

SENATE, No. 307

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators INVERSO and KENNY

1 AN ACT concerning banking and revising parts of the statutory law.

2

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

5

6 1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read as
7 follows:

8 1. In this act, unless the context otherwise requires:

9 "Association" means any State or federally chartered savings and
10 loan association;

11 "Capital funds" means (a) in the case of a State bank or national
12 bank or capital stock savings bank, the aggregate of the capital stock,
13 surplus and undivided profits of the bank or savings bank; (b) in the
14 case of a mutual savings bank, the aggregate of the capital deposits,
15 if any, and the surplus of the savings bank; and (c) in the case of an
16 association, the aggregate of all reserves required by any law or
17 regulation, and the undivided profits, if any, of the association;

18 "Commissioner" means the Commissioner of Banking;

19 "Defaulting depository" means a public depository as to which an
20 event of default has occurred;

21 "Eligible collateral" means:

22 (a) Obligations of any of the following:

23 (1) The United States;

24 (2) Any agency or instrumentality of the United States, including,
25 but not limited to, the Student Loan Marketing Administration, the
26 Government National Mortgage Association, the Federal Home Loan
27 Mortgage Corporation, the Federal National Mortgage Association,
28 the Federal Housing Administration and the Small Business
29 Administration;

30 (3) The State of New Jersey or any of its political subdivisions;

31 (4) Any other governmental unit; or

32 (b) Obligations guaranteed or insured by any of the following, to

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.

1 the extent of that insurance or guaranty:

2 (1) The United States;

3 (2) Any agency or instrumentality of the United States, including,
4 but not limited to, the Student Loan Marketing Administration, the
5 Government National Mortgage Association, the Federal Home Loan
6 Mortgage Corporation, the Federal National Mortgage Association,
7 the Federal Housing Administration and the Small Business
8 Administration;

9 (3) The State of New Jersey or any of its political subdivisions; or

10 (c) Obligations now or hereafter authorized by law as security for
11 public deposits;

12 (d) Obligations in which the State, political subdivisions of the
13 State, their officers, boards, commissions, departments and agencies
14 may invest pursuant to an express authorization under any law
15 authorizing the issuance of those obligations; or

16 (e) Any other obligations as may be approved by the commissioner
17 by regulation or by specific approval;

18 "Event of default" means issuance of an order of a supervisory
19 authority or of a receiver restraining a public depository from making
20 payments of deposit liabilities;

21 "Governmental unit" means any county, municipality, school district
22 or any public body corporate and politic created or established under
23 any law of this State by or on behalf of any one or more counties or
24 municipalities, or any board, commission, department or agency of any
25 of the foregoing having custody of funds;

26 "Maximum liability" of a public depository means, with respect to
27 any event of default, a sum equal to 5% of the average daily balance
28 of collected public funds held on deposit by the depository during the
29 six-month period ending on the last day of the month next preceding
30 the occurrence of such event of default;

31 "Net deposit liability" means the deposit liability of a defaulting
32 depository to a governmental unit after deduction of any deposit
33 insurance with respect thereto;

34 "Obligations" means any bonds, notes, capital notes, bond
35 anticipation notes, tax anticipation notes, temporary notes, loan bonds,
36 mortgage related securities, or mortgages;

37 "Public depository" means a State or federally chartered bank, [a
38 national bank, a] savings bank or an association located in this State
39 or a state or federally chartered bank, savings bank or an association
40 located in another state with a branch office in this State, the deposits
41 of which are insured by the Federal Deposit Insurance Corporation [or
42 the Federal Savings and Loan Insurance Corporation, as the case may
43 be,]and which receives or holds public funds on deposit;

44 "Public funds" means the funds of any governmental unit, but does
45 not include deposits held by the State of New Jersey Cash
46 Management Fund;

1 "Valuation date" means December 31 and June 30.
2 (cf: P.L.1986, c.161, s.1)
3

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

6 1. As used in this act, and except as otherwise expressly provided
7 in this act:

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

9 (a) Every corporation heretofore organized pursuant to the act
10 entitled "An act concerning banks and banking (Revision of 1899)," approved March 24, 1899;
11

12 (b) Every corporation heretofore organized pursuant to the act
13 entitled "An act concerning trust companies (Revision of 1899)," approved March 24, 1899;
14

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

17 (d) Every corporation, other than a savings bank, heretofore G56
18 authorized by any general or special law of this State to transact
19 business as a bank or as a trust company, or as both;

20 (e) Every corporation hereafter organized pursuant to article 2 of
21 this act;

22 (2) "Banking institution" shall mean a bank, an out-of-State bank
23 having a branch office in this State, an out-of-country bank having a
24 branch office in this State, savings bank, and a national banking
25 association having its principal or a branch office in this State;

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

28 (4) "Capital stock" shall include both common stock and preferred
29 stock;

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

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

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

38 (6) "Commissioner" shall mean the Commissioner of Banking of
39 New Jersey;

40 (7) "Department" shall mean the Department of Banking of New
41 Jersey;

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

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

- 1 (10) "Municipality" shall mean a city, town, township, village, and
2 borough of this State;
- 3 (11) "Population" shall mean the population as determined by the
4 latest federal census or as determined by the commissioner from other
5 information which he may deem reliable;
- 6 (12) "Qualified bank" shall mean:
- 7 (a) A bank or an out-of-State bank with a branch office in New
8 Jersey which has heretofore been authorized or which shall hereafter
9 be authorized to exercise any of the powers authorized by section 28
10 of P.L.1948, c.67 (C.17:9A-28);
- 11 (b) A savings bank which has heretofore been authorized or which
12 shall hereafter be authorized to exercise any of the powers authorized
13 by section 28 of P.L.1948, c.67 (C.17:9A-28); and
- 14 (c) A national banking association having its principal or a branch
15 office in this State authorized to act as a fiduciary;
- 16 (13) "Savings bank" shall include the following:
- 17 (a) Every corporation heretofore organized pursuant to the act
18 entitled "An act concerning savings banks," approved April 12, 1876;
- 19 (b) Every corporation heretofore organized pursuant to the act
20 entitled "An act concerning savings banks," approved May 2, 1906;
- 21 (c) Every corporation heretofore organized pursuant to chapter 6
22 of Title 17 of the Revised Statutes;
- 23 (d) Every corporation, other than a bank, authorized by any
24 general or special law of this State to carry on the business of a
25 savings bank or institution or society for savings;
- 26 (e) Every corporation hereafter organized pursuant to article 3 of
27 [this act] P.L.1948, c.67 (C.17:9A-7 and 17:9A-8) or P.L.1982, c.9
28 (C.17:9A-8.1 et seq.);
- 29 (14) "Branch office" of a bank or savings bank shall mean an office,
30 unit, station, facility, terminal, space or receptacle at a fixed location
31 other than a principal office, however designated, at which any
32 business that may be conducted in a principal office of a bank or
33 savings bank may be transacted. "Branch office" includes full branch
34 offices, minibranch offices and communication terminal branch offices;
- 35 (15) "Full branch office" means a branch office of a bank or savings
36 bank not subject to the limitations or restrictions imposed upon
37 minibranch offices or communication terminal branch offices;
- 38 (16) "Minibranch office" means a branch office of a bank or savings
39 bank which does not occupy more than 500 square feet of floor space
40 and which does not contain more than four teller stations, manned by
41 employees of the bank or savings bank;
- 42 (17) "Communication terminal branch office" means a branch office
43 of a bank or savings bank which is either manned by a bona fide third
44 party under contract to a bank or savings bank or unmanned and which
45 consists of equipment, structures or systems, by means of which
46 information relating to financial services rendered to the public is

1 transmitted and through which transactions with banks and savings
2 banks are consummated, either instantaneously or otherwise;

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

24 (19) With respect to savings banks, "director" and "board of
25 directors" may be used to mean "manager" and "board of managers,"
26 respectively.

27 (20) "De novo branch" means a branch office of a foreign bank in
28 this State which is originally established as a branch office, and does
29 not become a branch office of the foreign bank as a result of the
30 acquisition by the foreign bank of an insured depository institution or
31 a branch office of an insured depository institution or the conversion,
32 merger, or consolidation of any such institution or branch office.

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

41 (22) "Home state" means:

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

44 (b) with respect to a state bank, the state by which the bank is
45 chartered.

46 (23) "Host state" means, with respect to a bank, a state, other than

1 the home state of the bank, in which the bank maintains, or seeks to
 2 establish and maintain, a branch office.

3 For purposes of this subsection and subsection (22), "bank" means a
 4 bank as defined in the Federal Deposit Insurance Act, 12 U.S.C.
 5 §1813(a)(2).

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

9 (25) "Out-of-country bank" means a bank chartered under the laws
 10 of a country other than the United States.

11 (26) "Interstate merger transaction" means:

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

15 (2) The purchase of all or substantially all of the assets, the
 16 assumption of all or substantially all of the liabilities, or both, g3
 17 including all or substantially all of the branches, of a bank whose home
 18 state is different from the home state of the acquiring bank.¹

19 (27) "State" means any state of the United States, the District of
 20 Columbia, any territory of the United States, Puerto Rico, Guam,
 21 American Samoa, the Trust Territory of the Pacific Islands, the Virgin
 22 Islands and the Northern Mariana Islands.

23 (28) "Resulting bank" means a state or federally chartered bank or
 24 state chartered savings bank that has resulted from an interstate
 25 merger transaction pursuant to P.L.1948, c.67 (C.17:9A-1 et seq.).
 26 (cf: P.L.1992, c.187, s.1)

27
 28 3. Section 19 of P.L.1948, c.67 (C.17:9A-19) is amended to read
 29 as follows:

30 19. A. Any bank or savings bank may, pursuant to a resolution of
 31 its board of directors or board of managers, establish and maintain
 32 branch offices, subject to the conditions and limitations of this article.

33 B. [No bank or savings bank shall establish or maintain a branch
 34 office which is located outside the municipality in which it maintains
 35 its principal office, except that a bank or savings bank may establish
 36 and maintain a branch office or offices anywhere in the State:

37 (1) When such bank is a receiving bank as defined in section 132
 38 or a receiving savings bank as defined in section 205, and each
 39 proposed branch will be established at a location occupied by the
 40 principal office or a branch office of a merging bank, as defined in
 41 section 132; or a merging savings bank, as defined in section 205; or

42 (2) When each proposed branch will be established at a location
 43 occupied by the principal office or a branch office of a banking
 44 institution in liquidation or in contemplation of liquidation.] (Deleted
 45 by amendment, P.L. , c. .)(pending before the Legislature as this
 46 bill.)

1 (3) (Deleted by amendment.)

2 C. No bank shall hereafter establish a full branch office unless its
3 capital [stock and surplus shall at least equal the minimum capital
4 stock and surplus required by section 4 on the organization of a bank
5 to transact business at the location occupied by the principal office of
6 the bank proposing to establish such full branch office, plus at least
7 \$100,000.00 of capital stock for each full branch office maintained or
8 proposed to be established by such bank] shall equal or exceed the
9 minimum capital established by the commissioner by regulation.

10 D. No savings bank shall hereafter establish a full branch office
11 unless its [surplus shall at least equal the minimum capital deposits
12 required by section 8 on the organization of a savings bank to transact
13 business at the location occupied by the principal office of the savings
14 bank proposing to establish such full branch office, plus at least
15 \$100,000.00 of surplus for each full branch office maintained or
16 proposed to be established by such savings bank] capital shall equal or
17 exceed the minimum capital established by the commissioner by
18 regulation.

19 E. (Deleted by amendment.)

20 F. (Deleted by amendment.)

21 G. (Deleted by amendment.)

22 H. (Deleted by amendment.)

23 I. (Deleted by amendment.)

24 J. (Deleted by amendment.)

25 K. A bank or savings bank may establish a full branch office, a
26 minibranch office, or communications terminal branch office anywhere
27 in this State[, provided that no bank or savings bank shall, except as
28 provided in subsection B. of this section, establish a full branch office
29 or a minibranch office in a municipality, other than that in which it
30 maintains its principal office, which has a population of less than
31 10,000, and in which another banking institution maintains its principal
32 office. For purposes of this subsection, the principal office of each
33 bank or national banking association which is a subsidiary of a bank
34 holding company which controls two or more banking institutions
35 shall be deemed to be a branch office. The commissioner, upon
36 application, may set aside the population requirement set forth above
37 for full branch offices or minibranch offices].

38 L. Except as otherwise provided by law, no foreign bank [as
39 defined in section 315] shall establish, operate or maintain in this State
40 any full branch office, minibranch office or communication terminal
41 branch office.

42 (cf: P.L.1981, c.24, s.1)

43

44 4. Section 1 of P.L.1989, c.245 (C.17:9A-19.2) is amended to read
45 as follows:

46 1. [A banking] a. An insured depository institution located in this

1 State may accept deposits and conduct other banking business as agent
2 for any [other banking institution which is also a subsidiary of the
3 same bank holding company or savings bank holding company]
4 affiliate, without being required to obtain a license as a branch office
5 of the [other banking institution] affiliate or foreign bank; and may
6 provide customer information to [the bank holding company or savings
7 bank holding company of which it is a subsidiary or to] any [other
8 subsidiary thereof] affiliate solely for use in conducting business with
9 the customer. [A customer shall have the right to treat the processing
10 of a transaction by a bank acting as agent pursuant to this section as
11 processing by the customer's bank for all purposes, including the date
12 and time of processing.] For purposes of this [act, "subsidiary" and
13 "bank holding company" shall have the same meaning as set forth in
14 section 1 of P.L.1986, c.6 (C.17:9A-373), and "savings bank holding
15 company" shall mean a "mutual savings bank holding company" or a
16 "capital stock savings bank holding company" as set forth in section
17 1 of P.L.1987, c.201 (C.17:9A-382)]section, "control" shall be
18 construed consistently with the provisions of paragraph (2) of
19 subsection (a) of section 2 of the "Bank Holding Company Act of
20 1956," 12 U.S.C. §1841(a)(2); "insured depository institution" shall
21 have the same meaning as set forth in the "Federal Deposit Insurance
22 Act," 12 U.S.C. §1813; "foreign bank," "agency," and "branch" shall
23 have the same meaning as set forth in the "International Banking Act
24 of 1978," 12 U.S.C. §3101 et seq.; and "affiliate" means a company
25 which controls, is controlled by or under common control with another
26 company, and includes a United States branch or agency of a foreign
27 bank.

28 b. The commissioner shall have the authority to request from any
29 insured depository institution information with respect to its activities
30 as an agent, including a request for a copy of any agreement of an
31 insured depository institution to act as an agent for an affiliate.

32 (cf: P.L.1989, c.245, s.1)

33

34 5. Section 20 of P.L.1948, c.67 (C.17:9A-20) is amended to read
35 as follows:

36 20. A. (1) Before any full branch office shall be established
37 [except those branches established pursuant to paragraph (1) of
38 subsection B. of section 19], the bank or savings bank shall file written
39 application in the department for the commissioner's approval thereof.
40 If, after such investigation or hearings, or both, as the commissioner
41 may determine to be advisable, [he] the commissioner shall find:

42 [(1)] (a) That the bank or savings bank has complied with the
43 requirements of section 19 of P.L.1948, c.67 (C.17:9A-19);

44 [(2)] (b) That the interests of the public will be served to
45 advantage by the establishment of such full branch office; [and]

46 [(3)] (c) That conditions in the locality in which the proposed full

1 branch office is to be established afford reasonable promise of
2 successful operation; and

3 (d) That the applicant has achieved sufficient compliance, as
4 defined by the commissioner by regulation, with the "Community
5 Reinvestment Act of 1977," 12 U.S.C. §2901 et seq.;

6 the commissioner shall, within 90 days after the filing of the
7 application, approve such application.

8 (2) To determine if an applicant meets the requirements of
9 subparagraph (c) of paragraph (1) of this subsection A., the
10 commissioner shall consider only the costs of purchasing, constructing,
11 leasing or otherwise establishing the proposed office including the
12 costs for staffing, furniture and equipment needed therefor and the
13 effect of these costs on the operations of the applicant as a whole.

14 (3) The applicant need not demonstrate an ability to operate the
15 proposed office at a profit within a definable period of time based on
16 the generation of new deposits from the market area to be entered
17 except to the extent that losses suffered at the proposed office could
18 affect the safety and soundness of the applicant's overall operations.

19 B. Before any minibranch office shall be established, the bank or
20 savings bank shall file a written application on forms supplied by the
21 commissioner. A duly adopted resolution of the board of directors or
22 managers authorizing such application shall accompany the
23 application. Notice of such application shall be published in
24 accordance with procedural rules and regulations of the department.
25 Within 20 days after said notice is published, any person or banking
26 institution having objections to the application shall submit detailed
27 written factual and legal grounds for the objection to the
28 commissioner. There shall be no hearing required to be held by the
29 commissioner in connection with such application. The commissioner,
30 after considering the application and written objections and such
31 investigation as [he] the commissioner deems advisable, shall approve
32 the application, if [he] the commissioner shall find

33 (1) That the convenience and needs of the public will be served to
34 advantage by the establishment of such minibranch office; and

35 (2) That the costs of establishing such minibranch office, including
36 (a) construction and alteration costs; (b) the cost of real property to
37 be acquired in connection therewith or rental to be paid for space to
38 be occupied by such office; (c) the cost of purchasing or renting and
39 installing the equipment to be used in the operation of such office; and
40 (d) the cost of manning such office, shall not in the aggregate exceed
41 such sum as the commissioner shall deem reasonable, taking into
42 consideration the capital and surplus of the bank, or the surplus of the
43 savings bank.

44 C. Before any communication terminal branch office shall be
45 established, the bank or savings bank shall file in the department
46 written notice of the proposed establishment [which shall consist of a

1 resolution duly adopted by the board of directors or board of
2 managers] and such other information as the commissioner shall
3 require. [No hearing shall be held by the commissioner in connection
4 with such application. Within 45 days after receipt of the application,
5 the commissioner shall approve the application unless he finds that the
6 establishment is contrary to the interest of the public.]

7 D. Any bank or savings bank may participate in the establishment,
8 maintenance or use of one or more communication terminal branch
9 offices with one or more financial institutions whose deposits are
10 insured by [either] the Federal Deposit Insurance Corporation [or the
11 Federal Savings and Loan Insurance Corporation]. The commissioner
12 may require a bank or savings bank to participate with one or more
13 insured financial institutions, at a reasonable cost, if the institution
14 requesting participation maintains a principal, full branch or
15 minibranch office located within 5 miles of the proposed site.

16 E. A bank or savings bank shall provide insurance protection under
17 its bonding program for transactions involving such communication
18 terminal branch offices.

19 F. [A bank which maintains a communication terminal branch
20 office shall be deemed to have come into possession and to have
21 received such deposits at the time when they are placed in the
22 receptacle.](Deleted by amendment, P.L. ., c. .)(pending before the
23 Legislature as this bill.)

24 G. The commissioner shall have the power to make, amend and
25 repeal rules and regulations concerning the establishment, maintenance
26 and operation of full branch offices, minibranch offices and
27 communication terminal branch offices not inconsistent with the
28 provisions of this act. The regulations so made shall also be directed
29 toward the creation, operation and maintenance of a substantial
30 competitive parity between banking institutions and other financial
31 institutions in all matters relating to the establishment, operation, and
32 maintenance of branch offices.

33 (cf: P.L.1975, c.148, s.3)

34

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

37 21. A. The failure of a bank, out-of-State bank or savings bank to
38 open and operate a branch office within [six months] one year after the
39 commissioner approves the application therefor shall automatically
40 terminate the right of the bank, out-of-State bank or savings bank to
41 open the branch office, and it shall make no further application to
42 establish a branch office at such location, or in the area which would
43 be served by a bank, out-of-State bank or savings bank doing business
44 at such location, until after the expiration of one year from the date of
45 such approval; except that, for good cause shown, the commissioner
46 may, in [his] the commissioner's discretion, on application of the bank,

1 out-of-State bank or savings bank made before the expiration of [such
2 six months] the one year period, extend for additional periods, not in
3 excess of six months each, the time within which such branch office
4 may be opened.

5 B. A bank, out-of-State bank or savings bank may discontinue a
6 branch office upon resolution of its board of directors or board of
7 managers. Upon the adoption of such a resolution, the bank,
8 out-of-State bank or savings bank shall file a certificate in the
9 department specifying the location of the branch office to be
10 discontinued, and the date upon which the discontinuance shall be
11 effective.

