

17:9A-382

**LEGISLATIVE HISTORY CHECKLIST**  
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(Capital Stock--savings banks)

**NJSA:** 17:9A-382

**LAWS OF:** 1995 **CHAPTER:** 24

**BILL NO:** A1680

**SPONSOR(S):** Bateman

**DATE INTRODUCED:** May 2, 1994

**COMMITTEE:** **ASSEMBLY:** Financial Institution  
**SENATE:** State Management

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** September 12, 1994  
**SENATE:** December 19, 1994

**DATE OF APPROVAL:** January 25, 1995

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBG:pp

1 AN ACT concerning capital stock savings banks and amending  
2 P.L.1987, c.201.

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

6 1. Section 1 of P.L.1987, c.201 (C.17:9A-382) is amended to  
7 read as follows:

8 1. As used in sections 1 through 27 of [this act] P.L.1987, c.201  
9 (C.17:9A-382 et seq.):

10 a. "Beneficial owner":

11 (1) Includes any person who, directly or indirectly through any  
12 contract, arrangement, understanding, relationship or otherwise,  
13 has or shares:

14 (a) Voting power which includes the power to vote, or to direct  
15 the voting of shares; or

16 (b) Investment power which includes the power to dispose, or  
17 to direct the disposition of shares;

18 (2) Includes any person who directly or indirectly creates or  
19 uses a trust, proxy, power of attorney, pooling arrangement or  
20 any other contract, arrangement or device with the purpose or  
21 effect of divesting the person of beneficial ownership of shares or  
22 preventing the vesting of such beneficial ownership as part of a  
23 plan or scheme to evade this act;

24 (3) Includes any person who has the right to acquire beneficial  
25 ownership of the shares as defined herein within sixty (60) days,  
26 including, but not limited to, any right to acquire:

27 (a) Through the exercise of any option, warrant or right;

28 (b) Through the conversion of a security;

29 (c) Pursuant to the power to revoke a trust, discretionary  
30 account, or similar arrangement; or

31 (d) Pursuant to the automatic termination of a trust,  
32 discretionary account or similar arrangement; except that, any  
33 person who acquires a security or power specified in subparagraph  
34 (a), (b), or (c) above, with the purpose or effect of changing or  
35 influencing the control of the issuer, or in connection with or as a  
36 participation in any transaction having such effect or purpose,  
37 immediately upon the acquisition shall be deemed to be the  
38 beneficial owner of the shares which may be acquired through the  
39 exercise or conversion of such security or power. Any securities  
40 not outstanding which are subject to these options, warrants,  
41 rights, or conversion privileges shall be deemed to be outstanding  
42 for the purpose of computing the percentage of outstanding  
43 securities of the class owned by the person but shall not be  
44 deemed to be outstanding for the purpose of computing the

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 percentage of the class by any other person;

2 (4) Does not include:

3 (a) Any member of a national securities exchange who holds  
4 shares directly or indirectly on behalf of another person solely  
5 because the member is the record holder of the securities and,  
6 pursuant to the rules of the exchange, may direct the vote of the  
7 shares without instruction on other than contested matters or  
8 matters that may affect substantially the rights or privileges of  
9 the holders of these shares to be voted, but is otherwise  
10 precluded by the rules of the exchange from voting without  
11 instruction; or

12 (b) Any person who in the ordinary course of business is a  
13 pledgee of securities under a written pledge agreement until the  
14 pledgee had taken all formal steps necessary which are required  
15 to declare a default and determines that the power to vote or  
16 direct a vote or to dispose or to direct the disposition of pledged  
17 shares will be exercised, provided that (i) the pledge agreement is  
18 bona fide and was not entered into with the purpose or the effect  
19 of changing or influencing the control of the issuer, or in  
20 connection with any transaction having any such purpose or  
21 effect including any transaction subject to this act; and (ii) the  
22 pledge agreement prior to default does not grant to the pledgee:  
23 (A) the power to vote or to direct the vote of the pledged  
24 securities; or (B) the power to dispose or to direct the disposition  
25 of the pledged securities other than the grant of this power  
26 pursuant to a pledged agreement under which credit is extended  
27 subject to Regulation T of the Federal Reserve Board, 12 C.F.R.  
28 220, and in which the pledgee is a broker or dealer registered  
29 under section 15 of the "Securities Exchange Act of 1934,"  
30 48 Stat. 895 (15 U.S.C. §78o); or

31 (c) Any person engaged in business as an underwriter of  
32 securities who acquires shares through participation in good faith  
33 in a firm commitment underwriting of shares registered under the  
34 "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. §77a et seq.), or  
35 under the "Securities Exchange Act of 1934," 48 Stat. 881  
36 (15 U.S.C. §78a et seq.), until the expiration of 40 days after the  
37 date of the acquisition.

