

17:9A-6

LEGISLATIVE HISTORY CHECKLIST

HISA 17:9A-6 (Bank mergers to be effected by certain methods)

LAWS OF 1977 CHAPTER 417

Bill No. S3229

Sponsor(s) Merlino

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Committee: Assembly Banking & Insurance

Senate Labor, Industry & Professions

Amended during passage Yes

* Amendments during passage denoted by asterisks

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Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
Senate	Yes	No
Fiscal Note	Yes	No
Veto message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

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SENATE, No. 3229

STATE OF NEW JERSEY

INTRODUCED APRIL 25, 1977

By Senator MERLINO

Referred to Committee on Labor, Industry and Professions

AN ACT to amend "The Banking Act of 1948," approved April 29,
1948 (P. L. 1948, c. 67).

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

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

3 6. A. Except as otherwise provided in this section the par value of
4 the shares of the capital stock issued by any bank shall be not less
5 than \$2.00 per share.

6 B. **[No** bank shall create more than one class of stock, except to
7 the extent and for the purposes in this act or otherwise by law
8 expressly provided.] *A bank may create and issue common stock*
9 *and preferred stock.*

10 C. The minimum par value imposed by subsection A of this
11 section shall not apply to stock issued before the effective date of
12 this act. Notwithstanding any other provision of this act, any bank
13 heretofore organized may, in increasing or decreasing its capital
14 stock, or in converting its preferred stock into common stock,
15 assign to its shares the same par value as that assigned to such
16 stock issued and outstanding on the effective date of this act.

1 2. Section 124 of P. L. 1948, c. 67 (C. 17:9A-124) is amended to
2 read as follows:

3 124. **[No** A bank **[shall hereafter** may issue preferred stock
4 **[except**

5 (1) Upon its organization as a successor bank pursuant to
6 section 16; or

7 (2) Upon its reorganization pursuant to Article 24; or

8 (3) Upon amending its certificate of incorporation as provided
9 by Article 19, upon the vote of the holders of at least two-thirds of
10 the shares of each class of stock issued by the bank; **[but 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.**

11 commissioner shall not approve such a certificate of amendment
 12 unless he shall find that the issuance of such preferred stock is in
 13 the public interest] *or*

14 (4) *As an incident of a merger when it is a receiving bank as*
 15 *defined in section 132 (C. 17:9A-132).*

1 3. Section 125 of P. L. 1948, c. 67 (C. 17:9A-125) is amended to
 2 read as follows:

3 125. A. The certificate of incorporation of every bank hereafter
 4 authorized to issue preferred stock upon its organization pursuant
 5 to section 16, and the certificate of amendment to the certificate of
 6 incorporation of every other bank hereafter issuing preferred
 7 stock, *and every merger agreement hereafter effected which pro-*
 8 *vides for the issuance of preferred stock* shall state:

9 (1) The number of classes of preferred stock to be issued, and
 10 the number of shares in each class;

11 (2) The par value of the shares of each class of preferred stock;

12 (3) The issue price of each share of preferred stock, *except that,*
 13 *when preferred stock is issued in exchange for the capital stock of*
 14 *a merging bank pursuant to Article 21, the issue price shall be the*
 15 *par value of such preferred stock;*

16 (4) When the issue price exceeds the par value, the use to which
 17 the excess over the par value is to be put;

18 (5) The priorities, preferences, and rights of each class of
 19 preferred stock;

20 (6) If the preferred stock is to be subject to retirement, the
 21 retirement price of each share thereof;

22 (7) If the preferred stock is to be subject to conversion into
 23 common stock, the terms and conditions upon which such conversion
 24 shall be effected;

25 (8) The rate of dividend to be paid on the preferred stock, and
 26 whether such rate is to be based upon the par value or the issue
 27 price of the stock;

28 (9) If a sinking fund is to be established for the retirement of
 29 preferred stock, the terms and conditions governing the establish-
 30 ment and maintenance of such fund;

31 (10) The amount which shall be paid upon each such share of
 32 preferred stock upon the dissolution of the bank.

