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## **TITLE 12 COMMERCE AND TRADE**

### **Part**

- I. General Provisions
- II. Economic Development Entities
- III. Economic Development Programs
- IV. Commercial Protection
- V. Consumer Credit
- IX. Miscellaneous Provisions

**Enactment.** Unless otherwise noted, the provisions of Title 12 were added December 3, 1993, P.L.479, No.70, effective in 60 days.

**Special Provisions in Appendix.** See sections 2 and 4 of Act 70 of 1993 in the appendix to this title for special provisions relating to statutory construction and applicability.

See section 1 of Act 12 of 2004 in the appendix to this title for special provisions relating to legislative findings and declarations.

## **PART I**

### GENERAL PROVISIONS

**Enactment.** Part I was added February 12, 2004, P.L.99, No.12, effective immediately.

#### **Chapter**

1. Preliminary Provisions
3. Economic Development Financing Strategy
4. Pennsylvania Military Community Enhancement Commission
5. Small Business Council
7. Tax-Exempt Bond Allocation (Reserved)

## **CHAPTER 1**

### PRELIMINARY PROVISIONS

#### **Sec.**

101. Definitions.

**Enactment.** Chapter 1 was added February 12, 2004, P.L.99, No.12, effective immediately.

#### **§ 101. Definitions.**

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Department."** The Department of Community and Economic Development of the Commonwealth.

**"Secretary."** The Secretary of Community and Economic Development.

## **CHAPTER 3**

### ECONOMIC DEVELOPMENT FINANCING STRATEGY

#### **Sec.**

301. Scope.
302. Definitions.
303. Development.
304. Oversight.

**Enactment.** Chapter 3 was added February 12, 2004, P.L.99, No.12, effective immediately.

**Special Provisions in Appendix.** See section 4(1) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

**Cross References.** Chapter 3 is referred to in section 2305 of this title.

**§ 301. Scope.**

This chapter relates to the development of an annual economic development financing strategy.

**§ 302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Economic development program."** A program which is administered by the department, including programs administered or staffed by the department, and which provides financial assistance for economic development to persons. The term includes all of the following:

- (1) Any program created under Part III (relating to economic development programs).
- (2) Any program of an entity created under 64 Pa.C.S. Pt. II (relating to economic development financing).
- (3) The Pennsylvania Industrial Development Authority.
- (4) The Pennsylvania Minority Business Development Authority.

(5) The Infrastructure Development Program.

(6) The Industrial Sites Reuse Program.

(7) The tax credit programs established in Articles XVII-B and XVIII-B of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(Oct. 22, 2014, P.L.2569, No.161, eff. 60 days)

**§ 303. Development.**

The department shall annually develop a report containing a financing strategy for economic development within this Commonwealth. In developing the report, the department shall gather input and recommendations from businesses, community leaders and organizations, legislators and private citizens. The report shall include all of the following:

(1) A financial audit or statement of operations for each economic development program.

(2) A narrative description of accomplishments for each economic development program during the preceding fiscal year.

(3) A detailed description of the parameters of operation for the economic development programs during the upcoming fiscal year. The description shall include the terms and conditions under which the economic development programs shall be administered.

(4) A description of the performance measurements and accountability factors to be applied and the performance targets or goals to be met for each economic development program.

(5) A description of long-range planning for the economic development programs through the next five fiscal years.

(6) A list of the loans, grants or credits approved for the economic development programs during the fiscal year. The list shall include a brief description of and details regarding each loan, grant or credit approved, including penalties imposed by the department.

(7) A review of pending projects.

**§ 304. Oversight.**

Concurrent with the submission of the Governor's annual budget message, the department shall submit the report required by this chapter to all of the following:

(1) The Secretary of the Senate.

(2) The chairperson of the Appropriations Committee of the Senate.



- (3) The Chief Clerk of the House of Representatives.
- (4) The chairperson of the Appropriations Committee of the House of Representatives.

#### **CHAPTER 4**

##### PENNSYLVANIA MILITARY COMMUNITY ENHANCEMENT COMMISSION

**Sec.**

401. Definitions.
402. Establishment and membership.
403. Powers and duties.
404. Administrative assistance.
405. Report.

**Enactment.** Chapter 4 was added October 22, 2014, P.L.2569, No.161, effective in 60 days.

**Special Provisions in Appendix.** See section 1 of Act 161 of 2014 in the appendix to this title for special provisions relating to legislative findings and declarations.

**§ 401. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Commission."** The Pennsylvania Military Community Enhancement Commission established under this chapter.

**§ 402. Establishment and membership.**

**(a) Establishment.--**The commission is hereby established within the department.

**(b) Membership.--**The commission shall be comprised of not more than 17 members as follows:

- (1) The Lieutenant Governor.
- (2) A member appointed by the President pro tempore of the Senate.
- (3) A member appointed by the Minority Leader of the Senate.
- (4) A member appointed by the Speaker of the House of Representatives.
- (5) A member appointed by the Minority Leader of the House of Representatives.
- (6) Up to 12 members appointed by the Governor as follows:

(i) One member shall have experience at the senior level of the military, such as an active duty retired three-star or four-star military officer, and shall be familiar with the operations represented by the installations and organizations stationed in this Commonwealth. The member shall serve as chairperson in the absence of the chairperson elected by a majority of the members.

(ii) At least ten members shall be representatives of the military installations or organizations stationed in this Commonwealth and shall have knowledge of the mission and operations of the installation or organization that they represent.

(iii) One member shall be an expert in the field of economic development and shall be knowledgeable in the missions and operations of the military in their respective regions of this Commonwealth.

**(c) Chairperson.--**A chairperson shall be elected by a majority of the commission members.

**(d) Executive director.**--The Governor shall appoint an executive director who shall be an employee of the department.

**(e) Membership terms.**--

(1) Members shall be appointed for a term of two years and serve until their respective successors are appointed. A member may be reappointed for additional terms. Members appointed by the Governor shall serve at the pleasure of the Governor.

(2) If a vacancy occurs on the commission, a successor shall be appointed in the same manner as the predecessor.

(3) A member who is absent from two consecutive meetings of the commission without a reasonable excuse, as determined by the chairperson, shall forfeit membership on the commission.

(4) Members shall not receive compensation for their services, but shall receive reimbursement for their necessary and proper expenses related to their duties on the commission.

**§ 403. Powers and duties.**

The commission shall have the following powers and duties:

(1) Advise on the expansion of economic development opportunities and defense-related industry organizations in public or private sectors in this Commonwealth.

(2) Establish a viable and long-term relationship with each military installation, organization and defense-related organization in this Commonwealth.

(3) Closely monitor the activities at the Federal level relating to any initiative or proposal that will affect, either positively or negatively, any military installation or organization or defense-related organization in this Commonwealth.

(4) Educate and engage stakeholders at the Federal, State and local levels and in the public and private sectors on the enhancement and preservation of the military installations and organizations and defense-related organizations in this Commonwealth.

(5) Advocate at the Federal, State and local levels for the enhancement of the military installations and organizations and defense-related organizations in this Commonwealth in order to fully support our nation's military at home and abroad.

(6) Identify, in coordination with the department, sources of funding for economic development projects, including projects under this title, 64 Pa.C.S. (relating to public authorities and quasi-public corporations) or projects under the act of February 9, 1999 (P.L.1, No.1), known as the Capital Facilities Debt Enabling Act, related to military installations and defense-related organizations and for the enhancement of military installations or defense-related organizations in this Commonwealth.

(7) Estimate an annual budget for the commission.

**§ 404. Administrative assistance.**

The department shall provide appropriate administrative, legal and technical support as needed by the commission in order to accomplish its purpose.

**§ 405. Report.**

The commission shall report its activities no less than quarterly to the Governor or the Governor's designated representative and annually to the General Assembly.

SMALL BUSINESS COUNCIL

**Sec.**

- 501. Scope.
- 502. Definitions.
- 503. Small Business Council.
- 504. Regulatory review.

**Enactment.** Chapter 5 was added February 12, 2004, P.L.99, No.12, effective immediately.

**Special Provisions in Appendix.** See section 4(2) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

**§ 501. Scope.**

This chapter relates to the Small Business Council.

**§ 502. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Council."** The Small Business Council established under section 503 (relating to Small Business Council).

**"Executive agency."** The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.

**"Small business."** A person that employs fewer than 100 employees.

**§ 503. Small Business Council.**

**(a) Establishment.--**There is established within the department an agency to be known as the Small Business Council. The council shall do all of the following:

- (1) Assist with the development of policies and regulations which affect small businesses within this Commonwealth.
- (2) Provide advice relating to the nature of small business practices and problems in this Commonwealth.
- (3) Provide a review of existing and proposed policies and regulations which are relevant to small business.

**(b) Composition.--**The council shall be composed of 13 members. The secretary shall serve ex officio. Twelve members shall be appointed as follows:

- (1) Four individuals appointed by the Governor.
- (2) Two individuals appointed by the President pro tempore of the Senate.
- (3) Two individuals appointed by the Minority Leader of the Senate.
- (4) Two individuals appointed by the Speaker of the House of Representatives.
- (5) Two individuals appointed by the Minority Leader of the House of Representatives.

**(c) Qualifications.--**In order to be eligible for appointment to the council, an individual must:

- (1) have a background in improving small businesses;
- and
- (2) be one of the following:
    - (i) a present owner or operator of a small business within this Commonwealth;
    - (ii) a member of the academic community who has expertise regarding small business practices; or

(iii) a professional who specializes in representing small businesses.

**(d) Term.**--Each member of the council shall serve for a period of two years.

**(e) Organization.**--The secretary shall serve as chairperson.

**(f) Meetings.**--The council shall meet at the call of the chairperson.

**(g) Quorum.**--A majority of the board shall constitute a quorum. A majority of the members present shall be necessary to transact business on behalf of the council.

**(h) Expenses.**--A member shall not receive compensation or remuneration but shall be entitled to reimbursement for all reasonable and necessary actual expenses.

**(i) Administrative assistance.**--The department shall do all of the following:

(1) Provide administrative and technical support to the council.

(2) Publish notice of council meetings in accordance with 65 Pa.C.S. Ch. 7 (relating to open meetings).

(3) Maintain a mailing list of persons who have requested specific notification of meetings and activities of the council.

(4) Designate a deputy secretary to attend council meetings and to serve as the public's liaison of the council.

**(j) Cooperation.**--Upon the council's request, an executive agency shall provide the council with officially promulgated regulatory and nonregulatory documents which regulate or would regulate small businesses.

**Cross References.** Section 503 is referred to in section 502 of this title.

#### **§ 504. Regulatory review.**

**(a) Notification.**--To the extent known to the secretary, the department shall, on a semiannual basis, provide the council with a list of regulations being proposed by all executive agencies which may affect small businesses in this Commonwealth.

**(b) Conference.**--The department shall, upon request of the council, arrange a meeting between the council and representatives of an executive agency to discuss regulatory proposals and policy initiatives of the executive agency which might affect small businesses in this Commonwealth.

**(c) Written comments.**--The council shall provide the department with written comments regarding the council's position on the proposed regulations. The department shall transmit the comments to the appropriate executive agencies. The written comments shall include an impact statement and any other information which the council deems necessary for the public to make an informed opinion on the proposals.

**(d) Exceptions.**--The requirements under subsections (a) and (b) shall not apply to the promulgation of the following regulations relating to small businesses:

(1) Regulations required by court order.

(2) Regulations necessitated by a Federal or State declaration of emergency.

(3) Interim regulations which are authorized by statute.

## **CHAPTER 7**

### **TAX-EXEMPT BOND ALLOCATION**

(Reserved)

**Enactment.** Chapter 7 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**PART II**  
ECONOMIC DEVELOPMENT ENTITIES

**Chapter**

- 11. Ben Franklin (Reserved)
- 13. Industrial Resource Centers (Reserved)
- 15. (Reserved)
- 17. (Reserved)
- 19. (Reserved)

**Enactment.** Part II was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 11**  
BEN FRANKLIN  
(Reserved)

**Enactment.** Chapter 11 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 13**  
INDUSTRIAL RESOURCE CENTERS  
(Reserved)

**Enactment.** Chapter 13 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 15**  
(Reserved)

**Enactment.** Chapter 15 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 17**  
(Reserved)

**Enactment.** Chapter 17 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 19**  
(Reserved)

**Enactment.** Chapter 19 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**PART III**  
ECONOMIC DEVELOPMENT PROGRAMS

**Chapter**

- 21. Opportunity Grants
- 23. Small Business First

25. Industrial Development Assistance (Reserved)
27. Customized Job Training (Reserved)
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33. Entertainment Economic Enhancement Program
34. Infrastructure and Facilities Improvement Program
35. Keystone Opportunity Zones (Reserved)
37. Keystone Innovation Zones
39. Water Supply and Wastewater Infrastructure Capitalization
41. Film Production Grants
43. Property Assessed Clean Energy Program

**Enactment.** Part III was added February 12, 2004, P.L.99, No.12, effective immediately.

## **CHAPTER 21**

### **OPPORTUNITY GRANTS**

#### **Sec.**

2101. Scope.
2102. Definitions.
2103. Establishment.
2104. Application.
2105. Review.
2106. Approval.
2107. Penalty.
2108. Limitations.
2109. Guidelines.

**Enactment.** Chapter 21 was added February 12, 2004, P.L.99, No.12, effective immediately.

**Special Provisions in Appendix.** See section 4(3) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

#### **§ 2101. Scope.**

This chapter relates to the Opportunity Grant Program.

#### **§ 2102. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Applicant."** A person that applies for a grant in accordance with this chapter.

**"Developer."** A person that has as a purpose the promotion or construction of economic development projects and that is engaged in the development of real estate for use by more than one person.

**"Eligible recipient."** Any of the following persons:

- (1) A municipality.
- (2) An entity created under the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.
- (3) An entity certified as an industrial development agency under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.
- (4) An entity created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.
- (5) An entity created under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

- (6) A developer.
- (7) A person that is engaged in any of the following activities:
  - (i) The production or processing of farm commodities.
  - (ii) Manufacturing.
  - (iii) Research and development.
  - (iv) Export services.
  - (v) Any other activity which offers a significant economic impact on the Commonwealth, as determined by the department.

**"Eligible use."** Any of the following activities:

- (1) Job training.
- (2) The acquisition of interest in land, buildings or rights-of-way.
- (3) The construction or rehabilitation of buildings.
- (4) The construction or rehabilitation of infrastructure.
- (5) The purchase or upgrading of machinery and equipment.
- (6) Working capital.
- (7) Site preparation, including demolition and clearance.
- (8) Environmental assessments.
- (9) Remediation of hazardous material.
- (10) Architectural and engineering fees up to 10% of the award.

**"Job-creating economic development."** Includes the expansion or preservation of existing industry.

**"Program."** The Opportunity Grant Program established in section 2103 (relating to establishment.)

**"Project."** An activity conducted in this Commonwealth.

**"Recipient."** A person who receives a grant under this chapter.

#### **§ 2103. Establishment.**

There is established within the department a program to be known as the Opportunity Grant Program. The program shall be administered by the department to provide grants to eligible persons for certain projects which encourage job-creating economic development within this Commonwealth.

**Cross References.** Section 2103 is referred to in section 2102 of this title.

#### **§ 2104. Application.**

A person may submit an application to the department requesting a grant for a project. The application shall be on the form required by the department and shall include or demonstrate all of the following:

- (1) The name and address of the applicant.
- (2) A statement that the applicant is an eligible recipient under the program.
- (3) A statement of the amount of grant sought.
- (4) A statement of the project, including a detailed statement of the cost of the project.
- (5) A statement identifying the economic impact of the project to the region and the estimated impact on State and local revenues.
- (6) A commitment of private matching funds of at least \$4 for every \$1 of grant funds, and of the balance of funding for the entire project cost, from a responsible source.
- (7) A commitment from the applicant to complete the project.

(8) Any other information required by the department.

**Cross References.** Section 2104 is referred to in section 2105 of this title.

**§ 2105. Review.**

The department shall review the application to determine if the applicant has met all of the criteria set forth in section 2104 (relating to application).

**§ 2106. Approval.**

The following shall apply:

(1) Upon being satisfied that all requirements have been met, the department may approve the application and award a grant.

(2) Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant. The contract shall include provisions requiring the applicant to use the grant to pay the costs of the project.

(3) The department may impose any other terms and conditions on the grants authorized by this chapter as the department determines is in the best interests of the Commonwealth, including a provision requiring collateral to secure repayment of any penalty imposed under the program.

**§ 2107. Penalty.**

**(a) Imposition.--**Except as provided in subsection (b), the department shall impose a penalty upon a recipient for any of the following:

(1) Failing to create the number of jobs specified in the recipient's application.

(2) Failing to inject the required amount of private matching funds into the project.

(3) Failing to operate at the project site for a minimum period of five years.

**(b) Exception.--**The department may waive the penalty required by subsection (a) if the department determines that the failure was due to circumstances outside the control of the recipient.

**(c) Amount.--**The amount of the penalty shall be equal to the full amount of the grant received plus an additional amount of up to 10% of the amount of the grant received. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

**§ 2108. Limitations.**

(1) An applicant may not receive a grant under this chapter for more than two consecutive fiscal years for the same project.

(2) A grant awarded under this chapter may not be used to do any of the following:

(i) Refinance or retire existing debt.

(ii) Pay costs unrelated to a project location at a site in this Commonwealth.

(3) In no case shall the aggregate amount of grants paid in any fiscal year under this chapter exceed the annual appropriation to the department for the program.

(4) A grant awarded under this chapter shall in no way constitute an entitlement derived from the Commonwealth or a claim on any other funds of the Commonwealth.

**§ 2109. Guidelines.**

The department shall develop written guidelines for the program. The guidelines shall do all of the following:

(1) Limit grant size for any single project.

(2) Clarify eligible uses of grants.



- (3) Clarify standards for eligibility.
- (4) Require geographic diversity of funded projects.

**CHAPTER 23**  
SMALL BUSINESS FIRST

**Sec.**

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**Enactment.** Chapter 23 was added February 12, 2004, P.L.99, No.12, effective immediately.

**Special Provisions in Appendix.** See section 4(4) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

**Cross References.** Chapter 23 is referred to in sections 1102, 1130, 1552 of Title 64 (Public Authorities and Quasi-Public Corporations).

**§ 2301. Scope.**

This chapter relates to the Small Business First Program.

**§ 2302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Agent."** The term includes the Department of Community and Economic Development.

**"Agricultural processor."** A person that adds value by subjecting one or more farm commodities to a process of manufacture, development or preparation for sale or a person that converts a farm product into a marketable form.

**"Agricultural producer."** A person involved in the management and use of a normal agricultural operation for the production of a farm commodity.

**"Apparel products."** Products manufactured, woven, cut, sewn or otherwise similarly processed by mechanical or human effort from fabrics, leather or cloth and made for use as clothing, shoes or other attire.

**"Applicant."** A person that applies for a loan in accordance with this chapter.

**"Area loan organization."** (Deleted by amendment).

**"Authority."** The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

**"Board."** The board of directors of the authority.

**"Capital development project."** Land, buildings, equipment and machinery and working capital which is acquired, constructed, renovated or used by a small business in accordance with any of the following:

(1) As part of a for-profit project or venture not of a mercantile or service-related nature, except for hospitality industry projects.

(2) As part of an effort to:

- (i) bring a small business into compliance with Federal or State environmental laws or regulations;
- (ii) complete an approved remediation project; or
- (iii) permit a small business to adopt generally acceptable pollution prevention practices.

(3) As part of an effort to provide assistance to a small business that is a recycler of municipal or commercial waste or that is a manufacturer using recycled municipal or commercial waste materials.

(4) As part of an effort to assist a small business with defense conversion activities.

(5) As part of a for-profit project or venture to manufacture products to be exported out of the United States by a small business which is not of a mercantile or service-related nature, except for export-related services and international export-related mercantile ventures or advanced technology and computer-related services and mercantile ventures and which will increase this Commonwealth's national or international market shares.

(6) As part of a for-profit project or venture that meets the requirements of section 2308 (relating to loans in distressed communities)

(7) As part of an effort to assist in the start-up or expansion of a for-profit or not-for-profit child day-care center subject to licensure by the Commonwealth.

**"Certified economic development organization."** An entity certified by the authority under 64 Pa.C.S. § 1123 (relating to certification of economic development organizations).

**"Child day-care center."** Any premises in which child day care is provided simultaneously for seven or more children who are not related to the provider.

**"Community development institution."** (Deleted by amendment).

**"Distressed community."** A community which has any of the following:

(1) A census tract or other specifically defined geographic area in which there is any of the following:

- (i) A median income below 80% of the median income for the United States or this Commonwealth.
- (ii) Twenty percent or more of the population is below the poverty level by family size published by the Bureau of the Census.
- (iii) An unemployment rate 50% higher than the national average.

(2) An area which is designated a subzone, expansion subzone or improvement subzone under the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act.

(3) Any other geographic area designated by the authority as distressed. The designation shall be published in the Pennsylvania Bulletin.

**"EDA loan."** A loan made under this chapter utilizing funds made available to the department or the authority under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. § 3121 et seq.).

**"Ex-Im Bank."** The Export-Import Bank of the United States.

**"Export activity."** An activity undertaken by a person within this Commonwealth related to exports.

**"Export business."** A person that is engaged in a for-profit enterprise involving export activities and that employs 250 or fewer individuals.

**"Exports."** Goods or services to be sold or performed outside the United States.

**"Farm commodity."** Any Pennsylvania-grown agricultural, horticultural, aquacultural, vegetable, fruit and floricultural product of the soil, livestock and meats, wools, hides, furs, poultry, eggs, dairy products, nuts, mushrooms, honey products and forest products.

**"Fund."** The Small Business First Fund continued under section 2304 (relating to fund and accounts).

**"Hazardous substance."** Any element, compound or material which is any of the following:

(1) Regulated as a hazardous air pollutant under section 6.6 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

(2) Defined as a hazardous waste under section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(3) Regulated under the act of December 7, 1990 (P.L.639, No.165), known as the Hazardous Material Emergency Planning and Response Act.

**"Hospitality industry project."** A for-profit project or venture which involves a small business that operates a hotel, motel or other lodging facility and that employs at least five full-time equivalent employees at the time an application is submitted to the authority for financing. The term includes a for-profit project or venture which involves a small business that operates a restaurant or food service operation open to the public, that has been in continuous operation for at least five years and that employs at least five full-time equivalent employees at the time an application is submitted.

**"Insurance policy."** An export credit insurance policy for small businesses offered by the Export-Import Bank of the United States.

**"Natural disaster."** As defined in 35 Pa.C.S. § 7102 (relating to definitions).

**"Normal agricultural operation."** As defined in section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

**"Pollution prevention."** The reduction or elimination of pollution at its source. The term does not include any of the following:

(1) A substitution of one hazardous or toxic substance for another which will cause an increased risk to the environment or to human health.

(2) A cross-media transfer.

(3) A delisting of a hazardous waste or toxic chemical.

**"Pollution prevention assistance agency."** (Deleted by amendment).

**"Pollution prevention infrastructure."** A capital development project which permits a small business to adopt or install pollution prevention equipment or processes to:

(1) Reduce or reuse raw materials onsite.

(2) Reduce the production of waste.

(3) Reduce energy consumption.

**"Program."** The Small Business First Program established under section 2303 (relating to establishment).

**"Reuse."** Use of a product or component in its original form more than once.

**"Small business."** A person that is engaged in a for-profit enterprise and that employs 100 or fewer individuals. The term includes the following:

- (1) An enterprise located in a small business incubator facility.
- (2) An agricultural processor.
- (3) An agricultural producer.
- (4) An enterprise which manufactures apparel products.
- (5) An enterprise which is a for-profit or not-for-profit child day-care center subject to licensure by the Commonwealth.

**"Working capital."** Capital used by a small business for operations, excluding fixed assets and production machinery and equipment.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014; June 22, 2017, P.L.202, No.7, eff. imd.)

**2017 Amendment.** Act 7 added the def. of "agent."

**2014 Amendment.** Act 161 amended the defs. of "distressed community," "EDA loan" and "hospitality industry project," added the defs. of "authority," "board" and "certified economic development organization" and deleted the defs. of "area loan organization," "community development institution" and "pollution prevention assistance agency."

**References in Text.** The name of the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act was changed to the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act.

**§ 2303. Establishment.**

There is established a program to be known as the Small Business First Program. The program shall be administered by the authority and provide loans to eligible persons for certain projects which encourage job-creating and job-preserving economic development within this Commonwealth.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**Cross References.** Section 2303 is referred to in section 2302 of this title.

**§ 2304. Fund and accounts.**

**(a) Fund.--**The Small Business First Fund, created under section 1302(a) of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, is continued. The Treasury Department shall credit the following to the fund:

- (1) Appropriations made by the General Assembly to the department or authority for the program.
- (2) Federal funds made available under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. § 3121 et seq.) or any other Federal statute, regulation or program for the program.
- (3) Payments from recipients of loans made from the fund.
- (4) Payments from recipients of loans made under the former act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act.

(5) Interest income derived from investment of the money in the fund.

(6) Any other deposits, payments or contributions from any other source made available to the department or authority for the program.

**(b) Pollution prevention assistance.--**The Pollution Prevention Assistance Account, created under the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act,

is continued. The Treasury Department shall credit the following to this account:

(1) Appropriations made by the General Assembly to the department or authority for pollution prevention assistance.

(2) Payments from recipients of loans made from the Pollution Prevention Assistance Account.

(3) Transfers from the Hazardous Sites Cleanup Fund as established in section 602.3 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) Interest income derived from investment of the money in the Pollution Prevention Assistance Account.

(5) Any other deposits, payments or contributions from any other source made available to the department or authority for pollution prevention assistance.

**(c) Use of fund.--**

(1) Money in the fund may be used as follows:

(i) By the authority to make loans in accordance with this chapter and for administrative costs of the authority in administering the program.

(ii) By certified economic development organizations for administrative costs associated with the program which are approved by the authority.

(2) Money from the fund derived from appropriations specified for export financing assistance may be deposited by the authority in banks or trust companies in special accounts. The special accounts must be continuously secured by a pledge of direct obligations of the United States or of the Commonwealth having an aggregate market value, exclusive of accrued interest, at least equal to the balance on deposit in the account. The securities shall be deposited with the authority to be held by a trustee or agent satisfactory to the authority. Banks and trust companies are authorized to give security under this paragraph. Money in these special accounts shall be paid out on order of the authority.