12 C. Whenever the commissioner shall find that a branch office is not
13 open for the transaction of business during such hours or days as [he]
14 the commissioner shall determine are reasonably necessary for the
15 banking needs of the area served by such branch office, the
16 commissioner may, by order, direct the bank, out-of-State bank or
17 savings bank to keep such branch office open during such hours or
18 days, and, upon the failure of the bank, out-of-State bank or savings
19 bank to comply with such order, the commissioner may, after giving
20 the bank, out-of-State bank or savings bank reasonable opportunity
21 to be heard, make an order forfeiting the right of the bank, out-
22 of-State bank or savings bank to maintain the branch office, and,
23 upon the service of the order upon the bank, out-of-State bank or
24 savings bank, it shall cease to maintain such branch office. An order
25 of the commissioner made pursuant to this subsection shall be subject
26 to review, hearing and relief in the Superior Court, in a proceeding in
27 lieu of prerogative writ.

28 (cf: P.L.1953, c.17, s.15)

29

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

32 22. A. Upon filing an application therefor in the department, and
33 upon obtaining the approval of the commissioner thereto a bank or
34 savings bank may change the location of its principal office or of a
35 branch office [to a location within the same municipality in which such
36 principal office or such branch office is located, and may change the
37 location of its principal office to a location in a municipality other than
38 that in which it maintains its principal office, but not more than 30
39 miles distant from such principal office] located in this State to
40 another location in this State. Upon filing an application therefor in
41 the department, and upon obtaining the approval of the commissioner
42 thereto, an out-of-State bank with a branch office located in this State
43 may change the location of a branch office in this State to another
44 location in this State, and a bank or savings bank with a branch office
45 located outside this State may change the location of a branch office
46 to another location in that state.

1 B. If it shall appear from the application, or if the commissioner
2 shall find from such proof as [he] the commissioner may require, or
3 from such investigation as [he] the commissioner may cause to be
4 made, that the area which would be served by such office after its
5 change in location would not be substantially different from the area
6 theretofore served by such office, [he] the commissioner shall approve
7 the application.

8 C. If it shall appear to the commissioner, from the application, or
9 from such proof as [he] the commissioner may require, or from such
10 investigation as [he] the commissioner may cause to be made, that the
11 proposed location will be so far removed from the place then occupied
12 by such principal office or by such branch office that the area which
13 would be served by such office after its change in location would be
14 substantially different from the area theretofore served by it, [he] the
15 commissioner shall not approve such application unless, after such
16 investigation or hearing, or both, as the commissioner may determine
17 to be advisable, [he] the commissioner shall find that the interests of
18 the public will be served to advantage by such change in location, and
19 that conditions in the locality to which removal is proposed afford
20 reasonable promise of successful operation.

21 D. [No bank shall change the location of its principal office
22 pursuant to subsection C of this section unless, following the approval
23 of the commissioner, it shall amend its certificate of incorporation to
24 effect such change.] No savings bank shall change the location of its
25 principal office pursuant to subsection C₂ of this section unless, prior
26 to making application to the commissioner for his approval, the change
27 in location is approved by a vote of two-thirds of its board of
28 managers then in office.

29 (cf: P.L.1979, c.226, s.1)

30
31 8. Section 23 of P.L.1948, c.67 (C.17:9A-23) is amended to read
32 as follows:

33 23. A bank or savings bank may, without satisfying the
34 requirements of section 22 of P.L.1948, c.67 (C.17:9A-22), change
35 the location of its principal office to a location in this State then
36 occupied by a branch office maintained by it. After such a change, the
37 bank or savings bank may maintain a branch office at the location
38 formerly occupied by its principal office, or it may discontinue
39 business at such location. Such bank or savings bank shall file a
40 certificate of such change in the department within 1 week from the
41 date such change is made. A change in location effected pursuant to
42 this section shall not be subject to the limitations imposed by
43 subsections C or D of section 19 of P.L.1968, c.67 (C.17:9A-19). No
44 change in location shall be made under this section without prior
45 written approval of the commissioner which the commissioner shall
46 not withhold unless [he] the commissioner shall find that such change

1 will not be in the public interest.

2 (cf: P.L.1970, c.165, s.3)

3

4 9. Section 2 of P.L.1952, c.179 (C.17:9A-23.2) is amended to read
5 as follows:

6 2. [Each auxiliary office shall be located in the same municipality
7 as that in which the bank or savings bank maintains the office to which
8 such auxiliary office is an adjunct.] No auxiliary office shall be
9 established or maintained at a location which is outside this State or
10 more than [2,000 feet] one mile from the office of the bank or savings
11 bank to which such auxiliary office is an adjunct; nor shall any such
12 auxiliary office be established within 1,000 feet of the principal office
13 or a branch office of another banking institution without the written
14 consent of such other banking institution. Such consent, once given,
15 shall thereafter be irrevocable, regardless whether it was given
16 gratuitously or for a valuable consideration. No bank or savings bank
17 shall be required to discontinue an auxiliary office for the reason that,
18 after its establishment pursuant to this act, another banking institution
19 has established its main office or a branch office within 1,000 feet of
20 such auxiliary office.

21 (cf: P.L.1962, c.101, s.1)

22

23 10. Section 3 of P.L.1961, c.67 (C.17:9A-23.11) is amended to
24 read as follows:

25 3. a. A branch office established pursuant to this act may be
26 located [in a municipality other than the municipality in which the
27 applying bank maintains its principal office, but no bank shall establish
28 any such branch office outside the county in which it maintains its
29 principal office] anywhere in this State.

30 b. No branch office established pursuant to this act shall be
31 removed to a location outside the installation on which it has been
32 established.

33 c. The principal office of the bank may not be interchanged with
34 any branch office established pursuant to this act.

35 d. [In determining whether a banking institution maintains its
36 principal office or a branch office in a municipality within the meaning
37 of section 19B(3) of the act to which this act is a supplement, a branch
38 office established pursuant to this act shall be disregarded.](Deleted
39 by amendment, P.L. , c. .)(pending before the Legislature as this
40 bill.)

41 e. The right to maintain a branch office established pursuant to this
42 act shall cease and the branch office shall be discontinued when the
43 authority to maintain it under Federal law or regulation ceases.

44 f. A branch office maintained pursuant to this act shall not be
45 deemed to be a branch as an adjunct of which an auxiliary office may
46 be established.

1 (cf: P.L.1961, c.67, s.3.)

2

3 11. (New section) a. A bank or savings bank may, pursuant to a
4 resolution of its board of directors, establish and maintain a branch
5 office or branch offices outside this State, subject to the conditions
6 and limitations of sections 19 and 20 of P.L.1948, c.67 (C.17:9A-19
7 and 17:9A-20).

8 b. No bank or savings bank shall establish a branch office outside
9 this State unless the laws of the jurisdiction where the branch is to be
10 established do not prohibit the establishment of the branch.

11 c. A bank or savings bank which establishes a branch office outside
12 this State shall have such additional powers in that state as permitted
13 to banks or savings banks, as applicable, in the state in which the
14 branch is located.

15

16 12. (New section) a. An out-of-State bank without a branch office
17 in this State may apply to establish a de novo branch office in this
18 State by filing with the department a copy of the application the
19 out-of-State bank filed with the regulator in its home state and the
20 application it filed with the [Federal Deposit Insurance Corporation]
21 responsible federal bank supervisory agency.

22 b. The commissioner shall approve the application if the
23 out-of-State bank is adequately capitalized as of the date of the
24 application, will be adequately capitalized and managed after the
25 branch is established, has published notice of the application in
26 accordance with procedural rules and regulations of the department,
27 and has achieved sufficient compliance, as defined by the
28 commissioner by regulation, with the Community Reinvestment Act of
29 1977, 12 U.S.C. §2901 et seq.

30 c. A national bank without a branch office in this State may
31 establish a de novo branch office in this State by application to the
32 Comptroller of the Currency so long as the national bank is adequately
33 capitalized as of the date of the application, will be adequately
34 capitalized and managed after the branch is established and has
35 achieved satisfactory compliance with the Community Reinvestment
36 Act of 1977, 12 U.S.C. §2901 et seq.

37 [d. An out-of-State bank without a branch office in this State and
38 a national bank without a branch office in this State shall not establish
39 a de novo branch in this State unless the home state of the out-of-State
40 bank or national bank has in effect, as of the date of approval of that
41 establishment, a law that expressly permits de novo branching into that
42 state by banks, savings banks and national banks with principal offices
43 in New Jersey.

44 e. If the reciprocity provisions of this section are prohibited by law
45 on or after June 1, 1997, this section shall expire.]

46

1 13. (New section) An out-of-State bank that opens, occupies or
2 maintains a branch office in this State shall have in this State only the
3 powers a bank chartered in this State has.

4
5 14. (New section) a. An out-of-State bank with at least one
6 branch office in this State, and a national bank with at least one branch
7 office in this State, may establish and maintain additional branch
8 offices in this State as long as the out-of-State bank or national bank
9 is adequately capitalized as of the date of the application, will be
10 adequately capitalized and managed after the branch is established, and
11 has achieved sufficient compliance with the "Community Reinvestment
12 Act of 1977," 12 U.S.C. §2901 et seq.

13 b. An out-of-State bank or national bank branching in New Jersey
14 pursuant to this section, shall publish notice of the application in New
15 Jersey in the appropriate trade journals.

16
17 15. Section 1 of P.L.1968, c.149 (C.17:9A-23.50) is amended to
18 read as follows:

19 1. [A.] As used in this act unless the context requires otherwise,

20 (a) "Commissioner" means the Commissioner of Banking [and
21 Insurance] and any other person lawfully exercising the powers of
22 such commissioner;

23 (b) "Bank" includes banks, out-of-State banks and savings banks,
24 and, to the extent the provisions hereof are not inconsistent with and
25 do not infringe upon paramount Federal law governing national banks,
26 "bank" also includes national banks;

27 (c) "Officers" means the person or persons designated by the board
28 of directors of a bank or the board of managers or trustees of a savings
29 bank or the board of directors or managers or trustees of an
30 out-of-State bank, as appropriate, to act for the bank, out-of-State
31 bank or savings bank in carrying out the provisions of this act;

32 (d) "Emergency" means any condition which interferes with the
33 conduct of normal business operations at one or more or all offices of
34 a bank or banks, or which poses an imminent or existing threat to the
35 safety and security of persons or property, or both. Without limiting
36 the generality of the foregoing, an emergency may arise as a result of
37 any one or more of the following: fire; flood; wind, rain or snow
38 storms; labor disputes; power failures; transportation failures; war; and
39 riots, civil commotions, and other acts of lawlessness or violence;

40 (e) "Office" means any place at which a bank transacts business or
41 conducts operations related to the transaction of business;

42 (f) "Person" includes natural persons, corporations, partnerships
43 and associations.

44 (cf: P.L.1968, c.149, s.1)

45
46 16. Section 9 of P.L.1981, c.153 (C.17:9A-24a) is amended to

1 read as follows:

2 9. The commissioner shall have the power to make, amend, and
3 repeal regulations permitting banks to exercise any power, right,
4 benefit, or privilege permitted to national or state banks, provided that
5 such power, right, benefit, or privilege is not contrary to law. Such
6 regulations shall be in substantial conformity with similar rules or
7 regulations of the Comptroller of the Currency, the Federal Reserve
8 Board, and the Federal Deposit Insurance Corporation, as applicable.
9 (cf: P.L.1981, c.153, s.9)

10

11 17. (New section) a. One or more banks or savings banks may,
12 with the approval of the commissioner, enter into an interstate merger
13 transaction with an out-of-State bank or banks pursuant to section 11
14 of P.L.1982, c.9 (C.17:9A-8.11), article 21 of "The Banking Act of
15 1948," P.L.1948, c.67 (C.17:9A-132 et seq.) or article 31 of "The
16 Banking Act of 1948," P.L.1948, c.67 (C.17:9A-199 et seq.), as
17 applicable.

18 b. Except as otherwise expressly provided in this subsection b., an
19 interstate merger transaction shall not be permitted if, upon
20 consummation of the transaction, the resulting state or federally
21 chartered bank or savings bank, including all federally insured
22 depository institutions that would be affiliates as defined in subsection
23 (k) of section (2) of the federal "Bank Holding Company Act of
24 1956," 12 U.S.C. 1841(k), would control 30 percent or more of the
25 total amount of deposits held by insured depository institutions in this
26 State. The commissioner may by regulation adopt a procedure
27 whereby the foregoing limitation on control of deposits may be waived
28 for good cause.

29 c. The commissioner shall not permit before June 1, 1997, an
30 interstate merger transaction involving one or more banks or savings
31 banks and an out-of-State bank or banks unless the home state of each
32 bank involved in the transaction has in effect, as of the date of the
33 approval of such transaction, a law that applies equally to all
34 out-of-state banks and expressly permits interstate merger transactions
35 with all out-of-state banks.

36 d. The commissioner shall not permit on or after June 1, 1997, an
37 interstate merger transaction involving one or more banks or savings
38 banks and an out-of-State bank or banks if the home state of any bank
39 or savings bank involved in the merger transaction has enacted a law
40 after September 29, 1994, and before June 1, 1997, that applies
41 equally to all out-of-State banks and expressly prohibits merger
42 transactions involving out-of-State banks.

43 e. An out-of-State bank may, with the approval of the
44 commissioner, acquire a branch office of a bank, out-of-State bank,
45 national bank or savings bank, and the branch shall be treated, for
46 purposes of this section, as a bank or savings bank, as appropriate.

1 f. A bank or savings bank may, with the approval of the
2 commissioner, acquire an out-of-State branch office of a bank, savings
3 bank or an out-of-State bank, and the branch shall be treated, for
4 purposes of this section, as an out-of-State bank.

5 g. Any out-of-State bank which shall be the resulting bank in an
6 interstate merger transaction shall file with the commissioner in a
7 manner consistent with regulations promulgated by the commissioner
8 for this purpose.

9
10 18. Section 148 of P.L.1948, c.67 (C.17:9A-148) is amended to
11 read as follows:

12 148. A. As used in subsection B. of this section, "applicable
13 Federal law" means the laws of the United States, as presently enacted
14 and as hereafter from time to time supplemented or amended,
15 governing the merger or consolidation of a bank organized under State
16 laws into a national banking association, under the charter of such
17 association; and, as used in subsection C. of this section, "applicable
18 Federal law" means the laws of the United States, as presently enacted
19 and as hereafter from time to time supplemented or amended,
20 governing the merger or consolidation of a national banking
21 association into a bank organized under State laws, under the charter
22 of such bank.

23 B. One or more banks may, without the approval of the
24 commissioner or of any other officer, department, board or agency of
25 this State, merge into or consolidate with a national banking
26 association under the charter of such association, with the approval of
27 the holders of at least 2/3 of the capital stock of each such bank
28 entitled to vote. A majority of the directors of each such bank shall,
29 within 10 days after such approval has been given, file in the
30 department a certificate over their signatures that such approval has
31 been given, and that the bank intends to act in pursuance thereof.
32 Except as otherwise provided in subsection D. of this section, a
33 merger or consolidation authorized by this subsection shall be effected
34 solely in the manner and with the effect provided by applicable Federal
35 law, and no such merger or consolidation shall be subject to sections
36 132 through 147 of P.L.1948, c.67 (C.17:9A-132 through 17:9A-147)
37 or to any other law of this State; but a copy of the agreement or
38 merger or consolidation certified by the comptroller of the currency
39 shall be evidence, and may be recorded, as provided by section 138 of
40 P.L.1948, c.67 (C.17:9A-138). Upon the taking effect of the merger
41 or consolidation, the bank shall be deemed to have surrendered its
42 charter.

43 C. One or more national banking associations, or one or more
44 national banking associations together with one or more banks may,
45 with the approval of the commissioner as provided by section 136 of
46 P.L.1948, c.67 (C.17:9A-136), merge into a bank, or may consolidate

1 with a bank under the charter of such bank. Each bank which is a
2 party to such a merger or consolidation as a merging bank or as the
3 receiving bank shall, in all respects, comply with and be subject to the
4 provisions of sections 134 through 147 of P.L.1948, c.67
5 (C.17:9A-134 through 17:9A-147), in the same manner and with the
6 same effect as if all the parties to such merger or consolidation were
7 banks; the rights, duties, obligations, powers and privileges of each
8 such bank, whether such bank is a merging bank or the receiving bank,
9 and of its or their depositors, other creditors, stockholders and all
10 other persons in interest, shall be as prescribed and defined by sections
11 134 through 137 of P.L.1948, c.67 (C.17:9A-134 through 17:9A-137);
12 and except as in this subsection otherwise provided in respect to
13 national banking associations, every provision contained in sections
14 134 through 137 of P.L.1948, c.67 (C.17:9A-134 through 17:9A-137)
15 shall be applicable to a merger or consolidation effected pursuant to
16 this subsection, notwithstanding that a national banking association is
17 a party to such a merger or consolidation. Each national banking
18 association which is a party to a merger or consolidation authorized by
19 this subsection shall comply with and be subject to the provisions of
20 applicable Federal law, and the rights, duties, obligations, powers and
21 privileges of such national banking association, and of its depositors,
22 other creditors, stockholders and all other persons in interest, shall be
23 as prescribed and defined by such applicable Federal law.

24 D. National banking associations may, under the laws of the United
25 States, merge into or consolidate with a bank organized under State
26 laws, without approval by any United States authority other than an
27 authority empowered by United States law to approve or disapprove
28 of a merger between, or a consolidation of, State-chartered banks.

29 E. Except as otherwise expressly provided in this subsection E., an
30 interstate merger transaction shall not be permitted if, upon
31 consummation of the transaction, the resulting state or federally
32 chartered bank or savings bank, including all federally insured
33 depository institutions that would be affiliates as defined in subsection
34 (k) of section (2) of the federal "Bank Holding Company Act of
35 1956," 12 U.S.C. 1841(k), would control 30 percent or more of the
36 total amount of deposits held by insured depository institutions in this
37 State. The commissioner may by regulation adopt a procedure
38 whereby the foregoing limitation on control of deposits may be waived
39 for good cause.

40 F. Before June 1, 1997, a merger involving a bank and a national
41 banking association without a branch office in New Jersey shall not be
42 not permitted unless the home state of each institution involved in the
43 transaction has in effect, as of the date of the approval of that
44 transaction, a law that applies equally to all out-of-state banks and
45 expressly permits interstate merger transactions with all out-of-state
46 banks. On or after June 1, 1997, a merger involving a bank and a

1 national banking association without a branch office in New Jersey,
2 shall not be not permitted if the home state of any institution involved
3 in the transaction has enacted a law after September 29, 1994 and
4 before June 1, 1997, that applies equally to all out-of-state banks and
5 expressly prohibits merger transactions involving out-of-state banks.

6 G. A national banking association without a principal or branch
7 office in New Jersey may acquire a branch office of a bank, and the
8 branch shall be treated, for the purposes of this section, as a bank. A
9 bank may acquire an out-of-State branch office of a national banking
10 association, and the branch shall be treated, for purposes of this
11 section, as a national banking association.

12 (cf: P.L.1973, c.211, s.4)

13
14 19. Section 256 of P.L.1948, c.67 (C.17:9A-256) is amended to
15 read as follows:

16 256. A. Every bank and out-of-State bank with a branch office in
17 this State shall make and file in the department, not less than two
18 reports during each year, in the form prescribed by the commissioner.

19 B. Every report filed pursuant to subsection A of this section shall
20 state in detail and under appropriate heads the assets and liabilities of
21 the bank or out-of-State bank at the close of business on any day
22 specified by the commissioner, and shall be filed in the department
23 within ten days after the receipt by the bank or out-of-State bank of a
24 request therefor. The report shall be attested by the signatures of at
25 least three directors who are not officers of the bank or out-of-State
26 bank, and shall be verified by the oaths of at least two officers of the
27 bank or out-of-State bank. The commissioner may extend for not more
28 than ten days the time within which such report shall be filed.

29 C. The commissioner shall have power to call for special reports
30 from a bank or out-of-State bank when, in [his] the commissioner's
31 judgment, such special reports are necessary in order to obtain a full
32 and complete knowledge of its condition.

33 D. A bank or out-of-State bank which fails to make and transmit
34 a report required by this section shall be subject to a penalty of [one
35 hundred dollars] \$100 for each day during which such failure
36 continues, to be recovered with costs by the State in any court of
37 competent jurisdiction in a civil action prosecuted by the
38 Attorney-General.

39 E. The commissioner may waive the requirements of this section
40 if the bank or out-of-State bank files a similar report with federal
41 regulators and adequate provision is made for the commissioner to
42 have access to that filing.

43 (cf: P.L.1953, c.17, s.38)

44
45 20. Section 258 of P.L.1948, c.67 (C.17:9A-258) is amended to
46 read as follows:

1 258. A summary of [each report filed pursuant to subsection A of
2 section 256, in such form as the commissioner shall prescribe, shall be
3 published once by the bank in a newspaper published and circulated in
4 the municipality in which the bank maintains its principal office, or, if
5 there be no such newspaper, then in one published in the county in
6 which the bank maintains its principal office, or in an adjoining county,
7 and which has a general circulation in such municipality. The
8 publication shall be made within two weeks after the filing of the
9 report, and the cost thereof shall be paid by the bank. Proof of
10 publication shall be made and filed in the department] the report of
11 assets and liabilities as of the end of the most recent fiscal year,
12 required to be submitted to the department pursuant to the section 256
13 of P.L.1948, c.67 (C.17:9A-256), shall be readily available to
14 customers of the bank.