33 B. In addition to the matters required by subsection A of this
 34 section, the [certificate of incorporation or certificate of amend-
 35 ment] *original or amended certificate of incorporation and the*
 36 *merger agreement pursuant to which preferred stock is issued may*
 37 *contain such other provisions as may be necessary or convenient,*
 38 *including, by way of description and not by way of limitation,*

39 (1) A provision that, upon a meeting called to approve the
40 voluntary dissolution of the bank, the holders of preferred stock
41 may have two votes for each share of stock;

42 (2) A provision for the increase of the common stock, without
43 further act of the stockholders, upon the conversion of preferred
44 stock into common stock;

45 (3) A provision that, upon the issuance of preferred stock, or
46 upon the issuance of common stock to effect a conversion of pre-
47 ferred stock, such stock may be issued without an offer thereof to
48 existing stockholders.

1 4. Section 126 of P. L. 1948, c. 67 (C. 17:9A-126) is amended to
2 read as follows:

3 126. Every issue of preferred stock shall be subject to the
4 following:

5 (1) The issue price for each share shall be not less than the
6 par value, and shall be the same for all shares included within a
7 single class;

8 (2) So long as a bank is not in default in the payment of divi-
9 dends on preferred stock, or in meeting any requirements specified
10 in its certificate of incorporation *or in a merger agreement provid-*
11 *ing for the issuance of preferred stock* for the maintenance of a
12 sinking fund for the retirement of preferred stock, the holders of
13 preferred stock shall have no greater voting rights than the
14 holders of common stock; but, if so provided in the certificate of
15 incorporation *or merger agreement*, the holders of preferred stock
16 of any class or classes shall, upon either such default, have two
17 votes for each share of such stock so held;

18 (3) The retirement price, if any, of each share of preferred stock
19 shall be not less than its par value or greater than its issue price,
20 plus any accrued dividends thereon;

21 (4) No more than the par value of shares of preferred stock
22 shall be charged against the capital stock of a bank upon retire-
23 ment of such stock;

24 (5) No preferred stock shall be retired if the effect of such
25 retirement would be to reduce the capital stock of the bank below
26 the minimum specified in section 121;

27 (6) The valuation placed upon preferred stock for the purpose
28 of its conversion into common stock shall be not less than its par
29 value ***[or greater than its issue price]*** **nor greater than the price*
30 *approved by the commissioner on the issue of such preferred*
31 *stock**, plus any accrued dividends thereon. The valuation placed
32 upon common stock issued on the conversion of preferred stock
32A shall be not less than par value of such common stock;

33 (7) The dividend rate shall not exceed 6% per annum of the
 34 par value of such stock or of the issue price thereof, if the issue
 35 price is greater; *except that the commissioner may approve a rate*
 36 *in excess of 6% per annum ***【but not in excess of the rate which***
 37 *national banks are authorized to pay on preferred stock at the*
 38 *time of issuance of such stock by a bank**】*** *if, upon application, the*
 39 *commissioner deems a higher rate is appropriate after giving con-*
 40 *sideration to the bank's capital, surplus, and earnings*.*

41 **【(8) Dividends on all preferred stock shall be cumulative.】**

1 5. Section 127 of P. L. 1948, c. 67 (C. 17:9A-127) is amended to
 2 read as follows:

3 127. No dividend shall be declared or paid on common stock until
 4 all accrued dividends shall have been paid on preferred stock, or
 5 until funds shall have been set aside for such payment; nor shall
 6 any dividends be paid on common stock until the provisions, if any,
 7 of the certificate of incorporation *or merger agreement* governing
 8 the establishment and maintenance of a sinking fund for the retire-
 9 ment of preferred stock, shall have been satisfied.

1 6. Section 128 of P. L. 1948, c. 67 (C. 17:9A-128) is amended to
 2 read as follows:

3 128. Upon a bank's dissolution in any manner, the holders of
 4 preferred stock shall be entitled to receive in full the amount
 5 specified in the certificate of incorporation *or merger agreement*
 6 *providing for the issuance of preferred stock*, before any distribu-
 7 tion is made to the holders of common stock.