38 All securities of the same class beneficially owned by a person,  
39 regardless of the forms the beneficial ownership takes, shall be  
40 aggregated in calculating the number of shares beneficially  
41 owned by the person.

42 b. "Capital stock savings bank" means any savings bank  
43 chartered pursuant to the provisions of P.L.1982, c.9  
44 (C.17:9A-8.1 et seq.) and includes any person that controls a  
45 capital stock savings bank.

46 c. "Commissioner" means the Commissioner of Banking.

47 d. "Control of a capital stock savings bank" includes:

48 (1) Owning, beneficially or otherwise, controlling, or having  
49 power to vote [5%] 25% or more of the outstanding shares of any  
50 class of voting securities of a capital stock savings bank, directly  
51 or indirectly, or acting through one or more persons;

52 (2) Controlling in any manner the election of a majority of the  
53 directors of a capital stock savings bank;

54 (3) Exercising or having the power to exercise directly or

1 indirectly a controlling influence over the management or  
2 policies of a capital stock savings bank; or

3 (4) Conditioning in any manner the transfer of [5%] 25% or  
4 more of any class of voting securities of a capital stock savings  
5 bank.

6 "Control of a capital stock savings bank" does not include a  
7 director or officer of a capital stock savings bank acting in the  
8 capacity of performing his duties or responsibilities of office.

9 e. "Converted savings bank" means an organizing mutual  
10 savings bank which has converted to a capital stock savings bank  
11 pursuant to the provisions of P.L.1982, c.9 (C.17:9A-8.1 et seq.)  
12 subsequent to the formation of a mutual savings bank holding  
13 company.

14 f. "Mutual savings bank holding company" means a mutual  
15 savings bank holding company which has its principal office of  
16 business in this State and which has been formed by an organizing  
17 mutual savings bank pursuant to sections 7 through 27 of [this  
18 act] P.L.1987, c.201 (C.17:9A-388 through 17:9A-406).

19 g. "Organizing mutual savings bank" means a mutual savings  
20 bank which has its principal office of business in this State, the  
21 board of managers of which propose to form a mutual savings  
22 bank holding company pursuant to the provisions of this act.

23 h. "Person" means an individual, bank, corporation, savings  
24 bank, savings and loan association, partnership, trust, association,  
25 joint venture, pool, syndicate, sole proprietorship, unincorporated  
26 organization, or any form of entity.

27 i. "Subsidiary capital stock savings bank" means a capital  
28 stock savings bank which has been incorporated by the directors  
29 of a mutual savings bank holding company, a majority of the  
30 stock of which subsidiary capital stock savings bank is held by a  
31 mutual savings bank holding company.

32 j. "Voting power" means that a person has or shares, directly  
33 or indirectly, through any option, contract, arrangement,  
34 understanding, conversion right or relationship, or by acting  
35 jointly or in concert or otherwise, the power to vote, or to direct  
36 the voting of voting shares.

37 k. "Department" means the Department of Banking.

38 l. "Capital stock savings bank holding company" means a bank  
39 holding company that has issued or intends to issue voting capital  
40 stock; and which controls one or more savings banks located in  
41 this State or any other state, the aggregate deposits of which  
42 controlled savings banks exceed the aggregate deposits of the  
43 bank holding company's subsidiaries which are banks, banks  
44 incorporated in other states or national banks wherever their  
45 principal office is located.

46 m. "Bank holding company" means a bank holding company  
47 subject to the "Bank Holding Company Act of 1956," 70 Stat. 133  
48 (12 U.S.C. §1841 et seq.).

49 n. "Bank" means a bank as defined in subsection (1) of section  
50 1 of P.L.1948, c.67 (C.17:9A-1), a national banking association  
51 having its principal office in this State and a bank holding  
52 company.