**(d) Use of Pollution Prevention Assistance Account.--**Money in the Pollution Prevention Assistance Account may be used by the authority to provide loans to small businesses for the adoption or installation of pollution-prevention or energy-efficient equipment or processes in accordance with section 2309 (relating to pollution prevention assistance loans).

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a)(1) and (6), (b)(1) and (5), (c) and (d).

**References in Text.** Section 602.3 of the act of March 4, 1971, (P.L.6, No.2), known as the Tax Reform Code of 1971, referred to in subsec. (b)(3), was repealed by the act of December 18, 2007 (P.L.486, No.77). The subject matter is now contained in Act 77.

**Cross References.** Section 2304 is referred to in sections 2302, 2310 of this title; section 1102 of Title 64 (Public Authorities and Quasi-Public Corporations).

**§ 2305. Authority responsibilities.**

**(a) General rule.--**The authority shall do all of the following:

(1) Administer the program.

(2) Establish written guidelines as necessary. Any guidelines established shall be included in the report required by Chapter 3 (relating to economic development financing strategy).

(3) Deposit payments made by recipients in the fund or the Pollution Prevention Assistance Account, as appropriate.

(4) Approve standards for certified economic development organization application fees.

(5) (Deleted by amendment).

(6) Except as provided under section 2306(c)(iii) (relating to capital development loans), determine the job retention or job creation requirements for each project financed in whole or in part through a loan or line of credit made under this chapter.

**(b) Program.**--In administering the program, the authority may do any of the following:

(1) Provide grants or other financial assistance to certified economic development organizations for any of the following purposes:

(i) To establish loan reserve funds.

(ii) To reimburse loan losses to commercial banks and other financial institutions as a means of encouraging the expansion and financing of small businesses.

(2) Apply to the Ex-Im Bank for delegated authority lender status under the Ex-Im Bank's Working Capital Guaranty Program.

(3) Utilize the outstanding portfolio of loans and lines of credit made under this chapter to raise additional funds by selling, securing, hypothecating or otherwise using such loan proceeds as a financing vehicle if the funds raised are used by the authority for either of the following purposes:

(i) To make new and additional loans under this chapter.

(ii) To pay costs associated with financing.

**(c) Additional powers.**--In addition to the powers authorized under this chapter and 64 Pa.C.S. Ch. 11 (relating to Pennsylvania Industrial Development Authority), the board may administer the program by exercising the powers granted to it under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act. (Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended the section heading and subsecs. (a) intro. par. and (4), (b) intro. par., (1) and (3), added subsecs. (a)(6) and (c) and deleted subsec. (a)(5).

**§ 2306. Capital development loans.**

**(a) Application.**--A small business may submit an application and any applicable application fee to a certified economic development organization requesting a loan or line of credit for certain costs of a capital development project under 64 Pa.C.S. § 1121 (relating to common application process). The application shall be on the form required by the authority and shall include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

(1) The name and address of the applicant.

(2) A statement of the type and amount of assistance sought.

(3) A statement of the capital development project, including a detailed statement of the cost of the project.

(4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.

(5) Any other information required by the authority.

**(b) Certified economic development organization review.**--

(1) Upon receipt of a completed application, a certified economic development organization shall investigate and determine all of the following:

- (i) If the applicant is a small business.
- (ii) If the project is a capital development project.
- (iii) If, when the applicant is a small business, the capital development project demonstrates a substantial likelihood of creating or preserving employment activities in this Commonwealth or if, when the applicant is an agricultural producer, the project demonstrates a substantial likelihood of enhancing and growing normal agriculture operations.
- (iv) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable.
- (v) The existence and sufficiency of collateral for the loan.
- (vi) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.
- (vii) The number of employment opportunities to be created or preserved by the proposed capital development project.
- (viii) If the applicant complied with all other criteria established by the authority.

(2) Upon being satisfied that all requirements have been met, the certified economic development organizations shall recommend the applicant to the authority and forward the application with all supporting documentation to the authority for its review and approval.

**(c) Authority review.--**

(1) Within 30 days of receiving a recommendation and a completed application, the authority shall review the application. If the authority is satisfied that all requirements have been met, the authority may approve the loan request in accordance with the following:

- (i) A loan for land, buildings and machinery and equipment may not exceed \$400,000 or 50% of the total capital development project costs, whichever is less. For the purposes of this subparagraph, capital development project costs incurred during the 12-month period prior to the date of submission of the application to the authority shall be considered part of the total capital development project costs.
- (ii) A loan or line of credit for working capital may not exceed \$100,000.
- (iii) Except for loans to agricultural producers, a loan must create or preserve one job for every \$25,000 loaned. The authority may, by submitting notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, periodically update the amount under this subparagraph, based on changes in unemployment statistics, inflation, the authority's cash flow and the need to keep this Commonwealth and the businesses of this Commonwealth competitive.

(2) The authority shall notify the certified economic development organization and applicant of its decision.

**(d) Approvals.--**For applications which are approved, the authority shall draw an advance equal to the principal amount of the loan from the fund. The advance shall be forwarded to the certified economic development organization and, upon receipt by the certified economic development organization,

shall become an obligation of the certified economic development organization. Prior to providing loan funds to the applicant, the certified economic development organization shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The authority may require the certified economic development organization to impose other terms and conditions on the recipient if the authority determines that they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

**(e) Loan terms.**--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the certified economic development organization with the approval of the authority.

(2) State the repayment period in accordance with the following:

(i) A loan for real property shall have a repayment period of up to 15 years.

(ii) A loan for machinery and equipment shall have a repayment period of up to ten years.

(iii) A loan or line of credit for working capital shall have a repayment period of up to three years. A line of credit may be renewed for an additional three-year period at the discretion of the authority.

(iv) If, in a capital development project, there are two or more uses planned, the loan terms may be blended.

(3) State the interest rate in accordance with the following:

(i) Except as provided in subparagraph (ii), loans shall be made at an interest rate not to exceed 5% for the term of the loan.

(ii) A loan to a small business which is an agricultural producer shall be made at an interest rate of not less than 2% for the term of the loan if all of the following apply:

(A) A declaration under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor) is in effect for at least ten days prior to the date of application.

(B) The application is made within nine months of termination of the declaration.

(C) The agricultural producer is in the area which has been declared to be a natural disaster area.

**(f) Loan administration.**--A loan made under this section shall be administered in accordance with authority policies and procedures by the certified economic development organization which made the loan. Each certified economic development organization shall submit an annual report on the form required by the authority and which includes or demonstrates all of the following:

(1) Each outstanding loan.

(2) The date approved.

(3) The original principal amount.

(4) The current principal balance.



- (5) The interest rate.
- (6) The purpose for which the loan was made.
- (7) An enumeration of any problems or issues which have arisen with regard to each loan.
- (8) A statement regarding the progress of the small business in creating or preserving its requisite number of employment opportunities.
- (9) Any other information or documentation required by the authority.

**(g) Penalty.--**

(1) Except as provided in paragraph (2), the authority shall impose a penalty upon a recipient if the recipient fails to create or preserve the number of employment opportunities specified in its approved application.

(2) The authority may waive the penalty required by paragraph (1) if the authority determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of the penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

**(h) Defaults.--**The authority may by foreclosure take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The authority shall pay all costs arising out of the foreclosure and acquisition from moneys held in the fund. The authority may, in order to minimize financial losses and sustain employment, lease the capital development project. The authority may withdraw moneys from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed where purchase or payment is necessary to protect a loan made under this section. The authority may sell, transfer, convey and assign the first mortgages and shall deposit any moneys derived from the sale of any first mortgages in the fund.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a), (b) heading, (1) intro. par. and (viii) and (2), (c), (d), (e) (1) and (2) (iii), (f) intro. par. and (9), (g) (1) and (2) and (h).

**Cross References.** Section 2306 is referred to in sections 2305, 2310.1 of this title.

**§ 2307. EDA loans.**

**(a) Application and administration procedures.--**The authority shall establish application and administration procedures to be used for EDA loans. The procedures shall be established by guidelines and shall conform in all respects to those procedures required or established by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965 (Public Law 89-136, 42 U.S.C. § 3121 et seq.) and, if applicable, 64 Pa.C.S. § 1121 (relating to common application process).

**(b) Eligibility for EDA loans.--**The authority shall establish eligibility requirements to be used for EDA loans. The requirements shall be established by guidelines and shall conform in all respects to those procedures required or established by the Economic Development Administration for use of Federal funds under the Public Works and Economic Development Act of 1965.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**Cross References.** Section 2307 is referred to in section 2310.1 of this title.

**§ 2308. Loans in distressed communities.**

**(a) Application.--**A small business located in a distressed community may submit an application and any applicable application fee to a certified economic development organization requesting a loan or line of credit for certain costs of a capital development project under 64 Pa.C.S. § 1121(a) (relating to common application process). The application shall be on the form required by the authority and shall include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

(1) The name and address of the applicant.

(2) A statement that the small business is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors.

(3) A statement of the type and amount of assistance sought.

(4) A statement of the capital development project, including a detailed statement of the cost of the project.

(5) A financial commitment from a responsible source for the cost of the capital development project in excess of the amount requested.

(6) Any other information required by the authority.

**(b) Certified economic development organization review.--**

(1) Upon receipt of a completed application, a certified economic development organization shall investigate and determine all of the following:

(i) If the applicant is a small business which is engaged in business-to-public service or in the mercantile, commercial or point-of-sale retail business sectors in accordance with conditions or criteria established by the authority.

(ii) If the project is a capital development project.

(iii) If the applicant has demonstrated a direct impact on the community in which the capital development project is or will be located, on residents of that community or on the local and/or regional economy. The authority shall establish criteria that will assist in making this demonstration.

(iv) Number of employment opportunities to be created or preserved by the proposed capital development project.

(v) If the applicant complied with all other criteria established by the authority.

(2) Upon being satisfied that all requirements have been met, the certified economic development organization shall recommend the applicant to the authority and forward the application with all supporting documentation to the authority for its review and approval.

**(c) Authority review.--**

(1) Upon receipt of a recommendation and a completed application, the authority shall investigate and determine all of the following:

(i) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable. In reviewing repayment obligations, loans shall not be approved on the basis of direct financial return on investment and shall not be held to the loan loss standards of private commercial lenders. Loans shall be reviewed for the purpose of establishing a strong

economic base and promoting entrepreneurial activity within the distressed community.

(ii) The existence and sufficiency of collateral for the loan.

(iii) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.

(2) If the authority is satisfied that all requirements have been met, the authority may approve the loan or line of credit request in an amount not to exceed \$200,000 or 50% of the total capital development project costs, whichever is less. For the purpose of this paragraph, capital development project costs, except the costs related to working capital, incurred during the 12-month period prior to the date of submission of the application to the authority shall be considered part of the total capital development project costs.

(3) The authority shall notify the certified economic development organization and applicant of its decision.

**(d) Approvals.--**For applications which are approved, the authority shall draw an advance equal to the principal amount of the loan from the fund and, prior to providing loan funds to the applicant, the authority shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The authority may impose other terms and conditions on the recipient if the authority determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

**(e) Loan terms.--**A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State any collateral securing the loan. The authority may use its best judgment to identify and secure collateral.

(2) State the repayment period which may be flexible, except that a line of credit may not have a term of more than three years. A line of credit may be renewed for an additional three-year period at the discretion of the authority.

(3) State the interest rate which may not be less than 2% nor more than 5% for the term of the loan.

(4) State that the recipient agrees to maintain, at a minimum, the number of jobs in existence as of the date of loan application.

**(f) Loan administration.--**A loan made under this section shall be administered in accordance with authority policies and procedures.

**(g) Penalty.--**

(1) Except as provided in paragraph (2), the authority shall impose a penalty upon a recipient if the recipient fails to preserve the number of employment opportunities specified in its approved application.

(2) The authority may waive the penalty required by paragraph (1) if the authority determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

**(h) Defaults.--**The authority may take title by foreclosure to a capital development project which it financed where acquisition is necessary to protect a loan made under this section. The authority shall pay all costs arising out of the foreclosure and acquisition from money held in the fund. The authority may, in order to minimize financial losses and sustain employment, lease the capital development project. The authority may withdraw money from the fund to purchase first mortgages and to make payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The authority may sell, transfer, convey and assign the first mortgages and shall deposit in the fund money derived from the sale of any first mortgages.  
(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a), (b) heading, (1) intro. par., (i), (iii) and (v) and (2), (c) heading, (1) intro. par., (2) and (3), (d), (e)(1) and (2), (f), (g)(1) and (2) and (h).

**Cross References.** Section 2308 is referred to in sections 2302, 2310 of this title.

**§ 2309. Pollution prevention assistance loans.**

**(a) Application.--**A small business may submit an application and any application fee to a certified economic development organization requesting a loan for a pollution prevention infrastructure under 64 Pa.C.S. § 1121(a) (relating to common application process). The application shall be on the form required by the authority and shall include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

- (1) The name and address of the applicant.
- (2) A statement of the amount of loan assistance sought.
- (3) A statement of the pollution prevention infrastructure, including a detailed statement of the cost of the infrastructure.
- (4) A financial commitment from a responsible source for the cost of the pollution prevention infrastructure in excess of the amount requested.
- (5) Any other information required by the authority.

**(b) Certified economic development organization review.--**

(1) Upon receipt of a completed application, a certified economic development organization shall investigate and determine all of the following:

- (i) If the applicant is a small business.
- (ii) If the project is for pollution prevention infrastructure.
- (iii) If the applicant complied with all other criteria established by the authority.

(2) Upon being satisfied that all requirements have been met, the certified economic development organization shall recommend the applicant to the department and forward the application with all supporting documentation to the authority for its review and approval.

**(c) Authority review.--**

(1) Upon receipt of a recommendation and a completed application, the authority shall investigate and determine all of the following:

- (i) If the pollution prevention infrastructure demonstrates a substantial likelihood of preventing or reducing pollution. The Department of Environmental

Protection shall assist the authority in reviewing the applications and provide technical assistance.

(ii) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable. In reviewing repayment obligations, loans shall not be approved on the basis of direct financial return on investment and shall not be held to the loan loss standards of private commercial lenders. Loans shall be reviewed for the purpose of reducing pollution through source reduction technologies or processes.

(iii) The existence and sufficiency of collateral for the loan.

(iv) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.

(2) If the authority is satisfied that all requirements have been met, the authority may approve the loan request. A loan approved under this subsection may not exceed the lesser of:

(i) \$100,000; or

(ii) 75% of infrastructure costs.

(3) The authority shall notify the certified economic development organization and applicant of its decision.

**(d) Approvals.**--For applications which are approved, the authority shall draw an advance equal to the principal amount of the loan from the Pollution Prevention Assistance Account. Prior to providing loan funds to the applicant, the authority shall require the applicant to execute a note and to enter into a loan agreement. In addition to the requirements of subsection (e), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the pollution prevention infrastructure. The authority may impose other terms and conditions on the recipient if the authority determines they are in the best interests of this Commonwealth, including a provision requiring collateral for any penalty imposed under subsection (g).

**(e) Loan terms.**--A loan agreement entered into in accordance with subsection (d) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the authority.

(2) State the repayment period which may not exceed 10 years.

(3) State that the interest rate is 2%.

(4) State that any loan fee is not to exceed 5% of the loan amount.

**(f) Loan administration.**--A loan made under this section shall be administered in accordance with authority policies and procedures.

**(g) Penalty.**--

(1) Except as provided in paragraph (2), the authority shall impose a penalty upon a recipient if the recipient fails to carry out the pollution prevention infrastructure project as specified in its approved application.

(2) The authority may waive the penalty required by paragraph (1) if the authority determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of any penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to

2% greater than the current prime interest rate for the remainder of the loan.

**(h) Defaults.**--The authority may take title by foreclosure to a pollution prevention infrastructure which it financed if acquisition is necessary to protect a loan made under this section. The authority shall pay all costs arising out of the foreclosure and acquisition from money held in the Pollution Prevention Assistance Account. The authority may, in order to minimize financial losses and sustain employment, lease the pollution prevention infrastructure. The authority may withdraw money from the Pollution Prevention Assistance Account to purchase first mortgages and to make payments on first mortgages on any pollution prevention infrastructure which it financed if the purchase or payment is necessary to protect a loan made under this section. The authority may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the Pollution Prevention Assistance Account.  
(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a), (b), (c) heading, (1) intro. par. and (i), (2) intro. par. and (3), (d), (e)(1), (f), (g)(1) and (2) and (h).

**Cross References.** Section 2309 is referred to in sections 2304, 2310.1 of this title.

**§ 2310. Export financing loans.**

**(a) Application.**--A person may submit an application and any applicable application fee to a certified economic development organization requesting a loan for certain costs of a capital development project which will be used in export activities under 64 Pa.C.S. § 1121(a) (relating to common application process). The application must be on the form required by the authority and must include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

- (1) The name and address of the applicant.
- (2) A statement of the amount of loan assistance sought.
- (3) A statement of the capital development project, including a detailed statement of the cost of the project.
- (4) A financial commitment from a responsible source for any cost of the capital development project in excess of the amount requested.
- (5) A statement that the loan, if approved, would not supplant funding from private sector sources on commercially reasonable terms.
- (6) Any other information required by the authority.

**(b) Review.**--Upon receipt of a completed application, the authority shall investigate and determine all of the following:

- (1) If the applicant is an export business.
- (2) If the project is a capital development project.
- (3) The ability of the applicant to meet and satisfy the debt service as it becomes due and payable.
- (4) The existence and sufficiency of collateral for the loan.
- (5) Relevant criminal and credit history and ratings of the applicant as determined from outside credit reporting services and other sources.
- (6) Number of employment opportunities to be created or preserved by the proposed capital development project.
- (7) If the applicant complied with all other criteria established by the authority.

**(c) Approvals.**--If the authority is satisfied that all requirements have been met, the authority may approve the loan request. A loan approved under this section may not exceed \$350,000. The authority shall notify the applicant and, if applicable, the certified economic development organization of its decision. The authority shall reserve an amount equal to the principal amount of the loan within the fund or the special account authorized by section 2304(c)(2) (relating to fund and accounts). Prior to providing funds to the applicant, the authority shall require the applicant to execute a note and enter into a loan agreement. In addition to the requirements of subsection (d), the loan agreement shall include a provision requiring the recipient to use the loan proceeds to pay the costs of the capital development project. The authority may impose other terms and conditions on the recipient if the authority determines they are in the best interests of this Commonwealth, including any of the following:

(1) A provision requiring collateral for any penalty imposed under subsection (f).

(2) A provision requiring the person to be eligible for an insurance policy.

(3) A provision requiring the loan to be guaranteed by the Working Capital Guaranty Program offered by the Ex-Im Bank.

(4) A provision requiring an export credit sales contract insured by an insurance policy.

**(d) Loan terms.**--A loan agreement entered into in accordance with subsection (c) shall do all of the following:

(1) State the collateral securing the loan. All loans shall be secured by lien positions on collateral at the highest level of priority as may be determined by the authority.

(2) State the repayment period as determined by the authority.

(3) State the interest rate as determined by the authority.

**(e) Loan administration.**--A loan made under this section shall be administered in accordance with authority policies and procedures.

**(f) Penalty.**--

(1) Except as provided in paragraph (2), the authority shall impose a penalty upon a recipient if the recipient fails to carry out the export activities specified in its approved application.

(2) The authority may waive the penalty required by paragraph (1) if the authority determines that the failure was due to circumstances outside the control of the recipient.

(3) The amount of the penalty imposed under paragraph (1) shall be equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan.

**(g) Defaults.**--The authority may, by foreclosure, take title to a capital development project which it financed if acquisition is necessary to protect a loan made under this section. The authority shall pay all costs arising out of the foreclosure and acquisition from money held in the fund or a special account authorized by section 2304(c)(2). The authority may, in order to minimize financial losses and sustain employment, lease the capital development project. The authority may withdraw money from the fund or a special account authorized by section 2304(c)(2) to purchase first mortgages and to make

payments on first mortgages on any capital development project which it financed if purchase or payment is necessary to protect a loan made under this section. The authority may sell, transfer, convey and assign the first mortgages and shall deposit any money derived from the sale of any first mortgages in the fund or a special account authorized by section 2304(c)(2).

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a), (b) intro. par. and (7), (c) intro. par., (d), (e), (f)(1) and (2) and (g).

**Cross References.** Section 2310 is referred to in section 2310.1 of this title.

**§ 2310.1. Delegation.**

For loans authorized under section 2306 (relating to capital development loans), 2307 (relating to EDA loans), 2308 (relating to loans in distressed communities), 2309 (relating to pollution prevention assistance loans) or 2310 (relating to export financing loans), the board may delegate the review and approval of applications totaling less than \$200,000 to the authorized staff of the authority by adopting a resolution authorizing the delegation, subject to any conditions established by the board. The resolution must do all of the following:

(1) Enumerate the qualifications and training required for authority staff to be authorized to review and approve applications.

(2) Set loan guidelines and underwriting standards for the authorized staff to follow during the review and approval of applications.

(3) Require authorized staff to provide a monthly report to the board of all actions to a pending or approved application taken during the reporting period.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 added section 2310.1.

**§ 2311. Reporting and inspection.**

**(a) Inspection.--**An applicant or a recipient shall, upon request, permit authorized employees of the authority or its agent to inspect the plant, books and records of the applicant or recipient.

**(b) Updating.--**An applicant or a recipient shall provide updated information to the authority and its agents if conditions change or to the extent that the information originally given becomes inaccurate or misleading.

**(c) Periodic reports.--**A recipient shall provide the authority and its agents with such periodic financial reports as the authority may require until the loan is repaid in full.

**(d) Financial and performance audits.--**An agent of the authority shall annually submit to the authority, at the agent's expense, an independent financial audit. If the audit reveals misconduct of a material nature on the part of the agent, the authority shall take appropriate action.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**§ 2312. Limitations.**

No loans shall be recommended or approved if the proceeds of the loan could do any of the following:

(1) Cause, aid or assist directly in the relocation of any business operations from one part of this Commonwealth to another unless there is at least a 25% net increase in employment.



(2) Refinance any portion of the total cost of a capital development project, pollution prevention infrastructure or other existing loans or debt.

(3) Finance a capital development project or pollution prevention infrastructure located outside the geographic boundaries of this Commonwealth.

(4) Provide funds, directly or indirectly, for payment distribution or as loan owners, partners or shareholders of a small business, except as ordinary compensation for services rendered.

(5) Provide funds for speculation in real or personal property, whether tangible or intangible.

## **CHAPTER 25**

### **INDUSTRIAL DEVELOPMENT ASSISTANCE (Reserved)**

**Enactment.** Chapter 25 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

## **CHAPTER 27**

### **CUSTOMIZED JOB TRAINING (Reserved)**

**Enactment.** Chapter 27 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

## **CHAPTER 29**

### **MACHINERY AND EQUIPMENT LOANS**

#### **Sec.**

- 2901. Scope.
- 2902. Definitions.
- 2903. Establishment.
- 2904. Machinery and Equipment Loan Fund.
- 2905. Eligibility for loans; terms and conditions.
- 2906. Application and administration.
- 2907. Powers of authority.
- 2908. Reporting and inspection.
- 2909. Nondiscrimination (Deleted by amendment).
- 2910. Conflict of interest (Deleted by amendment).
- 2911. Reports to General Assembly.
- 2912. Guidelines.

**Enactment.** Chapter 29 was added February 12, 2004, P.L.99, No.12, effective immediately unless otherwise noted.

**Special Provisions in Appendix.** See section 4(5) of Act 12 of 2004 in the appendix to this title for special provisions relating to continuation of prior law.

**Cross References.** Chapter 29 is referred to in sections 1102, 1130, 1513, 1543, 1544, 1552 of Title 64 (Public Authorities and Quasi-Public Corporations).

#### **§ 2901. Scope.**

This chapter relates to the Machinery and Equipment Loan Program.

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2901 shall take effect upon publication of the guidelines required by section 2912.

## § 2902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Agent."** The term includes the Department of Community and Economic Development.

**"Authority."** The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

**"Board."** The board of directors of the authority.

**"Business enterprise."** A for-profit corporation, partnership or proprietorship. The term includes a medical facility.

**"Farm commodity."** Any Pennsylvania-grown agricultural, horticultural, aquacultural, vegetable, fruit and floricultural product of the soil, livestock and meats, wools, hides, furs, poultry, eggs, dairy products, nuts, mushrooms, honey products and forest products.

**"Fund."** The Machinery and Equipment Loan Fund created and established by this chapter.

**"Medical facility."** An entity licensed as a hospital under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

**"Normal agricultural operation."** The term shall have the same meaning as given to it in section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

**"Production agriculture."** The management and use of a normal agricultural operation for the production of a farm commodity.

**"Program."** The Machinery and Equipment Loan Program established under section 2903 (relating to establishment). (Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014; June 22, 2017, P.L.202, No.7, eff. imd.)

**2017 Amendment.** Act 7 added the def. of "agent."

**2014 Amendment.** Act 161 added the defs. of "authority," "board" and "program."

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2902 shall take effect upon publication of the guidelines required by section 2912.

**References in Text.** The short title of the act of June 13, 1967, P.L.31, No.21, known as the Public Welfare Code, referred to in the definition of "medical facility," was amended by the act of December 28, 2015, P.L.500, No.92. The amended short title is now the Human Services Code.

## § 2903. Establishment.

There is established a program to be known as the Machinery and Equipment Loan Program. The program shall be administered by the authority and provide loans to business enterprises for machinery and equipment.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2903 shall take effect upon publication of the guidelines required by section 2912.

**Cross References.** Section 2903 is referred to in section 2902 of this title.

## § 2904. Machinery and Equipment Loan Fund.

**(a) Creation.--**There is created a special account in the Treasury Department, to be known as the Machinery and Equipment Loan Fund, to which shall be credited all program appropriations made by the General Assembly, all proceeds from loan repayments and any and all other deposits, payments or contributions from any other source made available to the fund. The fund shall operate as a revolving fund whereby all appropriations, payments and interest made thereto may be applied and reapplied to the purposes of this chapter.

**(b) Credits to fund.--**All appropriations, deposits and contributions made to the fund shall be immediately credited in full to the fund, and earnings on the moneys held in the fund shall also be credited to the fund for the purposes of this chapter.

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2904 shall take effect upon publication of the guidelines required by section 2912.

**Cross References.** Section 2904 is referred to in sections 1102, 1544 of Title 64 (Public Authorities and Quasi-Public Corporations).