15 (cf: P.L.1948, c.67, s.258)

16

17 21. Section 260 of P.L.1948, c.67 (C.17:9A-260) is amended to
18 read as follows:

19 260. A. The commissioner shall, whenever and as often as [he] the
20 commissioner shall deem it advisable, cause the affairs of every bank,
21 and every out-of-State bank with a branch office in New Jersey, to be
22 examined to determine whether the bank or out-of-State bank is
23 conducting its business in conformity with the laws of this State and
24 its certificate of incorporation, and with safety to its depositors, other
25 creditors and the public.

26 B. The officers and employees of every bank and out-of-State bank
27 being examined shall exhibit to the examiners all its securities, books,
28 records and accounts and shall otherwise facilitate the examination so
29 far as it may be in their power.

30 C. The commissioner, a deputy commissioner, and every examiner
31 assigned by the commissioner or by a deputy commissioner to examine
32 the affairs of a bank or out-of-State bank may administer an oath to
33 any person whose testimony is required for the purposes of the
34 examination. The commissioner or deputy commissioner may compel
35 the appearance of any person for the purposes of examination, by
36 subpoena ad testificandum and the production of books, papers,
37 documents, or other records by subpoena duces tecum.

38 D. For banks or out-of-State banks with branches in New Jersey
39 and one or more other states, the commissioner may contract with the
40 state banking regulator in the other state or states where branch offices
41 are located to conduct cooperative exams. Pursuant to those
42 agreements, examiners of the department may examine branch offices
43 of banks and out-of-State banks both in New Jersey and in other
44 states, and examiners of other state banking regulators may examine
45 branch offices of banks and out-of-state banks both in New Jersey and
46 in other states. The fees for these examinations may be shared

1 pursuant to a contract or agreement among the regulators.

2 (cf: P.L.1948, c.67, s.260)

3

4 22. Section 264 of P.L.1948, c.67 (C.17:9A-264) is amended to
5 read as follows:

6 264. Every report and copy of a report of examination of a bank or
7 out-of-State bank made by or under the supervision of the
8 commissioner, and every report and copy thereof made by a bank or
9 out of state bank pursuant to subsection C₂ of section 256 of
10 P.L.1948, c.67 (C.17:9A-256) shall be confidential, and shall not be
11 made public by any officer, director or employee of a bank, and shall
12 not be subject to subpoena or to admission into evidence in any action
13 or proceeding in any court, except pursuant to an order of the court
14 made upon notice to the commissioner and after affording the
15 commissioner an opportunity to advise the court of reasons for
16 excluding from evidence such report or any portion thereof. The court
17 shall order the issuance of a subpoena for the production or admission
18 into evidence of any such report or portion thereof, only if it is
19 satisfied that (1) it is material and relevant to the issues in the
20 proceedings, and (2) the ends of justice and public advantage will be
21 subserved thereby. This section shall not prohibit the commissioner
22 from sharing a report of examination with another state or federal
23 regulator so long as provision is made for retaining the confidentiality
24 of the report. This section shall not apply to any action or proceeding
25 instituted by the commissioner or Attorney General pursuant to any
26 law of this State.

27 (cf: P.L.1948, c.67, s.264)

28

29 23. Section 267 of P.L.1948, c.67 (C.17:9A-267) is amended to
30 read as follows:

31 267. A. If the commissioner finds that a bank, or an out-of-State
32 bank with a branch in this State, is violating the provisions of its
33 certificate of incorporation, or is conducting its business in violation
34 of any law of this State or another state where it is transacting
35 business, or in an unsafe manner, [he] the commissioner shall order the
36 bank to cease its ultra vires, unlawful or unsafe practices, as the case
37 may be.

38 B. An order of the commissioner made pursuant to subsection A
39 of this section shall be subject to review, hearing and relief in the
40 Superior Court by a proceeding in lieu of prerogative writ. The
41 institution of proceedings for review in the Superior Court shall
42 suspend the accrual of the penalties provided for by section 268 of
43 P.L.1948, c.67 (C.17:9A-268) until the final determination of such
44 proceedings.

45 (cf: P.L.1953, c.97, s.1)

46

1 24. Section 268 of P.L.1948, c.67 (C.17:9A-268) is amended to
2 read as follows:

3 268. A bank, or out-of-State bank with a branch in this State,
4 which continues to violate the provisions of its certificate of
5 incorporation or which continues to conduct its business in violation
6 of any law of this State, or another state where it is transacting
7 business, or in an unsafe manner, after having been ordered by the
8 commissioner to cease such practices, shall be liable to a penalty of
9 [one thousand dollars (\$1,000.00)]\$1,000 to be recovered with costs
10 by the State in any court of competent jurisdiction in a civil action
11 prosecuted by the Attorney-General, and it shall be liable to a like
12 penalty for each day's additional default from and after the time
13 specified in the order. The penalty provided by this section shall be in
14 addition to and not in lieu of any other provision of law applicable
15 upon a bank's or out-of-State bank's failure to comply with an order
16 of the commissioner.

17 (cf: P.L.1953, c.17, s.42)

18

19 25. Section 316 of P.L.1948, c.67 (C.17:9A-316) is amended to
20 read as follows:

21 316. A. [No] Except as otherwise provided pursuant to section 1
22 of P.L.1989, c.245 (C.17:9A-19.2) and sections 38 through 87 of P.L.
23 c. (C.) (pending before the Legislature as this bill), no foreign
24 bank organized under the laws of a foreign government shall transact
25 any business in this State.

26 B. A foreign bank, other than one excluded by subsection A of this
27 section, may transact business in this State only as executor or as
28 testamentary trustee or guardian, and then only when named in a
29 decedent's will or codicil thereto. Before transacting such business in
30 this State, a foreign bank shall secure from the commissioner a
31 certificate of authority to transact such business. The commissioner
32 shall not issue a certificate of authority to a foreign bank unless a
33 qualified bank is permitted to transact business as executor, or as
34 testamentary trustee or guardian, when named in a will or codicil
35 thereto, in the jurisdiction in which the foreign bank has its principal
36 office.

37 C. No foreign bank shall maintain an office in this State, except
38 that a foreign bank may maintain one or more service facilities in this
39 State, provided that the foreign bank performs only back office
40 operations at the service facility and does not transact business with
41 its customers or the public at the service facility. Prior to opening a
42 service facility in this State, a foreign bank shall register the service
43 facility with the commissioner, which registration shall include the
44 address of the proposed service facility and the name and address of
45 the foreign bank's agent in this State for service of process. No
46 foreign bank organized under the laws of a foreign government which

1 has an office licensed as a representative office pursuant to sections 56
2 and 57 of P.L. , c. (C.)(pending before this Legislature as this
3 bill), shall be required to register under this subsection as a service
4 facility. Each service facility shall comply with the requirements and
5 pay the fees that the commissioner establishes by regulation. Each
6 service facility shall be subject to examination by the department to
7 determine whether the foreign bank has operated the service facility in
8 accordance with the provisions of this subsection, the costs of which
9 examination shall be paid by the foreign bank at the department's per
10 diem rate for examinations of depository institutions. The
11 commissioner may, upon notice and a hearing, order a foreign bank to
12 close any service facility operated in violation of the provisions of this
13 subsection or of other any law. [An entity which is affiliated, either
14 directly or indirectly, with a foreign bank and intends to engage in
15 back office operations in this State shall register and be regulated
16 pursuant to this subsection as if it were a foreign bank.]Any entity
17 acting as an agent pursuant to section 1 of P.L.1989, c.245
18 (C.17:9A-19.2) shall not be required to register and be regulated
19 pursuant to this subsection C.

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

29 E. (1) For the purposes of Article 44 of "The Banking Act of
30 1948," (C.17:9A-315 through 17:9A-332), a foreign bank¹, including
31 one organized under the laws of a foreign country,¹ shall not be
32 deemed to transact business or maintain an office in this State by
33 virtue of conducting business in this State through an agent in this
34 State which is an insured depository institution affiliate or other agent.

35 (2) Nothing in this section or in the "Banking Act of 1948,"
36 P.L.1948, c.67 (C.17:9A-1 et seq.) shall prohibit a foreign bank,
37 including one organized under the laws of a foreign country, from
38 owning and operating in this State, as a subsidiary, a State or federally
39 chartered bank and the ownership and operation of, and the sharing of
40 directors, officers and employees with that subsidiary shall not

1 constitute transacting business in this State.

2 (cf: P.L.1991, c.74, s.1)

3

4 26. Section 334 of P.L.1948, c.67 (C.17:9A-334) is amended to
5 read as follows:

6 334. A foreign bank shall pay to the commissioner for the use of
7 the State a fee, to be prescribed by the commissioner by regulation, in
8 an amount not less than or not more than, the following minimum and
9 maximum amounts:

10

11

Minimum Maximum

12

(1) For filing a copy of its
13 certificate of incorporation or
14 amendment thereof or other

15

change therein

\$50.00 \$250.00

16

17

(2) For filing a statement of
18 its financial condition ...

19

50.00 250.00

20

(3) For filing a power of
21 attorney ...

22

25.00 75.00

23

(4) For each substitution of
24 securities pursuant to sub-
25 section B. of section 320 of

26

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

25.00 100.00

27

28

(5) For registering a back
29 office

30

500.00

31

The commissioner shall charge for the issuance of a certificate of
32 authority or a certificate of renewal of a certificate of authority such
33 fee as he shall prescribe by rule or regulation, not to exceed \$1,500.00.

34

The certificate shall run from the date of issuance to the end of the
35 biennial period. When the initial certificate is issued in the second year
36 of the biennial certification period, the certificate fee shall be an
37 amount equal to one-half of the fee for the biennial certification
38 period.

39

The commissioner may by rule or regulation adopted pursuant to
40 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.) impose other fees and charges, including assessments and fees for
42 application and examinations, on out-of-State banks establishing
43 branch offices or agency offices in this State.

44

(cf: P.L.1988, c.73, s.2)

45

46

27. Section 2 of P.L.1969, c.118 (C.17:9A-356) is amended to

1 read as follows:

2 2. (1) An acquiring corporation may[, subject to the provisions of
3 An act concerning the ownership of bank stock in certain cases,
4 defining certain terms in relation thereto, imposing certain restrictions
5 on such ownership, providing for the enforcement of the act and for
6 punishment of violations thereof, approved June 5, 1957 (P.L.1957,
7 c.70),]acquire ownership of all the outstanding shares of the capital
8 stock of one or more banks in the manner provided by this act.

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

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

21 (cf: P.L.1969, c.118, s.2)

22

23 28. (New section) The commissioner is authorized to enter into
24 contracts with bank supervisors of other states for the purpose of
25 establishing effective and efficient supervisory and regulatory
26 structures and practices with respect to the provisions of sections 1
27 through 27 of this 1995 amendatory and supplementary act.

28

29 29. (New section) As used in sections 29 through 37 of P.L. ,
30 c. (C.)(pending before the Legislature as this bill):

31 "Acquire" means:

32 (1) That a company merges or consolidates with a bank holding
33 company;

34 (2) That a company assumes direct or indirect ownership or control
35 of:

36 (a) more than 25 percent of any class of voting shares of a
37 bank holding company or a bank, if the acquiring company was not a
38 bank holding company prior to that acquisition;

39 (b) more than 5 percent of any class of voting shares of a bank
40 holding company or a bank, if the acquiring company was a bank
41 holding company prior to that acquisition;

42 (c) all or substantially all of the assets of a bank holding
43 company or a bank; or

44 (3) That a company takes any other action that results in the direct
45 or indirect acquisition or control by that company of a bank holding
46 company or a bank.

1 "Affiliate," "bank," "company," and "subsidiary" have the meanings
2 set forth in section 2 of the federal "Bank Holding Company Act of
3 1956," 12 U.S.C. §1841.

4 "Bank holding company" has the meaning set forth in subsection (a)
5 of section 2 of the federal "Bank Holding Company Act of 1956," 12
6 U.S.C. §1841(a) and, unless the context requires otherwise, includes
7 a New Jersey bank holding company, an out-of-State bank holding
8 company and a foreign bank holding company.

9 "Bank supervisory agency" means any of the following:

10 (1) The Office of the Comptroller of the Currency, the Federal
11 Deposit Insurance Corporation, the Board of Governors of the Federal
12 Reserve System, and any successor to these agencies; and

13 (2) Any agency of another state with primary responsibility for
14 chartering and supervising banks.

15 "Branch" has the meaning set forth in section 1 of P.L.1948, c.67
16 (C.17:9A-1).

17 "Control" shall be construed consistently with the provisions of
18 paragraph (2) of subsection (a) of section 2 of the "Bank Holding
19 Company Act of 1956," 12 U.S.C. §1841(a)(2).

20 "Commissioner" means the Commissioner of Banking.

21 "Deposit" has the meaning set forth in the "Federal Deposit
22 Insurance Act," 12 U.S.C. §1813.

23 "Depository institution" means any institution included for any
24 purpose within the definitions of "insured depository institution" as set
25 forth in the "Federal Deposit Insurance Act," 12 U.S.C. §1813(c)(2)
26 and (3).

27 "Foreign bank holding company" means a bank holding company
28 that is organized under the laws of a country other than the United
29 States, including any territory or possession thereof.

30 "New Jersey bank" means a bank that is:

31 (1) organized under P.L.1948, c.67 (C.17:9A-1 et seq.); or

32 (2) organized under federal law and having its principal place of
33 business in this State.

34 "New Jersey bank holding company" means a bank holding
35 company that:

36 (1) has its principal place of business in this State; and

37 (2) is not controlled by a bank holding company other than a New
38 Jersey bank holding company.

39 "Out-of-State bank holding company" means:

40 (1) a bank holding company that is not a New Jersey bank holding
41 company; and

42 (2) unless the context requires otherwise, includes a foreign bank
43 holding company.

44 "Person" has the meaning given it pursuant to R.S.1:1-2.

45 "Principal place of business" of a bank holding company means the
46 state in which the total deposits of its bank subsidiaries are the

1 greatest.

2 "State" means any state, territory, or other possession of the United
3 States , including the District of Columbia.

4

5 30. (New section) Sections 29 through 37 of P.L. , c. (C.
6)(pending before the Legislature as this bill) set forth the conditions
7 under which a person may acquire a New Jersey bank or New Jersey
8 bank holding company. Sections 29 through 37 are intended not to
9 discriminate against out-of-State bank holding companies or against
10 foreign bank holding companies in any manner that would violate
11 subsection (d) of section 3 of the federal "Bank Holding Company Act
12 of 1956," 12 U.S.C. §1842(d), as amended effective September 29,
13 1995.

14

15 31. (New section) a. Except as otherwise expressly permitted by
16 federal law, no person may acquire a New Jersey bank holding
17 company or a New Jersey bank without the prior approval of the
18 commissioner.

19 b. The prohibitions in subsection a. of this section shall not apply
20 if the acquisition is made:

21 (1) in a transaction arranged by the commissioner or another bank
22 supervisory agency to prevent the insolvency or closing of the
23 acquired bank; or

24 (2) in a transaction in which a bank forms its own bank holding
25 company, if the ownership rights of the former bank shareholders are
26 substantially similar to those of the shareholders of the new bank
27 holding company.

28 c. In a transaction for which the commissioner's approval is not
29 required under this section, the parties shall give written notice to the
30 commissioner at least 15 days before the effective date of the
31 acquisition, unless a shorter period of notice is required under
32 applicable federal law.

33

34 32. (New section) a. A person that proposes to make an
35 acquisition under sections 29 through 37 of P.L. , c. (C.)
36 (pending before the Legislature as this bill) shall:

37 (1) file with the commissioner an application in the form that the
38 commissioner requires; and

39 (2) pay to the commissioner an application fee prescribed by the
40 commissioner.

41 b. To the extent consistent with the effective discharge of the
42 commissioner's responsibilities, the forms established under sections
43 29 through 37 of P.L. , c. (C.)(pending before the Legislature
44 as this bill) for application and reporting shall conform to those
45 established by the Board of Governors of the Federal Reserve System
46 under the federal "Bank Holding Company Act of 1956," 12 U.S.C.

1 §1841 et seq.

2 c. In connection with an application received under this section, the
3 commissioner shall:

4 (1) require that prior notice of the application be published in a
5 daily newspaper of general circulation and provide an opportunity for
6 public comment; and

7 (2) make the application available for public inspection to the
8 extent required or permitted under applicable State or federal law.

9 d. If the applicant is an out-of-State bank holding company it shall
10 submit with the application proof that the applicant has complied with
11 or is exempted from the requirements of N.J.S.14A:13-3 and N.J.S.
12 14A:13-4, requiring registration by foreign corporations doing
13 business in this State.

14

15 33. (New section) a. In deciding whether to approve an
16 application for a proposed acquisition under sections 29 through 37 of
17 P.L. , c. (C.)(pending before the Legislature as this bill), the
18 commissioner shall consider whether the acquisition may:

19 (1) be detrimental to the safety and soundness of the New Jersey
20 bank or New Jersey bank holding company to be acquired;

21 (2) result in an undue concentration of resources or a substantial
22 reduction of competition in this State; or

23 (3) have a significantly adverse impact on the convenience and
24 needs of the community or communities in this State that are served
25 by the New Jersey bank or New Jersey bank holding company.

26 b. Except as otherwise provided in this section, the commissioner
27 shall not approve an acquisition under sections 29 through 37 of P.L.
28 , c. (C.)(pending before the Legislature as this bill) if upon
29 consummation of the transaction, the applicant, including any
30 depository institution affiliated with the applicant, would control
31 percent or more of the total amount of deposits held by depository
32 institutions in this State.

33 c. The commissioner may by regulation adopt a procedure whereby
34 the limitation on control of deposits set forth in subsection b. of this
35 section may be waived for good cause shown.

36

37 34. (New section) a. The commissioner shall decide whether to
38 approve an acquisition under sections 29 through 37 of P.L. , c.
39 (C.)(pending before the Legislature as this bill) within 60 days after
40 receipt of a completed application, provided, that if the commissioner
41 requests additional information from the applicant following receipt of
42 a completed application, the time limit for decision by the
43 commissioner shall be the later of:

44 (1) the date set forth above in this subsection, or

45 (2) 30 days after the commissioner's receipt of the requested
46 additional information.

1 b. The commissioner may in the commissioner's discretion hold a
2 public hearing in connection with an application.

3 c. If the commissioner holds a public hearing in connection with an
4 application, the time limits specified in subsection a. of this section
5 shall be extended to 30 days after the conclusion of the public hearing.

6 d. An application shall be deemed approved if the commissioner
7 takes no action on the application within the time limits specified in
8 this section.

9

10 35. (New section) a. To the extent specified by the commissioner
11 by regulation, order or written request:

12 (1) each bank holding company or person that controls a New
13 Jersey bank or a New Jersey bank holding company shall submit to the
14 commissioner one or more copies of each report filed with any bank
15 supervisory agency, except for any report the disclosure of which
16 would be prohibited by applicable federal or state law, within 15 days
17 after the filing thereof with that agency; and

18 (2) each person that controls a New Jersey bank or a New Jersey
19 bank holding company that does not file a report with any other bank
20 supervisory agency shall file an annual report with the commissioner.

21 b. At the request of the commissioner, to the extent permitted by
22 applicable state and federal law, each bank holding company or person
23 that controls a New Jersey bank or a New Jersey bank holding
24 company shall provide to the commissioner copies of the reports of
25 examination of any New Jersey bank or New Jersey bank holding
26 company.

27

28 36. (New section) The commissioner may enforce the provisions
29 of sections 29 through 37 of P.L. , c. (C.)(pending before the
30 Legislature as this bill) by any appropriate action in the Superior
31 Courts of this State, including an action for civil money penalties,
32 injunctive relief or divestment.