1 7. Section 132 of P. L. 1948, c. 67 (C. 17:9A-132) is amended to
 2 read as follows:

3 132. As used in this article:

4 (1) "Merging bank" mean a bank which is merged, or which
 5 is in process of being merged, into another bank; and, in a case
 6 where a national banking association is merged into or consolidated
 7 with, or is in process of being merged into or consolidated with,
 8 a bank under the charter of such bank, "merging bank" also means
 9 such national banking association;

10 (2) "Receiving bank" means a bank into which one or more
 11 other banks are merged, or are in process of being merged; and,
 12 in a case where a national banking association is merged into or
 13 consolidated with, or is in process of being merged into or con-
 14 solidated with, a bank under the charter of such bank, "receiving
 15 bank" also means the bank into which such national banking
 16 association is merged or consolidated, or is in process of being
 17 merged or consolidated;

18 (3) *“Company” as used in sections 133 and 134 (C. 17:9A-133*
 19 *and 17:9A-134) means a corporation, joint stock company, business*
 20 *trust, general or limited partnership, voting trust and any similar*
 21 *organized group of persons whether incorporated or not, owning*
 22 *more than 25% of the capital stock of a receiving bank after a*
 23 *merger is effected.*

1 8. Section 133 of P. L. 1948, c. 67 (C. 17:9A-133) is amended to
 2 read as follows:

3 133. *A.* Any two or more banks may, with the approval of the
 4 commissioner, merge one or more of them into another of them as
 5 provided in this article.

6 *B.* *A merger may be effected by any one or by any combination*
 7 *of any two or more or all of the following methods:*

8 (1) *By the exchange of shares of capital stock of each merging*
 9 *bank for the shares of capital stock of the receiving bank;*

10 (2) *By the exchange of shares of capital stock of each merging*
 11 *bank for the shares of capital stock of a company as such term is*
 12 *defined in paragraph (3) of section 132 (C. 17:9A-132);*

13 (3) *By the exchange of shares of capital stock of each merging*
 14 *bank for capital notes of the receiving bank;*

15 (4) *By the exchange of shares of capital stock of each merging*
 16 *bank for cash received from the receiving bank or from a company*
 17 *as such term is defined in paragraph (3) of section 132*
 18 *(C. 17:9A-132);*

19 (5) *By the exchange of shares of capital stock of each merging*
 20 *bank for capital notes of a company as such term is defined in*
 21 *paragraph (3) of section 132 (C. 17:9A-132).*

1 9. Section 134 of P. L. 1948, c. 67 (C. 17:9A-134) is amended to
 2 read as follows:

3 134. *A.* The boards of directors of the several banks proposing
 4 to merge shall authorize the execution of a merger agreement which
 5 shall contain:

6 (1) The name of each merging bank and the location of the
 7 principal office and branch offices of each merging bank;

8 (2) The name of the receiving bank and the location of its
 9 principal office and branch offices;

10 (3) The name by which the receiving bank will be known after
 11 the merger is effected;

12 (4) The names of the persons who will be the directors of the
 13 receiving bank;

14 (5) The names of the persons who will be officers of the
 15 receiving bank;

16 (6) The location then occupied by the principal office or a branch
 17 office of a merging bank or the receiving bank at which the principal
 18 office of the receiving bank will be maintained;

19 (7) The locations then occupied by the principal offices and
 20 branch offices of the merging banks and the receiving bank which
 21 will be continued as branch offices of the receiving bank;

22 (8) The effective date of the merger;

23 (9) The amount of the capital stock, the number of shares into
 24 which it will be divided, the par value of each share, and the amount
 25 of the surplus which the receiving bank will have after the merger
 26 is effected;

27 (10) **【**The basis upon which shares of each merging bank will be
 28 exchanged for shares of the receiving bank or of a company as
 29 such term is defined in P. L. 1957, c. 70, § 1 (C. 17:9A-344), as
 30 amended, owning more than 25% of the capital stock of such receiv-
 31 ing bank after the merger is effected**】** *The basis upon which shares*
 32 *of each merging bank will be exchanged for shares of capital stock*
 33 *of the receiving bank, or for shares of capital stock of a company*
 34 *as such term is defined in paragraph (3) of section 132*
 35 *(C. 17:9A-132), or for capital notes, or for cash, or for any one*
 36 *or more or all of the foregoing, as the case may be;*