**§ 2905. Eligibility for loans; terms and conditions.**

**(a) Loans; general rules.--**The authority may make advances from the fund, subject to the terms, conditions and restrictions provided under this chapter, for the purpose of making loans to business enterprises involved in industrial processes, mining, manufacturing, production agriculture, information technology, biotechnology, service as a medical facility or other industrial or technology sectors, as defined by the authority, to acquire and install new machinery and equipment or upgrade existing machinery and equipment, including the acquisition, application and utilization of computer hardware and software.

(1) All loans shall be subject to all of the following conditions:

(i) Be made to eligible business enterprises under the provisions of this chapter.

(ii) Have a maximum loan ceiling of \$5,000,000 or 50% of the cost of the project, whichever is less.

(iii) Be limited to the purchase and installation of new equipment and machinery or the upgrade of existing machinery and equipment. This subparagraph includes the acquisition, application and utilization of computer hardware and software.

(iv) Be limited to projects that demonstrate the creation or retention of one job for every \$25,000 received from the fund. This subparagraph does not apply to loans made to business enterprises involved in production agriculture or to loans made to medical facilities. The authority may, by submitting notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, periodically update the amount under this subparagraph, based on changes in unemployment statistics, inflation, the authority's cash flow and the need to keep this Commonwealth and the businesses of this Commonwealth competitive.

(v) Have an interest rate which shall be established by the authority.

(vi) Have a term of not in excess of ten years.

(2) For loans to medical facilities, loan funds may be used only to finance the acquisition, installation and utilization of machinery and equipment, including computer

hardware and software components, to be used in the prescribing and dispensing of medication for medical facility patients.

**(b) Restrictions.**--No loans shall be made that do any of the following:

(1) Cause, aid or assist in, directly or indirectly, the relocation of any business enterprise from one part of this Commonwealth to another unless there is at least a 25% increase in net employment.

(2) Supplant funding that is otherwise available expeditiously from private sector sources on commercially reasonable terms.

(3) Be for the purpose of refinancing any portion of the total project cost or other existing loans or debt.

(4) Be for the purpose of financing projects located outside the geographic boundaries of this Commonwealth.

(5) Be for the purpose of paying off a creditor that is inadequately secured and is in a position to sustain a loss.

(6) Be for the purpose of repaying a debt owed to a small business investment company.

(7) Provide funds for speculation in any kind of property, real or personal, tangible or intangible.

**(c) Security.**--All loans shall be secured by no less than a second lien position on the equipment purchased and other sufficient collateral as determined by the authority. (Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a) intro. par. and (1) (iv) and (v) and (c).

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2905 shall take effect upon publication of the guidelines required by section 2912.

**§ 2906. Application and administration.**

**(a) Procedures.**--Application and administration procedures for fund loans shall be established by the authority under 64 Pa.C.S. § 1121 (relating to common application process).

**(b) Receipt.**--The authority shall receive applications from eligible business enterprises for machinery and equipment loans. Applications shall be made to the authority in the form and manner as the authority may require.

**(c) Investigation.**--Upon receipt of the application, the authority shall investigate and review the application and either approve or disapprove the loan application by proper action of the authority. The decision of the authority shall be based, in whole or in part, upon the following criteria:

(1) Ability of the applicant to meet and satisfy all debt service as it becomes due and payable.

(2) Sufficiency of available collateral, including satisfactory lien positions on real and personal property.

(3) Eligibility of the applicant as a business enterprise involved in industrial processes, manufacturing, mining, production agriculture, information technology, biotechnology, services as a medical facility or other industrial or technology sectors as defined by the secretary.

(4) Sufficient evidence that funds shall be used only to acquire and install new equipment and machinery or upgrade existing equipment and machinery, including the acquisition, application and utilization of computer hardware and software.

(5) Capital needs of the applicant.

(6) Conformity of the project to the provisions of this chapter.

(7) Relevant criminal and credit history and ratings of applicant as determined from outside credit reporting services and other sources.

(8) Number of net employment opportunities created and retained by the proposed project. This paragraph does not apply to business enterprises involved in production agriculture or medical facilities.

(9) Supporting evidence that the loan project will increase the firm's competitiveness and value added within its respective industry.

(10) Explanation of how the loan will aid the Commonwealth in its efforts to assist business enterprises to increase their productivity and improve the future competitive position of this Commonwealth's industries.

(11) Compliance with the loan amount limitations provided for machinery and equipment loans.

(12) Payment to date of all tax obligations due and owing to the Commonwealth or any political subdivision thereof.

(13) Conformity of all aspects of the loan transaction with the substantive and procedural provisions of this chapter and regulations promulgated hereunder.

(14) Such information and documentation as the authority shall require.

**(d) Notification.**--The authority shall notify the applicant of final approval or disapproval of the loan application within a reasonable period of time following the receipt of the application. In the case of approval of a loan application, the authority shall arrange to draw the loan amount from the fund and advance the sum to the recipient. The advance shall be made available in the form of a loan transaction, which loan shall be evidenced by a note executed by the recipient and secured in a manner as the authority shall require in conformity in all respects to the loan as approved by the authority.

**(e) Policy requirements.**--All loans shall be administered and monitored by the authority in accordance with the policies and procedures prescribed by the authority.

**(f) Penalty for noncompliance.**--In the event that a loan recipient does not comply with its approved application by failing to create or preserve the number of employment opportunities specified in its approved application, the authority shall impose a penalty equal to an increase in the interest rate to 2% greater than the current prime interest rate for the remainder of the loan unless the penalty is waived by the authority because the failure is due to circumstances outside the control of the loan recipient. The penalty shall be payable in installments that the authority deems appropriate. (Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**2014 Amendment.** Act 161 amended subsecs. (a), (b), (c) intro. par. and (14), (d), (e) and (f).

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2906 shall take effect upon publication of the guidelines required by section 2912.

**Cross References.** Section 2906 is referred to in section 2911 of this title.

#### **§ 2907. Powers of authority.**

The authority shall have and may exercise all powers and authority necessary to the proper administration and implementation of this chapter and shall have the authority to

adopt policies, procedures and guidelines and promulgate rules and regulations necessary to effectuate the provisions of this chapter. In addition to any powers authorized under this chapter and 64 Pa.C.S. Ch. 11 (relating to Pennsylvania Industrial Development Authority), the board may administer the program by exercising the powers granted to it under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.  
(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2907 shall take effect upon publication of the guidelines required by section 2912.

**§ 2908. Reporting and inspection.**

**(a) Inspection.--**Each business enterprise which applies for or receives assistance under this chapter shall, upon request, permit authorized employees of the authority or its agent to inspect the plant, books and records of the business enterprise.

**(b) Updating.--**Each business enterprise shall update the information given to the authority in its application if conditions change or to the extent that the information given originally becomes inaccurate or misleading.

**(c) Periodic reports.--**Each recipient of assistance under this chapter shall provide the authority with periodic financial reports as the authority may require until such time as the loan is paid off.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014; June 22, 2017, P.L.202, No.7, eff. imd.)

**2017 Amendment.** Act 7 amended subsec. (a).

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2908 shall take effect upon publication of the guidelines required by section 2912.

**§ 2909. Nondiscrimination (Deleted by amendment).**

**2014 Amendment.** Section 2909 was deleted by amendment October 22, 2014, P.L.2569, No.161, effective November 1, 2014.

**§ 2910. Conflict of interest (Deleted by amendment).**

**2014 Amendment.** Section 2910 was deleted by amendment October 22, 2014, P.L.2569, No.161, effective November 1, 2014.

**§ 2911. Reports to General Assembly.**

**(a) Annual reports.--**On or before September 1 of each year, the authority shall provide a report to the Secretary of the Senate and to the Chief Clerk of the House of Representatives. The report shall describe all relevant activities of the authority pursuant to this chapter and shall include the following:

(1) List of business enterprises receiving loans from the fund and the amounts and terms of this assistance.

(2) Loan amounts repaid. Information under this paragraph may be reported in the aggregate.

(3) Loans outstanding, balances due and any penalties imposed. Information under this paragraph may be reported in the aggregate.

(4) Jobs created by businesses receiving funds in previous years. Information under this paragraph may be reported in the aggregate.

(5) Other relevant information as determined by the authority.

**(b) Availability of departmental reports.--**Reports prepared by the secretary under section 2906(e) (relating to application

and administration) shall be made available upon request to members of the General Assembly.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**Effective Date.** Section 6(1)(i) of Act 12 of 2004 provided that section 2911 shall take effect upon publication of the guidelines required by section 2912.

**§ 2912. Guidelines.**

The authority shall develop written guidelines for the implementation of this chapter.

(Oct. 22, 2014, P.L.2569, No.161, eff. Nov. 1, 2014)

**CHAPTER 30**

**PENNSYLVANIA INDUSTRIAL DEVELOPMENT PROGRAM**

**Sec.**

- 3001. Scope of chapter.
- 3002. Definitions.
- 3003. Establishment.
- 3004. Industrial Development Fund (Reserved).
- 3005. Application.
- 3006. Loans for industrial development projects.
- 3007. Loans for industrial parks.
- 3008. Loans for multiple-tenancy building projects.
- 3009. Reporting and inspection.
- 3010. Limitations.
- 3011. Job creation.

**Enactment.** Chapter 30 was added October 22, 2014, P.L.2569, No.161, effective November 1, 2014.

**Special Provisions in Appendix.** See section 11 of Act 161 of 2014 in the appendix to this title for special provisions relating to continuation of prior law.

**Cross References.** Chapter 30 is referred to in section 1102 of Title 64 (Public Authorities and Quasi-Public Corporations).

**§ 3001. Scope of chapter.**

This chapter relates to the Pennsylvania Industrial Development Program.

**§ 3002. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Agent."** The term includes the Department of Community and Economic Development.

**"Agricultural processor."** An entity that adds value by subjecting one or more farm commodities to a process of manufacture, development or preparation for sale or a person that converts a farm product into a marketable form.

**"Agricultural producer."** A person or entity involved in the management and use of an agricultural operation for the production of a farm commodity.

**"Agriculture."** Any of the following:

(1) The management and use of an agricultural operation for the production of a farm commodity.

(2) The sale of a farm commodity at wholesale.

(3) The sale of a farm commodity at retail by an urban and rural supermarket in an underserved area or farmers' markets.

(4) An energy-related activity impacting production agriculture.

(5) An activity which implements best industry practices related to an agricultural waste product, agriculture by-product or fertilizer.

**"Authority."** The Pennsylvania Industrial Development Authority organized and existing under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

**"Board."** The board of directors of the authority.

**"Fund."** The Industrial Development Fund.

**"Industrial development project."** A project sponsored by a certified economic development organization involving the acquisition or improvement of real property within this Commonwealth which will be occupied and operated by any of the following:

- (1) An industrial enterprise.
- (2) A manufacturing enterprise.
- (3) A research and development enterprise.
- (4) An agricultural producer.
- (5) An agricultural processor.

**"Industrial enterprise."** An enterprise which has created or will create substantial employment opportunities. The term may include a warehouse, distribution and terminal facility and office building utilized as national or regional headquarters or computer or clerical operations centers. The term shall not include a mercantile, commercial or retail enterprise.

**"Industrial park project."** A project sponsored by a certified economic development organization for the purpose of creating sites for the establishment of two or more industrial development projects.

**"Manufacturing enterprise."** An enterprise which is engaged in the giving of a new shape, new quality or new combination to matter by the application of skill and labor.

**"Multiple-tenancy building project."** A project sponsored by a certified economic development organization involving the acquisition or construction of land, site, structure or facility for occupancy by two or more industrial enterprises, manufacturing enterprises, research and development enterprises, agricultural producers or agricultural processors.

**"Program."** The Pennsylvania Industrial Development Program established under section 3003 (relating to establishment).

**"Research and development enterprise."** An enterprise for the discovery of new and the refinement of known substances, processes, products, theories and ideas. The term does not include an enterprise activity directed primarily to the accumulation or analysis of commercial, financial or mercantile data.

(June 22, 2017, P.L.202, No.7, eff. imd.)

**2017 Amendment.** Act 7 added the def. of "agent."

**§ 3003. Establishment.**

There is established within the authority a program to be known as the Pennsylvania Industrial Development Program. The program shall be administered by the authority to provide loans for industrial development projects, industrial parks and multiple-tenancy building projects, to increase employment levels and to improve the overall economic health of this Commonwealth.

**Cross References.** Section 3003 is referred to in section 3002 of this title.

**§ 3004. Industrial Development Fund (Reserved).**

**§ 3005. Application.**



A certified economic development organization may submit an application for assistance under this chapter and under 64 Pa.C.S. § 1121(a) (relating to common application process). The application shall be on the form required by the authority and shall include or demonstrate all of the following, in addition to the contents required under 64 Pa.C.S. § 1121(b):

(1) A general description of the type, classes and number of employees employed or to be employed in the operation of the project.

(2) The cost or estimate of the cost of establishing the project. As used in this paragraph, the term "cost" shall include financing charges, including interest incurred before and during construction but shall not include the cost of any machinery, equipment or fixtures necessary for the project or the installation or maintenance of any of the machinery, equipment or fixtures.

(3) Financial statements of the applicant, proposed guarantors and any other party whose credit is significant to the approval of the financial assistance. By guideline, the authority may specify the period to be covered by the financial statements and whether they must be compiled, reviewed or prepared by a certified public accountant.

(4) Evidence of the arrangement made by the borrower for the financing of all costs of the project exceeding the amount to be financed by the authority.

(5) Evidence that the establishment of the project will not cause the removal of an industrial enterprise, manufacturing enterprise, research and development enterprise, agricultural producer or agricultural processor from one area of this Commonwealth to another area of this Commonwealth, as determined by the authority.

(6) Evidence that the proposed project location has undergone an environmental assessment.

(7) Any other information required by the authority.

**§ 3006. Loans for industrial development projects.**

The authority may contract to loan an amount not to exceed 50% of the cost of establishing an industrial development project, subject to the following conditions:

(1) Before making the loan, the authority shall determine that:

(i) the borrower is responsible to assume all obligations imposed by the authority in connection with the project, financial or otherwise, and to undertake the operation of the project; and

(ii) the borrower has obtained from other independent and responsible sources a firm commitment for any funds which, in addition to the loan and any other property or assets held by the borrower, are necessary for the completion and operation of the project.

(2) The authority shall determine the interest rate and repayment period of the loan.

(3) The loan must be evidenced by note of the borrower, and secured by a mortgage on the project for which the loan was made, subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds provided to pay the cost of the project from the independent and responsible sources, and used in the financing of the project.

(4) The authority may require additional security as it may deem necessary.

**§ 3007. Loans for industrial parks.**

The authority may contract to loan an amount not to exceed 75% of the cost of establishing an industrial park project, subject to the following conditions:

(1) The authority shall determine the interest rate and repayment period of the loan.

(2) The loan must be evidenced by note of the borrower and secured by a first mortgage on the industrial park or by participation in a first mortgage. If a Federal agency participates in the financing of the industrial park, the authority may take as security for its loan a mortgage on the industrial park which is second only to the mortgage given to the Federal agency.

(3) If the loan is secured by participation in a first mortgage on the industrial park, a portion of the loan, not to exceed 10% of the cost of the project, may be secured by a second mortgage on the industrial park which is second only to the participating first mortgage.

**§ 3008. Loans for multiple-tenancy building projects.**

The authority may contract to loan an amount not to exceed 50% of the cost of establishing a multiple-tenancy building project, subject to the following conditions:

(1) The authority shall determine the interest rate and repayment period of the loan.

(2) The loan must be evidenced by note of the borrower and secured by a first mortgage or participation in a first mortgage on the multiple-tenancy building project.

(3) The authority may contract to loan an amount not to exceed 50% of the cost of the project if the loan is secured by a first mortgage or participation in a first mortgage on the project. If the loan is not secured by a first mortgage or participation in a first mortgage on the project, the authority may contract to loan an amount not to exceed 40% of the cost of the project.

(4) If the loan is secured by a participation in a first mortgage on the project, the authority may permit a portion of its loan, not to exceed 10% of the cost of the project, to be secured by a second mortgage on the project which is second only to the participating first mortgage.

**§ 3009. Reporting and inspection.**

(a) **Inspection.**--An applicant or a recipient shall, upon request, permit authorized employees of the authority or its agent to inspect the plant, books and records of the applicant or recipient.

(b) **Updating.**--An applicant or a recipient shall provide updated information to the authority and its agents if conditions change or to the extent that the information originally given becomes inaccurate or misleading.

(c) **Periodic reports.**--A recipient shall provide the authority and its agents with periodic financial reports as the authority may require until the loan is repaid in full.

(d) **Financial and performance audits.**--A recipient shall annually submit to the authority, at the recipient's expense, an independent financial audit. If the audit reveals misconduct of a material nature on the part of the recipient, the authority shall take appropriate action.

**§ 3010. Limitations.**

A loan may not be recommended or approved if the proceeds of the loan could do any of the following:

(1) Cause, aid or assist directly in the relocation of any business operations from one part of this Commonwealth to another unless there is at least a 25% net increase in employment.

(2) Refinance any portion of the total cost of an industrial development project, industrial park or multiple-tenancy building project or other existing loans or debt.

(3) Finance an industrial development project, industrial park or multiple-tenancy building project located outside the geographic boundaries of this Commonwealth.

(4) Provide funds, directly or indirectly, for payment distribution or as loan owners, partners or shareholders of a small business, except as ordinary compensation for services rendered.

(5) Provide funds for speculation in real or personal property, whether tangible or intangible.

**§ 3011. Job creation.**

The authority shall establish minimum levels of job creation for loans under this chapter, or a requirement that one new job be created for a certain amount of funds loaned. In establishing the minimum levels of job creation, the authority shall consider unemployment statistics, inflation, the authority's cash flow and the need to keep this Commonwealth and the businesses of this Commonwealth competitive. Notice of job creation requirements must be submitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

**CHAPTER 31**

FAMILY SAVINGS ACCOUNT

(Reserved)

**Enactment.** Chapter 31 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 33**

ENTERTAINMENT ECONOMIC ENHANCEMENT PROGRAM

(Repealed)

**2017 Repeal.** Chapter 33 (§§ 3301 - 3311) was added February 12, 2004, P.L.99, No.12, and repealed October 30, 2017, P.L.672, No.43, effective immediately. The subject matter can now be found in Subarticle E of Article XVII-D of the act of March 4, 1971, P.L.6, No.2, known as the Tax Reform Code of 1971.

**CHAPTER 34**

INFRASTRUCTURE AND FACILITIES IMPROVEMENT PROGRAM

**Sec.**

3401. Scope of chapter.

3402. Definitions.

3403. Establishment.

3404. Application.

3405. Review.

3406. Approval.

**Enactment.** Chapter 34 was added April 1, 2004, P.L.200, No.23, effective July 1, 2004.

**§ 3401. Scope of chapter.**

This chapter relates to the Infrastructure and Facilities Improvement Program.

**§ 3402. Definitions.**

The following words and phrases when used in this chapter shall have the meaning given to them in this section unless the context clearly indicates otherwise:

**"Applicant."** An issuing authority which applies for financial assistance under section 3404 (relating to application).

**"Convention center."** Interests in land, improvement, structure, buildings or part of a building, whether owned by, leased by or to or otherwise acquired by an authority, which are appropriate for large public assemblies, the holding of conventions, conferences, trade exhibitions and other business, social, cultural, scientific and public interest events.

**"Convention center authority."** An entity created under any of the following:

(1) Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(2) Article XXIII(n) and (o) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(3) 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, for purposes related to convention centers.

(4) 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center authority).

**"Cost of a project."** Any of the following expenses incurred for a project:

(1) Expenses for the acquisition, construction, reconstruction, expansion, extension, demolition, improvement, rehabilitation or remodeling of interests in land, buildings, structures, improvements or infrastructure, which are part of the project.

(2) Expenses for the remediation of existing environmental hazards on land where the project is or will be located.

(3) Financing charges and other costs and expenses incurred in financing and issuing bonds for the project.

(4) Costs and expenses of administrative expenses and professional services, including the costs of engineering, financial services, accounting and legal services, rendered in completing the project.

(5) Costs and expenses associated with the preparation of plans, specifications, studies and surveys, necessary or incidental to determining the feasibility or practicability of constructing the project.

**"Department."** The Department of Community and Economic Development of the Commonwealth.

**"Hospital."** A facility operated by an entity licensed as a hospital under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, which is used to provide inpatient care and services.

**"Hotel establishment."** A hotel which is associated with a convention center.

**"Industrial enterprise."** An enterprise, other than a mercantile, commercial or retail enterprise, which by virtue of its size requires substantial capital and will create significant employment opportunities.

**"Infrastructure."** Any of the following:

(1) Drainage and storm water systems.

(2) Energy facilities which distribute electric power.

(3) Wastewater systems.

(4) Transportation facilities. The term includes roads, parking facilities, sidewalks, bridges, rails, ports, waterways and airports.

(5) Pipelines for transporting natural gas.

(6) Facilities for the transmission of information. The term includes telecommunication and cable.

(7) Water supply facilities.

(8) Interests in land to construct a facility, pipeline or system listed in paragraphs (1) through (7).

(9) Engineering, design and inspection costs associated with the construction of a facility, pipeline or system listed in paragraphs (1) through (7).

**"Issuing authority."** Any of the following:

(1) An authority created under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(2) An authority created under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(3) Article XXIII(n) and (o) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(4) The Pennsylvania Economic Development Financing Authority or an authority established under section 4 of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(5) An issuing authority as defined in section 3 of the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act.

(6) An authority created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, for purposes related to convention centers.

(7) An authority created and continued under 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center Authority).

**"Manufacturer."** An entity which is engaged in the giving of new shapes, new qualities or new combinations to matter by the application of skill and labor.

**"Project."** As follows:

(1) If the project user is an industrial enterprise or retail enterprise:

(i) Infrastructure.

(ii) Remediation of environmental hazards which were not caused or contributed to by the applicant or the project user.

(2) If the project user is a research and development enterprise, manufacturer, hospital, convention center or hotel establishment:

(i) Infrastructure.

(ii) Remediation of environmental hazards which were not caused or contributed to by the applicant or the project user.

(iii) Interests in land, buildings, structure or improvements required by the project user.

**"Project user."** An industrial enterprise, retail enterprise, research and development enterprise, manufacturer, hospital, convention center or hotel establishment, which owns, leases or uses all or any part of a project.

**"Research and development enterprise."** A for-profit business engaged in the discovery of new and the refinement of known substances, processes, products, theories and ideas.

**"Retail enterprise."** An entity or entities engaged in retail sales which created or will create at least 200 full-time jobs and occupies or will occupy at least a 200,000-square-foot facility.

**"Secretary."** The Secretary of Community and Economic Development of the Commonwealth.

**"Year."** The fiscal year of the Commonwealth.  
(Nov. 30, 2004, P.L.1708, No.218, eff. imd.)

**2004 Amendment.** Act 218 amended the defs. of "project," "project user" and "retail enterprise" and added the def. of "research and development enterprise."

**References in Text.** The short title of the act of June 13, 1967, P.L.31, No.21, known as the Public Welfare Code, referred to in the definition of "hospital," was amended by the act of December 28, 2015, P.L.500, No.92. The amended short title is now the Human Services Code.

**§ 3403. Establishment.**

There is established within the department a program to be known as the Infrastructure and Facilities Improvement Program. The program shall enhance the economic development of the Commonwealth by providing financial assistance in the form of multiyear grants to issuing authorities toward payment of debt service on projects.

**§ 3404. Application.**

An issuing authority may submit an application to the department requesting financial assistance for a project. The application must be on a form required by the department and must include all of the following:

- (1) The name and address of the applicant.
- (2) The name, address and state tax identification numbers of the project user.
- (3) A description of the project. The description shall include all of the following:
  - (i) A detailed narrative describing the project and the project user.
  - (ii) A detailed statement of the cost of the project. The statement must include the amount and type of debt to be issued by the applicant for the project, the identity of the party responsible for repayment of the debt and the collateral or security to be provided.
  - (iii) A statement of the number of net new full-time jobs to be created by the project and the number of existing full-time jobs to be preserved by the project.
- (4) A statement of the amount of grant funds being requested per year.
- (5) A statement of the number of years a grant is being requested. If the applicant is requesting a grant for a project of a project user that is an industrial enterprise, retail enterprise, a research and development enterprise or a manufacturer, the request may not exceed ten years. If the applicant is requesting a grant for a project of a project user that is a hospital, convention center or hotel establishment, the request may not exceed 20 years.
- (6) Financial information from the project user prepared or reported on by an independent certified public accountant projecting for the next three years all of the following:
  - (i) The sales or expected sales tax collected or to be collected by the project user from activities as a result of the project.

(ii) The expected hotel occupancy tax to be collected by the project user from activities as a result of the project.

(iii) The expected net increase in personal income tax withheld by the project user as an employer pursuant to Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, from activities as a result of the project.

(7) Evidence of a firm commitment from the project user to use the project upon completion.

(8) (Deleted by amendment).

(9) Any other information required by the department.  
(Nov. 30, 2004, P.L.1708, No.218, eff. imd.)

**2004 Amendment.** Act 218 amended par. (5) and deleted par. (8).

**Cross References.** Section 3404 is referred to in section 3402 of this title.

**§ 3405. Review.**

**(a) Project review.--**Upon receiving a completed application, the department shall review the application to determine all of the following:

(1) That the cost of the project is reasonable.

(2) The number of net new full-time jobs created or to be created by the project and the number of existing full-time jobs to be preserved by the project.

(3) That a firm commitment from the project user to use the project upon completion exists.

(4) That the financing for the project identifies a party other than the Commonwealth that will be responsible for repayment of the debt.

(5) That the applicant submitted satisfactory financial information from the project user prepared or reported on by an independent certified public accountant.

(6) That the financing for the project does not pledge the full faith and credit of the Commonwealth.

(7) (Deleted by amendment).

(8) If the project was completed prior to the effective date of this section, that the project user is a retail enterprise.

(9) That the applicant and the project user complied with all other criteria established by the department.

**(b) Financial review.--**

(1) Upon being satisfied that all requirements have been met, the department shall forward the application to the Office of the Budget and the Department of Revenue. The office, in conjunction with the Department of Revenue, shall review the application. Notwithstanding the provisions of section 353(f) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, the Department of Revenue may supply the department and the office with information concerning taxes owed or paid by a project user or for which a project user may otherwise be liable or with any other aspect of an applicant's tax liability. The office, in conjunction with the Department of Revenue, shall evaluate all of the following:

(i) The sales tax collected or expected to be collected by the project user pursuant to Article II of the Tax Reform Code of 1971 from activities as a result of the project.