33

34 37. (New section) In order to carry out the purposes of sections
35 29 through 37 of P.L. , c. (C.)(pending before the legislature as
36 this bill) the commissioner may:

37 a. Adopt regulations pursuant to the "Administrative Procedure
38 Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

39 b. Enter into cooperative, coordinating or information-sharing
40 agreements with any other bank supervisory agency or any
41 organization affiliated with or representing one or more bank
42 supervisory agencies;

43 c. Accept any report of examination or investigation by another
44 bank supervisory agency having concurrent jurisdiction over a New
45 Jersey bank holding company or any New Jersey bank in lieu of
46 conducting the commissioner's own examination or investigation of

1 that bank holding company or bank;

2 d. Enter into joint examinations or joint enforcement actions with
3 any other bank supervisory agency having concurrent jurisdiction over
4 any New Jersey bank holding company or New Jersey bank; provided,
5 however, that the commissioner may take any such action
6 independently if the commissioner determines that the action is
7 necessary or appropriate to carry out the commissioner's
8 responsibilities under sections 29 through 37 of P.L. , c. (C.
9)(pending before the Legislature as this bill) and to ensure compliance
10 with the laws of this State; and

11 e. May assess supervisory and examination fees that shall be
12 payable by New Jersey banks and New Jersey bank holding companies
13 in connection with the commissioner's performance of the
14 commissioner's duties under sections 29 through 37 of P.L. , c.
15 (C.)(pending before the Legislature as this bill) and in accordance
16 with regulations adopted by the commissioner. These fees may be
17 shared with other bank supervisory agencies or any organizations
18 affiliated with or representing one or more bank supervisory agencies
19 in accordance with agreements between them and the commissioner.
20

21 38. (New section) a. Sections 38 through 87 of P.L. , c. (C.
22)(pending before the Legislature as this bill) shall govern the
23 establishment and operation in New Jersey of offices and certain
24 commercial lending company affiliates of banks organized under the
25 laws of a foreign country except that the operation of such foreign
26 banks through subsidiary banks or depository institutions organized
27 under the laws of the United States or any state of the United States,
28 the deposits of which are insured by the Federal Deposit Insurance
29 Corporation or any successor thereto, shall be governed by the other
30 provisions of "The Banking Act of 1948," P.L. 1948, c. 67 (C.
31 17:9A-1 et seq.).

32 b. For purposes of sections 38 through 87 of P.L. , c. (C.
33)(pending before the Legislature as this bill), unless the context
34 clearly requires otherwise, the following terms shall be interpreted and
35 applied in the same manner as the Federal Reserve interprets and
36 applies the terms with respect to foreign banks and foreign banking
37 organizations: "agency;" "branch;" "commercial lending company;"
38 "to establish;" "foreign bank;" "foreign banking organization;" "office
39 or office of a foreign bank;" "representative office;" and "subsidiary."

40 c. The provisions of sections 38 through 87 of P.L. , c. (C.
41)(pending before the Legislature as this bill) are intended to
42 authorize foreign banks to establish and operate branches, agencies,
43 commercial lending company affiliates and representative offices in this
44 State and generally to ensure that interstate branches of foreign banks
45 may be established and operated in this State to the extent consistent
46 with the provisions of section 5 of the "International Banking Act of

1 1978," 12 U.S.C. §3103, and the regulations of the Federal Reserve
2 promulgated thereunder, 12 CFR §211.20 et seq., and under terms and
3 conditions that are generally comparable to and no less favorable than
4 those applicable to the establishment of interstate federal branches in
5 this State by foreign banks.

6 d. As provided in subsection e. of this section, a foreign bank may
7 establish a branch or agency in this State in the same manner
8 (including by merger or other transactions under the Federal Deposit
9 Insurance Act, 12 U.S.C. §1831u, and comparable provisions of the
10 laws of this State, with New Jersey banks or other institutions) as, and
11 subject generally to the same criteria, standards, conditions,
12 requirements and procedures applicable to the establishment of
13 interstate branches in this State by an out-of-State bank having the
14 same home state in the United States as the foreign branch or agency,
15 notwithstanding any provisions of the laws or regulations of this State
16 to the contrary.

17 e. In interpreting the provisions of sections 38 through 87 of P.L.
18 , c. (C.)(pending before the Legislature as this bill), the
19 commissioner:

20 (1) generally shall apply to the establishment of an initial office of
21 a foreign bank whether or not the initial office is an interstate branch,
22 and any subsequent intrastate offices of a foreign bank, the same
23 criteria, standards, conditions, requirements and procedures applicable
24 to the establishment of an initial branch in New Jersey by an
25 out-of-State bank, and of subsequent intrastate branches in this State
26 by an out-of-State bank;

27 (2) may apply any other criterion, standard, condition, requirement
28 or provision of the laws or regulations of this State that is determined
29 by the commissioner to be substantially equivalent to or consistent
30 with a criterion, standard, condition, requirement or provision of
31 federal law or regulation generally applicable to the establishment of
32 offices in the United States by foreign banks or specifically applicable
33 to the establishment of an office in the United States by the applicant
34 foreign bank;

35 (3) may by regulation or order allow a foreign bank:

36 (a) to acquire an individual branch of any "insured bank," as that
37 term is defined in the "Federal Deposit Insurance Act," 12 U.S.C.
38 §1813(h), or of any other depository institution, including another
39 foreign bank, without acquiring the entire bank or other institution;

40 (b) to acquire or merge with another foreign bank maintaining a
41 branch or agency in this State and thereafter continue each operation
42 as its own; or

43 (c) to acquire or establish an interstate office through any other
44 means not inconsistent with section 5 of the "International Banking
45 Act of 1978," 12 U.S.C. §3103.

46 For purposes of this section, "out-of-State bank" shall have the

1 meaning given that term pursuant to section 1 of P.L.1948, c.67
2 (C.17:9A-1).

3

4 39. (New section) As used in sections 38 through 87 of P.L. ,
5 c. (C.)(pending before the Legislature as this bill):

6 "Agency" means any place of business of a foreign bank at which
7 credit balances are maintained, checks are paid, money is lent, or, to
8 the extent not prohibited by federal law, deposits are accepted from a
9 person or entity that is not a citizen or resident of the United States.
10 Obligations shall not be considered credit balances unless they are:

11 (1) Incidental to, or arise out of the exercise of, other lawful
12 banking powers;

13 (2) To serve a specific purpose;

14 (3) Not solicited from the general public;

15 (4) Not used to pay routine operating expenses such as salaries,
16 rent, or taxes in the United States;

17 (5) Withdrawn within a reasonable period of time after the specific
18 purpose for which they were placed has been accomplished; and

19 (6) Drawn upon in a manner reasonable in relation to the size and
20 nature of the account.

21 "Banking Act" means "The Banking Act of 1948," P.L.1948, c.67
22 (C.17:9A-1 et seq.).

23 "Banking subsidiary," with respect to a specified foreign bank,
24 means a bank that is a subsidiary as the terms "bank" and "subsidiary"
25 are defined in section 2 of the federal "Bank Holding Company Act of
26 1956," 12 U.S.C. §1841.

27 "Branch" means any place of business of a foreign bank at which
28 deposits are received and that is not an agency, as that term is defined
29 in this section.

30 "Business in this State", when used with respect to a foreign bank
31 which is licensed to establish one or more agencies or branch offices,
32 includes, without limitation, the aggregate business of all those offices
33 and agencies.

34 "Change the status of an office" means convert a representative
35 office into a branch or agency, or an agency into a branch, or the
36 reverse of the foregoing, but does not include renewal of the license
37 of an existing office.

38 "Commercial lending company" means any organization, other than
39 a bank or an organization operating under section 25 of the Federal
40 Reserve Act, 12 U.S.C. 601-604a, organized under the laws of any
41 state of the United States or a foreign country, that maintains credit
42 balances permissible for an agency and engages in the business of
43 making commercial loans. Commercial lending company includes any
44 company chartered under Article XII of the banking law of the State
45 of New York.

46 "Commissioner" means the Commissioner of Banking of New

1 Jersey.

2 "Controlling person," when used with respect to a foreign bank,
3 means any person who, directly or indirectly, controls that bank.

4 "Department" means the Department of Banking of New Jersey.

5 "To establish" or "establish" means to:

6 (1) Open and conduct business through an office;

7 (2) Acquire directly, through merger, consolidation, or similar
8 transaction with another foreign bank, the operations of an office that
9 is open and conducting business;

10 (3) Acquire an office through the acquisition of a foreign bank
11 subsidiary that will cease to operate in the same corporate form
12 following the acquisition;

13 (4) Change the status of an office; or

14 (5) Relocate an office from one physical location to another, unless
15 the new office is in the same building as the existing office.

16 "Executive officer," when used with respect to a foreign bank or a
17 controlling person of a foreign bank, means the chief executive officer,
18 the chief operating officer, the chief financial officer, and any other
19 person who participates or has authority to participate in major
20 policy-making functions of such bank or controlling person.

21 "Executive officer," when used with respect to a foreign bank, includes
22 the head of the international division, or, if there is no such division,
23 the closest equivalent division or unit of that bank.

24 "Federal agency" has the meaning set forth in section 1(b) of the
25 "International Banking Act of 1978," 12 U.S.C. §3101.

26 "Federal branch" has the meaning set forth in section 1(b) of the
27 "International Banking Act of 1978," 12 U.S.C. §3101.

28 "FDIC" means the Federal Deposit Insurance Corporation
29 established pursuant to "Federal Deposit Insurance Act," 12 U.S.C.
30 §1811 et seq.

31 "Federal Reserve" means the Board of Governors of the Federal
32 Reserve System.

33 "Foreign country" means any nation other than the United States,
34 including, without limitation, any subdivision, territory, trust territory,
35 dependency, or possession of any such nation. With respect to banks
36 which do not have deposit insurance with the FDIC, "foreign country"
37 also includes Puerto Rico, Guam, American Samoa, the Virgin Islands,
38 and any territory, trust territory, dependency, or insular possession of
39 the United States.

40 "Foreign bank" means an organization that is organized under the
41 laws of a foreign country and that engages directly in the business of
42 banking outside of the United States. The term "foreign bank" does
43 not include a central bank of a foreign country that does not engage in
44 a commercial banking business in the United States through an office.

45 "Foreign banking organization" means a foreign bank that operates
46 a branch, agency or commercial lending company subsidiary in the

1 United States or that controls a bank in the United States and any
2 company of which such foreign bank is a subsidiary.

3 "License" means a license issued under sections 38 through 87 of
4 P.L.____, c.____ (C.____) (pending before the Legislature as this bill),
5 authorizing a foreign bank or a commercial lending company to
6 establish and to maintain an office; to be "licensed" means to be issued
7 or to hold a license; and to be "licensed to transact business in this
8 State," when used with respect to a foreign bank or a commercial
9 lending company, means that the bank is licensed to establish an
10 agency or branch office or commercial lending company.

11 "Loans and extensions of credit" means all direct and indirect
12 advances of funds to a person made on the basis of any obligation of
13 that person to repay funds.

14 "Office" or "office of a foreign bank" means any branch, agency,
15 representative office, or commercial lending company subsidiary of a
16 foreign bank in the United States.

17 "Organization" means a corporation, government, partnership,
18 association, or any other entity.

19 "Person" means an individual or an organization.

20 "Primary office," when used with respect to a foreign bank which
21 is licensed to establish a single office, means that office and, when
22 used with respect to a foreign bank which is licensed to establish two
23 or more offices, means one of those offices which that bank has
24 designated as its primary office in accordance with section 52 of P.L.
25 , c. (C.)(pending before the Legislature as this bill).

26 "Representative office" means any place of business of a foreign
27 bank that is not a branch, agency, or subsidiary of the foreign bank.

28 "State of the United States" means any state of the United States or
29 the District of Columbia.

30 "Subsidiary" means an organization, 25 percent or more of whose
31 voting shares is directly or indirectly owned, controlled, or held with
32 the power to vote by a company, including a foreign bank or foreign
33 banking organization, or any organization that is otherwise controlled
34 or capable of being controlled by a foreign bank or foreign banking
35 organization.

36

37 40. (New section) a. For purposes of sections 38 through 87 of
38 P.L. , c. (C.)(pending before the Legislature as this bill),
39 offices of foreign banks are divided into classes and ranked in
40 ascending order, as follows:

- 41 (1) Representative office.
- 42 (2) Commercial lending company.
- 43 (3) Agency.
- 44 (4) Branch.

45 b. For purposes of sections 38 through 87 of P.L. , c. (C.
46)(pending before the Legislature as this bill):

1 (1) Changing a lower class office into a higher class office shall be
2 treated as establishing the higher class office, but not as closing the
3 lower class office.

4 (2) Changing a higher class office into a lower class office shall be
5 treated as closing the higher class office, but not as establishing the
6 lower class office.

7 c. In the case of changing a higher class office into a lower class
8 office, when the application for approval to close the higher class
9 office has been approved and all conditions precedent to the closing
10 have been fulfilled, the foreign bank may change the higher class office
11 into the lower class office, and the commissioner shall issue a license
12 authorizing the bank to establish the lower class office.

13
14 41. (New section) Fees shall be paid to, and collected by, the
15 commissioner as follows:

16 a. The fee for filing with the commissioner an application by a
17 foreign bank which is not licensed to transact business in this State for
18 approval to establish a branch office shall be \$3,000.

19 b. The fee for filing with the commissioner an application by a
20 foreign bank or commercial lending company which is not licensed to
21 transact business in this State for approval to establish an agency or an
22 office of a commercial lending company shall be \$2,500.

23 c. The fee for filing with the commissioner an application by a
24 foreign bank which is licensed to transact business in this State for
25 approval to establish a branch office shall be \$2,000.

26 d. The fee for filing with the commissioner an application by a
27 foreign bank or commercial lending company which is licensed to
28 transact business in this State for approval to establish an agency or an
29 office of a commercial lending company shall be \$1,500.

30 e. The fee for filing with the commissioner an application by a
31 foreign bank for approval to establish a representative office shall be
32 \$1,500.

33 f. The fee for filing with the commissioner an application by a
34 foreign bank or commercial lending company which is licensed to
35 establish an agency, branch or commercial lending company office for
36 approval to relocate or to close that office shall be \$1,000.

37 g. The fee for filing with the commissioner an application by a
38 foreign bank which is licensed to establish a representative office for
39 approval to relocate or to close that representative office shall be
40 \$500.

41 h. The fee for issuing a license shall be \$300.

42 i. The commissioner, by regulation, shall have the power to
43 increase the fees set forth above and to set and to charge additional
44 fees, including but not limited to, annual assessment fees.

45
46 42. (New section) a. Each application filed with the commissioner

1 under sections 38 through 87 of P.L. , c. (C.)(pending before
2 the Legislature as this bill) or under any regulation or order issued
3 under sections 38 through 87 of P.L. , c. (C.)(pending before
4 the Legislature as this bill) shall be in such form, shall contain the
5 information, be signed in the manner, and, if the commissioner so
6 requires, be verified in the manner the commissioner may by regulation
7 or order require.

8 b. Without limiting the foregoing, the commissioner shall require
9 as part of the application all of the information submitted to the
10 Federal Reserve in connection with any application and may require
11 only the information in the form submitted to the Federal Reserve as
12 these are required pursuant to the "Bank Holding Company Act of
13 1956," 12 U.S.C. §1841 et seq., the "International Banking Act of
14 1978," 12 U.S.C. §3101 et seq. and regulation K, 12 CFR §211.20 et
15 seq., issued by the Federal Reserve.

16

17 43. (New section) a. In this section, "act" includes, without
18 limitation, omission.

19 b. For purposes of making findings on an application by a foreign
20 bank or commercial lending company for approval to establish an
21 office:

22 (1) The commissioner may, in the absence of credible evidence to
23 the contrary, find that the directors, executive officers, and any
24 controlling person of the bank and the directors and executive officers
25 of any controlling person of the bank are each of good character and
26 sound financial standing.

27 (2) The commissioner may find that the bank, a director, executive
28 officer, or a controlling person of the bank, or director or executive
29 officer of a controlling person of the bank is not of good character if
30 that person:

31 (a) Has been convicted of, or has pleaded nolo contendere to, any
32 crime involving an act of fraud or dishonesty;

33 (b) Has consented to or suffered a judgment in any civil action
34 based upon conduct involving an act of fraud or dishonesty;

35 (c) Has consented to or suffered the suspension or revocation of
36 any professional, occupational, or vocational license based upon
37 conduct involving an act of fraud or dishonesty;

38 (d) Has willfully made or caused to be made in any application or
39 report filed with the commissioner or in any proceeding before the
40 commissioner, any statement which was at the time and in the light of
41 the circumstances under which it was made false or misleading with
42 respect to any material fact, or has willfully omitted to state in any
43 such application or report any material fact which was required to be
44 stated therein; or

45 (e) Has willfully committed any violation of, or has willfully aided,
46 abetted, counseled, commanded, induced, or procured the violation by

1 any other person of, any provision of this section or of any regulation
2 or order issued under this section.

3 c. Paragraph (2) of subsection b., of this section shall not be
4 deemed to be an exclusive list of the grounds upon which the
5 commissioner may find, for purposes of making findings on an
6 application by a foreign bank or commercial lending company for
7 approval to establish an office, that such bank or company, a director,
8 executive officer, or controlling person of the bank, or a director or
9 executive officer of a controlling person of the bank or company, is
10 not of good character.

11

12 44. (New section) a. Each foreign bank and commercial lending
13 company which is licensed to establish an office shall file with the
14 commissioner reports as and when the commissioner may by regulation
15 or order require.

16 b. Each report filed with the commissioner under sections 38
17 through 87 of P.L. , c. (C.)(pending before the Legislature as
18 this bill) or under any regulation or order issued thereunder shall be in
19 the form, contain the information, be signed in the manner, and, if the
20 commissioner so requires, be verified in the manner the commissioner
21 may by regulation or order require.

22

23 45. (New section) Each foreign bank and commercial lending
24 company which is licensed to establish an office shall make, keep, and
25 preserve at an office or at any other place as the commissioner may by
26 regulation or order approve, the books, accounts, and other records
27 relating to the business of the office, in the form, manner, and for the
28 time the commissioner may by regulation or order provide.

29

30 46. (New section) a. No foreign bank which is licensed to
31 establish an agency or branch office shall concurrently establish a
32 federal agency or federal branch in this State.

33 b. No foreign bank which establishes a federal agency or federal
34 branch in this State shall concurrently be licensed to establish an
35 agency or branch office in this State.

36

37 47. (New section) A foreign bank or commercial lending company
38 may open one or more offices in this State. Each office shall be
39 separately licensed and each office of a separate class shall be
40 separately maintained.

41

42 48. (New section) a. (1) No foreign bank, other than a foreign
43 bank which is licensed to establish an agency or branch office, shall be
44 issued a license to establish a representative office or commercial
45 lending company unless it shall have first filed with the commissioner,
46 in the form as the commissioner may by regulation or order require, an

1 appointment irrevocably appointing the commissioner to be the bank's
2 or commercial lending company's attorney to receive service of any
3 lawful process in any noncriminal judicial or administrative proceeding
4 against the bank or any of its successors which arises out of the
5 activities in this State of the representative office or commercial
6 lending company after the appointment has been filed, with the same
7 force and validity as if served personally on the bank or its successor,
8 as the case may be.

9 (2) Any foreign bank, other than a foreign bank which is licensed
10 to establish an agency or branch office or which establishes a federal
11 agency or federal branch in this State, which establishes a
12 representative office or commercial lending company and which has
13 not filed with the commissioner an appointment pursuant to paragraph
14 (1) of this subsection a., shall be deemed by the establishment of that
15 office to have appointed the commissioner as its attorney to receive
16 service of any lawful process in any noncriminal judicial or
17 administrative proceeding against the bank or any of its successors
18 which arises out of the activities in this State of the representative
19 office or commercial lending company with the same force and validity
20 as if served personally on the bank or its successor, as the case may
21 be.

22 b. (1) No foreign bank shall be issued a license to establish an
23 agency or branch office unless it shall have first filed with the
24 commissioner, in a form as the commissioner may by regulation or
25 order require, an appointment irrevocably appointing the commissioner
26 to be the bank's attorney to receive service of any lawful process in
27 any noncriminal judicial or administrative proceeding against the bank
28 or any of its successors which arises after the appointment has been
29 filed, with the same force and validity as if served personally on the
30 bank or its successor, as the case may be.

31 (2) Any foreign bank which establishes an agency or branch office,
32 other than a federal agency or federal branch, and which has not filed
33 with the commissioner an appointment pursuant to paragraph (1) of
34 this subsection b. shall be deemed by the establishment of that office
35 to have appointed the commissioner as its attorney to receive service
36 of any lawful process in any noncriminal judicial or administrative
37 proceeding against the bank or any of its successors with the same
38 force and validity as if served personally on the bank or its successor,
39 as the case may be.

40 c. Service may be made on a foreign bank which has appointed or
41 is deemed to have appointed the commissioner as its attorney for
42 service of process by leaving a copy of the process at any office of the
43 commissioner. However, this service is not effective unless (1) the
44 party making the service, who may be the commissioner, forthwith
45 sends notice of the service and a copy of the process by registered or
46 certified mail to the foreign bank at its last address on file with the

1 commissioner at any of its offices in this State or at its primary office
2 wherever located, and (2) an affidavit of compliance with this
3 subsection c by the party making service is filed in the case on or
4 before the return date, if any, or within such further time as the court,
5 in the case of a judicial proceeding, or the administrative agency, in the
6 case of an administrative proceeding, allow.

