

CHAPTER 195

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

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

C.17:1-25 Findings, declarations relative to enforcement powers of Department of Banking and Insurance.

1. The Legislature finds and declares that:

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

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

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

C.17:1-26 Definitions relative to enforcement powers of Department of Banking and Insurance.

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

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

"Commissioner" means the Commissioner of Banking and Insurance.

"Control" means:

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

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

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

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

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

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

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

(a) by any subsidiary of the person;

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

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

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

"Department" means the Department of Banking and Insurance.

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

"Major shareholder" means anyone who owns voting securities of a covered institution and exercises control as defined in this section, and shall mean a depositor of a mutual State association which exercises control as defined in this section.

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

"State association" means a State association as defined in subsection (1) of section 5 of

P.L.1963, c.144 (C.17:12B-5).

"Subsidiary" means (1) any entity, 25 percent or more of whose voting shares are directly or indirectly owned or controlled by a covered institution or are held by a covered institution with power to vote; (2) any entity, the election of a majority of whose directors, general partners of a partnership or limited partnership, or members of a limited liability company is controlled in any manner by a covered institution; or (3) any entity, with respect to the management of the policies of which a covered institution has the power, directly or indirectly, to exercise a controlling influence.

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

- (1) To vote for or to select directors, trustees, partners or persons exercising similar functions for the issuing person; or
- (2) To vote on or to direct the conduct of the operations or other significant policies of the issuing person.

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

- (1) Any voting rights associated with the shares or interests, including the right to select or vote for the selection of directors, trustees or partners or persons exercising similar functions, are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing person, or the payment of dividends by the issuing person when preferred dividends are in arrears, or, entitle the holder thereof to vote for the election of directors, trustees or partners or persons exercising similar functions only as the result of the failure to pay a dividend or to fulfill an obligation or satisfy a condition specified by the terms of the shares or interests; and
- (2) The shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing person.

C.17:1-27 Prohibited actions.

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

- a. Fail to comply with an order or other written instruction of the commissioner or any other financial regulatory agency;
- b. Violate a State or federal law;
- c. Take any action, or fail to take an action, with the result that a material interest of the covered institution is adversely affected;
- d. Be convicted of a crime that would permit adverse action by a governmental agency pursuant to P.L.1968, c.282 (C. 2A:168A-1 et seq.);
- e. Provide incorrect, misleading, incomplete or untrue material information about the covered institution to the commissioner or any federal financial regulatory agency;
- f. Withhold material information from the commissioner or any federal financial regulatory authority about the covered institution; or
- g. Take an action, or fail to take an action, the result of which poses a substantial risk to the safety and soundness of the covered institution or may cause substantial damage to its reputation.

C.17:1-28 Enforcement of, penalties for violations under C.17:1-27.

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

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

willful violation;

- (2) Suspend, revoke or refuse to renew a license issued by the department;
- (3) Temporarily remove a person responsible for a violation of this act from working in that person's present capacity or in any capacity related to activities regulated by the department;
- (4) Prohibit or bar a person responsible for a violation of this act from working in that person's present capacity or in any capacity related to activities regulated by the department;
- (5) Order a person to cease and desist any violation of this act;
- (6) Order a person to make restitution for actual damages;
- (7) Enter an appropriate temporary order, to be effective immediately and until entry of a final order, pending completion of an investigation or any formal proceeding instituted pursuant to this act, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to the covered institution, depositors or the public. Orders issued pursuant to this paragraph shall be subject to an application to vacate upon two days' notice, and a preliminary hearing on the temporary order shall be held, in any event, within five days after it is issued, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and

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

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

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

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

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

Repealer.

5. Section 249 of P.L.1948, c.67 (C.17:9A-249) is repealed.

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

Approved August 18, 2005.