, are limited
40 solely to the type customarily provided by statute with regard to
41 matters that would significantly and adversely affect the rights or
42 preference of the security or other interest, such as the issuance of
43 additional amounts or classes of senior securities, the modification of
44 the terms of the security or interest, the dissolution of the issuing
45 person, or the payment of dividends by the issuing person when
46 preferred dividends are in arrears, or, entitle the holder thereof to vote

1 for the election of directors, trustees or partners or persons exercising
2 similar functions only as the result of the failure to pay a dividend or
3 to fulfill an obligation or satisfy a condition specified by the terms of
4 the shares or interests; and

5 (2) The shares or interests represent an essentially passive
6 investment or financing device and do not otherwise provide the
7 holder with control over the issuing person.

8
9 3. No bank, savings bank, State association, or any officer,
10 director, employee, or major shareholder thereof, shall:

11 a. Fail to comply with an order or other written instruction of the
12 commissioner or any other financial regulatory agency;

13 b. Violate a State or federal law;

14 c. Take any action, or fail to take an action, with the result that a
15 material interest of the covered institution is adversely affected;

16 d. Be convicted of a crime that would permit adverse action by a
17 governmental agency pursuant to P.L.1968, c.282 (C.2A:168A-1 et
18 seq.);

19 e. Provide incorrect, misleading, incomplete or untrue material
20 information about the covered institution to the commissioner or any
21 federal financial regulatory agency;

22 f. Withhold material information from the commissioner or any
23 federal financial regulatory authority about the covered institution; or

24 g. Take an action, or fail to take an action, the result of which
25 poses a substantial risk to the safety and soundness of the covered
26 institution or may cause substantial damage to its reputation.

27
28 4. a. In addition to any other penalty provided by law, if the
29 commissioner determines that a bank, savings bank, State association,
30 or any officer, director, employee or major shareholder thereof, has
31 violated a provision of section 3 of this act, the commissioner may
32 impose any one or more of the following penalties and sanctions as he
33 deems appropriate. The commissioner may:

34 (1) Impose a civil penalty of up to \$10,000 for each violation, or
35 up to \$50,000 for each willful violation;

36 (2) Suspend, revoke or refuse to renew a license issued by the
37 department;

38 (3) Temporarily remove a person responsible for a violation of this
39 act from working in that person's present capacity or in any capacity
40 related to activities regulated by the department;

41 (4) Prohibit or bar a person responsible for a violation of this act
42 from working in that person's present capacity or in any capacity
43 related to activities regulated by the department;

44 (5) Order a person to cease and desist any violation of this act;

45 (6) Order a person to make restitution for actual damages;

46 (7) Enter an appropriate temporary order, to be effective

1 immediately and until entry of a final order, pending completion of an
2 investigation or any formal proceeding instituted pursuant to this act,
3 if the commissioner finds that the interests of the public require
4 immediate action to prevent undue harm to the covered institution or
5 depositors. Orders issued pursuant to this paragraph shall be subject
6 to an application to vacate upon two days' notice, and a preliminary
7 hearing on the temporary order shall be held, in any event, within five
8 days after it is issued, in accordance with the provisions of the
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.); and

11 (8) Impose other sanctions or conditions as the commissioner
12 deems appropriate.

13 b. Penalties and other sanctions shall be reasonable, based on the
14 nature, extent and frequency of the violation, and the risk to the
15 covered institution, depositors and the public. In addition to these
16 factors, the commissioner shall consider, when determining the amount
17 of a monetary penalty against an institution pursuant to paragraph (1)
18 of subsection a. of this section, the amount of other monetary
19 penalties, if any, imposed, or to be imposed, by another regulatory
20 agency or through other legal process, and the impact of the total
21 penalties on the institution.

22 c. A decision of the commissioner shall be a final order of the
23 department and shall be enforceable in a court of competent
24 jurisdiction.

25 d. The department shall publish the final adjudication issued in
26 accordance with this section, subject to redaction or modification to
27 preserve confidentiality.

28 e. Orders may be appealed as a final administrative action pursuant
29 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
30 et seq.).

31
32 5. Sections 249, 267 and 268 of P.L.1948, c.67 (C.17:9A-249,
33 C.17:9A-267 and C.17:9A-268) are repealed.

34
35 6. This act shall take effect on the 60th day following enactment
36 and shall apply to all actions occurring or continuing on or after that
37 date.

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STATEMENT

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42 This bill strengthens the enforcement powers of the Department of
43 Banking and Insurance with respect to State-chartered banks, savings
44 banks and savings and loans and provides for more consistent
45 enforcement authority across charter types. In so doing, the bill
46 provides the department with regulatory authority which corresponds

1 more closely to that of its federal regulatory counterparts.

2 Under the bill, the department may take enforcement action if any
3 person: (1) Fails to comply with an order of the Commissioner of
4 Banking and Insurance or any other financial regulatory agency; (2)
5 Violates a State or federal law; (3) Takes any action, or fails to take
6 an action, the result of which adversely affects a material interest of
7 the covered institution; (4) Is convicted of a crime that would permit
8 adverse action by a governmental agency pursuant to the law
9 concerning rehabilitated offenders, P.L.1968, c.282 (C.2A:168A-1 et
10 seq.); (5) Provides incorrect, misleading, incomplete or untrue material
11 information to the commissioner or any federal financial regulatory
12 agency about the covered institution; (6) Withholds material
13 information about the affairs of the covered institution; or (7) Takes
14 an action, or fails to take an action, the result of which poses a
15 substantial risk to the safety and soundness of the covered institution
16 or may cause substantial damage to its reputation.