7
8 49. (New section) No license shall be transferable or assignable.

9
10 50. (New section) Each foreign bank and commercial lending
11 company which is licensed to establish an office shall post its license
12 in a conspicuous place at that office.

13
14 51. (New section) a. Each foreign bank and commercial lending
15 company which is licensed to establish an office shall assign to that
16 office a popular name which consists of a specific designation by
17 name, number or both, and shall post the popular name and the name
18 of the bank in a conspicuous place at the office.

19 b. The popular name that a foreign bank assigns to a representative
20 office which it is licensed to establish shall include the term
21 "representative office."

22 c. The popular name that a foreign bank assigns to an agency
23 which it is licensed to establish shall not include the term "branch"
24 unless that term is modified by the word "foreign" or "overseas" or by
25 a similar word.

26 d. Each foreign bank which is licensed to establish a commercial
27 lending company shall select a popular name that includes the term
28 "commercial lending company" and shall post with that popular name
29 a clear expression of whether the foreign bank is liable for the debts
30 and obligations of the commercial lending company.

31
32 52. (New section) Whenever a foreign bank is licensed to establish
33 two or more offices it shall designate one of those offices as its
34 primary office.

35
36 53. (New section) Each foreign bank and commercial lending
37 company which is licensed to establish an office shall conduct all of the
38 business of that office in a single building or in a single building and
39 adjoining buildings. However, for good cause and with the approval
40 of the commissioner, the bank may conduct part of the business of the
41 office elsewhere in the same vicinity.

42
43 54. (New section) a. The department shall have the right to
44 examine each office which the commissioner licenses under section 38
45 through 87 of P.L. , c. (C.)(pending before the Legislature as
46 this bill). The department shall insure that each office which is

1 licensed hereunder is examined by either the Federal Reserve or the
2 department as often as the commissioner deems it advisable. The costs
3 of any examination by the department shall be assessed to the bank or
4 commercial lending company which is the holder of the license. The
5 examination fees shall be assessed in the same manner and on the same
6 basis as examination fees are assessed for banks or trust companies
7 organized under the Banking Act.

8 b. The commissioner may contract with the Federal Reserve or the
9 bank examination officials in any other state of the United States or in
10 any other foreign country to conduct cooperative examinations. Every
11 report and copy of a report of examination of a foreign bank or office
12 of a foreign bank made by or under the supervision of the
13 commissioner, and every report and copy thereof made by a bank
14 pursuant to the requirement of the commissioner, shall be confidential,
15 and shall not be made public by any officer, director or employee of a
16 foreign bank, and shall not be subject to subpoena or to admission into
17 evidence in any action or proceeding in any court, except pursuant to
18 an order of the court made upon notice to the commissioner and after
19 affording the commissioner an opportunity to advise the court of
20 reasons for excluding from evidence that report or any portion thereof.
21 The court shall order the issuance of a subpoena for the production or
22 admission into evidence of any report or portion thereof, only if it is
23 satisfied that (1) it is material and relevant to the issues in the
24 proceedings, and (2) the ends of justice and public advantage will be
25 subserved thereby. This section shall not prohibit the commissioner
26 from sharing a report of examination with another state or federal
27 regulator or a bank regulator from a foreign country, or other person,
28 so long as provision is made for retaining the confidentiality of the
29 report. This section shall not apply to any action or proceeding
30 instituted by the commissioner or Attorney General pursuant to any
31 law of this State.

32
33 55. (New section) A foreign bank or commercial lending company
34 which makes a loan or extends credit from an office in this State, or
35 books a loan or extension of credit in this State, shall comply with any
36 applicable interest rate limitations imposed by the laws of this State
37 or the United States which would be applicable to that loan if made by
38 a commercial bank organized under the Banking Act. When
39 transacting business in this State, an office of a foreign bank shall
40 comply with all other laws and regulations of the State governing the
41 business in which the office is engaged, unless the commissioner, for
42 good cause shown, exempts the office by regulation or order from
43 compliance.

44
45 56. (New section) a. No foreign bank shall establish a
46 representative office in this State unless it is licensed to establish a

1 representative office at that place.

2 b. (1) No person shall establish a representative office in this State
3 as representative of a foreign bank unless that bank is licensed to
4 establish the office as a representative office.

5 (2) For purposes of sections 38 through 87 of P.L. , c. (C.
6)(pending before the Legislature as this bill), if any person establishes
7 an office in this State as representative of a foreign bank, that foreign
8 bank shall be deemed to establish the office as a representative office.

9 c. Neither subsection a. nor subsection b. of this section shall
10 prohibit a foreign bank which establishes a federal agency or federal
11 branch in this State from establishing one or more representative
12 offices in this State.

13

14 57. (New section) a. (1) No foreign bank shall establish a
15 representative office unless the commissioner shall have first approved
16 the establishment of that office and issued a license authorizing the
17 foreign bank to establish the office.

18 (2) Paragraph (1) of this subsection a. shall not prohibit a foreign
19 bank which establishes a federal agency or federal branch in this State
20 from establishing one or more representative offices in this State.

21 b. If the commissioner finds the following with respect to an
22 application by a foreign bank to establish a representative office, the
23 commissioner shall approve the application:

24 (1) That the bank, any controlling person of the bank, the directors
25 and executive officers of the bank or of any controlling person of the
26 bank, and the proposed management of the office are each of good
27 character and sound financial standing;

28 (2) That the financial history and condition of the bank are
29 satisfactory;

30 (3) That the management of the bank and the proposed
31 management of the office are adequate;

32 (4) That it is reasonable to believe that, if licensed to establish the
33 office, the bank will operate the office in compliance with all
34 applicable laws, regulations, and orders; and

35 (5) That the bank's establishment of the office will promote the
36 public convenience and advantage.

37 (6) Such other standards as the commissioner may by regulation
38 require.

39 If the commissioner finds otherwise, the commissioner shall deny
40 the application.

41 c. Whenever an application by a foreign bank to establish a
42 representative office has been approved and all conditions precedent
43 to the issuance of a license authorizing the foreign bank to establish
44 the representative office have been fulfilled, the commissioner shall
45 issue the license.

1 58. (New section) a. No foreign bank which is licensed to
2 establish a representative office shall relocate its office unless the
3 commissioner shall have first approved the relocation and issued a
4 license authorizing the foreign bank to establish the office at the new
5 site.

6 b. If the commissioner finds the following with respect to an
7 application by a foreign bank to relocate a representative office, the
8 commissioner shall approve the application:

9 (1) If the new site of the office is in the same vicinity as the old
10 site, that the relocation of the office will not be substantially
11 detrimental to the public convenience and advantage; or

12 (2) If the new site of the office is not in the same vicinity as the old
13 site:

14 (a) that the relocation of the office from the old site will not be
15 substantially detrimental to the public convenience and advantage in
16 the area which is primarily served by the office at the old site; and

17 (b) that the relocation of the office to the new site will promote the
18 public convenience and advantage.

19 If the commissioner finds otherwise, the commissioner shall deny
20 the application.

21 c. Whenever an application by a foreign bank to relocate a
22 representative office has been approved and all conditions precedent
23 to the issuance of a license authorizing such bank to establish the
24 office at the new site have been fulfilled, the commissioner shall issue
25 the license.

26 d. Promptly after a foreign bank which is licensed to establish a
27 representative office relocates its office, the bank shall surrender to the
28 commissioner the license which authorized it to establish the office at
29 the old site.

30

31 59. (New section) A foreign bank which is licensed to establish a
32 representative office may, subject to regulations the commissioner may
33 prescribe, engage in representational functions at that office but shall
34 not solicit or accept deposits or credit balances or otherwise transact
35 business at the office.

36

37 60. (New section) a. (1) No foreign bank which is licensed to
38 establish a representative office shall close its office unless the
39 commissioner shall have first approved the closing.

40 (2) Paragraph (1) of this subsection a. shall not prohibit a foreign
41 bank which is licensed to establish a representative office from closing
42 the office in accordance with sections 80 through 86 of P.L. , c.

43 (C.)(pending before the Legislature as this bill).

44 b. If the commissioner finds, with respect to an application by a
45 foreign bank to close a representative office, that the closing of that
46 office will not be substantially detrimental to the public convenience

1 and advantage, the commissioner shall approve the application. If the
2 commissioner finds otherwise, the commissioner shall deny the
3 application.

4 c. Whenever an application by a foreign bank to close a
5 representative office has been approved and all conditions precedent
6 to the closing have been fulfilled, that bank may close the office and
7 shall promptly thereafter surrender to the commissioner the license
8 which authorized it to establish the office.

9

10 61. (New section) Any office of a foreign bank existing in this
11 State on the effective date of sections 38 through 87 of P.L. , c.
12 (C.)(pending before the Legislature as this bill) which had been
13 previously approved by the commissioner shall be granted a license by
14 the commissioner as a representative office for purposes of that act.

15

16 62. (New section) a. No foreign bank shall transact business in
17 this State except at an agency or branch office which it is licensed to
18 establish and at which it is permitted by sections 38 through 87 of P.L.
19 , c. (C.)(pending before the Legislature as this bill) to transact
20 that business.

21 b. Subsection a. of this section shall not be deemed to prohibit:

22 (1) Any foreign bank which establishes a federal agency or federal
23 branch in this State from transacting at that federal agency or federal
24 branch such business as it may be authorized to transact under
25 applicable federal laws and regulations;

26 (2) Any foreign bank from carrying on the activities described in
27 paragraph (2) of N.J.S. 14A:13-3;

28 (3) Any foreign bank which does not establish an agency or branch
29 office from making, in this State, loans secured by liens on real or
30 personal property located in this State or enforcing those loans in this
31 State; or

32 (4) Any foreign bank which does not establish an agency or branch
33 office from transacting trust business in this State if the trust business
34 is not conducted from an office or location in this State and that trust
35 business is limited to trust business permitted by, and conducted
36 pursuant to a certificate of authority issued by the commissioner in
37 accordance with subsection B. of section 316 of P.L.1948, c.67
38 (C.17:9A-316B).

39

40 63. (New section) a. (1) No foreign bank shall establish an agency
41 or branch office unless the commissioner shall have first approved the
42 establishment of that office and issued a license authorizing the bank
43 to establish the office.

44 (2) Paragraph (1) of this subsection a. shall not prohibit a foreign
45 bank from establishing a federal agency or federal branch in this State.

46 b. If the commissioner finds the following with respect to an

1 application by a foreign bank to establish an agency or branch office,
2 the commissioner shall approve that application:

3 (1) That the bank, any controlling person of the bank, the directors
4 and executive officers of the bank or of any controlling person of the
5 bank, and the proposed management of the office are each of good
6 character and sound financial standing;

7 (2) That the financial history and condition of the bank are
8 satisfactory;

9 (3) That the management of the bank and the proposed
10 management of the office are adequate;

11 (4) That it is reasonable to believe that, if licensed to establish the
12 office, the bank will operate the office in a safe and sound manner and
13 in compliance with all applicable laws, regulations, and orders;

14 (5) That the bank's plan to establish and to operate the office
15 affords reasonable promise of successful operation; and

16 (6) That the bank's establishment of the office will promote the
17 public convenience and advantage.

18 If the commissioner finds otherwise, the commissioner shall deny
19 the application.

20 c. Whenever an application by a foreign bank to establish an
21 agency or branch office has been approved and all conditions
22 precedent to the issuance of a license authorizing the bank to establish
23 the office have been fulfilled, the commissioner shall issue the license.

24

25 64. (New section) a. No foreign bank which is licensed to establish
26 an agency or branch office shall relocate that office unless the
27 commissioner shall have first approved the relocation and issued a
28 license authorizing the bank to establish the office at the new site.

29 b. If the commissioner finds the following with respect to an
30 application by a foreign bank to relocate any agency or branch office,
31 the commissioner shall approve the application:

32 (1) If the new site of the office is in the same vicinity as the old
33 site:

34 (a) That it will not be unsafe or unsound for the bank to relocate
35 the office; and

36 (b) That the relocation of the office will not be substantially
37 detrimental to the public convenience and advantage, or that the
38 relocation is necessary in the interests of the safety and soundness of
39 the bank; or

40 (2) If the new site of the office is not in the same vicinity as the old
41 site:

42 (a) That the bank's plan to relocate the office and to establish the
43 office at the new site affords reasonable promise of successful
44 operation;

45 (b) That the relocation of the office from the old site will not be
46 substantially detrimental to the public convenience and advantage in

1 the area which is primarily served by the office at the old site, or that
2 the relocation is necessary in the interests of the safety and soundness
3 of the bank; and

4 (c) That the relocation of the office to the new site will promote
5 the public convenience and advantage.

6 If the commissioner finds otherwise, the commissioner shall deny
7 the application.

8 c. Whenever an application by a foreign bank to relocate an agency
9 or branch office has been approved and all conditions precedent to the
10 issuance of a license authorizing the bank to establish the office at the
11 new site have been fulfilled, the commissioner shall issue the license.

12 d. Promptly after a foreign bank which is licensed to establish an
13 agency or branch office relocates the office, the bank shall surrender
14 to the commissioner the license which authorized it to establish the
15 office at the old site.

16

17 65. (New section) a. A foreign bank which is licensed to establish
18 an agency or branch office may transact banking business at that
19 office, subject to the following:

20 (1) If the office is an agency, the bank shall not transact the
21 business of accepting deposits, other than deposits of: (a) a foreign
22 nation; (b) an agency or instrumentality of a foreign nation; or (c) a
23 person which resides, is domiciled, and maintains its principal place of
24 business in a foreign nation. For purposes of this paragraph "person"
25 means any individual, proprietorship, joint venture, partnership, trust,
26 business trust, syndicate, association, joint stock company,
27 corporation, or any other organization or any branch or division
28 thereof.

29 (2) If the office is a branch office, the bank shall not transact the
30 business of accepting any deposits other than: (a) deposits of the kind
31 described in paragraph (1) of this subsection a.; (b) deposits of
32 \$100,000 or more; (c) deposits of less than \$100,000 which the branch
33 is permitted to accept under applicable federal law; or (d) deposits the
34 acceptance of which the commissioner determines by regulation or
35 order does not constitute engaging in domestic retail deposit activities
36 requiring deposit insurance protection.

37 (3) If the office is an agency or branch office or commercial
38 lending company, the bank or lending company may maintain credit
39 balances as those obligations are defined under the term "agency" in
40 section 39 of P.L. , c. (C.)(pending before the Legislature as
41 this bill).

42 (4) In any case, the bank or commercial lending company shall not
43 transact any business which it is not authorized to transact or is
44 prohibited from transacting under the laws of its domicile or which
45 banks organized under the laws of this State are not authorized to
46 transact or are prohibited from transacting.

1 b. No foreign bank which is licensed to establish an agency or
2 branch office shall transact any trust business at that office unless the
3 commissioner expressly authorizes the trust business by order upon a
4 finding by the commissioner that the agency or branch is qualified to
5 transact such business under standards similar to those required to
6 obtain a charter for a trust company under the Banking Act.

7 c. All provisions of the Banking Act shall apply to any foreign bank
8 or commercial lending company licensed to transact business in this
9 State, unless the commissioner by regulation or order otherwise
10 specifies.

11 d. (1) Any provisions of the Banking Act which are applicable to
12 or with respect to foreign banks licensed to transact business in this
13 State, whether by law, regulation or order, shall be applied with any
14 changes in interpretation or application as may be necessary or
15 appropriate.

16 (2) Without limiting the provisions of paragraph (1) of this
17 subsection d., for purposes of any provision of the Banking Act, which
18 are applicable to or with respect to a foreign bank or commercial
19 lending company licensed to transact business in this State:

20 (a) "Approved by, or approval of, the board" means approved or
21 ratified by the board of the bank, by a committee of the board
22 authorized to exercise the powers of the board with respect to the
23 particular matter, or by an officer of the bank who is assigned to the
24 head office of the bank and who has authority over the bank's business
25 in this State, including authority to approve or ratify the particular
26 matter.

27 (b) "Principal office" means the primary office of the bank.

28 (c) "Shareholders' equity" means the shareholders' equity of the
29 bank or, if the bank has no shareholders' equity, the closest equivalent
30 account or accounts.

31 e. Whenever any provision of the Banking Act, which is applicable
32 to or with respect to a foreign bank or commercial lending company
33 licensed to transact business in this State limits the amount of any
34 assets or liabilities of the bank, including, by way of example, the
35 amount of borrowings of, obligations to, or investment of the bank or
36 commercial lending company, for purposes of calculating the amount
37 of such assets or liabilities, only assets or liabilities of the agencies or
38 branch offices of the bank or commercial lending company shall be
39 included, and the assets and liabilities of offices of the bank or
40 commercial lending company outside this State shall be excluded.

41
42 66. (New section) a. Whenever the commissioner calls for a report
43 of condition or income from commercial banks organized under the
44 laws of this State, the commissioner shall call for a like report from
45 each foreign bank which is licensed to transact business in this State.

46 b. Whenever a foreign bank which is licensed to transact business

1 in this State files with the commissioner a report called for under
2 subsection a. of this section, that report shall be readily available to the
3 customers of the office of the bank.

4 c. The statement of condition shall be in the form, contain the
5 information, and be signed in the manner, and, if the commissioner so
6 requires by regulation or order, be verified in the manner the
7 commissioner may by regulation or order require.

8

9 67. (New section) Each foreign bank which is licensed to establish
10 an agency or branch office shall, in accordance with the regulations the
11 commissioner may prescribe, give notice that deposits in that office are
12 not insured by the Federal Deposit Insurance Corporation.

13

14 68. (New section) a. If a foreign bank is licensed to establish a
15 depository agency or branch office and such office is not subject to the
16 regulations of the Depository Institutions Deregulation Committee
17 established pursuant to the "Depository Institutions Deregulation Act
18 of 1980," 12 U.S.C. §3501 et seq., Regulation Q of the Federal
19 Reserve, 12 CFR §217 et seq., or Part 329 of the regulations of the
20 Federal Deposit Insurance Corporation, 12 CFR §329 et seq., the bank
21 shall, with respect to deposits accepted at the office, comply with the
22 regulations regarding maximum interest rates on deposits, prepayment
23 of time deposits, and related matters the commissioner may prescribe
24 as being necessary and appropriate to establish competitive equality
25 between foreign banks and banks organized under the laws of this
26 State which are subject to the regulations of the Depository
27 Institutions Deregulation Committee, Regulation Q of the Federal
28 Reserve, or Part 329 of the regulations of the Federal Deposit
29 Insurance Corporation.

30 b. Whenever the commissioner adopts a regulation or order of
31 repeal of a regulation under subsection a. of this section, the
32 commissioner may, without describing specific facts showing the need
33 for immediate action, make the regulation or order of repeal effective
34 immediately.

35

36 69. (New section) a. Each foreign bank which is licensed to
37 transact business in this State shall keep the assets of that business
38 separate and apart from the assets of its business outside this State.

39 b. The creditors of the business in this State of a foreign bank
40 which is licensed to transact business in this State shall be entitled to
41 priority over other creditors with respect to the assets of the foreign
42 banks's business in this State.

43

44 70. (New section) a. In this section:

45 (1) "Adjusted liabilities," when used with respect to a foreign bank,
46 means the liabilities of the bank's business in this State, excluding: (a)

1 accrued expenses; (b) any liability to an office, whether in or outside
2 of this State, or subsidiary of the bank; and (c) such other liabilities as
3 the commissioner may by regulation or order exclude.

4 (2) "Applicable minimum," when used with respect to eligible
5 assets deposited or to be deposited with an approved depository by a
6 foreign bank, means the amount as the commissioner may from time
7 to time by regulation or order determine to be necessary for the
8 establishment of sound financial condition, for the protection of the
9 interests of creditors of the bank's business in this State, or for the
10 protection of the public interest.

11 However, in the case of a foreign bank which is licensed to establish
12 an agency or a branch office, the applicable minimum shall in no event
13 be less than the greater of (a) 5 percent of the adjusted liabilities of the
14 bank or (b) \$1,000,000.

15 (3) "Approved depository," when used with respect to a foreign
16 bank, means a bank organized under the laws of this State or a
17 national bank headquartered in this State which has been selected by
18 such foreign bank and approved by the commissioner for the purpose
19 of acting as the approved depository of the foreign bank and which has
20 filed with the commissioner, in the form as the commissioner may by
21 regulation or order prescribe, an agreement to comply with all
22 applicable provisions of this section and of any regulation or order
23 issued under this section.

24 (4) "Eligible assets" when used with respect to a foreign bank,
25 means any of the following:

26 (a) Cash.

27 (b) Any investment security which by regulation is eligible for
28 investment by a commercial bank organized under the Banking Act.