53 (cf: P.L.1987, c.201, s.1)

54 2. Section 2 of P.L.1987, c.201 (C.17:9A-383) is amended to

1 read as follows:

2 2. No person shall, without the prior approval of the  
3 commissioner, acting directly or indirectly or through or in  
4 concert with one or more persons:

5 a. Obtain or exercise control of a capital stock savings bank;

6 b. Offer to acquire beneficial ownership or control of any  
7 voting shares of a capital stock savings bank if, after the  
8 acquisition, the person would beneficially own or control more  
9 than [5%] 25% of the then-outstanding voting shares of the  
10 capital stock savings bank; or

11 c. Acquire beneficial ownership or control of any voting shares  
12 of a capital stock savings bank, if, after the acquisition, the  
13 person would beneficially own or control more than [5%] 25% of  
14 the then-outstanding voting shares of the capital stock savings  
15 bank.

16 (cf: P.L.1987, c.201, s.2)

17 3. Section 3 of P.L.1987, c.201 (C.17:9A-384) is amended to  
18 read as follows:

19 3. a. An application by a person for the approval of the  
20 commissioner to obtain control of a capital stock savings bank, to  
21 offer to acquire beneficial ownership or control of more than  
22 [5%] 25% of the voting shares of a capital stock savings bank, or  
23 to acquire beneficial ownership or control of more than [5%] 25%  
24 of the voting shares of a capital stock savings bank shall be made  
25 on a form provided by the commissioner. The commissioner shall  
26 give notice to the capital stock savings bank involved in the  
27 proposed transaction and, upon request, shall send a copy of the  
28 application to the capital stock savings bank within five business  
29 days of receiving the application. [The] If the commissioner  
30 decides to hold a hearing on the application, he notice shall  
31 include the hearing date established pursuant to subsection b. of  
32 this section.

33 No later than 10 days after the date upon which a completed  
34 application is filed with the commissioner, the applicant shall  
35 cause to be published a notice of application for control of a  
36 capital stock savings bank. This publication shall be made in a  
37 newspaper of general circulation in the county in which the  
38 capital stock savings bank has its principal office. The notice  
39 shall include whatever information the commissioner, by  
40 regulation, deems to be necessary and appropriate.

41 b. The commissioner [shall] may hold a hearing on the  
42 application within 60 days of receipt of the completed  
43 application[, and] . If the commissioner decides to hold a hearing  
44 on the application, the commissioner shall notify the applicant as  
45 to the date of the hearing [at the time the application is filed]  
46 within five business days of the date the commissioner receives  
47 the completed application. The hearing shall be held in  
48 accordance with the provisions of the "Administrative Procedure  
49 Act," P.L.1968, c.410 [C.52:14B-1 et seq.] and any rules and  
50 regulations promulgated by the commissioner.

51 (cf: P.L.1987, c.201, s.3)

52 4. Section 5 of P.L.1987, c.201 (C.17:9A-386) is amended to  
53 read as follows:

54 5. a. Any shares in excess of [5%] 25% of the outstanding

1 voting shares of a capital stock savings bank which are acquired  
2 in violation of sections 2 through 4 of [this act] P.L.1987, c.201  
3 (C.17:9A-383 through 17:9A-385) shall not be eligible to be voted  
4 and shall not be counted in determining the number of shares  
5 outstanding for the purpose of determining the number or percent  
6 of shares required for shareholder action.

7 b. All shares of stock in a capital stock savings bank shall be  
8 registered in the name of the true owner of the shares, and if  
9 held as nominee or in trust or otherwise for the benefit of any  
10 other person, the person listed as registered owner shall disclose  
11 to the capital stock savings bank the names and addresses of all  
12 persons who hold a beneficial interest in the shares on written  
13 demand by the capital stock savings bank.

14 (cf: P.L.1987, c.201, s.5)

15 5. Section 6 of P.L.1987, c.201 (C.17:9A-387) is amended to  
16 read as follows:

17 6. a. Whenever it appears to the commissioner that any person  
18 has engaged in or is about to engage in any act or practice which  
19 constitutes a violation of sections 2 through 5 of [this act]  
20 P.L.1987, c.201 (C.17:9A-383 through 17:9A-386) or any  
21 regulations promulgated pursuant thereto, the commissioner may  
22 conduct an investigation and issue cease and desist orders if he  
23 deems it necessary. In addition to all other remedies, the  
24 commissioner may bring an action in the Superior Court, Law  
25 Division on behalf of the State against any person or persons  
26 participating in or about to participate in a violation. In any  
27 court proceeding, the commissioner may apply for and shall be  
28 entitled to have issued the court's subpoena requiring the  
29 appearance of any defendant and the defendant's employees or  
30 agents, and the production of documents, books and records as  
31 may be necessary for the hearing of the action. Upon a proper  
32 showing, the court may grant a permanent or preliminary  
33 injunction or temporary restraining order or may order the  
34 rescission of any sale, tender for sale, purchase or tender for  
35 purchase of equity securities determined to be unlawful under  
36 sections 2 through 5 of [this act] P.L.1987, c.201 (C.17:9A-383  
37 through 17:9A-386).