17 Once a violation has occurred, the commissioner may impose a civil
18 penalty of up to \$10,000 for each violation, or up to \$50,000 for each
19 willful violation. The commissioner may also take other action as he
20 deems appropriate, such as: suspending, revoking, or refusing to
21 renew a license; temporarily or permanently removing an individual
22 responsible for a violation from working in any capacity related to
23 activities regulated by the department; ordering a person to cease and
24 desist any violation; ordering a person to make restitution for actual
25 damages; and entering an appropriate temporary order pending
26 completion of an investigation or proceeding if the interests of the
27 public require immediate action to prevent undue harm to the covered
28 institution

29 The bill applies to all State-chartered banks, savings banks and
30 savings and loan associations, and to the directors, officers, employees
31 and major stockholders of those depositories. Some of the
32 department's current enforcement powers vary depending on type of
33 charter (bank, savings bank or savings and loan association).

34 The bill also repeals the specific enforcement provisions in current
35 law that will be redundant once the enforcement provisions in the bill
36 take effect.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3981

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 2, 2005

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 3981.

As amended, this bill strengthens the enforcement powers of the Department of Banking and Insurance with respect to State-chartered banks, savings banks and savings and loans and provides for more consistent enforcement authority across charter types. In so doing, the bill provides the department with regulatory authority which corresponds more closely to that of its federal regulatory counterparts.

Under the bill, the department may take enforcement action if any person: (1) fails to comply with an order of the Commissioner of Banking and Insurance or any other financial regulatory agency; (2) violates a State or federal law; (3) takes any action, or fails to take an action, the result of which adversely affects a material interest of the covered institution; (4) is convicted of a crime that would permit adverse action by a governmental agency pursuant to the law concerning rehabilitated offenders, P.L.1968, c.282 (C.2A:168A-1 et seq.); (5) provides incorrect, misleading, incomplete or untrue material information to the commissioner or any federal financial regulatory agency about the covered institution; (6) withholds material information about the affairs of the covered institution; or (7) takes an action, or fails to take an action, the result of which poses a substantial risk to the safety and soundness of the covered institution or may cause substantial damage to its reputation.

Once a violation has occurred, the commissioner may impose a civil penalty of up to \$10,000 for each violation, or up to \$50,000 for each willful violation. The commissioner may also take other action as he deems appropriate, such as: suspending, revoking, or refusing to renew a license; temporarily or permanently removing an individual responsible for a violation from working in any capacity related to activities regulated by the department; ordering a person to cease and desist any violation; ordering a person to make restitution for actual damages; and entering an appropriate temporary order pending

completion of an investigation or proceeding if the interests of the public require immediate action to prevent undue harm to the covered institution, depositors or the public.

The bill applies to all State-chartered banks, savings banks and savings and loan associations, and to the directors, officers, employees and major stockholders of those depositories. Some of the department's current enforcement powers vary depending on type of charter (bank, savings bank or savings and loan association).

The committee amended the bill to: (1) revise the definition of a subsidiary; (2) expand the scope of the commissioner's powers to issue a temporary order to prevent undue harm to the public; and (3) repeal only that section of the current law pertaining to enforcement powers as to removing bank directors, officers or managers and to eliminate the repeal of certain other sections of law repealed by the bill as introduced.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3981

STATE OF NEW JERSEY

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably Assembly Bill No. 3981 (1R).

This bill strengthens the enforcement powers of the Department of Banking and Insurance with respect to State-chartered banks, savings banks and savings and loans and provides for more consistent enforcement authority across charter types. In so doing, the bill provides the department with regulatory authority which corresponds more closely to that of its federal regulatory counterparts.

Under the bill, the department may take enforcement action if any person: (1) fails to comply with an order of the Commissioner of Banking and Insurance or any other financial regulatory agency; (2) violates a State or federal law; (3) takes any action, or fails to take an action, the result of which adversely affects a material interest of the covered institution; (4) is convicted of a crime that would permit adverse action by a governmental agency pursuant to the law concerning rehabilitated offenders, P.L.1968, c.282 (C.2A:168A-1 et seq.); (5) provides incorrect, misleading, incomplete or untrue material information to the commissioner or any federal financial regulatory agency about the covered institution; (6) withholds material information about the affairs of the covered institution; or (7) takes an action, or fails to take an action, the result of which poses a substantial risk to the safety and soundness of the covered institution or may cause substantial damage to its reputation.

Once a violation has occurred, the commissioner may impose a civil penalty of up to \$10,000 for each violation, or up to \$50,000 for each willful violation. The commissioner may also take other action as he deems appropriate, such as: suspending, revoking, or refusing to renew a license; temporarily or permanently removing an individual responsible for a violation from working in any capacity related to activities regulated by the department; ordering a person to cease and desist any violation; ordering a person to make restitution for actual damages; and entering an appropriate temporary order pending completion of an investigation or proceeding if the interests of the public require immediate action to prevent undue harm to the covered institution, depositors or the public.

The bill applies to all State-chartered banks, savings banks and savings and loan associations, and to the directors, officers, employees and major stockholders of those depositories. Some of the department's current enforcement powers vary depending on type of charter (bank, savings bank or savings and loan association).

The committee amended the bill to: (1) revise the definition of a subsidiary; (2) expand the scope of the commissioner's powers to issue a temporary order to prevent undue harm to the public; and (3) repeal only that section of the current law pertaining to enforcement powers as to removing bank directors, officers or managers and to eliminate the repeal of certain other sections of law repealed by the bill as introduced.

As reported, this bill is identical to Senate Bill No. 2424 (1R) also as reported.

FISCAL IMPACT:

No fiscal information has been provided concerning this legislation.