29 (c) Any negotiable certificate of deposit which: (i) has a maturity
30 of not more than one year, (ii) is payable in the United States, and
31 (iii) is issued by a bank organized under the laws of a state of the
32 United States, by a national bank, or by a branch office of a foreign
33 bank which is located in the United States.

34 (d) Any commercial paper which is payable in the United States
35 and which is rated P-1 or its equivalent by a nationally recognized
36 rating service; provided, however, that any conflict in rating shall be
37 resolved in favor of the lower rating.

38 (e) Any banker's acceptance which is payable in the United States
39 and which is eligible for discount with a Federal Reserve bank.

40 (f) Any other asset which the commissioner by regulation or order
41 determines to be eligible.

42 Notwithstanding the foregoing provisions of this paragraph,
43 "eligible asset," when used with respect to a foreign bank, does not
44 include any instrument the issuer of which: (i) is, or is affiliated with,
45 the foreign bank; (ii) is domiciled in, or controlled by a bank or other
46 person domiciled in, the same foreign nation as the foreign bank; or

1 (iii) is, or is controlled by, the foreign nation. For purposes of the
2 foregoing provision, to be "affiliated" means to control, to be
3 controlled by, or to be under common control with.

4 b. For purposes of this section:

5 (1) The amount of adjusted liabilities of a foreign bank's business
6 in this State shall be computed for the period, in the manner, and on
7 the basis as the commissioner may by regulation or order prescribe.

8 (2) Any eligible asset shall be valued at the lesser of market or par.

9 c. (1) Before any foreign bank is licensed to transact business in
10 this State, the bank shall deposit, and each foreign bank which is
11 licensed to transact business in this State shall maintain on deposit,
12 with an approved depository, eligible assets having a value in an
13 amount not less than the applicable minimum.

14 (2) Whenever a foreign bank which is licensed to transact business
15 in this State ceases to be so licensed, the bank shall thereafter establish
16 on deposit, with an approved depository, eligible assets having a value
17 in an amount not less than the applicable minimum for the period of
18 time the commissioner may determine to be necessary for the
19 protection of creditors of the bank's business in this State or for the
20 protection of the public interest.

21 d. (1) No foreign bank which establishes eligible assets on deposit
22 with an approved depository pursuant to this section shall withdraw
23 any of those eligible assets except with the prior approval of the
24 commissioner.

25 (2) No approved depository which holds eligible assets on deposit
26 from a foreign bank pursuant to this section shall release any of those
27 eligible assets except with the prior approval of the commissioner or
28 as otherwise provided in subsection h. of this section.

29 e. Any foreign bank which establishes eligible assets on deposit
30 with an approved depository pursuant to this section shall be entitled
31 to receive any income paid on such eligible assets, unless the
32 commissioner shall have suspended or revoked its license to transact
33 business in this State or taken possession of its property and business
34 in this State.

35 f. (1) Whenever a foreign bank deposits eligible assets with, or
36 withdraws eligible assets from, an approved depository pursuant to
37 this section, the bank shall do so in accordance with the procedures
38 and requirements the commissioner may by regulation or order
39 prescribe.

40 (2) Whenever an approved depository receives, holds, or releases
41 eligible assets pursuant to this section, the approved depository shall
42 do so in accordance with the procedures and requirements the
43 commissioner may by regulation or order prescribe and shall file with
44 the commissioner reports as and when the commissioner may by
45 regulation or order require.

46 g. Whenever a foreign bank establishes eligible assets on deposit

1 with an approved depository pursuant to this section:

2 (1) The eligible assets shall be deemed to be pledged to the
3 commissioner for the benefit of the creditors of the bank's business in
4 this State; and, notwithstanding any provision of the Uniform
5 Commercial Code, N.J.S.12A:1-101 et seq., to the contrary, the
6 commissioner, for the benefit of the creditors, shall be deemed to have
7 a security interest in those eligible assets.

8 (2) The eligible assets shall be free from any lien, charge, right of
9 setoff, credit, or preference in connection with any claim of the
10 approved depository against the bank.

11 h. (1) If the commissioner takes possession of the property and
12 business of a foreign bank which establishes eligible assets on deposit
13 with an approved depository pursuant to this section, the approved
14 depository shall, upon order of the commissioner, release those eligible
15 assets to the commissioner, as liquidator of the property and business
16 of the bank.

17 (2) If a foreign bank which establishes eligible assets on deposit
18 with an approved depository pursuant to this section fails to pay any
19 judgement creditor of its business in this State and the commissioner
20 has not taken possession of the property and business of the bank, the
21 approved depository shall release the eligible assets to the
22 commissioner, and the commissioner shall make the disposition of the
23 eligible assets, as a court of competent jurisdiction of this State or of
24 the United States may order for the benefit of that judgement creditor.
25 For purposes of this paragraph, "judgement creditor of its business in
26 this State" means a person to whom the bank is required to pay money
27 under a judgement which: (a) arose out of the bank's business in this
28 State; (b) has been entered by a court of competent jurisdiction of this
29 State or of the United States; (c) has become final, in that all
30 possibility of direct attack on that judgement by way of appeal, motion
31 for new trial, motion to vacate, or petition for extraordinary writ has
32 been exhausted; and (d) has remained unpaid for a period of not less
33 than 60 days after becoming final.

34

35 71. (New section) a. In this section:

36 (1) "Adjusted liabilities," when used with respect to a foreign bank
37 which is licensed to establish an agency or a branch office this State,
38 means the liabilities of that bank's business in this State, excluding: (a)
39 accrued expenses; (b) any liability to an office, whether in or outside
40 of this State, or majority-owned subsidiary of the bank; and (c) such
41 other liabilities as the commissioner may by regulation or order
42 exclude.

43 (2) "Eligible assets" means any asset which the commissioner by
44 regulation or order determines to be eligible for purposes of this
45 section. However, "eligible asset," when used with respect to a
46 foreign bank which is licensed to establish an agency or a branch

1 office, includes: (a) any asset which the bank establishes on deposit
2 pursuant to section 70 of P.L. , c. (C.)(pending before the
3 Legislature as this bill); and (b) any reserves which the bank
4 establishes with respect to its business in this State in accordance with
5 requirements prescribed by the Federal Reserve.

6 b. For purposes of this section, the amount of eligible assets and
7 the amount of adjusted liabilities of a foreign bank which is licensed to
8 establish an agency or a branch office in this State shall each be
9 computed for the period, in the manner, and on the basis as the
10 commissioner may be regulation or order prescribe.

11 c. A foreign bank licensed to establish an agency or a branch office
12 in this State shall hold at its agency or branch offices in this State or
13 at such other places as the commissioner may approve, eligible assets
14 in the amount, if any, as the commissioner may from time to time by
15 regulation or order determine to be necessary for the interests of
16 creditors of the bank's business in this State, or for the protection of
17 the public interest. However, in no event shall the amount exceed 108
18 percent of the adjusted liabilities of the bank's business in this State.

19 d. If the commissioner finds, with respect to a foreign bank
20 licensed to establish an agency or a branch office in this State, that
21 such action is necessary for the establishment of sound financial
22 condition, for the protection of the public interest, the commissioner
23 may order the bank to place all or part of the eligible assets which the
24 bank is required to hold under subsection c. of this section in the
25 custody of a bank organized under the laws of this State or a national
26 bank headquartered in this State that the commissioner may designate.
27

28 72. (New section) a. (1) No foreign bank which is licensed to
29 establish an agency or branch office shall close its office unless the
30 commissioner shall have first approved the closing.

31 (2) Paragraph (1) of this subsection a. shall not prohibit a foreign
32 bank which is licensed to establish an agency or branch office from
33 closing that office in accordance with sections 80 through 86 of P.L.
34 , c. (C.)(pending before the Legislature as this bill).

35 b. If the commissioner finds the following with respect to an
36 application by a foreign bank to close an agency or branch office, the
37 commissioner shall approve the application:

38 (1) That it will not be unsafe or unsound for the bank to close the
39 office; and

40 (2) That the closing of the office will not be substantially
41 detrimental to the public convenience and advantage or that the
42 closing of the office is necessary in the interests of the safety and
43 soundness of the bank.

44 If the commissioner finds otherwise, the commissioner shall deny
45 the application.

46 c. Whenever an application by a foreign bank to close an agency or

1 branch office has been approved and all conditions precedent to the
2 closing have been fulfilled, the bank may close the office and shall
3 promptly thereafter surrender to the commissioner the license which
4 authorized it to establish the office.

5
6 73. (New section) a. No commercial lending company shall
7 transact business in this State except at an office it is licensed to
8 establish and at which it is permitted by sections 73 through 79 of P.L.
9 , c. (C.) (pending before the Legislature as this bill) to transact
10 such business.

11 b. Subsection a. of this section shall not prohibit:

12 (1) Any commercial lending company from carrying on the
13 activities described in paragraph (2) of N.J.S.14A:13-3;

14 (2) Any commercial lending company from making in this State
15 loans secured by liens on real or personal property located in this State
16 or enforcing those loans in this State; or

17 (3) Any commercial lending company from transacting trust
18 business in this State so long as the trust business is not conducted
19 from any office or location in this State and that trust business is
20 limited to trust business permitted by, and conducted pursuant to a
21 certificate of authority issued by the commissioner in accordance with
22 subsection B. of section 316 of P.L.1948, c.67 (C.17:9A-316B).

23 c. No person shall establish an office in this State for a commercial
24 lending company unless the commercial lending company is licensed
25 to transact business in this State. For purposes of this section, if
26 anyone establishes an office to act on behalf of or solicit business for
27 a commercial lending company in this State, the office shall be deemed
28 to be the office of the commercial lending company regardless of
29 whether the business of the commercial lending company is transacted
30 at that office.

31
32 74. (New section) a. No foreign bank and no commercial lending
33 company shall establish an office of a commercial lending company in
34 this State unless the commissioner shall have first approved the
35 establishment of that office and issued a license authorizing the
36 commercial lending company to maintain the office.

37 b. If the commissioner finds the following with respect to an
38 application by a commercial lending company to establish a
39 commercial lending company, the commissioner shall approve that
40 application:

41 (1) That the commercial lending company, any controlling person
42 of the commercial lending company, the directors and executive
43 officers of the commercial lending company or of any controlling
44 person of the commercial lending company, and the proposed
45 management of the office are each of good character and sound
46 financial standing;

1 (2) That the financial history and condition of the commercial
2 lending company are satisfactory;

3 (3) That the management of the commercial lending company and
4 the proposed management of the office are adequate;

5 (4) That it is reasonable to believe that, if licensed to establish the
6 office, the commercial lending company will operate the office in a
7 safe and sound manner and in compliance with all applicable laws,
8 regulations, and orders; and

9 (5) That the commercial lending company's establishment of the
10 office will promote the public convenience and advantage.

11 If the commissioner finds otherwise, the commissioner shall deny
12 the application. The commissioner may, in approving any application,
13 condition the issuance of the license upon the compliance by the
14 commercial lending company with any provisions of sections 62
15 through 72 or sections 80 through 86 of P.L. , c. (C.
16)(pending before the Legislature as this bill) applicable to branches
17 and agencies.

18

19 75. (New section) a. No commercial lending company which is
20 licensed to establish a commercial lending office shall relocate that
21 office unless the commissioner shall have first approved that relocation
22 and issued a license authorizing the commercial lending company to
23 establish the office at the new site.

24 b. If the commissioner finds the following with respect to an
25 application by a commercial lending company to relocate a commercial
26 lending office, the commissioner shall approve the application

27 (1) If the new site of the office is in the same vicinity as the old
28 site, that the relocation of the office will not be substantially
29 detrimental to the public convenience and advantage; or

30 (2) If the new site of the office is not in the same vicinity as the old
31 site:

32 (a) That the relocation of the office from the old site will not be
33 substantially detrimental to the public convenience and advantage in
34 the area which is primarily served by the office at the old site; and

35 (b) That the relocation of the office to the new site will promote
36 the public convenience and advantage.

37 If the commissioner finds otherwise, the commissioner shall deny
38 the application.

39 c. Whenever an application by a commercial lending company for
40 approval to relocate a commercial lending office has been approved
41 and all conditions precedent to the issuance of a license authorizing the
42 commercial lending company to establish an office at the new site have
43 been fulfilled, the commissioner shall issue the license.

44 d. Promptly after a commercial lending company which is licensed
45 to establish a commercial lending office relocates its office, that
46 commercial lending company shall surrender to the commissioner the

1 license which authorized it to establish an office at the old site.

2

3 76. (New section) A commercial lending company which is licensed
4 to establish a commercial lending office may, subject to such
5 regulations or orders as the commissioner may prescribe, engage in
6 representational functions at the commercial lending office for a
7 foreign bank but shall not solicit or accept deposits or credit balances
8 or otherwise transact business at the office on behalf of a foreign bank.

9

10 77. (New section) a. (1) No commercial lending company which
11 is licensed to establish a commercial lending office shall close its office
12 unless the commissioner shall have first approved the closing.

13 (2) Paragraph (1) shall not prohibit a commercial lending company
14 which is licensed to establish a commercial lending office from closing
15 its office in accordance with section 80 through 86 of P.L. , c. (C.
16)(pending before the Legislature as this bill).

17 b. If the commissioner finds, with respect to an application by a
18 commercial lending company to close a commercial lending office, that
19 the closing of the office will not be substantially detrimental to the
20 public convenience and advantage, the commissioner shall approve the
21 application. If the commissioner finds otherwise, the commissioner
22 shall deny the application.

23 c. Whenever an application by a commercial lending company to
24 close a commercial lending office has been approved and all conditions
25 precedent to that closing have been fulfilled, the commercial lending
26 company may close its office and shall promptly thereafter surrender
27 to the commissioner the license which authorized it to establish the
28 office.

29

30 78. (New section) The powers of a commercial lending company
31 in this State shall be limited as provided in section 65 and elsewhere
32 in sections 38 through 87 of P.L. , c. (C.)(pending before the
33 Legislature as this bill).

34

35 79. (New section) The commissioner shall have the power to grant
36 to any organization which is organized under the laws of this State,
37 including but not limited to a corporation, limited partnership, limited
38 liability company, joint venture or partnership, the right to operate as
39 a commercial lending company if the commercial lending company :
40 will be licensed under sections 73 through 78 of P.L. , c. (C.
41)(pending before the Legislature as this bill); is a subsidiary of a
42 foreign bank; and agrees in its certificate of incorporation or
43 organization or similar document to limit its activities to those
44 permitted to a commercial lending company under sections 38 through
45 87 of P.L. , c. (C.)(pending before the Legislature as this bill)
46 and Regulation K promulgated by the Federal Reserve, 12 CFR §211

1 et seq. Any such grant shall be issued in connection with and as part
2 of a license for a commercial lending office hereunder.

3
4 80. (New section) a. Except as provided in subsection b. of this
5 section, any foreign bank which holds a license to establish an office
6 may voluntarily surrender that license by filing the license and a report
7 with the commissioner. However, any foreign bank which holds
8 licenses to establish two or more offices may not voluntarily surrender
9 less than all of those licenses.

10 b. If the commissioner has reason to doubt a foreign bank's ability
11 or willingness to pay in full the claims of its creditors, the
12 commissioner shall take action as provided pursuant to section 86 of
13 P.L. , c. (C.)(pending before the Legislature as this bill).

14 c. (1) Except as otherwise provided in paragraph (2) of this
15 subsection c., a voluntary surrender of a license shall be effective on
16 the 30th day after that license and the report called for in subsection
17 a. of this section are filed with the commissioner or on such earlier
18 date as the commissioner may by order specify.

19 (2) If a proceeding to revoke or suspend a license is pending at the
20 time when that license and the report called for in subsection a. of this
21 section are filed with the commissioner or if a proceeding to revoke or
22 suspend a license or to impose conditions upon the surrender of a
23 license is instituted before the 30th day after the license and the report
24 called for in subsection a. of this section are filed with the
25 commissioner, the voluntary surrender of the license shall become
26 effective at the time and upon the conditions as the commissioner may
27 by order specify.

28
29 81. (New section) If, after notice and a hearing, the commissioner
30 finds that any person has violated any provision of sections 38 through
31 87 of P.L. , c. (C.)(pending before the Legislature as this bill)
32 or of any regulation or order issued thereunder, the commissioner may
33 order that person to pay to the commissioner a civil penalty in an
34 amount as the commissioner may specify; except that the amount of
35 the civil penalty shall not exceed \$100,000 for each violation or, in the
36 case of a continuing violation, \$100,000 for each day for which the
37 violation continues.

38
39 82. (New section) If, after notice and a hearing, the commissioner
40 finds any of the following with respect to a foreign bank or
41 commercial lending company which is licensed to establish an office,
42 the commissioner may issue an order suspending or revoking the
43 license of the bank or commercial lending company:

44 a. That the bank or commercial lending company has violated any
45 provision of sections 38 through 87 of P.L. , c. (C.)(pending
46 before the Legislature as this bill) or of any regulation or order issued

- 1 thereunder or any provision of any other applicable law, regulation, or
2 order;
- 3 b. That the bank or commercial lending company, in case it is
4 licensed to transact business in this State, is transacting that business
5 in an unsafe or unsound manner or, in any case, is transacting business
6 elsewhere in an unsafe or unsound manner;
- 7 c. That the bank or commercial lending company is in unsafe or
8 unsound condition;
- 9 d. That the bank or commercial lending company has ceased to
10 operate its office;
- 11 e. That the bank or commercial lending company is insolvent in
12 that it has ceased to pay its debts in the ordinary course of business,
13 it cannot pay its debts as they become due, or its liabilities exceed its
14 assets;
- 15 f. That the bank or commercial lending company has suspended
16 payment of its obligations, has made an assignment for the benefit of
17 its creditors, or has admitted in writing its inability to pay its debts as
18 they become due;
- 19 g. That the bank or commercial lending company has applied for
20 an adjudication of bankruptcy, reorganization, arrangement, or other
21 relief under any bankruptcy, reorganization, insolvency, or moratorium
22 law, or that any person has applied for any such relief under any such
23 law against the bank or commercial lending company and the bank or
24 commercial lending company has by any affirmative act approved of
25 or consented to the action or the relief has been granted.
- 26 h. That a receiver, liquidator, or conservator has been appointed
27 for the bank or commercial lending company or that any proceeding
28 for such an appointment or any similar proceeding has been initiated
29 in the place where the bank or commercial lending company is
30 domiciled;
- 31 i. That the existence of the bank or commercial lending company
32 or the authority of the bank or commercial lending company to
33 transact banking business or lending under the laws of the place where
34 the bank or commercial lending company is domiciled has been
35 suspended or terminated; or
- 36 j. That any fact or condition exists which, if it had existed at the
37 time when the bank or commercial lending company applied for its
38 license to transact business in this State, would have been grounds for
39 denying the application.
- 40
- 41 83. (New section) a. If the commissioner finds that any of the
42 factors set forth in section 82 of P.L. , c. (C.)(pending before
43 the Legislature as this bill) is true with respect to any foreign bank or
44 commercial lending company which is licensed to establish an office
45 and that it is necessary, for the protection of the interests of creditors
46 of the bank's or company's business in this State, or for the protection

1 of the public interest, that the commissioner immediately suspend or
2 revoke the license of the bank or commercial lending company, the
3 commissioner may issue an order suspending or revoking the license
4 of the bank or commercial lending company.

5 b. (1) Within 30 days after an order is issued pursuant to
6 subsection a. of this section, the foreign bank or commercial lending
7 company to which the order is issued may file with the commissioner
8 an application for a hearing on the order. If the commissioner fails to
9 commence that hearing within 15 business days after that application
10 is filed with the commissioner, or within such longer period to which
11 the bank consents, the order shall be deemed rescinded. Within 30
12 days after the hearing, the commissioner shall affirm, modify, or
13 rescind the order; otherwise, the order shall be deemed rescinded.

14 (2) The right of any foreign bank or commercial lending company
15 to which an order is issued under subsection a. of this section to
16 petition for judicial review of that order shall not be affected by the
17 failure of the bank or company to apply to the commissioner for a
18 hearing on the order pursuant to paragraph (1) of this subsection b.

19

20 84. (New section) Any foreign bank or commercial lending
21 company whose license to establish an office is suspended or revoked
22 shall immediately surrender its license to the commissioner.

23

24 85. (New section) a. Any foreign bank or commercial lending
25 company to which an order is issued under section 82 or 83 of P.L.
26 , c. (C.)(pending before the Legislature as this bill), may apply
27 to the commissioner to modify or rescind the order. The
28 commissioner shall not grant the application unless he finds that it is
29 in the public interest to do so and that it is reasonable to believe that
30 the bank or commercial lending company will, if and when it is again
31 licensed to establish an office, comply with all applicable provisions of
32 sections 80 through 86 of P.L. , c. (C.)(pending before the
33 Legislature as this bill) and of any regulation or order issued
34 thereunder.