(ii) The hotel occupancy tax to be collected by the project user pursuant to Article II of the Tax Reform Code of 1971 from activities as a result of the project.

(iii) The expected net increase in personal income tax withheld by the project user as an employer pursuant to Article III of the Tax Reform Code of 1971 from activities as a result of the project.

(2) The Office of the Budget may accept, reject or adjust the estimate of the amount of tax remitted or to be remitted to the Commonwealth by the project user from activities resulting from the project.

(Nov. 30, 2004, P.L.1708, No.218, eff. imd.)

**2004 Amendment.** Act 218 deleted subsec. (a)(7).

**Cross References.** Section 3405 is referred to in section 3406 of this title.

**§ 3406. Approval.**

**(a) Financial approval.**--Upon being satisfied that all requirements have been met, the Secretary of the Budget shall establish a maximum annual amount for the grant and shall notify the department and the Department of Revenue. The annual amount established shall be based upon the review made in section 3405(b) (relating to review) and the annual debt service of the project.

**(b) Grant approval.**--Upon receipt of the notification required in subsection (a), the department may approve the application and award the applicant a grant in an annual amount not to exceed the amount established by the Secretary of the Budget. Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant and the project user. The contract shall include provisions which do all of the following:

(1) Specify the base amount of the grant per year.

(2) Specify the total number of years that grant funds may be provided to the applicant and the year in which the grant may commence, including an option to defer commencement of the grant to any date up to the date upon which the project is completed and operations have commenced. If the applicant is an industrial enterprise, a retail enterprise, a research and development enterprise or a manufacturer, the number of years may not exceed ten years. If the applicant is a hospital, convention center or hotel establishment, the number of years may not exceed 20 years.

(3) If the grant will be awarded for more than four years, establish the procedure for the award of the grant after year four. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405(b) during the fifth year and each succeeding year thereafter are anticipated to be equal to or exceed the amount of the grant awarded during the previous year, the department shall award the grant in the amount of the original grant as determined under this section. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405(b) during the fifth year and each year thereafter will not equal or exceed the amount of the grant for the previous year, the department shall award a grant that is no less than the anticipated tax revenue specified in section 3405(b) and no more than the amount of the original grant awarded under this section.

(4) Require the applicant to use the grant to pay debt service for the project and to repay all or any portion of



a grant if the applicant fails to use the grant to pay debt service.

(5) Specify that the annual amount of the grant in any one year may not exceed the annual amount of the debt service on the project for that year.

(6) If the grant in any one year exceeds the annual payment on debt service in that year, require the applicant to repay the amount of the grant for that year which exceeds the payment on debt service for that year.

(7) (Deleted by amendment).

(8) Require the project user to pay to the applicant a sum equal to any payments received by the project user from third parties for infrastructure which is part of the project during the period which the applicant is receiving a grant from the department. Any payment received by the applicant under this paragraph must be applied to payment of the debt service for the project.

(9) Require the applicant to satisfactorily demonstrate that the full amount of annual debt service is paid for the project, regardless of the amount of the grant received.

(10) Require the project user to use the project for the period of time the applicant is receiving grants under this chapter and to repay all or any portion of a grant if the project user fails to use the project for the period of time the applicant is receiving grants.

(11) Require the project user to timely pay all Commonwealth and local taxes and fees that are then due and owing. A local government unit as defined under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) or an issuing authority may enter into an agreement or adopt an ordinance or resolution to permit the local government unit or issuing authority to pay, waive, abate, settle, compromise or reimburse any local tax, fee or other imposition applicable to a project user imposed by any local government unit or issuing authority. The agreement, ordinance or resolution shall not affect the eligibility of an applicant or a project to receive a grant under this chapter.

(12) Require the department to approve any change of use of a project during the period in which the applicant is receiving a grant from the department. The department may not unreasonably withhold its consent to a change of use.

**(c) Limitations.--**

(1) If sufficient funds are not appropriated to cover the anticipated cost of the grants awarded in any given fiscal year, the department shall prorate payments to issuing authorities.

(2) For grants renewed in accordance with subsection (b)(3), grants may not exceed the incremental growth in revenues realized by the Commonwealth from the tax sources identified in section 3405(b).

(3) Grants may not be used to pay debt service for projects directly related to gaming.

(Nov. 30, 2004, P.L.1708, No.218, eff. imd.; May 11, 2006, P.L.167, No.42, eff. imd.)

**2006 Amendment.** Act 42 amended subsec. (b). Section 4 of Act 42 provided that the amendment of section 3406 shall apply retroactively to July 1, 2004.

KEYSTONE OPPORTUNITY ZONES  
(Reserved)

**Enactment.** Chapter 35 (Reserved) was added February 12, 2004, P.L.99, No.12, effective immediately.

**CHAPTER 37**  
KEYSTONE INNOVATION ZONES  
(Repealed)

**2016 Repeal.** Chapter 37 (§§ 3701 - 3708) was added February 12, 2004, P.L.99, No.12, and repealed July 13, 2016, P.L.526, No.84, effective immediately. The subject matter can now be found in Article XIX-F of the act of March 4, 1971, P.L.6, No.2, known as the Tax Reform Code of 1971.

**CHAPTER 39**  
WATER SUPPLY AND WASTEWATER  
INFRASTRUCTURE CAPITALIZATION

**Sec.**

- 3901. Scope of chapter.
- 3902. Definitions.
- 3903. Establishment.
- 3904. Award of grants.
- 3905. Award and administration of loans.
- 3906. Funds.
- 3907. Commonwealth indebtedness.

**Enactment.** Chapter 39 was added November 30, 2004, P.L.1708, No.218, effective immediately.

**Special Provisions in Appendix.** See section 6 of Act 218 of 2004 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Chapter 39 is referred to in section 1543 of Title 64 (Public Authorities and Quasi-Public Corporations).

**§ 3901. Scope of chapter.**

This chapter relates to the Water Supply and Wastewater Infrastructure Capitalization Program.

**§ 3902. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Applicant."** A municipality, a municipal authority, industrial development corporation or an investor-owned water or wastewater enterprise that submits an application under 64 Pa.C.S. § 1558 (relating to Water Supply and Wastewater Infrastructure Program).

**"Authority."** The Commonwealth Financing Authority established under 64 Pa.C.S. § 1511 (relating to authority).

**"Cost of a water project."** Any of the following:

(1) Costs and expenses of acquisition of interests in land, infrastructure, buildings, structures, equipment, furnishings, fixtures and other tangible property which comprises the water project.

(2) Costs and expenses of construction, reconstruction, erection, equipping, expansion, improvement, installation, rehabilitation, renovation or repair of infrastructure, buildings, structures, equipment and fixtures which comprise the water project.

(3) Costs and expenses of demolishing, removing or relocating buildings or structures on lands acquired or to be acquired.

(4) Costs and expenses of preparing land for development.

(5) Costs and expenses of engineering services, financial services, accounting services, legal services, plans, specifications, studies and surveys necessary or incidental to determining the feasibility or practicability of the water project.

**"Fund."** The Water Supply and Wastewater Treatment Fund established in section 3906(b) (relating to funds).

**"Industrial development corporation."** An entity certified as an industrial development agency by the Pennsylvania Industrial Development Authority Board under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

**"Investor-owned water or wastewater enterprise."** A nonpublic entity which supplies water or provides wastewater services to the public for a fee.

**"Municipal authority."** A public authority created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, which supplies water or provides wastewater services to the public for a fee.

**"Sinking fund."** The Water Supply and Wastewater Treatment Sinking Fund established in section 3906(b) (relating to funds).

**"Water project."** As that term is defined in 64 Pa.C.S. § 1504 (relating to definitions).

#### **§ 3903. Establishment.**

There is established within the department a program to be known as the Water Supply and Wastewater Infrastructure Capitalization Program. The program shall finance single-year or multiyear grants to municipalities and municipal authorities and loans to municipalities, municipal authorities, industrial development corporations and investor-owned water or wastewater enterprises for water projects which are approved by the authority, which, when completed, construct, expand or improve water and wastewater infrastructure and which are related to economic development.

#### **§ 3904. Award of grants.**

Upon being notified by the authority that a grant has been approved under 64 Pa.C.S. § 1558(c) (relating to Water Supply and Wastewater Infrastructure Program) for an applicant, the department shall enter into a contract with the applicant. The contract shall be for the amount approved by the authority, and if the grant provided for improvements on a site of a private facility that has or will be receiving additional economic development assistance or job creation tax credits from the Commonwealth, the contract shall include a provision that ensures that if the facility is closed or is sold within five years after the approval of the application, the Commonwealth shall request reimbursement of the grant and shall place a lien for that amount on the real property of that facility to remain on the real property until the Commonwealth receives reimbursement. Upon entering into a contract with the applicant, the department shall award the grant for the amount specified in the contract.

#### **§ 3905. Award and administration of loans.**

##### **(a) Award.--**

(1) Upon being notified that a loan has been approved under 64 Pa.C.S. § 1558(d) (relating to Water Supply and

Wastewater Infrastructure Program) for an applicant, the department shall enter into a contract with the applicant. The contract shall be for the amount approved and shall specify the terms of the loan in accordance with all of the following:

(i) A loan shall be at an interest rate not to exceed 2%.

(ii) A loan shall be for a term not to exceed 20 years.

(2) Upon entering into a contract with the applicant, the department shall award the loan for the amount specified in the contract.

**(b) Administration.**--Loans made under this section shall be administered by the department. Loan payments received by the department for a loan awarded under this section shall be deposited in the General Fund.

**§ 3906. Funds.**

**(a) Proceeds.**--Proceeds of the borrowing authorized by the electors pursuant to the act of February 12, 2004 (P.L.72, No.10), known as the Water and Wastewater Treatment Project Bond Act, shall be deposited in the fund.

**(b) Fund.**--

(1) The Water Supply and Wastewater Treatment Fund is established as a restricted fund in the State Treasury.

(2) The fund shall be used in accordance with the following:

(i) \$200,000,000 shall be used by the department to fund grants and loans in accordance with this chapter.

(ii) \$50,000,000 shall be used by the Pennsylvania Infrastructure Investment Authority to finance projects of existing water and wastewater systems which, when complete, do any of the following:

(A) Repair, rehabilitate or modernize existing water or wastewater systems to meet environmental or public health standards.

(B) Eliminate existing combined or sanitary wastewater overflow problems.

(C) Construct water or wastewater infrastructure to improve public health or eliminate environmental concerns.

(D) Construct wastewater infrastructure utilizing nutrient reduction technology.

**(c) Sinking Fund.**--The Water Supply and Wastewater Treatment Sinking Fund is established to make principal and interest payments under section 3907(d) (relating to Commonwealth indebtedness).

**Cross References.** Section 3906 is referred to in section 3902 of this title.

**§ 3907. Commonwealth indebtedness.**

**(a) Borrowing authorized.**--

(1) Pursuant to section 7(a)(3) of Article VIII of the Constitution of Pennsylvania and the approval by the electorate on April 27, 2004, of the referendum authorized by the act of February 12, 2004 (P.L.72, No.10), known as the Water and Wastewater Treatment Project Bond Act, the issuing officials are authorized and directed to borrow, on the credit of the Commonwealth, money not exceeding in the aggregate the sum of \$250,000,000, not including money borrowed to refund outstanding bonds, notes or replacement notes, as may be found necessary to carry out the purposes of this chapter.

(2) All bonds and notes issued under this chapter shall be:

(i) exempt from taxation for State and local purposes; and

(ii) eligible for tax-exempt status under existing Federal law.

(3) Borrowing authorized under paragraph (1) shall be made in accordance with the provisions of sections 307 and 308 of the act of February 9, 1999 (P.L.1, No.1), known as the Capital Facilities Debt Enabling Act.

**(b) Sale of bonds.--**

(1) If bonds are issued, all sales of the bonds shall be made in accordance with the provisions of section 309 of the Capital Facilities Debt Enabling Act.

(2) The proceeds realized from the sale of bonds and notes, except refunding bonds and replacement notes, under this chapter shall be paid into the fund and are specifically dedicated to the purposes of this chapter. The proceeds shall be paid by the State Treasurer periodically to the department at times and in amounts as necessary to satisfy the funding needs of the department under this chapter. The proceeds of the sale of refunding bonds and replacement notes shall be paid to the State Treasurer and applied to the payment of principal, any accrued interest and premium and cost of redemption of the bonds and notes for which the obligations have been issued.

(3) Pending their application for the purposes authorized, money held or deposited by the State Treasurer may be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of the funds shall be paid into the State Treasury to the credit of the fund.

(4) The Auditor General shall prepare the necessary registry book to be kept in the office of the authorized loan and transfer agent of the Commonwealth for the registration of bonds, at the request of owners of the bonds, according to the terms and conditions of issue directed by the issuing officials.

(5) There is hereby appropriated to the State Treasurer from the fund as much money as may be necessary for all costs and expenses in connection with the issue of and sale and registration of the bonds and notes in connection with this chapter and the payment of interest arbitrage rebates.

**(c) Temporary financing authorization.--**

(1) Pending the issuance of bonds of the Commonwealth as authorized, the issuing officials are authorized, in accordance with this chapter and on the credit of the Commonwealth, to make temporary borrowings not to exceed one year in anticipation of the issue of bonds in order to provide funds in amounts as deemed advisable prior to the issue of bonds. In order to provide for and in connection with any temporary borrowing, the issuing officials are authorized in the name and on behalf of the Commonwealth to enter into purchase, loan or credit agreement or other agreement with any bank or trust company, other lending institution, investment banking firm or person in the United States having power to enter into the agreement. The agreement may contain provisions not inconsistent with this chapter as authorized by the issuing officials.

(2) Temporary borrowings made under this subsection shall be made in accordance with the provisions of section

306(b), (c) and (d) of the Capital Facilities Debt Enabling Act.

(3) Outstanding notes evidencing the borrowings may be funded and retired by the issuance and sale of the bonds of the Commonwealth as authorized in this paragraph. The refunding bonds shall be issued and sold not later than a date one year after the date of issuance of the first notes evidencing the borrowing to the extent that payment of the notes has not otherwise been made or provided for by sources other than proceeds of replacement notes.

(4) The proceeds of all temporary borrowing shall be paid to the State Treasurer to be held and disposed of in accordance with this chapter.

**(d) Debt retirement.--**

(1) All bonds issued under the authority of this chapter shall be redeemed at maturity, together with all interest due. Principal and interest payments shall be paid from the sinking fund. For the specific purpose of redeeming the bonds at maturity and paying all interest on the bonds in accordance with the information received from the Governor, the General Assembly shall appropriate money for the payment of interest on the bonds and notes and the principal of the bonds and notes at maturity. All money paid into the sinking fund and all of the money not necessary to pay accruing interest shall be invested by the State Treasurer in securities as are provided by law for the investment of the sinking funds of the Commonwealth.

(2) The State Treasurer shall determine and report to the Secretary of the Budget by November 1 of each year the amount of money necessary for the payment of any interest on outstanding obligations and the principal of the obligations for the following fiscal year and the times and amounts of the payments. The Governor shall include in every budget submitted to the General Assembly full information relating to the issuance of bonds and notes under this chapter and the status of the fund and the sinking fund for the payment of interest on the bonds and notes and the principal of the bonds and notes at maturity.

(3) The General Assembly shall appropriate for deposit into the sinking fund an amount equal to the sum necessary to meet repayment obligations for principal and interest.

**(e) Definition.--**As used in this section, the term "issuing officials" means the Governor, the Auditor General and the State Treasurer.

**Cross References.** Section 3907 is referred to in section 3906 of this title.

**CHAPTER 41**  
**FILM PRODUCTION GRANTS**

**Sec.**

- 4101. Scope of chapter.
- 4102. Definitions.
- 4103. Establishment.
- 4104. Application.
- 4105. Review.
- 4106. Approval.
- 4107. Penalty.
- 4108. Limitations.
- 4109. Guidelines.

**Enactment.** Chapter 41 was added May 11, 2006, P.L.167, No.42, effective immediately.

**§ 4101. Scope of chapter.**

This chapter relates to the Film Production Grant Program.

**§ 4102. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Applicant."** A person that files a notice and application in accordance with this chapter.

**"Department."** The Department of Community and Economic Development of the Commonwealth.

**"Film."** The term includes a feature film, television film, television pilot or each episode of a television series which is intended as programming for a national audience. The term does not include a production featuring:

- (1) News, current events, weather and market reports.
- (2) Public programming.
- (3) Talk shows, game shows, sports events, awards shows or other gala events.
- (4) A production that solicits funds.
- (5) A production that primarily markets a product or service.
- (6) A production containing obscene material or performances as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other sexual materials and performances).
- (7) A production primarily for private, political, industrial, corporate or institutional purposes.

**"Pennsylvania production expense."** A production expense incurred in this Commonwealth. For the purposes of wages and salaries, the term includes only wages and salaries on which the taxes imposed by Article III or IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, have been paid or accrued.

**"Production expense."**

(1) An expense incurred in the production of a film. The term includes:

(i) The aggregate amount of wages and salaries of individuals each of whom receive less than \$1,000,000 and are employed in the production of the film.

(ii) The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.

(iii) The cost of rental facilities and equipment.

(2) The term does not include expenses incurred in purchasing story rights, music rights, development costs, marketing or advertising a film.

**"Program."** The Film Production Grant Program established in section 4103 (relating to establishment).

**"Qualified film production expense."** A Pennsylvania production expense if at least 60% of the total production expenses are Pennsylvania production expenses.

**"Recipient."** A person who receives a grant under this chapter.

**"Start date."** The first day of principal photography in this Commonwealth.

**§ 4103. Establishment.**

There is established within the department a program to be known as the Film Production Grant Program. The program shall be administered by the department to provide grants to persons for certain films produced within this Commonwealth.

**Cross References.** Section 4103 is referred to in section 4102 of this title.

**§ 4104. Application.**

At any time prior to 60 days after the completion of production of a film, a person may submit an application for a film production grant to the department. The application shall be on a form required by the department and shall include or demonstrate all of the following:

- (1) An itemized list of production expenses incurred or to be incurred during the current fiscal year and the anticipated expenses to be incurred for any subsequent year if the film production is anticipated to extend into any such year.
- (2) An itemized list of Pennsylvania production expenses incurred.
- (3) The start date.
- (4) The actual or projected completion date.
- (5) A statement of the amount of grant sought.
- (6) Any other information required by the department.

**Cross References.** Section 4104 is referred to in section 4105 of this title.

**§ 4105. Review.**

The department shall review the application to determine if the applicant has met all of the criteria set forth in section 4104 (relating to application).

**§ 4106. Approval.**

The following shall apply:

- (1) Upon being satisfied that all requirements have been met and subject to section 4108 (relating to limitations), the department may approve the application and award a film production grant.
- (2) Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant. The contract shall include provisions requiring the applicant to use the grant to pay costs associated with the production of the film.
- (3) The department may impose any other terms and conditions on the grants authorized by this chapter as the department determines are in the best interests of the Commonwealth.

**Cross References.** Section 4106 is referred to in section 4107 of this title.

**§ 4107. Penalty.**

**(a) Imposition.**--Except as provided in subsection (b), the department shall impose a penalty upon a recipient for violation of the contract required by section 4106 (relating to approval).

**(b) Exception.**--The department may waive the penalty required by subsection (a) if the department determines that the failure was due to circumstances outside the control of the recipient.

**(c) Amount.**--The amount of the penalty shall be equal to the full amount of the grant received plus an additional amount of up to 10% of the amount of the grant received. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

**§ 4108. Limitations.**

The following limitations shall apply:



(1) A grant awarded under this chapter to an applicant for a film may not exceed 20% of the qualified film production expenses incurred for the film.

(2) In no case shall the aggregate amount of grants awarded in any fiscal year under this chapter exceed \$10,000,000.

(3) A grant awarded under this chapter shall in no way constitute an entitlement derived from the Commonwealth or a claim on any other funds of the Commonwealth.

**Cross References.** Section 4108 is referred to in section 4106 of this title.

**§ 4109. Guidelines.**

The department shall develop necessary written guidelines for the program.

## **CHAPTER 43**

### **PROPERTY ASSESSED CLEAN ENERGY PROGRAM**

**Sec.**

- 4301. Purpose.
- 4302. Definitions.
- 4303. Establishment of a program.
- 4304. Notice to lien holder required for participation.
- 4305. Scope of work.
- 4306. Notice.
- 4307. Lien.
- 4308. Collection of assessments.
- 4309. Bonds.
- 4310. Joint implementation.

**Enactment.** Chapter 43 was added June 12, 2018, P.L.198, No.30, effective in 60 days.

**§ 4301. Purpose.**

This chapter authorizes the establishment of a property assessed clean energy program in the Commonwealth to ensure that owners of agricultural, commercial and industrial properties can obtain low-cost, long-term financing for energy efficiency, water conservation and renewable energy projects.

**§ 4302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Alternative energy system."** Energy generated from alternative energy sources as defined under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act. In addition to these energy sources, programs may recognize alternative energy sources not included in the Alternative Energy Portfolio Standards Act when approving qualified project applications.

**"Assessment."** A charge against the real property within a district which is levied and collected by the county or municipality that establishes the district.

**"Bond."** The term includes any public or private financing note, mortgage, loan, deed of trust, instrument, refunding note or other evidence of indebtedness or obligation used to finance a qualified project.

**"Business."** A corporation, partnership, sole proprietorship, limited liability company, business trust or other commercial entity.

**"Clean energy project."** A project which does any of the following:

(1) Replaces or supplements an existing energy system that utilizes nonrenewable energy with an energy system that utilizes alternative energy.

(2) Facilitates the installation of an alternative energy system in an existing building or a major renovation of a building.

(3) Facilitates the retrofit of an existing building to meet high-performance building standards.

(4) Installs equipment to facilitate or improve energy conservation or energy efficiency, including heating and cooling equipment and solar thermal equipment.

**"District."** An area or group of real properties within a municipality or county, designated by the municipality or county for the purpose of establishing a property assessed clean energy program.

**"Financial institution."** Any person who in the ordinary course of business extends credit based on a lien, mortgage or security interest in real property or an encumbrance of real property or relies upon a lien, mortgage or security interest in real property or an encumbrance of real property to secure a current, contingent or future payment obligation. The term includes, but is not limited to, the following:

(1) A bank, savings association, trust company, credit union or a subsidiary or affiliate of a bank, savings association, trust company or credit union.

(2) A person engaged in the mortgage lending business subject to or exempt from licensing under 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection).

(3) A person subject to or exempt from licensing under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(4) A person registered as a management company or unit investment trust or treated as a business development company under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) or is excluded from registration under the Investment Company Act of 1940.

(5) An insurance company.

(6) A pension or employee health and welfare fund.

(7) An association engaged in construction or the development or improvement of real property.

(8) A condominium or cooperative association or planned community association.

(9) A Federal, State or local agency, authority or an instrumentality of a government entity that is engaged in the financing or supports the financing of real estate development or the purchase or improvement of real estate.

**"Local financing."** A bond provided or facilitated by a municipality, county, district, economic development corporation, related authority or any government-sponsored entity. This term does not include general obligation bonds.

**"Owner financing."** A bond provided by a real property owner or a third-party provider. This term may include a power purchase agreement.

**"Power purchase agreement."** A financial arrangement in which a third party owns, operates and maintains a permanently affixed energy generation unit for a property owner and the property owner purchases power from the third party at agreed-upon rates in the arrangement. The third party would have the ability to

finance its equipment acquisitions with an assessment under a property assessed clean energy program.

**"Program."** A property assessed clean energy program established under this chapter.

**"Property assessed clean energy program."** A means of financing qualified projects in a district through an assessment.

**"Qualified party."** A contractor or subcontractor that meets the following standards:

(1) Possesses all technical qualifications and resources, including equipment, management, technical and craft labor personnel, and financial resources necessary to perform the contracted responsibilities, or will obtain the contracted responsibilities through the use of qualified subcontractors.

(2) Possesses all valid, current licenses, registrations or other certificates required for the contractor or its employees by Federal, State or local law necessary for the type of work required for the project.

(3) Does not have any outstanding liability to the locality in the form of tax obligations, fines or other fees, unless the contractor or subcontractor has entered into and is in compliance with a payment agreement with the locality for such taxes, fines or fees.

(4) Meets all bonding requirements, as required by applicable law or contract specifications, and all insurance requirements as required by applicable law or contract specifications, including general liability insurance, workers' compensation insurance and unemployment insurance requirements.

**"Qualified project."** The installation or modification of a permanent improvement fixed to real property that is a clean energy project, water conservation project or alternative energy system, which generates measurable energy savings or reductions in water usage and the installation is performed by a qualified party in a district. The term includes installation of alternative energy-generating equipment affixed to the land or building.

**"Real property."** Any agricultural, commercial or industrial land or building owned by an individual, partnership, limited liability corporation, corporation or nonprofit. The term does not include multifamily housing or any residential property.

**"Water conservation project."** A project that reduces the usage of water or increases the efficiency of water usage.

#### **§ 4303. Establishment of a program.**

The following apply:

(1) A municipality with a community or economic development department or county may establish a property assessed clean energy program by adopting an ordinance or resolution that will establish the program, define the district and provide other operational standards and guidelines, which shall include, but not be limited to, the following:

(i) Require all clean energy projects to comply with national energy efficiency standards.

(ii) Develop criteria and procedures to determine the eligibility of real property and owners for participation in a program.

(iii) Other measures as needed to satisfy the requirements of this chapter or to ensure that a program is effective, efficient and fair to property owners.

(2) A county that establishes a program must notify any municipality that may be in the district of their possible inclusion before a resolution establishing a program is approved. A municipality or county may contract with a third party to administer the program.

**§ 4304. Notice to lien holder required for participation.**

Before real property may be subject to an assessment under the program and begin a local financing or an owner financing of a qualified project, the following shall occur:

(1) Any financial institution holding a lien, mortgage or security interest in or other encumbrance of the real property that secures a current, future or contingent payment obligation must be given written notice of the real property owner's intention to participate in the program and acknowledge in writing to the property owner and municipality or county that established the program that they have received such notice.

(2) Any financial institution required to be given notice under paragraph (1) must provide written consent to the property owner and municipality or county that established the program that the property may participate in the program.