38 b. Whenever any person has engaged in or is about to engage in  
39 any act or practice which constitutes a violation of sections 2  
40 through 5 of [this act] P.L.1987, c.201 (C.17:9A-383 through  
41 17:9A-386) or any regulation or order issued thereunder, the  
42 capital stock savings bank or any record or beneficial owner of an  
43 equity security of the capital stock savings bank may bring an  
44 action to enjoin the person from continuing or doing any act in  
45 violation of this act. Upon a proper showing, the court may grant  
46 a permanent or preliminary injunction or temporary restraining  
47 order or may order the rescission of any sale, tender for sale,  
48 purchase or tender for purchase of equity securities determined  
49 to be unlawful under [this act] P.L.1987, c.201 (C.17:9A-382 et  
50 seq.) or under any regulation or order of the commissioner.

51 c. [Any person who knowingly violates any provision of  
52 sections 2 through 5 of this act may be imprisoned for a period  
53 not to exceed one year, or fined an amount not to exceed  
54 \$100,000.00, or both.

1 d.] (1) In addition to any other penalties herein or otherwise  
2 provided by law, the commissioner may, upon notice and hearing  
3 impose a penalty not exceeding \$10,000.00 for any violation of  
4 sections 2 through 5 of [this act] P.L.1987, c.201 (C.17:9A-383  
5 through 17:9A-386) or of any rule or regulation promulgated  
6 thereto. The penalty shall be recovered by and in the name of  
7 the commissioner in a civil action by a summary proceeding under  
8 "the penalty enforcement law," N.J.S. 2A:58-1 et seq., in the  
9 Superior Court, Law Division. [Where] Whenever any violation of  
10 sections 2 through 5 of [this act] P.L.1987, c.201 (C.17:9A-383  
11 through 17:9A-386) or of any regulation hereunder is of a  
12 continuing nature, each day during which the violation continues  
13 shall constitute an additional, separate and distinct offense,  
14 except during the time an appeal from the order or notice may be  
15 taken or is pending.

16 (2) Sections 2 through 6 of [this act] P.L.1987, c.201  
17 (C.17:9A-383 through 17:9A-387) shall apply to all capital stock  
18 savings banks organized pursuant to P.L.1982, c.9 (C.17:9A-8.1 et  
19 seq.) whether chartered prior to or after the enactment of this  
20 act. Any person who prior to the effective date of this act  
21 directly or indirectly, beneficially owned or controlled more than  
22 [5%] 25% of the outstanding voting shares of a capital stock  
23 savings bank may continue such ownership after the effective  
24 date of this act without approval of the commissioner. This act  
25 shall not be construed to limit the applicability of any law  
26 governing the acquisition of securities.

27 (3) Sections 2 through 6 of [this act] P.L.1987, c.201  
28 (C.17:9A-383 through 17:9A-387) shall not apply to any merger of  
29 a capital stock savings bank with another capital stock savings  
30 bank or mutual savings bank. The provisions of P.L.1982, c.9  
31 (C.17:9A-8.1 et seq.) and sections 132 through 148 of P.L.1948,  
32 c.67 (C.17:9A-132 [to] through C.17:9A-148) shall be the  
33 exclusive governing provisions.

34 (4) Notwithstanding any other law of this State, the provisions  
35 contained in sections 2 through 6 of [this act] P.L.1987, c.201  
36 (C.17:9A-383 through 17:9A-387) shall also apply to an  
37 acquisition of voting shares of a bank or company which controls  
38 a bank by a savings bank or a savings bank holding company if,  
39 after the acquisition, the savings bank or savings bank holding  
40 company would beneficially own or control more than [5%] 25%  
41 of the outstanding voting shares of the bank or company which  
42 controls a bank. For the purpose of this paragraph (4), "savings  
43 bank" means any capital stock savings bank or mutual savings  
44 bank chartered under the laws of this State; "savings bank holding  
45 company" means any company located in this State which  
46 controls a savings bank and does not also control a bank; and  
47 "bank" shall have the same definition as provided in subsection  
48 (1) of section 1 of P.L.1948, c.67 (C.17:9A-1) and shall also  
49 include a national banking association having its principal office  
50 in this State.