35 b. The right of any foreign bank or commercial lending company
36 to which an order is issued under section 82 or 83 of P.L. , c. (C.
37)(pending before the Legislature as this bill) to petition for judicial
38 review of that order shall not be affected by the failure of that bank or
39 commercial lending company to apply to the commissioner pursuant
40 to subsection a. of this section to modify or rescind the order.

41

42 86. (New section) a. If the commissioner finds that any of the
43 factors set forth in section 82 of P.L. , c. (C.)(pending before
44 the Legislature as this bill) or in subsection b. of section 80 of P.L.
45 , c. (C.)(pending before the Legislature as this bill) is true with
46 respect to any foreign bank which is licensed to transact business in

1 this State and that it is necessary for the protection of the interests of
2 the creditors of the bank's business in this State or for the protection
3 of the public interest that the commissioner take immediate possession
4 of the property and business of the bank, the commissioner may by
5 order forthwith take possession of the property and business of the
6 bank and retain possession until the bank resumes business in this
7 State or is finally liquidated. The bank may, with the consent of the
8 commissioner, resume business in this State upon such conditions as
9 the commissioner may prescribe.

10 b. (1) Whenever the commissioner takes possession of the
11 property and business of a foreign bank pursuant to subsection a. of
12 this section, that bank may, within 10 days apply to the Superior Court
13 in the county in which the primary office of the bank is located to
14 enjoin further proceedings. The court may, after ordering the
15 commissioner to show cause why further proceedings should not be
16 enjoined and after a hearing, dismiss the application or enjoin the
17 commissioner from further proceedings and order him to surrender the
18 property and business of the bank to the bank or make such further
19 order as may be just.

20 (2) The judgement of the court may be appealed by the
21 commissioner or by the bank in the manner provided by law for
22 appeals from the judgement of a Superior Court. In case the
23 commissioner appeals the judgement of the court, an appeal shall
24 operate as a stay of the judgement, and the commissioner shall not be
25 required to post any bond.

26 c. Whenever the commissioner takes possession of the property
27 and business of a foreign bank pursuant to subsection a. of this
28 section, the commissioner shall conserve or liquidate the property and
29 business of that bank pursuant to the receivership provisions of the
30 Banking Act, including Article 42 of "The Banking Act of 1948,"
31 P.L.1948, c.67 (C.17:9A-266 et seq.), and these provisions shall apply
32 as if the bank were a bank organized under the Banking Act.

33 d. When the commissioner has completed the liquidation of the
34 property and business of a foreign bank, the commissioner shall
35 transfer any remaining assets to the bank in accordance with the orders
36 the court may issue. However, if the bank has an office in another
37 state of the United States which is in liquidation and the assets of that
38 office appear to be insufficient to pay in full the creditors of the office,
39 the court shall order the commissioner to transfer to the liquidator of
40 the office that amount of any such remaining assets as appears to be
41 necessary to cover the insufficiency; if there are two or more such
42 offices and the amount of remaining assets is less than the aggregate
43 amount of insufficiencies with respect to the offices, the court shall
44 order the commissioner to distribute the remaining assets among the
45 liquidators of those offices in any manner the court finds equitable.

46 e. The commissioner may apply the provisions of this section to a

1 commercial lending company, in which case these provisions shall
2 take precedence over any other provisions of state law applying to the
3 commercial lending company.

4
5 87. The commissioner shall, pursuant to the "Administrative
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), issue the rules,
7 regulations and orders the commissioner deems necessary in order to
8 perform the commissioner's duties and functions under sections 38 to
9 87 of P.L. , c. (C.)(pending before the Legislature as this bill.)
10

11 88. Section 5 of P.L.1963, c.144 (C.17:12B-5) is amended to read
12 as follows:

13 5. The following words and phrases as used in this act, unless a
14 different meaning is plainly required by the context, shall have the
15 following meaning:

16 (1) "State association" shall mean any savings and loan association,
17 building and loan association, or any corporation, however named,
18 now or hereafter operating pursuant to the provisions of this act.

19 (2) "Federal association" shall mean a savings and loan association
20 organized pursuant to an Act of Congress approved June 30, 1933,
21 entitled "Home Owners' Loan Act of 1933" or any subsequent Act of
22 Congress.

23 (3) "Association" shall mean [both] a State association [and] , a
24 Federal association having its principal office or a branch office in this
25 State , and an out-of State association having a branch office in this
26 State.

27 (4) "Insured association" shall mean an association whose savings
28 members' accounts or savings deposits are insured by the Federal
29 [Savings and Loan] Deposit Insurance Corporation.

30 (5) "Board" shall mean the board of directors of any association.

31 (6) "Commissioner" shall mean the Commissioner of Banking of
32 the State of New Jersey, or such other official as may hereafter be
33 charged by State law with the supervision of State associations.

34 (7) "Member" shall mean a person who holds an account or a
35 savings deposit in a mutual association as a savings member or as a
36 borrowing member.

37 (8) "Savings member" shall mean a member who holds an account
38 or a savings deposit representing savings in an association.

39 (9) "Borrowing member" shall mean a member to whom money of
40 the association is loaned or one who is the owner of property upon
41 which the association holds a mortgage.

42 (10) "Account" shall mean the record of the financial transactions
43 of a member or depositor as shown on the books of the association.

44 (11) "Direct reduction loan" shall mean a loan the principal of
45 which is repayable in periodical installments.

46 (12) "Sinking fund loan" shall mean a loan, the principal of which

1 is contracted to be repaid with the participation value of an installment
2 account pledged as collateral security for the payment of the loan.

3 (13) "Straight mortgage loan" shall mean a loan, the principal of
4 which is repayable upon a fixed day and upon which no interim
5 amortization is required.

6 (14) "Account loan" shall mean a loan secured by the pledge of an
7 account and the shares, if any, issued in connection therewith.

8 (15) "Capital" of a mutual State association shall mean the
9 aggregate participation value of all savings members' accounts. It shall
10 not be limited and shall be accumulated only by payments by savings
11 members, plus dividends credited to their accounts.

12 (16) "Participation value" of an account shall mean the amount
13 paid by a savings member on such account, plus dividends or interest
14 credited thereto, less payments of withdrawals and retirements
15 therefrom and any other amounts lawfully deductible therefrom.

16 (17) "Withdrawal value" of an account shall mean the participation
17 value of such an account, at the time application for withdrawal of the
18 account is filed, less such part, if any, of the dividends or interest then
19 credited to such account as the association is authorized to retain upon
20 withdrawal.

21 (18) "Gross income" shall have the meaning ascribed to it in
22 section 6 of this act.

23 (19) "Net income" shall have the meaning ascribed to it in section
24 7 of this act.

25 (20) "Federal Savings and Loan Insurance Corporation" shall mean
26 the corporation so named, organized pursuant to an Act of Congress,
27 or any Federal corporation, instrumentality or agency which succeeds
28 to the powers and functions of the Federal Savings and Loan Insurance
29 Corporation or undertakes to discharge the purposes for which said
30 corporation was created.

31 (21) "Federal Home Loan Bank Board" shall mean the board so
32 named, organized pursuant to an Act of Congress, or any Federal
33 corporation, instrumentality or agency which succeeds to the powers
34 and functions of the Federal Home Loan Bank Board, or which is
35 formed to carry out the purposes for which such board was created.

36 (22) "Change in the bylaws" includes new bylaws and revisions,
37 amendments, supplements and repealers of existing bylaws.

38 (23) "Principal office," "branch office" and "auxiliary office" shall
39 have the meanings ascribed to them in section 8 of this Act.

40 (24) "Agency" shall have the meaning ascribed to it in section 9 of
41 this act.

42 (25) "Per capita assets" shall have the meaning ascribed to it in
43 section 10 of this act.

44 (26) "Population." Where in this act the population of a
45 municipality, a county, or the State is mentioned, the population figure
46 shall be the last current population estimate as furnished to the

1 commissioner by any official agency of the State or Federal
2 Government.

3 (27) "Municipality." The word municipality shall include cities,
4 towns, townships, villages and boroughs.

5 (28) "First lien" shall have the meaning ascribed to it in section 11
6 of this act.

7 (29) "Foreign association" shall mean any association or
8 corporation conducting the business of a savings and loan association,
9 however designated, [not incorporated under the provisions of this
10 act,]except [a Federal] an association.

11 (30) "Department" shall mean the Department of Banking of New
12 Jersey.

13 (31) "Mutual association" shall mean any State association
14 organized pursuant to the provisions of this act without capital stock.

15 (32) "Capital stock association" shall have the meaning ascribed to
16 it in section 15 of P.L.1974, c.137 (C.17:12B-244).

17 (33) "Capital stock" shall have the meaning ascribed to it in section
18 15 of P.L.1974, c.137 (C.17:12B-244).

19 (34) "Stockholder" shall have the meaning ascribed to it in section
20 15 of P.L.1974, c.137 (C.17:12B-244).

21 (35) "Secondary mortgage loan" means a loan made to an
22 individual, association, joint venture, partnership, limited partnership
23 association, or any other group of individuals however organized,
24 except a corporation, which is secured in whole or in part by a lien
25 upon any interest in real property created by a security agreement,
26 including a mortgage, indenture, or any other similar instrument or
27 document, which real property is subject to one or more prior
28 mortgage liens and which is used as a dwelling, including a dual
29 purpose or combination type dwelling which is also used as a business
30 or commercial establishment, and has accommodations for not more
31 than 6 families, except that a loan which: (a) is to be repaid in 90
32 days or less; (b) is taken as security for a home repair contract
33 executed in accordance with the provisions of P.L.1960, c.41
34 (C.17:16C-62 et seq.); or (c) is the result of the private sale of a
35 dwelling if title to the dwelling is in the name of the seller and the
36 seller has resided in said dwelling for at least 1 year if the buyer is
37 purchasing said dwelling for his own residence and, as part of the
38 purchase price, executes a secondary mortgage in favor of the seller,
39 shall not be included within the definition of "secondary mortgage
40 loan."

41 (36) "De novo branch" means a branch of a foreign association in
42 this State which is originally established as a branch , and does not
43 become a branch of the foreign association as a result of the
44 acquisition by the foreign association of an insured depository
45 institution or a branch of an insured depository institution or the
46 conversion, merger or consolidation of any such institution or branch.

1 (37) "Federal Deposit Insurance Corporation" means the
2 corporation so named, organized pursuant to an Act of Congress, or
3 any federal corporation, instrumentality or agency which succeeds to
4 the powers and functions of the Federal Deposit Insurance
5 Corporation or undertakes to discharge the purposes for which said
6 corporation was created.

7 (38) "Home state" with respect to an out-of-State association
8 means the state by which the association is chartered. "Home state"
9 with respect to a federal association means the state in which the
10 principal office is located.

11 (39) "Out-of-State association" means a savings and loan
12 association or building and loan association insured by the Federal
13 Deposit Insurance Corporation and chartered under the laws of a state
14 other than New Jersey, but not a bank as defined in 12 U.S.C.
15 §1813(a)(2).

16 (40) "State" means any state of the United States, the District of
17 Columbia, any territory of the United States, Puerto Rico, Guam,
18 American Samoa, the Trust Territory of the Pacific Islands, the Virgin
19 Islands and the Northern Mariana Islands.

20 (41) "Resulting association" means a state or federally chartered
21 association that has resulted from an interstate merger transaction
22 pursuant to P.L.1963, c.144 (C.17:12-1 et seq.).

23 (cf: P.L.1981, c.74, s.1)

24
25 89. Section 24 of P.L.1963, c.144 (C.17:12B-24) is amended to
26 read as follows:

27 24. A. No State association shall hereafter establish or operate a
28 branch office or offices, other than as provided by the conditions and
29 limitations of sections 24 through 27 of this act without the prior
30 written approval of the commissioner; provided, however, that any
31 association operating an authorized branch office at the effective date
32 of this act may continue to do so.

33 (1) An association operating a branch office approved prior to the
34 effective date of this act with conditions or restrictions imposed on its
35 operation may upgrade such office by notifying the commissioner at
36 least 30 days before such upgrading. A branch office is considered
37 upgraded if the association is relieved of any of the conditions or
38 restrictions imposed on operation of the office when it opened. If
39 within 30 days of receipt of the notice, the commissioner does not
40 notify the association of his objection which would require the
41 association to submit an application or additional information before
42 upgrading, the association may upgrade the office.

43 (2) An approved, but unopened branch office as of the effective
44 date of this amendatory act may open and operate in the same manner
45 as a branch office approved subsequent to the effective date of this
46 amendatory act.

1 (3) Any application which deals with offices of a State association
2 filed with the commissioner prior to the effective date of this
3 amendatory act shall continue to be processed as any application filed
4 subsequent to the effective date of this amendatory act; however, the
5 commissioner may request such additional information as may be
6 necessary to comply with the requirements of this amendatory act.

7 B. An association may apply for a branch office regardless of the
8 number of branch applications it has pending before the commissioner.
9 Within 15 days after submission of any branch application to the
10 commissioner, the applying State association shall give notice of such
11 application by publication of a notice of such application in a
12 newspaper published within the municipality in which it is proposed to
13 locate the branch office if there be one or, if there be no such
14 newspaper, in a newspaper published in the county and having a
15 substantial circulation in the municipality. The notice shall be in a
16 form approved by the commissioner, and shall include the name of the
17 applying association and the location, as precisely as possible, in the
18 municipality where such branch office is to be located. For good
19 cause, the commissioner may dispense with the notice requirements of
20 this section.

21 No less than 30 days after filing with the commissioner the proof of
22 publication of the aforementioned notice within 90 days thereafter, the
23 commissioner shall announce his decision upon such application and
24 file in his office a written memorandum stating the reasons therefor,
25 which shall be open to public inspection; and he shall forthwith
26 thereafter give written notice thereof to the applicant.

27 C. [The commissioner shall approve an application only if, in his
28 opinion, the branch can be established without undue injury to
29 properly conducted existing local thrift and home financing
30 institutions; the policies, condition and operation of the applying State
31 association afford no basis for supervisory objection, and the proposed
32 branch will open within 12 months of approval unless otherwise
33 allowed by the commissioner. In addition, in considering whether to
34 approve an application, the commissioner shall take into account the
35 State association's record of helping to meet the credit needs of its
36 entire community, including low-to-moderate income neighborhoods
37 pursuant to Part 563e of the regulations promulgated by the Federal
38 Savings and Loan Insurance Corporation. Assessment of a State
39 association's record of performance may be the basis for denying an
40 application] The commissioner shall approve the application if the
41 commissioner finds that:

42 (1) the State association's capital equals or exceeds the minimum
43 capital established by the commissioner by regulation;

44 (2) the interests of the public will be served to advantage by the
45 establishment of the full branch office;

46 (3) conditions in the locality in which the proposed full branch

1 office is to be established afford reasonable promise of successful
2 operation. To determine if an applicant meets this requirement, the
3 commissioner shall consider only the costs of purchasing, constructing,
4 leasing or otherwise establishing the proposed office, including the
5 costs for staffing, furniture and equipment needed therefor and the
6 effect of these costs on the operations of the applying institution as a
7 whole. The applicant need not demonstrate an ability to operate the
8 proposed office at a profit within a definable period of time based on
9 the generation of new deposits from the market area to be entered
10 except to the extent that losses suffered at the proposed office could
11 affect the safety and soundness of the applicant's overall operations;
12 and

13 (4) that the applicant has achieved sufficient compliance as defined
14 by the commissioner by regulation with the provisions of the
15 "Community Reinvestment Act of 1977," 12 U.S.C. §2901 et seq.

16 D. [Persons may submit communications and answers to protests
17 only as provided in this subsection or as requested by the
18 commissioner.

19 (1) Within 10 days of the last day of publication of notice of
20 application, or 30 days after that day if an extension is requested in
21 writing within the 10-day period, any person may file a communication
22 in favor or protest of the application by furnishing 4 copies to the
23 commissioner.

24 (2) Within 10 days after filing a protest, the commissioner shall
25 advise the protestant and the State association, in writing, whether the
26 protest is considered substantial.

27 (3) A protest is substantial only if it is in writing, filed on time, and
28 contains at least the following:

29 (a) A summary of the reasons for protest;

30 (b) The specific matters in the application to which the protestant
31 objects, and the reasons for each objection;

32 (c) Facts supporting the protest, including relevant economic or
33 financial data;

34 (d) Any adverse effects on the protestant which may result from
35 the approval of the application.

36 (4) The commissioner shall determine whether a protest is
37 substantial and shall not consider protests which are not consider
38 substantial in his assessment of the merits of the application.

39 (5) The applying State association may file an answer to any
40 protest until 15 days after receipt of written notice from the
41 commissioner that such protest is considered substantial by furnishing
42 4 copies of the answer to the commissioner.](Deleted by amendment,
43 P.L. , c. .)(Pending before the Legislature as this bill.)

44 E. The commissioner shall conduct such investigation or hearing,
45 or both, as [he] the commissioner may deem advisable. The
46 commissioner may adopt, amend, alter or rescind regulations

1 prescribing the form of protest to applications and the procedures to
2 be followed in the event that the commissioner elects to hold a hearing
3 in connection with an application for a branch office, and such other
4 regulations as [he] the commissioner may deem necessary with respect
5 to the provisions of this section. [Such regulations shall be in
6 substantial conformity with similar rules and regulations promulgated
7 by the Federal Home Loan Bank Board.]

8 (cf: P.L.1981, c.376, s.3)

9

10 90. (New section) a. An out-of-State association without a branch
11 office in this State may apply to establish a de novo branch in this
12 State by filing with the department a copy of the application the
13 association filed with the regulator in its home state and the
14 application it filed with the Federal Deposit Insurance Corporation,
15 and any other information the commissioner may require.

16 b. The commissioner shall approve the application if the
17 out-of-State association is adequately capitalized as of the date of the
18 application, will be adequately capitalized and managed after the
19 branch is established, and has achieved sufficient compliance, as
20 defined by the commissioner by regulation, with the provisions of the
21 "Community Reinvestment Act of 1977," 12 U.S.C. §2901 et seq.

22 c. An out-of-State association without a branch office in this State
23 may not establish a de novo branch office in New Jersey unless the
24 home state of the out-of-State association has in effect, as of the date
25 of approval of such application, a law that permits de novo branching
26 into that state by an association whose home state is New Jersey.

27

28 91. (New section) a. Upon filing an application therefor in the
29 department, and upon obtaining the approval of the commissioner
30 thereto a State association may change the location of its principal
31 office or of a branch office located in this State to another location in
32 this State. Upon filing an application therefor in the department, and
33 upon obtaining the approval of the commissioner thereto, an
34 out-of-State association with a branch office located in this State may
35 change the location of a branch office in this State to another location
36 in this State, and an association with a branch office located outside
37 this State may change the location of a branch office to another
38 location in that State.

39 b. If it shall appear from the application, or if the commissioner
40 shall find from such proof as the commissioner may require, or from
41 such investigation as the commissioner may cause to be made, that the
42 area which would be served by the principal or branch office after its
43 change in location would not be substantially different from the area
44 theretofore served by that office, the commissioner shall approve the
45 application.

46 c. If it shall appear to the commissioner, from the application, or

1 from such proof as the commissioner may require, or from such
2 investigation as the commissioner may cause to be made, that the
3 proposed location will be so far removed from the place then occupied
4 by the principal office or by the branch office that the area which
5 would be served by that office after its change in location would be
6 substantially different from the area theretofore served by it, the
7 commissioner shall not approve the application unless, after an
8 investigation or hearing, or both, as the commissioner may determine
9 to be advisable, the commissioner shall find that the interests of the
10 public will be served to advantage by the change in location, and that
11 conditions in the locality to which removal is proposed afford
12 reasonable promise of successful operation.

13 d. The failure to open and operate a relocated office within 12
14 months after the commissioner approves the application therefor, shall
15 automatically terminate the right to open the relocated office, except
16 that, for good cause shown, the commissioner may, at the
17 commissioner's discretion, extend for additional periods, not to exceed
18 12 months each time, the time within which the relocated office may
19 be opened, provided that the initial application shall be made before
20 the expiration of 12 months from the date authority is granted to
21 relocate the principal office and any subsequent application shall be
22 made before the expiration of any subsequent period for which
23 permission to extend has been granted by the commissioner.