**§ 4305. Scope of work.**

(a) **Requirement.**--A program shall require for each proposed qualified project a scope of work, energy baseline or water usage baseline and the projected energy savings or water usage reductions in order to establish the viability of the qualified project and the projected energy savings or water usage reductions.

(b) **Verification of completion.**--After a qualified project is completed, the municipality or county shall obtain verification from the real property owner and from an independent professional inspector or building code official that the qualified project was properly completed.

**§ 4306. Notice.**

(a) **Notice.**--A municipality or county that establishes a program shall post online and make available to the public a notice of each qualified project financed through an assessment.

(b) **Contents of notice.**--The notice under subsection (a) must contain:

- (1) The legal description of the property.
- (2) The name of each property owner.
- (3) The total amount of the qualified project and a complete description of the qualified project.
- (4) The assessment needed to satisfy the bond.
- (5) A reference to the statutory assessment lien provided under this chapter.
- (6) The financing rate on the bond, the total amount of the bond financing and any financing charges associated with the bond.

**Cross References.** Section 4306 is referred to in section 4307 of this title.

**§ 4307. Lien.**

(a) **General rule.**--An assessment under this chapter, including past-due amounts and required future payments and any interest or penalties on the assessment:

- (1) shall be a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of contractual assessment is recorded and until the assessment, interest or penalty is satisfied;

(2) shall have the same priority status as a lien for any other tax imposed by any agency, municipality or county of the Commonwealth and shall be treated as a tax imposed by any agency, municipality or county;

(3) must be recorded with the title, including all information required under section 4306 (relating to notice), until the lien is discharged; and

(4) may be discharged, compromised or abated in the same manner as delinquent property tax obligations.

**(b) Lien.**--The lien runs with the land and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien. The assessment cannot be accelerated or extinguished until fully repaid.

**(c) Enforcement.**--The assessment lien may be enforced by the municipality or county in the same manner that a property tax lien against real property may be enforced by the municipality or county to the extent the enforcement is consistent with the laws of this Commonwealth.

**(d) Delinquency charge.**--Delinquent installments of the assessments incur interest and penalties in the same manner as delinquent property taxes.

**(e) Costs and expenses.**--A municipality or county may recover costs and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

#### **§ 4308. Collection of assessments.**

The following apply:

(1) The governing body of a municipality or county that establishes a district is required to collect the assessments for that district using their present tax collection process and remit for payment of the local financing or owner financing.

(2) The assessment shall be made only upon the real property whose owner has executed a written agreement with the governing body agreeing to the assessment.

(3) Proceeds may only be used to fund a local financing or an owner financing and lasts only for the term of the local financing or owner financing.

#### **§ 4309. Bonds.**

**(a) Issuance.**--Local financing or owner financing may be used to issue bonds to finance qualified projects.

**(b) Restrictions.**--Bonds issued under this chapter may not be general obligations of the municipality or county.

**(c) Use of proceeds.**--Funds generated from the issuance of a bond may only be used for the following purposes:

(1) Design, engineering and project development costs of a qualified project.

(2) Infrastructure related to and necessary for a qualified project.

(3) Purchase and installation cost of any equipment needed for a qualified project.

(4) Payment of normal and customary issuance and closing fees of a bond.

(5) Normal and customary administrative fees necessary to continue operations of the municipal or county financing agency. The fees can include, but are not limited to, audits and application fees.

#### **§ 4310. Joint implementation.**

Any combination of municipalities or counties may agree to jointly implement or administer a program under this chapter.

**PART IV**  
COMMERCIAL PROTECTION

**Chapter**

- 51. Voidable Transactions
- 53. Trade Secrets

**Part Heading.** Part IV heading was added October 22, 2014, P.L.2569, No.161, effective in 60 days.

**Prior Provisions.** Part IV (Reserved) heading was added November 27, 2013, P.L.1081, No.98, and repealed October 22, 2014, P.L.2569, No.161, effective in 60 days.

**CHAPTER 51**  
VOIDABLE TRANSACTIONS

**Sec.**

- 5101. Short title of chapter and definitions.
- 5102. Insolvency.
- 5103. Value.
- 5104. Transfer or obligation voidable as to present or future creditor.
- 5105. Transfer or obligation voidable as to present creditor.
- 5106. When transfer is made or obligation is incurred.
- 5107. Remedies of creditor.
- 5108. Defenses, liability and protection of transferee or obligee.
- 5109. Extinguishment of claim for relief.
- 5110. Governing law.
- 5111. Application to series organization.
- 5112. Supplementary provisions.
- 5113. Uniformity of application and construction.
- 5114. Relation to Electronic Signatures in Global and National Commerce Act.

**Enactment.** Chapter 51 was added December 3, 1993, P.L.479, No.70, effective in 60 days.

**Chapter Heading.** The heading of Chapter 51 was amended December 22, 2017, P.L.1249, No.78, effective in 60 days.

**Cross References.** Chapter 51 is referred to in section 4352 of Title 23 (Domestic Relations).

**§ 5101. Short title of chapter and definitions.**

**(a) Short title of chapter.**--This chapter, that was formerly cited as the Pennsylvania Uniform Fraudulent Transfer Act, shall be known and may be cited as the Pennsylvania Uniform Voidable Transactions Act.

**(b) Definitions.**--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

**"Asset."** Property of a debtor. The term does not include:

(1) property to the extent it is encumbered by a valid lien;

(2) property to the extent it is generally exempt under nonbankruptcy law; or

(3) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.

**"Claim."** Except as used in "claim for relief," a right to payment, whether or not the right is reduced to judgment,

liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

**"Creditor."** A person that has a claim.

**"Debt."** Liability on a claim.

**"Debtor."** A person that is liable on a claim.

**"Electronic."** Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

**"Lien."** A charge against or an interest in property to secure payment of a debt or performance of an obligation. The term includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien or a statutory lien.

**"Organization."** A person other than an individual.

**"Person."** An individual, partnership, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, trust or instrumentality or other legal entity.

**"Property."** Anything that may be the subject of ownership.

**"Record."** Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**"Sign."** With present intent to authenticate or adopt a record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic symbol, sound or process.

**"Transfer."** Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset. The term includes payment of money, release, lease, license and creation of a lien or other encumbrance.

**"Valid lien."** A lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.  
**§ 5102. Insolvency.**

**(a) General rule.--**A debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

**(b) Presumption of insolvency.--**A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

**(c) Exclusion of certain assets.--**Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

**(d) Exclusion of certain debts.--**Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

**(e) Exclusion of certain debts.--**((e) relettered to (d)).  
(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Section 5102 is referred to in section 5105 of this title.

**§ 5103. Value.**

**(a) General rule.--**Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

**(b) Reasonably equivalent value.--**For the purposes of sections 5104(a)(2) (relating to transfer or obligation voidable as to present or future creditor) and 5105 (relating to transfer or obligation voidable as to present creditor), a person gives reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or the exercise of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement or pursuant to a regularly conducted, noncollusive execution sale.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**§ 5104. Transfer or obligation voidable as to present or future creditor.**

**(a) General rule.--**A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

**(b) Certain factors.--**In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;



(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

**(c) Burden of proof.**--A creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Section 5104 is referred to in sections 5103, 5108, 5109 of this title.

**§ 5105. Transfer or obligation voidable as to present creditor.**

**(a) General rule.**--A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

**(b) Burden of proof.**--Subject to section 5102(b) (relating to insolvency), a creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Section 5105 is referred to in sections 5103, 5108, 5109 of this title.

**§ 5106. When transfer is made or obligation is incurred.**

For the purposes of this chapter:

(1) A transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

- (5) An obligation is incurred:
- (i) if oral, when it becomes effective between the parties; or
  - (ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**§ 5107. Remedies of creditor.**

**(a) Available remedies.--**In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in sections 5108 (relating to defenses, liability and protection of transferee or obligee) and 5109 (relating to extinguishment of claim for relief), may obtain:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law.
- (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
  - (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
  - (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
  - (iii) any other relief the circumstances may require.

**(b) Execution.--**If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, subject to the limitations of sections 5108 and 5109, may levy execution on the asset transferred or its proceeds.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**Saved from Suspension.** Pennsylvania Rule of Civil Procedure No. 3159(b)(1), adopted April 20, 1998, provided that section 5107 shall not be deemed suspended or affected by Rules 3101 through 3149 relating to enforcement of money judgments for the payment of money.

**Cross References.** Section 5107 is referred to in section 5108 of this title.

**§ 5108. Defenses, liability and protection of transferee or obligee.**

**(a) Certain transfers or obligations not voidable.--**A transfer or obligation is not voidable under section 5104(a)(1) (relating to transfer or obligation voidable as to present or future creditor) against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

**(b) Judgment for certain voidable transfers.--**To the extent a transfer is avoidable in an action by a creditor under section 5107(a)(1) (relating to remedies of creditor), the following rules apply:

- (1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount

necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

- (i) the first transferee of the asset or the person for whose benefit the transfer was made; or
- (ii) an immediate or mediate transferee of the first transferee, other than:
  - (A) a good faith transferee that took for value; or
  - (B) an immediate or mediate good faith transferee of a person described in clause (A).

(2) Recovery under section 5107(a)(1) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (1).

**(c) Measure of recovery.**--If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

**(d) Rights of good faith transferee or obligee.**--Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) a lien on or a right to retain an interest in the asset transferred;
- (2) enforcement of an obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

**(e) Certain transfers not voidable.**--A transfer is not voidable under section 5104(a)(2) or 5105 (relating to transfer or obligation voidable as to present creditor) if the transfer results from:

- (1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (2) enforcement of a security interest in compliance with 13 Pa.C.S. Div. 9 (relating to secured transactions), other than an acceptance of collateral in full or partial satisfaction of the obligations it secures under 13 Pa.C.S. § 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral).

The references to 13 Pa.C.S. Div. 9 and 13 Pa.C.S. § 9620 in paragraph (2) shall also be deemed to refer to the corresponding provisions of the Uniform Commercial Code as in effect in any other jurisdiction.

**(f) Burden of proof.**--The following rules determine the burden of proving matters referred to in this section:

- (1) A party that seeks to invoke subsection (a), (d) or (e) has the burden of proving the applicability of that subsection.
- (2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).
- (3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).
- (4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.

**(g) Standard of proof.**--The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

(June 8, 2001, P.L.123, No.18, eff. July 1, 2001; Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Section 5108 is referred to in section 5107 of this title.

**§ 5109. Extinguishment of claim for relief.**

A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

(1) under section 5104(a)(1) (relating to transfer or obligation voidable as to present or future creditor), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or

(2) under section 5104(a)(2) or 5105(a) (relating to transfer or obligation voidable as to present creditor), not later than four years after the transfer was made or the obligation was incurred.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Section 5109 is referred to in section 5107 of this title.

**§ 5110. Governing law.**

**(a) Location of debtor.**--In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at the organization's place of business.

(3) A debtor that is an organization and has more than one place of business is located at the organization's chief executive office.

**(b) Governing law.**--A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** Act 78 renumbered former section 5110 to section 5112 and added present section 5110. See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**§ 5111. Application to series organization.**

**(a) Separate person.**--A series organization and a protected series of the series organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the series organization or other protected series of the series organization.

**(b) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

**"Protected series."** An arrangement, however denominated, created by a series organization that, pursuant to the law under

which the series organization is organized, has the characteristics specified for a series organization.

**"Series organization."** An organization that, pursuant to the law under which the organization is organized, has the following characteristics:

(1) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identifies the property of or associated with the protected series.

(2) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(3) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only and not against the property of or associated with a protected series of the organization.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** Act 78 added section 5111. See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**§ 5112. Supplementary provisions.**

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** Act 78 renumbered former section 5110 to section 5112. See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**§ 5113. Uniformity of application and construction.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** Act 78 added section 5113. See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**§ 5114. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.), but does not modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act or authorize electronic delivery of a notice described in section 103(b) of the Electronic Signatures in Global and National Commerce Act.

(Dec. 22, 2017, P.L.1249, No.78, eff. 60 days)

**2017 Amendment.** Act 78 added section 5114. See section 7 of Act 78 in the appendix to this title for special provisions relating to applicability.

**CHAPTER 53**  
**TRADE SECRETS**

**Sec.**

- 5301. Short title of chapter.
- 5302. Definitions.
- 5303. Injunctive relief.
- 5304. Damages.
- 5305. Attorney fees.
- 5306. Preservation of secrecy.
- 5307. Statute of limitations.
- 5308. Effect on other law.

**Enactment.** Chapter 53 was added February 19, 2004, P.L.143, No.14, effective in 60 days.

**Special Provisions in Appendix.** See sections 3 and 4 of Act 14 of 2004 in the appendix to this title for special provisions relating to construction and application of law and misappropriations occurring prior to Act 14.

**§ 5301. Short title of chapter.**

This chapter shall be known and may be cited as the Uniform Trade Secrets Act.

**§ 5302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Improper means."** Includes, but is not limited to, theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

**"Misappropriation."** Includes:

(1) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

**"Person."** A natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

**"Trade secret."** Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**"Willful and malicious."** Such intentional acts or gross neglect of duty as to evince a reckless indifference of the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness.

**§ 5303. Injunctive relief.**

**(a) Injunctions.**--Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

**(b) Exceptional circumstances.**--In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

**(c) Affirmative acts compelled by court order.**--In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

**§ 5304. Damages.**

**(a) Monetary damages.**--Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

**(b) Exemplary damages.**--If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

**§ 5305. Attorney fees.**

A court may award reasonable attorney fees, expenses and costs to the prevailing party:

- (1) if a claim of misappropriation is made in bad faith;
- (2) a motion to terminate an injunction is made or resisted in bad faith; or
- (3) willful and malicious misappropriation exists.

**§ 5306. Preservation of secrecy.**

In any action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means which may include, but are not limited to, granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

**§ 5307. Statute of limitations.**

An action under this chapter for misappropriation must be brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered.

**§ 5308. Effect on other law.**

(a) **General rule.**--Except as provided in subsection (b), this chapter displaces conflicting tort, restitutionary and other law of this Commonwealth providing civil remedies for misappropriation of a trade secret.

(b) **Exceptions.**--This chapter does not affect:

- (1) contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) criminal remedies, whether or not based upon misappropriation of a trade secret.

**CHAPTER 56**  
MUNICIPAL AUTHORITIES

**Sec.**

- 5601. Short title of chapter.
- 5602. Definitions.
- 5603. Method of incorporation.
- 5604. Municipalities withdrawing from and joining in joint authorities.
- 5605. Amendment of articles.
- 5606. School district projects.
- 5607. Purposes and powers.
- 5608. Bonds.
- 5609. Bondholders.
- 5610. Governing body.
- 5611. Investment of authority funds.
- 5612. Money of authority.
- 5613. Transfer of existing facilities to authority.
- 5614. Competition in award of contracts.
- 5615. Acquisition of lands, water and water rights.
- 5616. Acquisition of capital stock.
- 5617. Use of projects.
- 5618. Pledge by Commonwealth.
- 5619. Termination of authority.
- 5620. Exemption from taxation and payments in lieu of taxes.
- 5621. Constitutional construction.
- 5622. Conveyance by authorities to municipalities or school districts of established projects.
- 5623. Revival of an expired authority.

**Enactment.** Chapter 56 was added June 19, 2001, P.L.287, No.22, effective immediately.

**Special Provisions in Appendix.** See sections 2 and 4 of Act 22 of 2001 in the appendix to this title for special provisions relating to applicability to authorities incorporated under former laws and continuation of Municipality Authorities Act of 1945.

**Cross References.** Chapter 56 is referred to in sections 2102, 3402 of Title 12 (Commerce and Trade); section 1504 of Title 64 (Public Authorities and Quasi-Public Corporations).



## Chapter

- 61. General Provisions
- 62. Motor Vehicle Sales Finance
- 63. Goods and Services Installment Sales

**Enactment.** Part V was added November 27, 2013, P.L.1081, No.98, effective in one year.

## CHAPTER 61 GENERAL PROVISIONS

### Sec.

- 6101. Scope of part.
- 6102. Definitions.
- 6103. Contracts and agreements.
- 6104. Electronic transactions.

**Enactment.** Chapter 61 was added November 27, 2013, P.L.1081, No.98, effective in one year.

#### **§ 6101. Scope of part.**

This part relates to consumer credit.

#### **§ 6102. Definitions.**

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Department."** The Department of Banking and Securities of the Commonwealth.

**"Financial institution."** A bank, bank and trust company, trust company, savings bank, private bank, savings association or credit union organized and doing business under the provisions of any law of this Commonwealth, another state or the United States.

**"Records."** Books, accounts, papers, documents, files and other similar business records and information, including information that is:

- (1) stored in an electronic or other medium that uses technology having electrical, digital, magnetic, wireless optical, electromagnetic or similar capabilities; and
- (2) retrievable in perceivable form.

#### **§ 6103. Contracts and agreements.**

**(a) General rule.--**A contract or agreement under this part shall be dated and in writing.

**(b) Clear and conspicuous provisions.--**The headings, notices and language of a contract or agreement under this part shall be clear and conspicuous and meet the following requirements:

- (1) Except as otherwise provided in this subsection, the language in a contract or agreement under this part shall be in at least eight-point type.
- (2) A heading in a contract or agreement under this part shall be in at least ten-point bold type.
- (3) A notice or disclosure in a contract or agreement under this part shall be in at least ten-point bold type.
- (4) An acknowledgment under this part shall be in at least ten-point bold type.

#### **§ 6104. Electronic transactions.**

**(a) Effect on other law.--**Nothing in this part shall be construed to supersede the provisions of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

**(b) Department procedures.**--The department may establish procedures for electronic transactions under this part, including:

- (1) the filing of applications and renewals for licenses and registrations;
- (2) the filing of reports and other required records; and
- (3) the verification of records and signatures on forms.

## **CHAPTER 62**

### MOTOR VEHICLE SALES FINANCE

#### **Subchapter**

- A. General Provisions
- B. Licenses
- C. Installment Sale Contracts
- D. Costs and Charges
- E. Repossession
- F. Penalties and Liability

**Enactment.** Chapter 62 was added November 27, 2013, P.L.1081, No.98, effective in one year.

**Special Provisions in Appendix.** See section 8 of Act 98 of 2013 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Chapter 62 is referred to in section 6302 of this title; section 6112 of Title 7 (Banks and Banking).

## **SUBCHAPTER A**

### GENERAL PROVISIONS

#### **Sec.**

6201. Scope of chapter.
6202. Definitions.
6203. Authority of department.
6204. Records.
6205. Appeals.
6206. Deposit of fees and fines.
6207. Distribution of information.
6208. Venue.
6209. Applicability.
6210. Consumer complaints.

#### **§ 6201. Scope of chapter.**

This chapter relates to motor vehicle sales finance.

#### **§ 6202. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

##### **"Buyer."**

(1) A person who buys, hires or leases a motor vehicle under an installment sale contract or a legal successor in interest to the person, even if the person may have entered into an extension, deferment, renewal or other revision of the contract.

(2) The term includes a person who as surety, endorser, guarantor or otherwise is liable on an obligation created by a buyer under an installment sale contract.

##### **"Collateral security."**

(1) Security, other than a security interest in a motor vehicle, which is the subject of an installment sale contract

and given to secure performance of an obligation of a buyer or the buyer's surety or guarantor under an installment sale contract or an extension, deferment, renewal or other revision of the contract.

(2) The term includes the following:

(i) The undertakings of a surety or guarantor for a buyer.

(ii) An interest in, encumbrance on or pledge of real or personal property other than the motor vehicle that is the subject of an installment sale contract.

**"Collector-repossessor."**

(1) A person who, as an independent contractor and not as a regular employee of an installment seller or a sales finance company, collects payments on installment sale contracts or repossesses motor vehicles that are the subject of installment sale contracts.

(2) The term excludes the following:

(i) A duly constituted public official or an attorney at law acting in an official capacity.

(ii) A licensed seller or licensed sales finance company making collections or repossessions on installment sale contracts, if the seller or sales finance company:

(A) was previously a holder; or

(B) was not a holder but occasionally makes collections or repossessions for other licensed sellers or licensed sales finance companies.

**"Commercial purpose."** A purpose related to the production, exhibition, marketing, transportation, processing or manufacture of goods or services.

**"Debt cancellation agreement."** A contractual arrangement in which a person agrees to pay all or part of a buyer's obligation to repay an extension of credit from a holder upon the occurrence of a specified event.

**"Debt suspension agreement."** A contractual arrangement in which a person agrees to pay for a specific period of time all or part of a buyer's obligation to repay an extension of credit from a holder upon the occurrence of a specified event.

**"Down payment."** Partial payments made in cash or otherwise and received by or for the benefit of an installment seller prior to or substantially contemporaneous with either the execution of an installment sale contract or the delivery of the items sold under the contract, whichever occurs later.

**"Finance charge."** Either of the following:

(1) The amount of the consideration in excess of the purchase price, which a buyer is required to pay to an installment seller for:

(i) the privilege of purchasing a motor vehicle under an installment sale contract; or

(ii) the credit extended by the seller to the buyer in conjunction with the sale of a motor vehicle under an installment sale contract.

(2) The difference between the cash sale price of the motor vehicle and the time balance, exclusive of insurance charges, late charges and other charges that are necessary or incidental to an installment sale and specifically authorized by this chapter to be included in an installment sale contract.

**"Heavy commercial motor vehicle."** A new or used motor vehicle, excluding a recreational vehicle, that is:

(1) a truck or truck tractor having a manufacturer's gross vehicular weight of 13,000 pounds or more; or

(2) a semitrailer or trailer designed for use in combination with a truck or truck tractor.

**"Holder."** An installment seller or a sales finance company with the rights of the installment seller under the installment sale contract.

**"Installment sale contract."**

(1) A contract for the retail sale of a motor vehicle, or a contract that has a similar purpose or effect, whether or not the installment seller has retained a security interest in the motor vehicle or has taken collateral security for a buyer's obligation, if:

(i) all or part of the purchase price is payable in two or more scheduled payments subsequent to the making of the contract; or

(ii) a buyer undertakes to make two or more scheduled payments or deposits that may be used to pay all or part of the purchase price.

(2) The term includes any form of contract, however nominated, for the bailment or leasing of a motor vehicle, which contains both of the following, or any other arrangement having a similar purpose or effect:

(i) The buyer contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle.

(ii) Ownership of the motor vehicle may be transferred to the buyer.

(3) The term includes and applies to an extension, deferment, renewal or other revision of the installment sale contract.

(4) The term excludes the following:

(i) A sale or contract for sale upon an open book account, if both of the following conditions are met:

(A) The installment seller has not retained or taken a security interest in the motor vehicle sold or a collateral security for the buyer's obligation.

(B) The buyer:

(I) is not required to pay a sum other than the purchase price of the motor vehicle sold in connection with the sale or extension of credit; and

(II) is obligated to pay for the motor vehicle in full within 90 days from the time the sale or contract for sale was made.

(ii) A right to acquire possession of goods under a lease, unless the lease:

(A) constitutes a security interest as defined in 13 Pa.C.S. § 1201 (relating to general definitions); and

(B) is subject to 13 Pa.C.S. Div. 9 (relating to secured transactions).

**"Installment seller."** A person engaged in the business of selling, hiring or leasing a motor vehicle under an installment sale contract or a legal successor in interest to the person.

**"Insurance charges."** Premiums, commissions and other payments authorized by insurance statutes or regulations of this Commonwealth.

**"Licensee."** A person who has been issued a license as an installment seller, a sales finance company or a collector-repossessor under this chapter, which license has not expired and has not been surrendered or revoked.

**"Manufactured home."** The term includes both of the following:

(1) A manufactured home as it is defined under section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Public Law 93-383, 42 U.S.C. § 5402(6)).

(2) A mobile home as defined in 75 Pa.C.S. § 102 (relating to definitions).

**"Mobility vehicle."** As defined in section 2 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

**"Motor vehicle."**

(1) A device in which, upon which or by which a person or property is or may be transported or drawn upon a public highway.

(2) The term includes a trailer, semitrailer, manufactured home, recreational vehicle and mobility vehicle.

(3) The term excludes the following:

(i) A tractor, a power shovel, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation but which may incidentally transport persons or property on a public highway.

(ii) A device that moves upon or is guided by a track or travels through the air.

**"Principal amount financed."** The unpaid purchase price balance plus the following:

(1) The charges for any insurance required or obtained as security for or by reason of the sale of a motor vehicle under an installment sale contract.

(2) Other costs or charges necessary or incidental to the sale of the motor vehicle under an installment sale contract.

(3) Amounts representing payment of a prior credit or lease balance to discharge a security interest, lien or lease interest on a motor vehicle or other property traded or returned.

**"Purchase price."** The price measured in dollars at which an installment seller would in good faith sell to a buyer, and the buyer would in good faith buy from the seller, a motor vehicle that is the subject matter of an installment sale contract, if the sale were a cash sale instead of an installment sale.

**"Recreational vehicle."** As defined in section 2 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

**"Retail sale."** The sale of a motor vehicle for the buyer's use or another's use from which the buyer derives a benefit or satisfaction.

**"Sales finance company."**

(1) A person engaged as principal, agent or broker in the business of financing or soliciting the financing of an installment sale contract made between other parties.

(2) The term includes the following:

(i) A person in the business of acquiring, investing in or lending money or credit on the security of an installment sale contract or any interest in the contract, whether by discount, purchase or assignment of the contract, or otherwise.

(ii) An installment seller, whether or not licensed under this chapter, who finances an installment sale contract for another seller or a sales finance company.

(3) The term excludes a person to the extent that the person is exempt under section 6229(e) (relating to transfer).

**"Security interest."** A security interest as provided by 13 Pa.C.S. Div. 9 (relating to secured transactions).

**"Service contract."** A written contract, optional on the part of a buyer, to perform over a fixed period of time or for a specified duration services regarding the maintenance or repair of a motor vehicle.

**"Time balance."** The sum of the principal amount financed and the finance charge.

**"Unpaid purchase price balance."** The difference between the purchase price and the down payment.

**"Warranty."**

(1) Either of the following, which becomes part of the basis of the bargain between a buyer and an installment seller for purposes other than resale:

(i) A written declaration of fact or written promise made in connection with the sale of a motor vehicle by an installment seller or manufacturer to a buyer that relates to the nature of the materials or workmanship regarding the motor vehicle and affirms or promises that the motor vehicle is free of defects or will meet a specified level of performance over a specified period of time.