37 (11) *A provision stating whether the capital notes to be issued*
 38 *pursuant to such agreement shall be convertible into shares of*
 39 *capital stock of the receiving bank, and, if so, shall contain a further*
 40 *provision for authorized but unissued shares of capital stock of*
 41 *the receiving bank in an aggregate par value sufficient to effect the*
 42 *conversion of such notes into such shares of capital stock of the*
 43 *receiving bank;*

44 (12) *If the merger agreement provides for the issuance of*
 45 *preferred stock, the provisions stated in subsection B of section 125*
 46 *(C. 17:9A-125);*

47 **【(11)】** (13) Such other provisions, *including the provisions*
 48 *stated in subsection B of section 125 (C. 17:9A-125), not incon-*
 49 *sistent with the provisions of this act, as may be necessary or*
 50 *appropriate to effect the merger.*

51 *B. Capital notes issued pursuant to this section shall conform*
 52 *with and be subject to sections 4, 8, 9 and 10 of P. L. 1966, chapter*
 53 *272, (C. 17:9A-131.23, 17:9A-131.27, 17:9A-131.28, and*
 54 *17:9A-131.29).*

1 10. Section 147 of P. L. 1948, c. 67 (C. 17:9A-147) is amended to
 2 read as follows:

3 147. A. The receiving bank shall require each stockholder of
4 each merging bank to surrender his certificates of *capital stock* of
5 each such bank, and shall, upon such surrender, issue *or deliver* in
6 lieu thereof, certificates for such number of its own shares of *capital*
7 *stock and such number of shares of capital stock of a company, as*
8 *such term is defined in paragraph (3) of section 132 (C. 17:9A-132),*
9 *and such amount of capital notes or cash,* as such stockholder is
10 entitled to receive pursuant to the terms of the merger agreement.

11 B. The increase in a receiving bank's capital stock resulting from
12 the issuance of its shares of *capital stock* in exchange for the shares
13 of *capital stock* of each merging bank, *or in exchange for con-*
14 *vertible capital notes converted into shares of capital stock* pursuant
15 to the merger agreement shall not entitle the stockholders of the
16 receiving bank to acquire additional shares of *capital stock*.

1 11 This act shall take effect immediately.

7 *stock and such number of shares of capital stock of a company, as*
8 *such term is defined in paragraph (3) of section 132 (C. 17:9A-132),*
9 *and such amount of capital notes or cash, as such stockholder is*
10 entitled to receive pursuant to the terms of the merger agreement.

11 B. The increase in a receiving bank's capital stock resulting from
12 the issuance of its shares *of capital stock* in exchange for the shares
13 *of capital stock* of each merging bank, *or in exchange for con-*
14 *vertible capital notes converted into shares of capital stock* pursuant
15 to the merger agreement shall not entitle the stockholders of the
16 receiving bank to acquire additional shares *of capital stock*.

1 11 This act shall take effect immediately.

STATEMENT

Under present law, bank mergers may be effected only by the exchange of the receiving bank's shares for shares of the merging bank or banks. This bill would permit a merger to be effected by one or more or all of the following methods:

a. By the exchange of shares of capital stock of each merging bank for the shares of capital stock of a company as such term is defined in paragraph (3) of section 132 of the Banking Act;

b. By the exchange of shares of capital stock of each merging bank for capital notes of the receiving bank;

c. By the exchange of shares of capital stock of each merging bank for cash received from the receiving bank or from a company as such term is defined in paragraph (3) of section 132 of the Banking Act;

d. By the exchange of shares of capital stock of each merging bank for capital notes of a company as such term is defined in paragraph (3) of section 132 of the Banking Act.

A companion bill is being introduced with this bill to make changes in the law applicable to capital notes which are necessary to carry out the purposes of this bill.