24

25 92. Section 30 of P.L.1963, c.144 (C.17:12B-30) is amended to
26 read as follows:

27 30. [Each auxiliary office shall be located in the same municipality
28 as that in which the State association operates the office to which such
29 auxiliary office is an adjunct.] No auxiliary office shall be established
30 or operated at a location which is outside this State or more than
31 [1,500] one mile from the office of the State association to which such
32 auxiliary office is an adjunct; nor shall any such auxiliary office be
33 established within [1,500] 1,000 feet of the principal office or a branch
34 office of another association, without the written consent of such
35 association. Such consent, once given, shall thereafter be irrevocable,
36 regardless whether it was given gratuitously or for a valuable
37 consideration. No State association shall be required to discontinue
38 an auxiliary office for the reason that, after its establishment pursuant
39 to this act, another association has established its principal office or a
40 branch office within [1,500] 1,000 feet of such auxiliary office.

41 (cf: P.L.1963, c.144, s.30)

42

43 93. Section 31 of P.L.1963, c.144 (C.17:12B-31) is amended to
44 read as follows:

45 31. No business shall be transacted at an auxiliary office other than
46 (a) the receipt of payments, deposits of currency, checks and other

1 items;

2 (b) the payment of withdrawals;

3 (c) the cashing of checks, drafts and other items; and

4 (d) the issuance of money orders or travelers' checks.

5 (cf: P.L.1963, c.144, s.31)

6

7 94. Section 1 of P.L.1968, c.150 (C.17:12B-46.1) is amended to
8 read as follows:

9 1. A. The following words as used in this act, unless a different
10 meaning is plainly required by the context, shall have the following
11 meaning:

12 (1) "Commissioner" means the Commissioner of Banking [and
13 Insurance] or any other person lawfully exercising the powers of such
14 commissioner;

15 (2) "Association" means any State savings and loan association
16 operating pursuant to the "Savings and Loan Act (1963)" P.L.1963,
17 c.144 (C.17:12B-1 et seq.) and any out-of-State association with a
18 branch office in this State;

19 (3) "Officers" means the person or persons designated by the board
20 of directors of an association to act for the association in carrying out
21 the provisions of this act;

22 (4) "Emergency" means any condition which makes the transaction
23 of business, at one or more or all of the offices of an association or
24 associations, contrary to the welfare and security of such office or
25 offices or contrary to the health, safety or security of persons working
26 in or making use of such office or offices. Without limiting the
27 generality of the foregoing, an emergency may arise when any
28 condition poses an imminent or existing threat to the welfare, safety
29 or security of persons or property or both, such as any one or more of
30 the following: forces of the natural elements, fire, explosions,
31 epidemics, power failures, labor disputes, transportation failures, war,
32 riots, civil commotions, and other acts of lawlessness or violence;

33 (5) "Office" means any place at which an association transacts
34 business or conducts operations related to the transaction of business;

35 (6) "Person" includes natural persons, corporations, partnerships
36 and associations.

37 B. This act shall apply to Federal savings and loan associations
38 having their principal offices or a branch office in this State to the
39 extent that the provisions of this act are not inconsistent with and do
40 not infringe upon Federal laws, rules or regulations.

41 (cf: P.L.1968, c.150, s.1)

42

43 95. (New section) a. An out-of-State association that opens,
44 occupies or maintains a branch office in this State shall have in this
45 State only the powers a State association has in this State.

46 b. A State association that owns, occupies or maintains a branch

1 office outside this state shall have in that State such additional powers
2 as permitted to associations chartered in the state in which the branch
3 is located.

4

5 96. Section 170 of P.L.1963, c.144 (C.17:12B-170) is amended to
6 read as follows:

7 170. Every State association shall make available to its members
8 annually, upon request, a report of its financial condition as of the end
9 of its fiscal year[, either

10 (1) By mailing or delivering to each member, a statement of assets
11 and liabilities, and a statement of operations, or

12 (2) By publishing a statement of its assets and liabilities at least
13 once in a newspaper published or circulating in the municipality in
14 which the principal office of the State association is located and by
15 furnishing to any member upon request, a statement of assets and
16 liabilities, and a statement of operations].

17 (cf: P.L.1963, c.144, s.170)

18

19 97. Section 172 of P.L.1963, c.144 (C.17:12B-172) is amended to
20 read as follows:

21 172. Every State association and every out-of-State association
22 with a branch office in this State shall be subject to the examination,
23 inspection and supervision of the department[, and the]. The
24 commissioner shall, either personally or by a person appointed by
25 [him] the commissioner, visit and examine every State association at
26 least once every 2 years, or [oftener] more often if deemed expedient.
27 When deemed advisable, the examiner shall verify the liabilities of the
28 State association to its members by an inspection and verification of
29 their accounts. The commissioner shall promptly communicate the
30 result of every examination to the president of the State association
31 examined, who shall present the same to the board at the next regular
32 meeting, or a special meeting, if deemed advisable, or if so directed by
33 the commissioner. The action taken thereon by the board shall
34 thereupon be promptly communicated by the president to the
35 commissioner.

36 Every report and copy of a report of examination of a State
37 association and out-of-State association made by or under the
38 supervision of the commissioner, shall be confidential, and shall not be
39 made public by any officer, director or employee of a State association
40 or out-of-State association, and shall not be subject to subpoena or to
41 admission into evidence in any action or proceeding in any court,
42 except pursuant to an order of the court made upon notice to the
43 commissioner an opportunity to advise the court of reasons for
44 excluding from evidence such report or any portion thereof. The court
45 shall order the issuance of a subpoena for the production or admission
46 into evidence of any such report or portion thereof, only if it is

1 satisfied that (1) it is material and relevant to the issues in the
2 proceedings, and (2) the ends of justice and public advantage will be
3 subserved thereby. This section shall not apply to any action or
4 proceeding instituted by the commissioner or Attorney General
5 pursuant to any law of this State.

6 For associations or out-of-State associations with branch offices
7 in this State and also in one or more other states, the commissioner
8 may contract with the state regulator in the other state or states where
9 branch offices are located to conduct cooperative examinations.
10 Pursuant to those agreements, examiners of the department may
11 examine branch offices of associations and out-of-State associations
12 in New Jersey and in other states, and examiners of other state
13 regulators may examine branch offices of associations and out-of-state
14 associations in New Jersey and other states. The fees for these
15 examinations may be shared pursuant to a contract or agreement
16 among the regulators.

17 (cf: P.L.1963, c.144, s.172)

18

19 98. Section 173 of P.L.1963, c.144 (C.17:12B-173) is amended to
20 read as follows:

21 173. The officers, directors and employees of the State association
22 or an out-of-State association shall exhibit its books, papers and
23 securities to the commissioner or the person appointed by him to
24 conduct the examination, and otherwise facilitate the same so far as it
25 may be in their power so to do. The commissioner and every examiner
26 may administer an oath or affirmation to any person whose testimony
27 is required on any examination, and compel the appearance of any
28 person for the purpose of examination, and the production of books,
29 papers and documents, by subpoena. [The subpoena may be served by
30 any police officer or constable of the municipality in which such
31 person resides.]

32 If any person shall fail to obey the subpoena, give testimony,
33 answer questions or produce any books, papers or documents as
34 required, the Superior Court may, upon ex parte application, make an
35 order compelling him to do so.

36 (cf: P.L.1963, c.144, s.173)

37

38 99. Section 178 of P.L.1963, c.144 (C.17:12B-178) is amended to
39 read as follows:

40 178. If it shall appear to the commissioner that a State association
41 or an out-of-State association has violated any law of this State or of
42 its home state, or any of its by-laws, or is conducting its business in an
43 unsafe or unauthorized manner, he may order it in writing to
44 discontinue its illegal or unsafe practices. Such order shall be sent to
45 the State association's president, who shall present it to the board at
46 its next regular meeting, or at a special meeting, if he deems it

1 advisable, or if the commissioner so directs. The board's action
2 thereon shall be promptly communicated by the president to the
3 commissioner.

4 A State association or out-of-State association which fails or
5 refuses to comply with an order of the commissioner issued pursuant
6 to this section within the time limited in such order, shall be liable to
7 a penalty of \$500.00 to be recovered with costs by the State in any
8 court of competent jurisdiction in a civil action prosecuted by the
9 Attorney General.

10 (cf: P.L.1963, c.144, s.178)

11

12 100. (New section) a. One or more State associations may, with
13 the approval of the commissioner, merge with an out-of-State
14 association or associations, or with a federal association or
15 associations, each with their principal office outside of this State,
16 pursuant to sections 198 through 212 of P.L.1963, c.144
17 (C.17:12B-198 through 17:12B-212).

18 b. The commissioner may not permit a merger involving an
19 association and an out-of-State association or federal association
20 unless the home state of each out-of-State association and federal
21 association involved in the transaction has in effect, as of the date of
22 the approval of such transaction, a law that permits interstate merger
23 transactions with associations whose home state is this State.

24 c. A resulting association that is an out-of-State association shall
25 file with the commissioner in a manner which is consistent with
26 regulations adopted by the commissioner for this purpose.

27

28 101. Section 214 of P.L.1963, c.144 (C.17:12B-214) is amended
29 to read as follows:

30 214. a. Foreign associations shall not transact the business of a
31 savings and loan association within this State, or maintain an office
32 within this State, except as authorized pursuant to subsection b. of this
33 section, for the purpose of transacting such business. It shall be
34 unlawful for any person to transact business within this State on behalf
35 of such associations; provided, however, the purchase, acquisition,
36 holding, sale, assignment, transfer, servicing, collecting and
37 enforcement of obligations or any interest therein secured by real
38 estate mortgages or other instruments in the nature of a mortgage,
39 covering real property located in this State, or the foreclosure of such
40 instruments, or the acquisition of title to such property by foreclosure,
41 or otherwise, as a result of default under such instruments, or the
42 holding, protection, rental, maintenance and operation of said property
43 so acquired, or the disposition thereof by a foreign association, or
44 back office operations shall not be considered as transacting business
45 within the meaning of this article.

46 b. A foreign association may maintain one or more service facilities

1 in this State, provided that the foreign association performs only back
2 office operations at the service facility and does not transact business
3 with its customers or the public at the service facility. Prior to
4 opening a service facility in this State, a foreign association shall
5 register the service facility with the commissioner, which registration
6 shall include the address of the proposed service facility and the name
7 and address of the foreign association's agent in this State for service
8 of process. Each service facility shall comply with the requirements
9 and pay the fees that the commissioner establishes by regulation. Each
10 service facility shall be subject to examination by the department to
11 determine whether the foreign association has operated the service
12 facility in accordance with the provisions of this subsection, the costs
13 of which examination shall be paid by the foreign association at the
14 department's per diem rate for examinations of depository institutions.
15 The commissioner may, upon notice and a hearing, order a foreign
16 association to close any service facility operated in violation of the
17 provisions of this subsection or of any other law. An entity which is
18 affiliated, either directly or indirectly, with a foreign association and
19 intends to engage in back office operations in this State shall register
20 and be regulated pursuant to this subsection as if it were a foreign
21 association.

22 c. For the purposes of this section, the term "transact business"
23 shall not include back office operations and the term "back office
24 operations" shall include [only] the following activities: data
25 processing, record-keeping, accounting, check and deposit sorting and
26 posting, computation and posting of interest, other similar clerical and
27 statistical functions, [and] producing and mailing correspondence or
28 documents [provided that the correspondence or documents do not
29 include the address of the service facility] and such other activities as
30 the commissioner approves.

31 d. For the purposes of this section, a foreign association shall not
32 be deemed to transact business or maintain an office in this State based
33 solely on the activities of an agent in this State.

34 (cf: P.L.1991, c.74, s.3)

35

36 102. Section 226 of P.L.1963, c.144 (c.17:12B-226) is amended
37 to read as follows:

38 226 A. Every State association shall pay to the commissioner for
39 the use of the State a fee, to be prescribed by the commissioner by
40 regulation in an amount not less than or not more than, the following
41 minimum and maximum amounts:

	Minimum	Maximum
1		
2 (1) Annual report or		
3 certificates where required...	\$ 50.00	\$100.00
4 (2) Dissolution proceedings	250.00	1,500.00
5 (3) Any new corporation filing:		
6 (a) mutual association.....	5,000.00	10,000.00
7 (b) stock association	10,000.00	20,000.00
8 (4) Any proceeding under		
9 section 204 of P.L.1963,		
10 c.144 (C.17:12B-204), pertaining		
11 to bulk sales...	500.00	1,500.00
12 (5) Any proceeding under		
13 section 198 of P.L.1963,		
14 c.144 (C.17:12B-198), pertaining		
15 to mergers, per association	1,500.00	4,000.00
16 (6) Any application for a		
17 branch office, except that no		
18 fee shall be paid under this		
19 paragraph with respect to a		
20 branch office acquired as a		
21 result of a merger or bulk		
22 purchase...	1,000.00	3,000.00
23 (7) Application to interchange		
24 a principal and branch office		
25 when such interchange involves		
26 two separate municipalities...	500.00	1,500.00
27 (8) Application for change		
28 of name	50.00	250.00
29 (9) Certifications by the		
30 commissioner, of papers or		
31 records on file with the department,		
32 plus \$2.00 per page for each		
33 certification ...	25.00	100.00
34		
35	Minimum	Maximum
36 (10) Application to interchange		
37 a principal and a branch office		
38 within the same municipality...	250.00	1,000.00
39 (11) Application to change		
40 location of principal office		
41 pursuant to subsection (2) of		
42 section 40 of P.L.1963, c.144		
43 (C.17:12B-40)...	500.00	2,000.00
44 (12) Application to change		
45 location of branch office beyond		
46 1,500 feet and in same municipality		

1	pursuant to subsection (1) of		
2	section 4 of P.L.1965, c.127		
3	(C.17:12B-27.1)...	250.00	1,000.00
4	(13) Application to change		
5	location of branch office		
6	pursuant to subsection (2) of		
7	section 4 of P.L.1965, c.127		
8	(C.17:12B-27.1)...	500.00	2,000.00
9	(14) Conversions...	3,500.00	10,000.00
10	(15) Sharing Facilities	100.00	500.00
11	(16) Application for approval		
12	of savings and loan holding		
13	company...	2,000.00	5,000.00
14	(17) Filing of any other		
15	certificate...	50.00	250.00
16	(18) For issuance of any other		
17	approval by the commissioner,		
18	plus a per diem...	100.00	250.00
19	(19) For filing plans of		
20	acquisition, stock, savings and		
21	loan and existing holding		
22	companies...	1,500.00	4,000.00

23 (20) In addition to the above fees, a per diem charge may be
 24 assessed when a special investigation of a filing is required.

25 B. Every State association shall defray all expenses incurred in
 26 making an examination of its affairs as provided in this act, and the
 27 commissioner may maintain an action, in the name of the State, against
 28 the association, for the recovery of such expenses, in a court of
 29 competent jurisdiction.

30 C. The commissioner may by rule or regulation adopted pursuant
 31 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
 32 et seq.) impose other fees and charges, including assessments and fees
 33 for applications and examinations, on out-of-State associations
 34 establishing and operating a branch office in this State.

35 (cf: P.L.1988, c.73, s.3)

36

37 103. (New section) The Commissioner is authorized to enter into
 38 contracts with association supervisors of other states for the purpose
 39 of establishing effective and efficient supervisory and regulatory
 40 structures and practices with respect to the provisions of sections 88
 41 through 102 of this 1995 amendatory and supplementary act.

42

43 104. The following are repealed:

44 Section 1 of P.L.1963, c.88 (C.17:9A-22.1);

45 Section 1 of P.L.1971, c.26 (C.17:9A-23.14);

46 Sections 259 and 315 of P.L.1948, c.67 (C.17:19A-259 and

1 17:9A-315);
2 Sections 1 through 3, 6 and 11 of P.L.1957, c.70 (C.17:9A-344
3 through 17:9A-346; 17:9A-349; and 17:9A-354);
4 Section 3 of P.L.1981, c.484 (C.17:9A-345a);
5 Section 2 of P.L.1968, c.426 (C.17:9A-345.2);
6 Section 5 of P.L.1986, c.4 (C.17:9A-348.1);
7 P.L.1986, c.5 (C.17:9A-370 et seq.);
8 P.L.1986, c.6 (C.17:9A-373 et seq.); and
9 Section 4 of P.L.1965, c.127 (C.17:12B-27.1).

10

11 105. This act shall take effect immediately .

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STATEMENT

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16 This bill, in response to the provisions of the federal "Riegle-Neal
17 Interstate Banking and Branching Efficiency Act of 1994," provides
18 for: nationwide interstate banking; interstate branching by acquisition
19 and merger transactions between any combination of federally and
20 state chartered insured depository institutions in those states not
21 opting out of the provisions concerning interstate branching; interstate
22 branching by state and federally chartered insured depository
23 institutions de novo and by the purchase of a single branch of a bank;
24 foreign (country) bank entry into this State directly and by branching
25 from a home state other than New Jersey; and interstate branching by
26 State and out-of-State state chartered savings and loan associations
27 through merger and acquisition, de novo and purchase of a single
28 branch with associations chartered in other states also adopting
29 interstate branching. Branching by State chartered associations is
30 provided in order to give them parity with federally chartered savings
31 banks which already have such authority under regulations
32 promulgated by the Office of Thrift Supervision.

33 This bill permits a branch of an out-of-State insured depository
34 institution to be a public depository under the Governmental Unit
35 Deposit Protection Act.

36 Under sections 2 through 28, the bill: provides for interstate
37 branching by State chartered banks and savings banks and out-of-State
38 banks (including savings banks) through merger and acquisition,
39 purchase of a single branch and de novo branching into this State by
40 banks in another state regardless of whether the other state also
41 permits banks in this State to branch de novo into that state;
42 establishes a cap of 30% on the percent of deposits of insured
43 depositories in this State a resulting bank, including all its federally
44 insured depository institution affiliates, can acquire and control and
45 provides that the commissioner, by regulation, may establish a
46 procedure whereby this cap can be waived; and permits an insured

1 depository institution located in this State to accept deposits and
2 conduct other banking business as agent for any affiliate, in-State or
3 out-of-State, without being required to obtain a license as a branch of
4 that affiliate.

5 Under sections 29 through 37, the bill: provides for bank holding
6 company acquisitions on an interstate basis consistent with the
7 provisions of the federal "Riegle-Neal Interstate Banking and
8 Branching Efficiency Act of 1994;" establishes a cap of 30% on the
9 percent of deposits of insured depositories in this State a bank holding
10 company can acquire and control and provides that the commissioner,
11 by regulation, may establish a procedure whereby this cap can be
12 waived; requires a person who controls a bank or bank holding
13 company that does not file with any other bank regulatory agency, to
14 file reports with the commissioner; and authorizes the commissioner
15 to enter into contracts with bank supervisors of other states for the
16 purpose of establishing effective and efficient supervisory and
17 regulatory structures and practices with respect to interstate branching
18 and agency.

19 Under sections 38 through 87, the bill provides for foreign bank
20 entry through four types of offices: representative; commercial lending
21 company; agency; and branch. Under sections 38 through 55, general
22 requirements for entry and operation of offices are provided,
23 including, but not limited to, requirements with respect to:
24 applications; fees; reports; books and records; federal versus State
25 offices; location of offices; names of companies; examinations; and
26 appointment of the commissioner to receive service of any lawful
27 process.

28 Sections 56 through 62 of the bill establish the procedures for
29 obtaining a license to operate a representative office of a foreign bank;
30 set forth the activities in which a representative office is permitted to
31 engage; and provide for the relocation and closure of a representative
32 office.

33 Sections 63 through 72 of the bill establish the procedures for
34 obtaining a license to operate an agency or a branch of a foreign bank;
35 set forth the activities in which an agency or a branch is permitted to
36 engage; establish the requirements for asset maintenance and a
37 minimum asset pledge; provide for the relocation and closure of an
38 agency or branch office; and provide for the examination of and filing
39 of reports by agency and branch offices.

40 Sections 73 through 79 of the bill establish the procedures for
41 obtaining a license to operate a commercial lending company; set forth
42 the activities in which a commercial lending company is permitted to
43 engage; and provide for the relocation and closure of a commercial
44 lending office.

45 Sections 80 through 86 establish the procedures for the voluntary
46 relinquishment of a license and for action by the commissioner to

1 suspend or revoke a license; to take possession of the property and
2 business of a licensee; and to conserve or liquidate the property and
3 business of the foreign bank.

4 Sections 88 through 102 provide for interstate branching by in- and
5 out-of-State state chartered savings and loan associations and provide
6 the commissioner the authority to examine and supervise the branches
7 that result from such activities on the part of State and out-of-State
8 state chartered savings and loan associations.

9 The bill repeals various sections of statutory law, including, but not
10 limited to: P.L.1957, c.70 (C.17:9A-344 et seq.) concerning transfer
11 of control of stock ownership; and P.L.1986, c.5 (C.17:9A-370 et
12 seq.) and P.L.1986, c.6 (C.17:9A-373 et seq.) concerning interstate
13 banking on a reciprocal basis.

14

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17

18 Provides for interstate banking and branching, permits insured
19 depositories to act as agent for affiliates and provides for certain types
20 of foreign bank entry.