(ii) Any undertaking in writing in connection with the sale of a motor vehicle by an installment seller or manufacturer to refund, repair, replace or take other remedial action with respect to the motor vehicle if the motor vehicle fails to meet the specifications set forth in the undertaking.

(2) The term excludes a service contract and an extended warranty with the characteristics of a service contract.

**Cross References.** Section 6202 is referred to in section 6102 of Title 7 (Banks and Banking).

**§ 6203. Authority of department.**

**(a) Powers.--**The department has the authority to do any of the following:

(1) Investigate the business activities of a licensee and person engaged in a business contemplated by this chapter by the following means:

(i) Examining the records of the licensee and person.

(ii) Accessing the offices and places of business of the licensee and person and the records of the licensee and person.

(2) Examine the records, safes and vaults of a person described under subsection (b)(2) for the purpose of discovering violations of this chapter.

(3) Require the attendance and testimony of witnesses and the production of records relating to a business that the department has the authority to investigate. For the purposes of this subsection, a duly authorized representative of the department may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence.

(4) Prescribe the minimum information to be shown in the records of a licensee so as to enable the department to determine compliance with the provisions of this chapter.

(5) Promulgate regulations and issue orders, statements of policy and written interpretations as necessary or

appropriate for the interpretation or enforcement of this chapter.

(6) Reduce the amount of or prohibit entirely a cost regarding the retaking, storing or repairing of a motor vehicle under section 6256 (relating to buyer's liability for costs) if the cost:

(i) appears to be fictitious, unnecessary, unreasonable or exorbitant; or

(ii) would not have been incurred by a prudent person under similar circumstances.

**(b) Applicability.--**

(1) This section applies whether the person acts or claims to act as principal, agent or broker, either under or without the authority of this chapter.

(2) A person who is not licensed under this chapter is presumed to be engaged in a business contemplated by this chapter if the person, as principal, agent or broker, advertises or solicits business for which a license is required by the provisions of this chapter.

**(c) Administration.--**In the case of disobedience of a subpoena or the noncooperation of a witness appearing before the department, the department may invoke the aid of the courts, and the court shall issue an order requiring the person subpoenaed to obey the subpoena, give evidence or produce records relative to the matter in question. Failure to obey the court order may be punished by the court as contempt.

**(d) Expenses.--**The expenses incurred by the department in connection with an examination or investigation, including a proportionate part of the salary of an examiner or other employee of the department and counsel assigned by the department, may be assessed by the department upon the particular person examined or investigated.

**§ 6204. Records.**

**(a) General rule.--**A licensee shall maintain, at the place of business designated in the license certificate, records of the business conducted under the license issued for the place of business so as to enable the department to determine whether the licensee's business contemplated by this chapter is being operated in accordance with the provisions of this chapter.

**(b) Multiple places of business.--**A licensee operating two or more licensed places of business in this Commonwealth may maintain the general control records of all the offices at any one of the offices, or at any other office maintained by the licensee, upon the following:

(1) The filing of a written request with the department designating the office at which the control records are maintained.

(2) Approval of the request by the department.

**(c) English language.--**Records of a licensee shall be maintained in the English language.

**(d) Preservation.--**Records of a licensee shall be preserved and available for examination by the department for at least two years after making the final entry therein.

**§ 6205. Appeals.**

An appeal may be taken from the action of the department in suspending and revoking a license under section 6218 (relating to revocation or suspension of license) or imposing a civil penalty under section 6274 (relating to civil penalty by department) in accordance with the procedure prescribed by 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

**§ 6206. Deposit of fees and fines.**

License fees and fines that are received by the department under this chapter shall be deposited in the State Treasury to the credit of a special fund for the use of the department in administering this and other laws of this Commonwealth placed under its administration.

**§ 6207. Distribution of information.**

(a) **Department.**--The department shall provide a copy of the provisions of this chapter to each licensee in conjunction with the licensee's initial license and all renewal applications.

(b) **Licensee.**--

(1) A licensee shall make the information under subsection (a) available to its employees.

(2) A copy of the information under subsection (a) shall be kept at the licensee's place of business for inspection by a buyer.

**§ 6208. Venue.**

An action on an installment sale contract shall be commenced in a county where any of the following occurred:

(1) The buyer signed the contract.

(2) The buyer resides at the commencement of the action.

(3) The buyer resided when the contract was entered into.

**§ 6209. Applicability.**

(a) **Consumer discount companies.**--The provisions of this chapter do not affect or impair a business conducted lawfully under a license issued under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act.

(b) **Other extensions of credit.**--The provisions of this chapter do not apply to an extension of credit for the purchase of a motor vehicle, including the financing of other costs or charges necessary or incidental to the sale or financing of a motor vehicle, made under the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

**§ 6210. Consumer complaints.**

(a) **Review and investigation.**--The department shall review and investigate, as appropriate, any consumer complaints or information obtained through examinations relating to any activities regulated by this chapter, including, but not limited to, those pertaining to charges for service contracts, warranties, debt cancellation agreements, debt suspension agreements and insurance products not required by section 6241 (relating to insurance).

(b) **Annual reports.**--The department shall annually report to the Consumer Protection and Professional Licensure Committee of the Senate and the Consumer Affairs Committee of the House of Representatives the number and disposition of such enforcement actions and consumer complaint resolutions.

**SUBCHAPTER B**

**LICENSES**

**Sec.**

6211. General license rules.

6212. Initial license application.

6213. Bond.

6214. License fees.

6215. License certificate.

6216. License renewal.

6217. Refusal to issue license or license renewal.

6218. Revocation or suspension of license.



6219. Multiple places of business.

**§ 6211. General license rules.**

**(a) License required.--**The following persons may engage or continue to engage in this Commonwealth as a principal, employee, agent or broker only as authorized in this chapter and under a license issued by the department:

- (1) An installment seller.
- (2) A sales finance company.
- (3) A collector-repossessor.

**(b) Term.--**

(1) Subject to paragraph (2), unless revoked or suspended under section 6218 (relating to revocation or suspension of license) or otherwise surrendered, a license shall be valid for one year.

(2) A license shall expire on October 1 annually, after the license is initially approved or renewed.

**(c) Transfer or assignment.--**A license may not be transferred or assigned.

**§ 6212. Initial license application.**

**(a) General rule.--**An initial license application shall be in writing, under oath and in the form prescribed by the department.

**(b) Contents.--**An initial license application shall contain the following:

- (1) The name under which the business is conducted.
- (2) The physical street address of the place of business.
- (3) The date of registration with the Secretary of the Commonwealth of any fictitious or trade name of the business.
- (4) If the applicant is a corporation:
  - (i) the date and place of incorporation; and
  - (ii) the names and addresses of the officers and directors.
- (5) If the applicant is an individual owner, the name and residence address of the owner.
- (6) If the applicant is a partnership, association or limited liability company, the name and residence address of each owner, partner or member and any managers.
- (7) Any other information that the department requires.

**(c) Process; notice.--**

(1) An application filed by an association or corporation shall be accompanied by a power of attorney showing the name and address of the authorized agent in this Commonwealth upon whom judicial and other process or legal notice may be served.

(2) The department is authorized to accept service of process or notice if the agent in paragraph (1):

- (i) has died;
- (ii) is removed from this Commonwealth; or
- (iii) is under a legal disability or otherwise disqualified from serving as agent.

**Cross References.** Section 6212 is referred to in sections 6216, 6219 of this title.

**§ 6213. Bond.**

**(a) Bond required.--**A bond shall accompany each license application for a sales finance company and collector-repossessor.

**(b) Form.--**The bond shall be in the form prescribed by the department.

**(c) Amount.--**

(1) A bond for a sales finance company shall be in the amount of \$10,000.

(2) A bond for a collector-repossessor shall be in the amount of \$5,000.

**(d) Execution.--**

(1) Except as provided in paragraph (2), the bond shall be executed by a surety company authorized by the laws of this Commonwealth to transact business.

(2) If the bond accompanying a license application for a sales finance company is filed by a financial institution within this Commonwealth, the financial institution may execute the bond on its own behalf.

(3) The bond shall be executed to the Commonwealth.

**(e) Purpose.--**The bond shall be for the use of the Commonwealth and for any person aggrieved by the misconduct of the licensee.

**(f) Condition.--**The condition of the bond is that the licensee will:

(1) comply with and abide by the provisions of this chapter and the rules and regulations of the department; and

(2) pay to the Commonwealth, the department or a person all money due to each under the provisions of this chapter.

**(g) Action on bond.--**A person may maintain an action on the bond in a court having jurisdiction of the amount claimed if all the following occur:

(1) The person is aggrieved by the misconduct of a licensee.

(2) The person receives a judgment against the licensee for the misconduct.

(3) The person executes on the judgment.

(4) The department assents to the action on the bond.

**Cross References.** Section 6213 is referred to in sections 6216, 6218, 6219 of this title.

**§ 6214. License fees.**

**(a) Amount.--**A license application shall be accompanied by a license fee as set forth in section 603-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

**(b) Abatement.--**No abatement in the amount of the license fee shall be made if the license is:

(1) issued for less than one year; or

(2) surrendered, canceled or revoked prior to the expiration of the license period for which the license was issued.

**Cross References.** Section 6214 is referred to in sections 6216, 6219 of this title.

**§ 6215. License certificate.**

**(a) Issuance.--**If the department approves an applicant's license application, it shall issue to the applicant a license certificate showing the name and address of the person authorized to do business under the license.

**(b) Public inspection.--**

(1) An installment seller and a sales finance company shall post the license certificate in a conspicuous place in the place of business of the licensee so that the certificate is in full view of the public at all times.

(2) A collector-repossessor shall carry the license certificate in the immediate possession of the collector-repossessor whenever engaged in the type of business for which the license is issued so that the

certificate may be presented for inspection upon request by any person entitled to inspection.

**(c) Amendment.--**

(1) A licensee desiring to change the address of the place of business shall:

- (i) give prior written notice to the department;
- (ii) return the license certificate to the department for amendment; and
- (iii) retain a copy of the license certificate.

(2) The department shall amend the license certificate to show the new address and the date. The new address shall thereafter be the authorized address of the licensee.

(3) A licensee is not required to pay a charge for amendment of a license certificate to effect a change of address.

**§ 6216. License renewal.**

An application for a license renewal shall have the following characteristics:

(1) The application shall be in writing, under oath and in the form prescribed by the department.

(2) The application shall be filed at least 15 days prior to October 1.

(3) The application shall include an update of the information under section 6212(b) and (c)(1) (relating to initial license application).

(4) The application shall be accompanied by the following:

(i) A new bond under the same provisions as set forth in section 6213 (relating to bond), which shall be filed annually at least 15 days prior to October 1.

(ii) A license fee under the same provisions as set forth in section 6214 (relating to license fees), which shall be paid annually on or before October 1 for each license and place of business.

**§ 6217. Refusal to issue license or license renewal.**

**(a) Discretionary refusal.--**Subject to subsection (b), the department may refuse to issue a license or renew a license because of any of the following:

(1) The applicant has made a material misstatement in the application for license or license renewal.

(2) The existence of any of the grounds under section 6218(a) (relating to revocation or suspension of license).

(3) The department is not satisfied that the financial responsibility, character, reputation, integrity and general fitness of the applicant command the confidence of the public and warrant the belief that the business for which the license application is filed will be operated lawfully, honestly, fairly and in accordance with this chapter and the general laws of this Commonwealth. In so determining, the department shall consider the applicant's:

(i) owners, partners or members and any managers, if the applicant is a partnership, association or limited liability company; and

(ii) officers and directors, if the applicant is a corporation.

**(b) Mandatory refusal.--**

(1) The department may not issue a license to an applicant under this chapter until the expiration of at least one year from the effective date of any revocation of the applicant's license or the department's refusal to issue a license or license renewal to the applicant.

(2) The department may not issue a license or renew a license if, within ten years of the date of license application or license renewal application, the applicant or the applicant's affiliate, owner, partner, member, officer, director, employee or agent has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of a violation under section 6271 (relating to operating without license) or subsection A of section 37 of the former act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

(3) Subject to paragraph (4), if an applicant's license was previously revoked under this chapter or the former Motor Vehicle Sales Finance Act, the department may not issue another license to the applicant if, within ten years of the date of license application, the applicant or the applicant's affiliate, owner, partner, member, officer, director, employee or agent has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of any violation of this chapter or the former Motor Vehicle Sales Finance Act.

(4) If an applicant's license was previously revoked under the former Motor Vehicle Sales Finance Act solely on the basis of the conduct of the applicant's spouse, paragraph (3) is not applicable.

**(c) License fee.--**

(1) Except as provided in paragraph (2), if the department rejects a license application or license renewal application, it shall return the license fee that accompanied the application.

(2) The department may retain all or part of the license fee if the license application or license renewal application was rejected based wholly or partially on false information furnished by the applicant in the application.

**§ 6218. Revocation or suspension of license.**

**(a) Grounds.--**Upon notice under subsection (b), the department may revoke or suspend a license if it discovers a fact or condition that, had it existed or been discovered at the time of filing of any license application, would have warranted disapproval of the application or if it finds that the licensee has engaged in any of the following:

(1) Made a material misstatement in the license application.

(2) Violated a provision of this chapter.

(3) Violated an order or regulation issued by the department under and within the authority of this chapter.

(4) Failed to comply with a demand, order or regulation of the department lawfully made by the department under and within the authority of this chapter.

(5) Refused or refuses to permit the department to make examinations authorized by this chapter.

(6) Failed to maintain in effect the bond required under section 6213 (relating to bond), in the case of a sales finance company and collector-repossessor.

(7) Failed to maintain satisfactory records required by this chapter or prescribed by the department.

(8) Falsified records required by this chapter to be maintained of the business contemplated by this chapter.

(9) Failed to file a report with the department within the time stipulated in this chapter.

(10) Failed to pay the fine required by this chapter for failure to file reports to the department within the time stipulated.

(11) Defrauded a buyer to the buyer's damage or willfully failed to perform a written agreement with a buyer.

(12) With respect to the tax or fee due the Commonwealth upon the sale of a motor vehicle:

(i) Failed to collect the tax or fee.

(ii) Collected the tax or fee and failed to issue a true copy of the tax report to the purchaser, as required by law.

(iii) Issued a false or fraudulent tax report or copy thereof.

(iv) Failed to pay the tax or fee to the Commonwealth at the time and in the manner required by law.

(13) Engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with a business regulated by this chapter.

**(b) Notice.--**

(1) The department shall provide 30 days' written notice to the licensee for a revocation or suspension of a license.

(2) The notice under this subsection shall be forwarded by registered mail to the place of business of the licensee, as shown in the license application or as amended on the license certificate in case of change of address subsequent to issuance of the license certificate.

**Cross References.** Section 6218 is referred to in sections 6205, 6211, 6217, 6219, 6242, 6274 of this title.

**§ 6219. Multiple places of business.**

**(a) License application.--**A separate license application under section 6212 (relating to initial license application) shall be filed for each place of business conducted by or to be established by a licensee within this Commonwealth.

**(b) Bond.--**A bond under section 6213 (relating to bond) shall be filed for each place of business conducted by a sales finance company and a collector-repossessor within this Commonwealth.

**(c) License fee.--**With respect to section 6214 (relating to license fees), a separate license fee in the same amount shall be paid for each place of business conducted by a licensee within this Commonwealth.

**(d) Requirements.--**

(1) Except as provided in paragraph (2), only one place of business may be operated under the same license.

(2) For an installment seller, only one license is required if:

(i) every place of business is conducted under one name; and

(ii) the business records are kept in one place.

(3) A licensee may operate more than one place of business only after performing the following actions:

(i) Filing an application for each additional place of business.

(ii) Furnishing a bond for each additional place of business in the case of a sales finance company and collector-repossessor.

(iii) Paying the respective license fee for each place of business.

**(e) License suspension and revocation.--**

(1) Subject to paragraph (2), the department may revoke or suspend only the particular license to which grounds exist under section 6218(a) (relating to revocation or suspension of license).

(2) If the department finds that grounds for revocation are of general application to all places of business or more than one place of business operated by a licensee, it may revoke all the licenses issued to the licensee or those licenses to which grounds exist.

**SUBCHAPTER C**  
INSTALLMENT SALE CONTRACTS

**Sec.**

- 6221. Requirements.
- 6222. Contents.
- 6223. Notice.
- 6224. Itemization.
- 6225. Disclosure.
- 6226. Heavy commercial motor vehicle.
- 6227. Manufactured homes.
- 6228. Prohibited provisions.
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- 6230. Statement of account to buyer.
- 6231. Payment receipts.
- 6232. Release of liens.
- 6233. Prohibited charges.
- 6234. Waiver of statutory protection prohibited.
- 6235. Effect of license expiration, surrender and revocation on contracts.
- 6236. Enforcement.

**§ 6221. Requirements.**

(a) **General rule.**--An installment sale contract shall:

- (1) be in writing;
- (2) contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold;
- (3) be signed by the buyer and seller; and
- (4) be complete as to all essential provisions before the buyer signs the contract.

(b) **Copies.**--

- (1) The installment seller shall furnish an exact copy of the installment sale contract without charge to the buyer at the time the buyer signs the contract.
- (2) The buyer's copy of the contract shall contain the signature of the seller identical to the signature on the original contract.
- (3) Upon request, a holder shall furnish to the buyer a duplicate copy of the contract upon payment of a reasonable fee not to exceed the cost of production.

(c) **Acknowledgment.**--

- (1) The installment seller shall obtain from the buyer a written acknowledgment of the buyer's receipt of a copy of the contract.
- (2) The acknowledgment shall be:
  - (i) printed below the buyer's signature to the contract, if attached to the contract; and
  - (ii) independently signed by the buyer.

(d) **Equal periods and amounts.**--An installment sale contract shall provide for payment of the time balance in substantially equal periods and amounts except in the following instances:

- (1) The buyer expects the buyer's income to vary because of seasonal employment, seasonal sales, use of accelerated depreciation for tax purposes or other known causes, in which

case the contract may provide for payment of the time balance in amounts that vary with the expected varying income.

(2) The sale of a heavy commercial motor vehicle.

(3) The sale of a motor vehicle to a salesperson licensed under the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

(4) When the contract provides for fixed residual value financing.

**(e) Disclosures.--**

(1) Prior to a buyer's execution of an installment sale contract, an installment seller shall provide to the buyer an oral and a written disclosure in plain language.

(2) The written disclosure shall:

(i) be separate from the contract to be signed by the buyer;

(ii) be complete without any blank spaces; and

(iii) advise that the purchase of specific items related to acquiring the motor vehicle is voluntary and not required as a condition of the buyer's receiving the installment sale contract loan. The items to which this subparagraph applies:

(A) include a service contract, warranty, debt cancellation agreement, debt suspension agreement and insurance products not required by section 6241 (relating to insurance); and

(B) exclude an option or accessory physically attached to the motor vehicle.

(3) The completed written disclosure shall be copied exactly and furnished by the seller to the buyer at no cost when the buyer receives a copy of the contract.

**(f) Definition.--**As used in this section, the term "fixed residual value financing" means the manner of purchase whereby a buyer listed as the owner on the motor vehicle title agrees, at the conclusion of a predetermined schedule of installment payments made in substantially equal periods and amounts, to:

(1) satisfy the balance of the contractual amount owing;

(2) refinance any balance owing on the terms previously agreed upon at the time of executing the installment sale contract; or

(3) surrender the motor vehicle at the time and manner agreed upon at the time of executing the contract.

**Cross References.** Section 6221 is referred to in section 6275 of this title.

**§ 6222. Contents.**

An installment sale contract shall contain the following:

(1) The full name and address of all the parties to the contract.

(2) The date that the buyer signed the contract.

(3) A description of the motor vehicle sold, which shall be sufficient for accurate identification.

(4) The notice under section 6223 (relating to notice).

(5) The following items in writing and in a clear and conspicuous manner, with each component of each subparagraph listed separately:

(i) The purchase price of the motor vehicle, which shall include the following:

(A) Taxes.

(B) Charges for delivery.

(C) Charges for servicing, repairing or improving the motor vehicle.

(D) Charges for a service contract, which:

(I) shall appear as separate items after the following or substantially similar words, which shall be boldface, underlined, adjacent to the purchase price and in type print size not smaller than that used for all item categories: "including optional service contracts and/or extended warranties in the amount of"; or

(II) may be separately included as "other charges" under subparagraph (v).

(E) Charges for accessories and installation.

(F) Other charges normally included in the delivered purchase price of a motor vehicle.

(ii) The down payment made by the buyer at the time of or prior to execution of the contract, which shall separately indicate the extent to which it is made in cash or represented by either or both of the following:

(A) The agreed-upon value of a trade-in motor vehicle, along with a description of the trade-in sufficient for accurate identification.

(B) Other goods.

(iii) The unpaid purchase price balance, which is the difference between the following:

(A) The purchase price under subparagraph (i).

(B) The down payment under subparagraph (ii).

(iv) Insurance charges, the payment for which the seller agrees to extend credit to the buyer, which shall set forth the term of insurance, a concise description of the coverage and the amount of the premium.

(v) Other charges necessary or incidental to the sale or financing of a motor vehicle:

(A) which the seller contracts to retain, receive or pay on behalf of the buyer; or

(B) for which the seller agrees to extend credit to the buyer as authorized by this chapter, including charges for a debt cancellation agreement and debt suspension agreement.

(vi) The principal amount financed, which is the sum of the following:

(A) The unpaid purchase price balance under subparagraph (iii).

(B) The insurance charges under subparagraph (iv).

(C) The other charges under subparagraph (v).

(D) Amounts representing payment of a prior credit or lease balance to discharge a security interest, lien or lease interest on a motor vehicle or other property traded or returned.

(vii) The finance charge, which is the consideration in excess of the purchase price under subparagraph (i), excluding insurance charges under subparagraph (iv) and other charges under subparagraph (v), and which the buyer agrees to pay to the seller for the privilege of purchasing the motor vehicle under the installment sale contract.

(viii) The time balance, which represents the total obligation of the buyer and which is the sum of the following:

(A) The principal amount financed under subparagraph (vi).

(B) The finance charge under subparagraph (vii).



(ix) The payment schedule, which shall state the number, amount and timing of the payments required to liquidate the time balance.

(6) A description that reasonably identifies collateral security in which a security interest is provided to secure the buyer's obligation pursuant to 13 Pa.C.S. § 9108 (relating to sufficiency of description), including the motor vehicle and other collateral.

(7) A summary notice of the buyer's principal legal rights regarding prepayment of the contract, rebate of finance charge and reinstatement of the contract in the event of repossession and notice of the right to receive the statement of account under section 6230(a) (relating to statement of account to buyer).

(8) Specific provisions regarding the following:

(i) The holder's right to accelerate the maturity of the contract upon default or other breach of contract.

(ii) The buyer's liability respecting nonpayment.

(iii) The dollar or percentage amount of late charges that may be imposed due to a late payment, other than a deferral or extension charge.

(iv) Repossession and sale of the motor vehicle, in case of default or other breach of contract.

(9) The following statement:

If you encounter a problem, you may have additional rights under the Unfair Trade Practices and Consumer Protection Law, which is enforced by the Pennsylvania Office of Attorney General, Bureau of Consumer Protection.

**Cross References.** Section 6222 is referred to in sections 6224, 6226, 6233, 6243 of this title.

**§ 6223. Notice.**

**(a) Requirement.--**An installment sale contract shall contain the notice under subsection (b), which shall be printed directly above the space provided for the signature of the buyer.

**(b) Form.--**

(1) Except as provided in paragraph (2), the notice shall be in the following form:

NOTICE TO BUYER: Do not sign this contract in blank. You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights. Any holder of this consumer credit contract is subject to all claims and defenses which the buyer could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the buyer shall not exceed amounts paid by the buyer hereunder.

(2) In the notice, the words "lessee" or "mortgagor" may be substituted for the word "buyer," and the words "lease" or "mortgage" may be substituted for the word "contract."

**Cross References.** Section 6223 is referred to in section 6222 of this title.

**§ 6224. Itemization.**

Costs and charges under sections 6222 (relating to contents) and 6242 (relating to other costs included in amount financed) shall be separately itemized in an installment sale contract as to their nature and amounts.

**§ 6225. Disclosure.**

If an installment seller retains a portion of the charge for a good or service provided by another person, the seller shall disclose that the seller may retain a portion of the charge.

**§ 6226. Heavy commercial motor vehicle.**

**(a) Variable finance charge percentage**

**rate.**--Notwithstanding any provision of law to the contrary, the finance charge percentage rate included in an installment sale contract for the sale of a heavy commercial motor vehicle may vary during the term of the contract pursuant to a formula or index set forth in the contract that is made readily available to and verifiable by the buyer and beyond the control of the holder of the contract.

**(b) Determinations.**--Notwithstanding that the finance charge percentage rate may increase or decrease over the term of the contract according to a formula or index set forth in the contract, the rate applicable to the transaction as of the date of execution of the contract may be used to determine the following:

- (1) The amount of finance charge under section 6222(5)(vii) (relating to contents).
- (2) The time balance under section 6222(5)(viii).
- (3) The payment schedule under section 6222(5)(ix).

**§ 6227. Manufactured homes.**

**(a) Optional contract provisions.**--An installment sale contract for the sale of a manufactured home may:

- (1) require the buyer to pay real estate taxes that may thereafter be levied upon the manufactured home and furnish the installment seller or holder with proof of payment of real estate taxes in the manner that the contract prescribes; and
- (2) upon the buyer's failure to pay the real estate taxes or furnish the required proof of payment, allow the seller or holder to accelerate payments or repossess the manufactured home, or both.

**(b) Sale.**--If the manufactured home is sold by a tax-levying unit of government for nonpayment of real estate taxes by the buyer, the following is not affected or divested:

- (1) A lien or encumbrance contained in the title of the vehicle pursuant to 75 Pa.C.S. (relating to vehicles).
- (2) An encumbrance filed of record against the vehicle under the provisions of 13 Pa.C.S. (relating to commercial code).

**§ 6228. Prohibited provisions.**

An installment sale contract may not contain any of the following:

- (1) Blank spaces to be filled in after the contract has been signed, except regarding serial numbers or other identifying marks that are not available for description of the motor vehicle at the time of execution of the contract.
- (2) An acceleration clause under which all or part of the time balance represented by payments not yet matured may be declared immediately payable because the installment seller or holder deems itself to be insecure. This paragraph does not apply to an acceleration clause authorizing the seller or holder to declare the entire time balance due and payable in case of any of the following:
  - (i) The buyer's default in the payment of one or more installment payments.
  - (ii) The buyer's failure to pay taxes levied against the motor vehicle.
  - (iii) The buyer's failure to furnish proof of payment of taxes levied against the motor vehicle.