51 (cf: P.L.1987, c.201, s.6)

52 6. This act shall take effect immediately.

## STATEMENT

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3 Under the bill, control of a capital stock savings bank is  
4 defined as owning, controlling, having the power to vote or  
5 conditioning the transfer of 25% or more of the outstanding  
6 shares of voting securities of the capital stock savings bank,  
7 instead of the current limit of 5% of such shares. A person is  
8 required to obtain prior approval from the commissioner before  
9 obtaining or exercising control of 25% or more of the  
10 outstanding shares of voting securities of a capital stock savings  
11 bank. In addition, any subsequent acquisition or offer to acquire  
12 outstanding shares of voting securities which would result in  
13 control of more than 25% of the outstanding shares of voting  
14 securities also needs prior approval of the commissioner. Under  
15 current law, a similar requirement applies whenever a person  
16 obtains or offers to obtain 5% or more of the outstanding shares  
17 of voting securities.

18 Under the bill, the commissioner is given the discretion, rather  
19 than being required, to hold a hearing on an application for  
20 approval to obtain control of a capital stock savings bank and on  
21 any subsequent acquisitions of or offers to acquire outstanding  
22 shares of voting securities which would result in control of more  
23 than 25% of such shares. If the commissioner decides to hold  
24 hearing, notice of the date and time is to be given to the capital  
25 stock savings bank and the applicant within five days of the date  
26 the completed application is received by the commissioner.

27 The bill removes the criminal penalty of imprisonment for  
28 persons knowingly violating any provisions related to change of  
29 control of a capital stock savings bank.

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34 Concerns control of capital stock savings banks.

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ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1680

STATE OF NEW JERSEY

DATED: MAY 12, 1994

The Assembly Financial Institutions Committee reports favorably Assembly Bill No. 1680.

Under the bill, control of a capital stock savings bank is defined as owning, controlling, having the power to vote or conditioning the transfer of 25% or more of the outstanding shares of voting securities of the capital stock savings bank, instead of the current limit of 5% of such shares. A person is required to obtain prior approval from the commissioner before obtaining or exercising control of 25% or more of the outstanding shares of voting securities of a capital stock savings bank. In addition, any subsequent acquisition or offer to acquire outstanding shares of voting securities which would result in control of more than 25% of the outstanding shares of voting securities also needs prior approval of the commissioner. Under current law, a similar requirement applies whenever a person obtains or offers to obtain 5% or more of the outstanding shares of voting securities.

Under the bill, the commissioner is given the discretion, rather than being required, to hold a hearing on an application for approval to obtain control of a capital stock savings bank and on any subsequent acquisitions of or offers to acquire outstanding shares of voting securities which would result in control of more than 25% of such shares. If the commissioner decides to hold a hearing, notice of the date and time is to be given to the capital stock savings bank and the applicant within five days of the date the completed application is received by the commissioner.

The bill removes the criminal penalty of imprisonment for persons knowingly violating any provisions related to change of control of a capital stock savings bank.

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SENATE STATE MANAGEMENT, INVESTMENTS  
AND FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1680

STATE OF NEW JERSEY

DATED: OCTOBER 17, 1994

The Senate State Management, Investments and Financial Institutions Committee reports favorably Assembly Bill No. 1680.

Under this bill, control of a capital stock savings bank is defined as owning, controlling, having the power to vote or conditioning the transfer of 25% or more of the outstanding shares of voting securities of the capital stock savings bank, instead of the current limit of 5% of such shares. A person is required to obtain prior approval from the Commissioner of Banking before obtaining or exercising control of 25% or more of the outstanding shares of voting securities of a capital stock savings bank. In addition, any subsequent acquisition or offer to acquire outstanding shares of voting securities which would result in control of more than 25% of the outstanding shares of voting securities also needs prior approval of the commissioner. Under current law, a similar requirement applies whenever a person obtains or offers to obtain 5% or more of the outstanding shares of voting securities.

The Commissioner of Banking is given the discretion, rather than being required, to hold a hearing on an application for approval to obtain control of a capital stock savings bank and on any subsequent acquisitions of or offers to acquire outstanding shares of voting securities which would result in control of more than 25% of such shares. If the commissioner decides to hold hearing, notice of the date and time is to be given to the capital stock savings bank and the applicant within five days of the date the completed application is received by the commissioner.

The bill removes the criminal penalty of imprisonment for persons knowingly violating any provisions related to change of control of a capital stock savings bank.