- (iv) Use of the motor vehicle for illegal purposes.
- (v) The buyer's filing for bankruptcy.
- (vi) The buyer's default in the payment of a cross-collateralized obligation.
- (vii) The buyer's intentionally providing fraudulent and misleading information on a credit application.

(3) A provision authorizing a person acting on behalf of the seller or holder to enter upon the premises of the buyer unlawfully or to commit a breach of the peace in the repossession of the motor vehicle or collateral security.

(4) A provision whereby the buyer waives a right of action against the seller, holder, collector-repossessor or other person acting on behalf of the holder for an illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle or collateral security.

(5) A provision whereby the buyer executes a power of attorney appointing the seller, the holder, a collector-repossessor or the agent of any of them as the buyer's agent in the collection of payments under the contract or in the repossession of the motor vehicle or collateral security. This paragraph does not apply to a power of attorney issued by the buyer to an attorney at law to be used only in the collection of the obligation by legal process.

(6) A provision relieving the holder or other assignee from liability for legal remedies that the buyer may have had against the seller under the contract or a separate instrument executed in connection with the contract.

(7) A provision requiring or entailing the execution of a note or series of notes by the buyer, which when separately negotiated will extinguish as to third parties a right of action or defense that the buyer may have against the original seller.

#### **§ 6229. Transfer.**

**(a) Installment seller.**--An installment seller of a motor vehicle under an installment sale contract executed in this Commonwealth may not sell, transfer or assign the obligation represented by the contract to a person in this Commonwealth or elsewhere unless the person is licensed as a sales finance company under this chapter.

**(b) Sales finance company.**--A sales finance company licensed under this chapter may not sell, transfer or assign the obligation represented by an installment sale contract executed in this Commonwealth, which it has lawfully acquired, to a person in this Commonwealth or elsewhere unless the person is licensed as a sales finance company under this chapter.

**(c) Notice; effect on subsequent holder.**--If an installment sale contract is lawfully sold, transferred or assigned to a person who is licensed as a sales finance company under this chapter, the buyer's payment or tender of payment made to and service of notice on the last known holder is binding on a subsequent holder until the new holder furnishes to the buyer a written notice of the sale, transfer or assignment that sets forth the name and address of the new holder authorized to receive future payments on the contract.

**(d) Default; notice; effect on subsequent holder.**--

(1) If an installment sale contract lawfully acquired by a sales finance company is in default, the holder may resell, retransfer or reassign the contract to the installment seller from whom the contract was originally acquired.

(2) The buyer's payment or tender of payment made to and service of notice on the last known holder is binding on a subsequent holder until the new holder furnishes to the buyer a written notice of the resale, retransfer or reassignment that sets forth the following:

- (i) The name and address of the new holder authorized to receive future payments on the contract.
- (ii) The unpaid time balance.
- (iii) The accrued late charges due under the contract.

**(e) Applicability.--**

(1) This section does not apply to an assignment of an aggregation of installment sale contracts:

(i) which is executed by a seller or sales finance company only as a security interest securing payment or performance of a bona fide commercial loan, obtained at lawful rates of interest from a person regularly engaged in the business of lending money on the security of the assigned collateral or amounts due pursuant to a security or debt instrument; and

(ii) under which, in the absence of default or other bona fide breach of the loan contract:

(A) ownership of the assigned contracts remains vested in the assignor; and

(B) collection of payments on the assigned contracts is made by the assignor.

(2) An assignment of an aggregation of loan contracts under this section may not be for the purpose of evading or circumventing the provisions of this chapter.

**Cross References.** Section 6229 is referred to in section 6202 of this title.

**§ 6230. Statement of account to buyer.**

**(a) Information to be included.--**At any time after the execution of an installment sale contract and within one year after the termination of the contract, a holder of the contract shall furnish to the buyer upon request a complete and detailed statement of account showing the following:

(1) All amounts paid by the buyer on account of the obligation, dates of payment and the allocation of the payments to the reduction of:

- (i) Time balance.
- (ii) Refinance charges.
- (iii) Late charges.
- (iv) Court costs.
- (v) Attorney fees.
- (vi) Costs of retaking, repairing and storing the motor vehicle.
- (vii) Other costs permitted under the provisions of this chapter and the contract.

(2) All amounts credited to the buyer as rebates for prepayment and unexpired premiums on canceled insurance.

(3) The amount of the installment payments, accrued charges and expenses incurred, which are due and payable.

(4) The number, amount and due dates of installment payments to become due and payable.

**(b) Copies.--**

(1) The buyer shall be furnished with one statement of account without charge during the term of the contract or within one year after the termination of the contract.

(2) Upon request and payment of a reasonable fee not to exceed the cost of production, a holder shall furnish to the buyer an additional statement of account.

**Cross References.** Section 6230 is referred to in sections 6222, 6254 of this title.

**§ 6231. Payment receipts.**

(a) **When necessary.**--When payment is made on an installment sale contract, the person receiving the payment shall, at the time of receiving the payment, furnish a complete written payment receipt to the buyer or individual making the payment on behalf of the buyer if:

- (1) the buyer requests such receipt; or
- (2) payment is made in cash.

(b) **Contents.**--The payment receipt shall contain the following:

- (1) The date, amount and nature of the payment.
- (2) An identification of the obligation to which the payment is applicable.
- (3) The signature or initials of the person receiving the payment on behalf of the holder.
- (4) The unpaid time balance remaining due after crediting the payment.
- (5) The amount attributed to late charges, independent of the payment applied to the reduction of the time balance.

(c) **Self-addressed stamped envelope.**--The holder may require the buyer to supply a self-addressed stamped envelope as a condition of mailing the receipt if the buyer:

- (1) elects to make a payment by mail; and
- (2) is previously notified of the need for the envelope.

**§ 6232. Release of liens.**

(a) **Duty of holder.**--Upon payment in full of the time balance and other amounts lawfully due under an installment sale contract, a holder shall perform the following:

- (1) Upon request, return to the buyer all instruments in the form maintained by the holder, except those filed or recorded with a public official and retained in the files of the official, which:
  - (i) evidence the buyer's indebtedness or constitute security under the contract; and
  - (ii) were signed by the buyer or the buyer's surety or guarantor, in conjunction with the contract.
- (2) Specify on the instruments under paragraph (1) that the buyer's obligation has been paid in full.
- (3) Release all security interests in the motor vehicle or collateral security for the obligation of the buyer under the contract.
- (4) Deliver to the buyer any assignments and documents of title as may be necessary to vest the buyer with complete evidence of title.

(b) **Delivery of certificate of title.**--The certificate of title for the motor vehicle shall be delivered to the buyer within ten days of the date of tender of payment in full by mail or other arrangements made between the buyer and holder.

**§ 6233. Prohibited charges.**

(a) **General rule.**--Except as provided in subsections (b) and (c), a licensee may directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, insurance charges, other charges necessary or incidental to the sale of the motor vehicle, finance charges, refinance charges, late charges, recording and satisfaction

fees, court costs, attorney fees and costs of retaking, repairing and storing a repossessed motor vehicle, which are disclosed as required by section 6222(5) (relating to contents).

**(b) Exception.**--A licensee may not directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other thing of value in excess of the amounts permitted under subsection (a) or (c).

**(c) Manufactured homes.**--An installment seller of a manufactured home may charge appraisal fees, brokerage fees and commissions if they represent actual charges and are properly disclosed to the buyer.

**(d) Charges if contract not consummated.**--

(1) Subject to paragraph (2), a licensee may not collect a charge in connection with a contemplated sale of a motor vehicle under an installment sale contract if the contract is not consummated.

(2) Paragraph (1) does not affect the legal status of a deposit paid by a prospective buyer to a seller as a binder on the contemplated purchase of a motor vehicle.

**(e) Unenforceable provision.**--If an installment sale contract contains a provision that authorizes a prohibited charge, the provision is unenforceable.

**§ 6234. Waiver of statutory protection prohibited.**

**(a) General rule.**--A buyer may not validly waive through an action, agreement or statement any provision of this chapter intended to protect a buyer of a motor vehicle.

**(b) Choice of law.**--A buyer's waiver of the provisions of this chapter, including any purported waiver effected by a contractual choice of the law of another jurisdiction contained in an installment sale contract, shall be deemed contrary to public policy and is void and unenforceable.

**§ 6235. Effect of license expiration, surrender and revocation on contracts.**

**(a) Effect.**--The expiration, surrender or revocation of a license issued under this chapter to an installment seller or sales finance company does not impair or affect the obligation under an installment sale contract entered into lawfully or lawfully acquired by the licensee prior to the effective date of the expiration, surrender or revocation of the license.

**(b) Charges by holder prohibited.**--A holder of an installment sale contract forfeits the right to charge, contract for, receive or collect refinance charges authorized by this chapter for renewal of the contract, if the holder's license has expired, was surrendered or was revoked prior to the date of the renewal.

**(c) Sale, transfer and assignment of contracts.**--A licensee whose license has expired, was surrendered or was revoked may sell, transfer or assign contracts entered into or acquired prior to the expiration, surrender or revocation to a licensed sales finance company, which may renew the contracts in accordance with the provisions of this chapter.

**(d) Prohibitions regarding contracts.**--A licensee whose license has expired, was surrendered or was revoked may not:

(1) enter into new contracts for the retail sale of motor vehicles under installment sale contracts; or

(2) discount, purchase or otherwise acquire the new contracts.

**§ 6236. Enforcement.**

**(a) When obligation unenforceable.**--An obligation of the buyer of a motor vehicle under an installment sale contract that was consummated in this Commonwealth is not enforceable in this Commonwealth if:

- (1) the installment seller was not licensed under this chapter when the seller entered into the contract; or
- (2) the holder was not licensed under this chapter when the holder acquired the contract.

**(b) Cancellation of contract; release of liens.**--Upon payment or tender of payment to the holder of the principal amount financed under the contract described in subsection (a), less payments on account of the obligation exclusive of down payment which had been made previously, the buyer under the contract is entitled to:

- (1) cancellation of the contract; and
- (2) release of all liens against:
  - (i) the motor vehicle sold under the contract; and
  - (ii) collateral security owned by the buyer or the buyer's surety or guarantor.

**(c) Applicability.**--This section shall not be construed to prevent the enforcement in this Commonwealth of an obligation arising from the sale of a motor vehicle made outside this Commonwealth under an installment sale contract entered into or executed by the buyer outside this Commonwealth, whether or not the buyer was a resident of this Commonwealth at the time the buyer entered into the contract.

#### **SUBCHAPTER D** COSTS AND CHARGES

**Sec.**

- 6241. Insurance.
- 6242. Other costs included in amount financed.
- 6243. Finance charges.
- 6244. Refinance charges.
- 6245. Late charges.
- 6246. Refund for prepayment of contract.

**§ 6241. Insurance.**

**(a) General rule.**--

(1) The insurance purchased under this section shall be:

- (i) Limited to insurance against risk of damage, destruction or theft of the motor vehicle.
- (ii) Written for the dual protection of the buyer and installment seller or holder to the extent of their respective interests in the motor vehicle.
- (iii) Subject to terms and conditions, including the amount and period of time, that are reasonable and appropriate considering the type and condition of the motor vehicle, the amount of the time balance and the schedule of payments in the installment sale contract.

(2) The provisions of paragraph (1) may not interfere with the following:

- (i) The liberty of contract of the buyer and installment seller to contract for other or additional insurance as security for or by reason of the obligation of the buyer.
- (ii) The inclusion of charges for insurance in the principal amount advanced under the installment sale contract.

**(b) Purchase by buyer.**--

(1) An installment seller may require a buyer of a motor vehicle under an installment sale contract to purchase insurance on the motor vehicle at the buyer's expense from an insurance company acceptable to the installment seller.

(2) The buyer may select the insurance company agent or broker, in which case the inclusion of insurance charges in the contract shall be at the option of the installment seller.

**(c) Purchase by installment seller generally.--**If an installment seller or a holder contracts to purchase at the buyer's expense insurance on a motor vehicle sold under an installment sale contract, the following apply:

(1) The insurance shall be purchased through an agent or broker authorized to conduct business in this Commonwealth.

(2) The insurance shall be written by an insurance company qualified to do business in this Commonwealth.

(3) The status of the buyer and installment seller or holder, as set forth in the insurance contract, shall reflect their respective interests in the motor vehicle.

(4) The insurance charges to the buyer may not exceed the following:

(i) The insurance charges that others are required to pay to the insurance company for similar coverage.

(ii) The limitations on premiums, commissions and other charges established by the Commonwealth.

(5) A copy of the policy or certificate of insurance shall be delivered to the buyer within 30 days of the date of the buyer's signing of the contract.

(6) The insurance policy shall contain the following:

(i) Complete information as to the effective dates, amounts of premiums and coverage.

(ii) All the terms of the insurance contract.

(7) If a certificate of insurance issued under a master policy is furnished to the buyer in lieu of an individual policy, the certificate shall contain the following:

(i) Complete information as to effective dates, amounts of premiums and coverage.

(ii) All the terms of the insurance contract embodied in the master policy to the same extent as would appear if an individual policy were issued.

(iii) Notice that it is not an insurance policy.

**(d) Early termination of policy.--**

(1) This subsection applies if an installment seller or holder has placed insurance at the buyer's expense on a motor vehicle sold under an installment sale contract.

(2) If the buyer prepays the time balance under the contract prior to the expiration date of the insurance:

(i) The insurance shall remain in force unless the buyer requests cancellation of the insurance.

(ii) The installment seller or holder may not cancel the insurance without the buyer's consent.

(iii) The installment seller or holder may not coerce the buyer to cancel the insurance.

(iv) Any unexpired insurance premiums received by the installment seller or holder, resulting from cancellation of insurance originally placed at the buyer's expense, shall be paid to the buyer or credited to matured unpaid installments under the contract.

(3) If the insurance company cancels the insurance prior to expiration, the installment seller or subsequent holder shall:



(i) obtain comparable insurance from another insurance company and furnish the buyer with a copy of the insurance policy, subject to the same requirements of this chapter applicable to the original policy; or

(ii) if unable to obtain comparable insurance from another insurance company, immediately notify the buyer who may then obtain insurance from an insurance company, agent or broker of the buyer's own selection, in which case the installment seller or holder shall be liable to the buyer for the following:

(A) Any additional insurance charges incurred by the buyer in rewriting the insurance for the unexpired period for which the original insurance was written.

(B) Any loss suffered by the buyer through negligence on the part of the installment seller or holder in promptly advising the buyer of the inability to obtain replacement insurance.

**Cross References.** Section 6241 is referred to in sections 6210, 6221 of this title.

**§ 6242. Other costs included in amount financed.**

**(a) Costs payable by buyer.**--An installment seller of a motor vehicle under an installment sale contract may require the buyer to pay the following other costs incurred in the sale of a motor vehicle under the contract:

(1) Fees payable to the Commonwealth for filing a lien or encumbrance on the certificate of title to a motor vehicle sold under the contract or collateral security for the motor vehicle.

(2) Fees payable to a public official for filing, recording, satisfying or releasing the contract or instruments securing the buyer's obligation.

(3) Fees for notarization required in connection with the filing, recording, satisfying or releasing a mortgage, judgment lien or encumbrance.

**(b) Costs for which buyer voluntarily contracts.**--The installment seller of a motor vehicle under an installment sale contract may contract with the buyer to pay on behalf of the buyer the following other incidental costs relating to the sale of the motor vehicle, for which the buyer has voluntarily contracted:

(1) Fees payable to the Commonwealth for registration of the motor vehicle and issuance or transfer of registration plates.

(2) Fees payable to the Commonwealth for the buyer's driver's license.

(3) Costs of messenger service and other costs associated with the submission of documents to the Commonwealth or other governmental entity.

(4) Licensing costs under section 27.1 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

**(c) Collection and credit for fees and costs.**--With respect to the fees and costs under subsections (a) and (b), the installment seller may:

(1) contract for, collect or receive the fees and costs from the buyer independently of the contract; or

(2) extend credit to the buyer for the fees and costs and include them in the principal amount financed under the contract.

**(d) Amount of fees and costs.**--Unless otherwise permitted by the laws of this Commonwealth, the fees and costs under subsections (a) and (b) that are paid or payable by the buyer may not exceed the amount that the installment seller expends or intends to expend for them.

**(e) Costs not disbursed.**--Costs that are collected from a buyer or included in the buyer's obligation under an installment sale contract but that are not disbursed by the seller as contemplated shall be immediately refunded or credited to the buyer.

**(f) Incidental charges.**--

(1) Subject to paragraph (2), the installment seller of a motor vehicle under an installment sale contract may contract with the buyer to pay on behalf of the buyer other charges necessary or incidental to the sale of a motor vehicle and contracted for by the buyer, if the charges are not:

(i) in violation of section 6218(a)(12) (relating to revocation or suspension of license); or

(ii) restricted under this chapter or any other statute.

(2) Only the costs of necessary repairs disclosed at the time of the installment sale may be included in the contract. Necessary repairs arising after the execution of the contract may not be added to the original contract.

(3) This subsection does not otherwise authorize the mark-up of costs under subsection (a) or (b).

**Cross References.** Section 6242 is referred to in section 6224 of this title.

#### **§ 6243. Finance charges.**

**(a) General rule.**--An installment seller licensed under this chapter may charge, contract for, receive or collect a finance charge under this chapter on an installment sale contract covering the retail sale of a motor vehicle in this Commonwealth.

**(b) Method of computation.**--

(1) An installment seller may compute a finance charge authorized by this section by any method, if the charge does not exceed the applicable maximum percentage under subsections (d) and (e).

(2) A finance charge under this section shall be computed:

(i) On the principal amount financed as determined under section 6222(5)(vi) (relating to contents).

(ii) At the annual rate indicated on a one-year installment sale contract.

(iii) Proportionately on an installment sale contract that extends for a period that is less than or greater than one year.

(3) A finance charge under this section may be computed on the basis of a full month for a fractional month period in excess of ten days and interest may continue to be charged during a period of time for which a late charge is also imposed.

**(c) Manufactured homes.**--If an installment sale contract involves a manufactured home, whether or not the sale on credit or loan is insured or guaranteed in whole or in part by the Federal Housing Administration pursuant to the National Housing Act (48 Stat. 1246, 12 U.S.C. § 1701 et seq.), the percentage established as a maximum finance charge for a manufactured home

by regulation of the Federal Housing Administration shall govern.

**(d) New motor vehicles.--**

(1) Except as otherwise provided in this section, a finance charge for a new motor vehicle may not exceed the equivalent of 18% simple interest per year on the unpaid balance.

(2) Except as provided in paragraph (3), a finance charge for a new motor vehicle having a purchase price of \$10,000 or more and used primarily for a commercial purpose may not exceed the equivalent of 7.5% per year.

(3) A finance charge may not exceed the equivalent of 10% per year for the following:

(i) A new truck and truck tractor having a manufacturer's gross vehicular weight of 13,000 pounds or more.

(ii) A new semitrailer and trailer designed for use in combination with a truck tractor.

**(e) Used motor vehicles.--**

(1) A finance charge for a used motor vehicle, of a model designated by the manufacturer during a year not more than two years prior to the year in which the sale is made, may not exceed the equivalent of 18% simple interest per year on the unpaid balance.

(2) A finance charge for an older used motor vehicle, of a model designated by the manufacturer during a year more than two years prior to the year in which the sale is made, may not exceed the equivalent of 21% simple interest per year on the unpaid balance.

**(f) Federally insured loans.--**Subject to subsection (c), if a sale on credit or loan is insured or guaranteed in whole or in part by the Department of Veterans Affairs or another Federal department or agency, the laws or regulations that govern the Department of Veterans Affairs or other Federal department or agency regarding the maximum finance charge and rate of interest for the sale shall govern.

**Cross References.** Section 6243 is referred to in sections 6244, 6245 of this title.

**§ 6244. Refinance charges.**

**(a) General rule.--**

(1) A holder of an installment sale contract may:

(i) extend the scheduled due date or defer the scheduled payment of all or part of an unpaid installment payment;

(ii) renew the unpaid time balance of the contract;

or

(iii) contract for, receive and collect a refinance charge for an extension, deferment or renewal under subparagraphs (i) and (ii).

(2) A refinance charge for a motor vehicle under section 6243(d) and (e) (relating to finance charges) may not exceed the amount determined under this section.

**(b) Rates and computation.--**

(1) For a motor vehicle under section 6243(d)(1) and (e), the refinance charge shall be determined by either of the following:

(i) Subject to subsection (c), the refinance charge on the amount of a refinanced full or partial installment payment for which each full or partial payment is extended or deferred may not exceed the equivalent of the following rates:

(A) One percent per month for a vehicle under section 6243(d)(1).

(B) One and one-half percent per month for a vehicle under section 6243(e)(1).

(C) Two percent per month for a vehicle under section 6243(e)(2).

(ii) Subject to subsection (d), the refinance charge on the amount obtained shall be determined by:

(A) Adding the unpaid time balance of the contract, insurance charges, other charges incidental to refinancing and unpaid late charges that may be accrued.

(B) Deducting a rebate that may be due to the buyer for prepayment incidental to refinancing, at the rate of the finance charge in the original contract, for the term of the renewal contract and subject to the provisions of this chapter governing computation of the original finance charge.

(2) For a motor vehicle under section 6243(d)(2) and (3), the refinance charge shall be determined by the method of computation under paragraph (1)(ii).

(3) For a manufactured home under section 6243(c), the refinance charge shall be determined by regulation of the Federal Housing Administration pursuant to the National Housing Act (48 Stat. 1246, 12 U.S.C. § 1701 et seq.).

(4) Subject to paragraph (3), if the refinancing of a motor vehicle is insured or guaranteed in whole or in part by the Department of Veterans Affairs or another Federal department or agency, the laws or regulations that govern the Federal department or agency regarding the maximum refinance charge and rate of interest for the refinancing shall govern.

**(c) Fractional month.**--A computed refinance charge under subsection (b)(1) may be computed on the basis of a full month for any fractional month period in excess of ten days.

**(d) Other provisions not applicable to computation.**--The provisions of this chapter governing minimum prepayment rebate shall not apply in calculating refinance charges on the contract renewed under subsection (b)(2).

**(e) Prohibited contents.**--Except as provided in subsection (f) and subject to subsection (g), the holder of an installment sale contract may not include in a refinancing contract a cash loan to the buyer or credit extended to the buyer incidental to the purchase of goods or services.

**(f) Permissible contents.**--A holder under subsection (e) may include the following in the refinance contract:

(1) Charges for accessories, equipment and parts for the motor vehicle sold under the contract.

(2) Charges for repairs and services to the motor vehicle.

(3) Finance charges.

**(g) Loan.**--

(1) A loan under subsection (e) shall not include and nothing in this chapter shall be construed to otherwise prohibit a rearrangement of payments under an installment sale contract by a refinance transaction involving a restoration of certain installment payments made under the contract.

(2) A refinance charge on an amount restored pursuant to paragraph (1) may not exceed the equivalent of 6% simple interest per year.

**§ 6245. Late charges.**

**(a) General rule.--**A late charge may be collected on the following:

(1) An installment payment that is not paid on or before the due date of the payment.

(2) A contract subject to this chapter, regardless of the classification of vehicle under section 6243 (relating to finance charges) or the method by which the finance charge is computed.

**(b) Rate and computation.--**

(1) Under a contract for the sale of a motor vehicle other than a heavy commercial motor vehicle, a late charge may not, for any payment not made within ten days of its scheduled due date, exceed the rate of 2% on the amount of the payment in arrears.

(2) Under a contract for the sale of a heavy commercial motor vehicle, a late charge may not, for any payment not made within ten days of its scheduled due date, exceed the rate of 4% of the amount of the payment in arrears.

(3) The late charges under paragraphs (1) and (2) may be collected only once on each payment in arrears.

**(c) Collection.--**

(1) Late charges may be:

(i) collected when earned during the term of a contract for the sale of a motor vehicle; or

(ii) accumulated and collected at final maturity or at the time of final payment under a contract for the sale of a motor vehicle.

(2) A late charge may not be collected on a payment in default because of an acceleration provision in the contract.

**§ 6246. Refund for prepayment of contract.**

**(a) Right to prepay unpaid time balance.--**Notwithstanding the provisions of an installment sale contract, a buyer may prepay at any time all or part of the unpaid time balance under the contract.

**(b) Rebate generally.--**If the entire time balance is liquidated prior to maturity by prepayment, refinancing or termination by surrender or repossession and resale of the motor vehicle, a holder of the contract for the sale of the motor vehicle shall immediately rebate to the buyer any unearned portion of the finance charge. The rebate may be made in cash or credited to the amount due on the obligation of the buyer.

**(c) Rebate amount.--**

(1) Subject to paragraph (2), the proportion of the unearned finance charge that shall be rebated to the buyer to the total finance charge shall be at least the proportion of the sum of the periodic time balances after the date of prepayment to the sum of all the periodic time balances under the schedule of payments in the original contract.

(2) The holder is not required to rebate:

(i) a portion of the unearned finance charge that results in a net minimum finance charge on the contract of less than \$10; or

(ii) an unearned finance charge if the computed amount due is less than \$1.

## **SUBCHAPTER E REPOSSESSION**

**Sec.**

6251. Repossession authorized.

6252. Who may repossess.

- 6253. Legal proceedings.
- 6254. Notice of repossession.
- 6255. Personal property in repossessed motor vehicle.
- 6256. Buyer's liability for costs.
- 6257. Notice to police.
- 6258. Reinstatement of contract after repossession.
- 6259. Redemption and termination of contract after repossession.
- 6260. Sale of motor vehicle after repossession.
- 6261. Deficiency judgment.
- 6262. Procedures for manufactured homes.

**§ 6251. Repossession authorized.**

**(a) When repossession may occur.**--An installment seller or a holder, who has lawfully acquired a motor vehicle installment sale contract, may retake possession of the motor vehicle if the buyer:

- (1) is in default in the payment of an amount due under the contract; or
- (2) has committed another breach of contract, which is by the contract specifically made a ground for retaking the motor vehicle.

**(b) Legal process.**--

- (1) Unless the motor vehicle can be retaken without breach of the peace, it shall be retaken by legal process.
- (2) This subchapter shall not be construed to authorize a violation of the criminal laws of this Commonwealth.

**(c) Limitation.**--Except as provided in this chapter, in a transaction involving a commercial purpose, the provisions of this chapter regarding repossession of a motor vehicle are limited by the provisions of 13 Pa.C.S. Div. 9 (relating to secured transactions).

**§ 6252. Who may repossess.**

**(a) With legal process.**--Repossession of a motor vehicle when effected by legal process shall be made only by a duly constituted public official.

**(b) Without legal process.**--Repossession of a motor vehicle when effected otherwise than by legal process under subsection (a) shall be made only by the following:

- (1) The holder.
- (2) An official or full-time employee of the holder.
- (3) A collector-repossessor licensed under this chapter.
- (4) The person who originally sold the motor vehicle to the buyer under the installment sale contract.
- (5) A licensed seller or sales finance company that is not regularly engaged in the business of repossessing motor vehicles but occasionally does so as an accommodation for another seller or sales finance company.
- (6) An official or full-time employee of a licensed seller or sales finance company under paragraph (5).

**§ 6253. Legal proceedings.**

**(a) When to commence action.**--If repossession and sale of a motor vehicle subject to an installment sale contract or its collateral security is effected by legal process, the holder may commence legal proceedings immediately upon the buyer's default or breach of the contract.

**(b) Rights and duties of buyer.**--In a proceeding under subsection (a), the buyer shall receive notice, have the rights and be liable for the costs of suit and reasonable attorney fees as provided by the laws of this Commonwealth governing legal proceedings.

**§ 6254. Notice of repossession.**

**(a) General rule.**--If repossession of a motor vehicle subject to an installment sale contract is effected other than by legal process, the holder shall immediately furnish the buyer with a written notice of repossession.

**(b) Delivery.**--The notice of repossession shall be delivered in person or sent by registered or certified mail to the last known address of the buyer.

**(c) Contents.**--The notice of repossession shall contain the following:

(1) The buyer's right to reinstate the contract, if the holder extends the privilege of reinstatement and redemption of the motor vehicle.

(2) An itemized statement of the total amount required to redeem the motor vehicle by reinstatement or payment of the contract in full.

(3) Notice to the buyer of the holder's intent to resell the motor vehicle at the expiration of 15 days from the date of mailing the notice.

(4) The place where the motor vehicle is stored.

(5) The name and address of the person to whom the buyer shall make payment or on whom the buyer may serve notice.

(6) A statement that any personal property left in the repossessed vehicle will be held for 30 days from the date of the mailing of the notice.

(7) The name and address of the person that the buyer may contact to receive a full statement of account as provided by section 6230 (relating to statement of account to buyer).

**Cross References.** Section 6254 is referred to in sections 6255, 6259 of this title.

**§ 6255. Personal property in repossessed motor vehicle.**

A buyer may reclaim personal property left in the repossessed motor vehicle within 30 days of the mailing of the notice under section 6254 (relating to notice of repossession). If personal property is left in the motor vehicle after the 30-day time period, the holder may dispose of the personal property in any manner that it chooses.

**§ 6256. Buyer's liability for costs.**

If repossession of a motor vehicle subject to an installment sale contract is effected other than by legal process, the buyer shall be liable for costs incurred by the holder in retaking, storing and repairing the motor vehicle only if:

(1) The default exceeds 15 days at the time of repossession.

(2) The costs are actual, necessary and reasonable, excluding repossession costs for services by an individual who is a regular full-time employee of the holder.

(3) The costs are supported by receipts or other satisfactory evidence of payment.

(4) The records of the holder show detailed information as to the nature and amount of each cost, the date of payment and the recipient of the payment.

**Cross References.** Section 6256 is referred to in sections 6203, 6258, 6259, 6261 of this title.

**§ 6257. Notice to police.**

The reposessor of a motor vehicle shall give notice within 24 hours after the repossession to:

(1) the local municipal police department having jurisdiction of the area where the motor vehicle was located at the time of repossession; or

(2) the Pennsylvania State Police, if no municipal police jurisdiction exists.

**§ 6258. Reinstatement of contract after repossession.**

**(a) When reinstatement may occur.--**If a motor vehicle subject to an installment sale contract has been repossessed by legal process or otherwise because of default or other breach of contract, the holder may reinstate the contract and return the motor vehicle to the buyer if the buyer:

(1) pays all past-due installments; or  
(2) makes mutually satisfactory arrangements with the holder regarding the following:

(i) Accrued late charges.  
(ii) Costs of suit under the contract and authorized by this chapter in repossession by legal process.

(iii) The costs of retaking, repairing and storing under section 6256 (relating to buyer's liability for costs), if default at the time of repossession exceeds 15 days.

**(b) Refinancing.--**If an installment sale contract for a motor vehicle is reinstated after repossession, the holder may contemporaneously or subsequently enter into a contract with the buyer for refinancing the obligation as provided in this chapter.

**§ 6259. Redemption and termination of contract after repossession.**

**(a) Retaining motor vehicle.--**Unless the right of redemption is waived in a nonconsumer transaction under 13 Pa.C.S. § 9624(c) (relating to waiver), if repossession of a motor vehicle subject to an installment sale contract is effected within or outside this Commonwealth other than by legal process, the holder shall retain the repossessed motor vehicle for a period of 15 days after the mailing of the notice of repossession under section 6254 (relating to notice of repossession).

**(b) Redemption.--**During the 15-day period after the mailing of the notice of repossession, the buyer may redeem the motor vehicle and terminate the installment sale contract by payment or tender of payment to the holder of the following amounts:

(1) If default at the time of repossession is 15 days or less, the sum of the following, less rebate of any unearned finance charge and excluding the costs of retaking, repairing and storing under section 6256 (relating to buyer's liability for costs):

(i) The unpaid time balance.  
(ii) Accrued late charges authorized by this chapter.  
(iii) Any other amount lawfully due under the contract.

(2) If default at the time of repossession exceeds 15 days, the sum of the following, less rebate of any unearned finance charge:

(i) The unpaid time balance.  
(ii) Accrued late charges authorized by this chapter.  
(iii) The costs of retaking, repairing and storing under section 6256.  
(iv) Any other amount lawfully due under the contract.

**(c) Return of motor vehicle and collateral.--**

(1) If the buyer redeems the motor vehicle and terminates the installment sale contract by payment or tender as provided in subsection (b), the holder shall return the motor vehicle and other collateral in a manner consistent



with 13 Pa.C.S. § 9623 (relating to right to redeem collateral).

(2) Property is deemed to be returned in a manner in compliance with this chapter and 13 Pa.C.S. § 9623 by delivery to one of the following sites designated by the buyer:

(i) The county in this Commonwealth or within a comparable governmental unit outside this Commonwealth where repossession occurred.

(ii) The county in this Commonwealth where the buyer resides.

(iii) The county in this Commonwealth where the vehicle was purchased under the contract.

(3) Upon receipt of the funds necessary to redeem the motor vehicle as provided in subsection (b), the holder shall return the repossessed motor vehicle as soon as is reasonably possible, but not later than ten business days from the receipt of the funds.

**§ 6260. Sale of motor vehicle after repossession.**

**(a) Forfeiture.--**If the repossessed motor vehicle subject to an installment sale contract is not redeemed by the buyer either by termination or reinstatement of the contract within the 15-day notice of redemption period, the buyer shall forfeit all claim to the motor vehicle and collateral security.

**(b) Deficiency.--**If the buyer does not redeem the repossessed motor vehicle within the 15-day notice of redemption period, the installment seller or holder may not bring an action or proceeding against the buyer for a deficiency under section 6261 (relating to deficiency judgment) unless there has been a public or private sale of the repossessed motor vehicle and collateral security.

**(c) Motor vehicle title.--**At the sale of a repossessed motor vehicle to a purchaser, the installment seller or holder shall provide to the purchaser the title to the vehicle and all necessary documents to effect the transfer of the motor vehicle.

**Cross References.** Section 6260 is referred to in section 6261 of this title.

**§ 6261. Deficiency judgment.**

**(a) General rule.--**If the proceeds of a resale under section 6260 (relating to sale of motor vehicle after repossession) are not sufficient to defray the expenses regarding the repossessed motor vehicle, including the costs under section 6256 (relating to buyer's liability for costs), the net balance due on the installment sale contract and the amount of accrued late charges authorized by this chapter, the installment seller or holder may recover the deficiency from the buyer or from any person who has succeeded to the obligations of the buyer.

**(b) Reasonable value.--**

(1) The reasonable value of the motor vehicle at the time of resale shall be determined in an action or a proceeding brought by:

(i) the installment seller or holder to recover the deficiency; or

(ii) the buyer.

(2) The resale price of the motor vehicle is prima facie, but not conclusive, evidence of the reasonable value of the motor vehicle.

(3) The determined reasonable value or the resale price of the motor vehicle, whichever is higher, shall be credited against the buyer's indebtedness.

**(c) Reasonable costs.**--In an action or a proceeding for a deficiency, the buyer may have the reasonableness of the costs incurred determined under section 6256.

**(d) Deficiency notice.**--Within 30 days after the sale of a repossessed motor vehicle, the installment seller or holder shall deliver in person or send by registered or certified mail to the last known address of the buyer a deficiency notice containing the following:

- (1) The sale price of the repossessed motor vehicle.
- (2) The itemized costs associated with the repossession and sale of the repossessed motor vehicle.
- (3) The amount of the deficiency owed by the buyer.

**(e) Nonapplicability.**--Subsections (b) (1) (ii) and (d) shall not apply to a deficiency on a resale that was held prior to the effective date of this section.

**Cross References.** Section 6261 is referred to in section 6260 of this title.

**§ 6262. Procedures for manufactured homes.**

**(a) Notice.--**

(1) A holder of an installment sale contract for a manufactured home shall give the buyer notice under this subsection before the holder takes any of the following actions:

- (i) Accelerates the maturity of the installment sale contract for the manufactured home.
- (ii) Commences a legal action to recover under the contract.
- (iii) Takes possession of any collateral of the buyer for the obligation.

(2) Notice of the intention to take an action under paragraph (1) shall be in writing and:

- (i) Sent to the buyer at least 30 days in advance of the action by registered or certified mail at the address where the manufactured home is located.
- (ii) Clearly and conspicuously state the following:
  - (A) The particular obligation or security interest.
  - (B) The nature of the default claimed.
  - (C) The right of the buyer to cure the default as provided in this section and exactly what performance, including the sum of money, that must be tendered to cure the default.
  - (D) The right of the buyer to cure the default at any time before title to the manufactured home is lawfully transferred from the buyer, which shall be at least 45 days after receipt of the notice.
  - (E) The method by which the buyer's ownership or possession of the manufactured home may be terminated.

(3) Notice under this subsection shall not be required if the buyer has abandoned or voluntarily surrendered the property that is the subject of the contract.

**(b) Cure of default.--**

(1) Notwithstanding any other provision of law, the buyer of a manufactured home under an installment sale contract or another person on the buyer's behalf may cure the buyer's default and prevent the sale or other disposition of the manufactured home and avoid acceleration:

- (i) After the notice under subsection (a) has been given.

(ii) At any time before title to the manufactured home is lawfully transferred from the buyer, which shall be at least 45 days after the buyer's receipt of the notice.

(iii) Not more than three times in a calendar year.

(iv) By tendering the amount or performance specified in this section.

(2) To cure a default under this subsection, the buyer shall take the following actions:

(i) Pay by cash, cashier's check or certified check all sums which would have been due at the time of payment, in the absence of default or exercise of an acceleration clause.

(ii) Perform any other obligation which the buyer would have been bound to perform, in the absence of default or exercise of an acceleration clause.

(iii) Pay reasonable fees allowed under subsection (d) and reasonable costs of proceeding to commence legal action as specified in writing by the holder and actually incurred to the date of payment.

(iv) Pay a reasonable late penalty, if provided for in the contract.

(v) Pay the costs that are reasonable and actually incurred by the holder for detaching and transporting the manufactured home to the site of the sale.

(3) The cure of a default under this subsection shall restore the buyer to the same position as if the default had not occurred.

**(c) Prepayment.**--An obligation under an installment sale contract for a manufactured home may be prepaid without penalty or other charge for prepayment at any time before the end of the period of the loan.

**(d) Attorney fees.**--A holder of an installment sale contract for a manufactured home may not contract for or receive attorney fees from the buyer except as follows:

(1) Upon commencement of legal action regarding the contract, attorney fees that are reasonable and actually incurred by the holder may be charged to the buyer.

(2) Prior to commencement of legal action regarding the contract, attorney fees may be charged if they are:

(i) Reasonable and actually incurred.

(ii) Not in excess of \$150.

(iii) Incurred after the 30-day notice period under subsection (a).

**(e) Waiver prohibited.**--Notwithstanding any other provision of law, a person may not waive the provisions of this section by an oral or written agreement.

**(f) Applicability.**--Notwithstanding this section, the act of November 24, 1976 (P.L.1176, No.261), known as the Manufactured Home Community Rights Act, shall govern procedures regarding abandoned manufactured homes.

## SUBCHAPTER F

### PENALTIES AND LIABILITY

#### Sec.

6271. Operating without license.

6272. Violation of chapter provisions.

6273. Use of unlicensed collector-repossessor.

6274. Civil penalty by department.

6275. Liability of sales finance company.

**§ 6271. Operating without license.**

(a) **Prohibition; penalty.**--An entity or individual under subsection (b) engaging in business in this Commonwealth as an installment seller, sales finance company or collector-repossessor without having obtained a license under this chapter commits a violation of this chapter and shall, upon conviction, be sentenced at the discretion of the court to either or both of the following:

(1) Pay a fine of not less than \$2,000 nor more than \$10,000.

(2) Imprisonment for not more than three years.

(b) **Applicability.**--Subsection (a) applies to the following:

(1) A person, partnership, association, business corporation, financial institution, nonprofit corporation, common law trust, joint stock company or any other group of individuals, however organized.

(2) An owner, partner, member, officer, director, trustee, employee, agent, broker or representative of an entity under paragraph (1).

**Cross References.** Section 6271 is referred to in section 6217 of this title.

**§ 6272. Violation of chapter provisions.**

A licensee or an owner, partner, member, officer, director, trustee, employee, agent, broker or representative of the licensee who violates a provision of this chapter or directs a violation of this chapter commits a violation of this chapter and shall, upon conviction, be sentenced at the discretion of the court to the following:

(1) Pay a fine of not more than \$2,000 for the first offense.

(2) For each subsequent offense, to either or both of the following:

(i) Pay a fine of not more than \$2,000.

(ii) Imprisonment for not more than one year.

**§ 6273. Use of unlicensed collector-repossessor.**

A licensed seller or sales finance company acting as holder of a motor vehicle installment sale contract who hires, authorizes or permits an unlicensed collector-repossessor, as defined in this chapter, to collect payments on the contract or repossess a motor vehicle sold under the contract within this Commonwealth commits a violation of this chapter and shall, upon conviction, be sentenced at the discretion of the court to the following:

(1) Pay a fine of not more than \$2,000 for the first offense.

(2) For each subsequent offense, to either or both of the following:

(i) Pay a fine of not more than \$2,000.

(ii) Imprisonment for not more than one year.

**§ 6274. Civil penalty by department.**

A person required to be licensed under this chapter that violates this chapter, directs a violation of this chapter or engages in an activity for which a license could be suspended or revoked under section 6218 (relating to revocation or suspension of license) shall be subject to a civil penalty levied by the department of not more than \$2,000 for each offense.

**Cross References.** Section 6274 is referred to in section 6205 of this title.

**§ 6275. Liability of sales finance company.**

**(a) Exemption from liability.**--A sales finance company licensed under this chapter and engaged in the purchase, sale, assignment, securitization or servicing of installment sale contracts may not be held liable under this chapter for either of the following:

- (1) Excessive markups of charges by installment sellers.
- (2) A failure to disclose under section 6221(e) (relating to requirements).

**(b) Federal status preserved.**--This section does not affect the liability of a sales finance company that is a holder under the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C. § 41 et seq.).

## **CHAPTER 63**

### GOODS AND SERVICES INSTALLMENT SALES

#### **Subchapter**

- A. General Provisions
- B. Closed-end Credit Agreements
- C. Open-end Credit Agreements
- D. Costs and Charges
- E. Enforcement and Penalties

**Enactment.** Chapter 63 was added November 27, 2013, P.L.1081, No.98, effective in one year.

**Special Provisions in Appendix.** See section 8 of Act 98 of 2013 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Chapter 63 is referred to in section 6911 of Title 42 (Judiciary and Judicial Procedure).

## **SUBCHAPTER A**

### GENERAL PROVISIONS

#### **Sec.**

6301. Scope of chapter.
6302. Definitions.
6303. Waiver.
6304. Applicability.
6305. Prohibited activities and provisions.
6306. Assignment.
6307. Venue.
6308. Attorney fees and costs.
6309. Repossession; acceleration; right to cure.
6310. Lien.
6311. Validity.
6312. Discharge of obligation.
6313. Prepayment of obligation.
6314. Acknowledgment of payment in full.

#### **§ 6301. Scope of chapter.**

This chapter relates to goods and services installment sales.

#### **§ 6302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Actuarial method."** The method of allocating payments made on a debt between the amount financed and the finance charge at the interest rate stated in the closed-end credit agreement, as defined in Regulation Z, adopted under the Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.).

**"Buyer."** A person who buys goods or obtains services from a seller in a sale, if the acquisition is not principally for the purpose of resale.

**"Closed-end credit agreement."** Either of the following:

(1) A contract for a sale between a buyer and seller in which the buyer promises to pay in installments the outstanding balance incurred in the sale, whether or not the contract contains a security interest, and which contains either of the following:

(i) A finance charge, which is computed and added to the unpaid balance.

(ii) A provision specifying that, if the buyer had not contracted to pay in installments, the buyer could have received the goods or services at a lesser price or additional or higher quality goods or services at no added cost.

(2) A contract for a sale between a buyer and seller that includes a security agreement or a contract for the bailment or leasing of goods in which both of the following occur:

(i) The consideration that the bailee or lessee contracts to pay as compensation for the use of the goods is a sum substantially equivalent to or in excess of their value and is an obligation for the term of the lease that is not subject to termination by the bailee or lessee.

(ii) The bailee or lessee agrees to become or has the option of becoming the owner of the goods for no or nominal additional consideration upon full compliance with the terms of the contract.

**"Finance charge."**

(1) The amount, regardless of how expressed, that a buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid in installments.

(2) Includes all charges incident to investigating and making a closed-end credit agreement or an open-end credit agreement and for the extension of the credit under that agreement.

(3) Excludes the following:

(i) Amounts charged for insurance premiums under section 6342 (relating to insurance).

(ii) Late fees under section 6343 (relating to late fees).

(iii) The costs of collection under section 6344 (relating to costs of collection).

(iv) Costs from nonaffiliated entities under section 6346 (relating to costs from nonaffiliated entity).

(v) Extension and deferment charges under section 6347 (relating to extension and deferment).

(vi) Attorney fees.

(vii) Court costs.

(viii) Official fees.

**"Financing agency."** A person, including a financial institution, engaged in this Commonwealth in whole or in part in the business of purchasing closed-end credit agreements or open-end credit agreements from at least one seller.

**"Goods."**

(1) Personal property bought primarily for personal, family or household use.

(2) The term includes the following:

(i) Certificates, coupons or gift cards exchangeable for goods.

- (ii) Electronic media items.
- (iii) Items purchased through the Internet.
- (3) The term excludes the following:
  - (i) Goods covered under the act of August 14, 1963 (P.L.1082, No.464), known as the Home Improvement Finance Act.
  - (ii) A motor vehicle covered under Chapter 62 (relating to motor vehicle sales finance).
  - (iii) A security covered under the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

"Holder."

- (1) Either of the following:

- (i) A seller who acquires a closed-end credit agreement or an open-end credit agreement that is executed, incurred or entered into by a buyer.
- (ii) A financing agency or other assignee that purchases the agreement under subparagraph (i).

(2) Excludes a pledgee or holder of a security interest in an aggregate number of agreements to secure a bona fide loan on them.

"Official fees." The fees required by law and actually to be paid to the appropriate public officer to perfect a lien or other security interest that is retained or taken by a seller under a closed-end credit agreement or an open-end credit agreement.

"Open-end credit agreement." A contract:

- (1) in which a buyer promises to pay in installments to a seller or financing agency the outstanding balance incurred in a sale, whether or not the seller retains a security interest in the goods sold; and
- (2) that provides for a finance charge expressed as a percent of the periodic balances to accrue thereafter, if the charge is not capitalized or stated as a dollar amount in the contract.

"Purchase price." The price of goods sold or services furnished, which may include applicable taxes, as specified in a closed-end credit agreement or an open-end credit agreement.

"Sale." The sale of goods or furnishing of services by a seller to a buyer for a time sale price payable in installments.

"Seller." A person engaged in the business of selling goods or furnishing services to a buyer.

"Service contract." A written contract, optional on the part of a buyer, to perform over a fixed period of time or for a specified duration services regarding the maintenance or repair of goods.

"Services."

(1) Work, labor and services for other than a commercial or business use.

- (2) The term includes the following:

- (i) Services furnished in connection with the purchase or repair of goods or the repair of motor vehicles.
- (ii) A service contract.
- (iii) Services purchased through the Internet.

- (3) The term excludes the following:

- (i) Services covered under the act of August 14, 1963 (P.L.1082, No.464), known as the Home Improvement Finance Act.
- (ii) A service contract or warranty covered under Chapter 62 (relating to motor vehicle sales finance).

(iii) Services for which the tariffs, rates, charges, costs or expenses, including in each instance the time sale price, are required by law to be filed with or approved by any of the following:

(A) The Commonwealth.

(B) The Federal Government.

(C) An official department, commission or agency of the Commonwealth or the United States.

"Time balance." The total of the unpaid balance and the amount of the finance charge.

"Time sale price." The total of the purchase price and the amounts included for insurance, official fees and finance charge.

"Unpaid balance." The purchase price and the amounts included for insurance and official fees, less the amount of a buyer's down payment in money or goods.

"Warranty."

(1) Either of the following, which becomes part of the basis of the bargain between a buyer and seller for purposes other than resale:

(i) A written affirmation of fact or written promise made in connection with the sale of goods by a seller or manufacturer to a buyer that relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance over a specified period of time.

(ii) Any undertaking in writing in connection with the sale of goods by a seller or manufacturer to refund, repair, replace or take other remedial action with respect to the goods if the goods fail to meet the specifications set forth in the undertaking.

(2) Excludes a service contract and an extended warranty with the characteristics of a service contract.

**Cross References.** Section 6302 is referred to in section 6902 of Title 42 (Judiciary and Judicial Procedure).

**§ 6303. Waiver.**

A buyer's waiver of the provisions of this chapter, including any purported waiver effected by a contractual choice of the law of another jurisdiction contained in a closed-end credit agreement or an open-end credit agreement, shall be deemed contrary to public policy and is void and unenforceable.

**§ 6304. Applicability.**

**(a) Agreements.--**A closed-end credit agreement and an open-end credit agreement are deemed to be made in this Commonwealth and subject to the provisions of this chapter if either of the following occurs:

(1) The seller offers or agrees in this Commonwealth to sell to a resident buyer of this Commonwealth.

(2) A resident buyer of this Commonwealth accepts or makes the offer in this Commonwealth to buy, regardless of the situs specified in the agreement.

**(b) Offer to sell.--**A verbal or written solicitation or communication to sell that originates outside this Commonwealth and is forwarded to and received in this Commonwealth by a resident buyer of this Commonwealth shall be deemed an offer or agreement to sell in this Commonwealth and subject to the provisions of this chapter.

**(c) Offer to buy.--**A verbal or written solicitation or communication to buy that originates within this Commonwealth from a resident buyer of this Commonwealth and is forwarded to



and received by a seller outside this Commonwealth shall be deemed an acceptance or offer to buy in this Commonwealth and subject to the provisions of this chapter.

**(d) Subsequent goods and services.**--Goods or services that subsequently result from a solicitation or communication under subsection (b) or (c) are subject to the provisions of this chapter.

**(e) Exclusivity.**--Notwithstanding any provision of law to the contrary, this chapter shall exclusively govern and regulate the terms and conditions of all extensions of credit, except cash advances, for the purchase of goods and services within this Commonwealth.

**§ 6305. Prohibited activities and provisions.**

**(a) Activities.**--In attempting to collect a buyer's obligation, a seller or holder shall comply with the act of March 28, 2000 (P.L.23, No.7), known as the Fair Credit Extension Uniformity Act.

**(b) Provisions.**--A closed-end credit agreement, an open-end credit agreement or other agreement may not contain a provision by which any of the following may occur:

(1) Except as provided in section 6306 (relating to assignment), the buyer agrees not to assert a claim or defense arising from the sale against a seller or an assignee.

(2) In the absence of the buyer's default in the performance of an obligation, the holder may accelerate the maturity of all or part of the amount owed.

(3) The seller or holder of the agreement, or a person acting on behalf of the seller or holder, is given authority to enter the buyer's premises unlawfully or commit a breach of the peace in the repossession of goods.

(4) The buyer waives a right of action against the seller or holder of the agreement, or a person acting on behalf of the seller or holder, for an illegal act committed in the collection of payments under the agreement or the repossession of goods.

(5) The buyer executes a power of attorney appointing the seller or holder of the agreement, or a person acting on behalf of the seller or holder, as the buyer's agent in the collection of payments under the agreement or the repossession of goods.

(6) The buyer relieves the seller from liability for legal remedies that the buyer may have against the seller under the agreement or a separate instrument executed in connection with the agreement.

(7) The buyer agrees to the payment of a charge by reason of the exercise of the right to rescind or avoid the agreement.

(8) The seller or holder of the agreement is given the right to commence an action on the agreement under the provisions of this chapter in a county other than the county where any of the following occurred:

(i) The buyer signed the agreement.

(ii) The buyer resides at the commencement of the action.

(iii) The buyer resided when the agreement was entered into.

(iv) The goods purchased under the agreement have been so affixed to real property as to become a part of the real property.

(9) An assignment of wages is given.

(10) The seller or holder of the agreement, or a person acting on behalf of the seller or holder, is given authority to execute upon a judgment by confession.

(11) The seller or holder of the agreement, or a person acting on behalf of the seller or holder, is given authority to take a mortgage or other security against residential real estate of the buyer or another obligee to the agreement.

**§ 6306. Assignment.**

Except as provided in section 6352 (relating to noncompliance; costs and charges), a right of action or defense arising from a sale that a buyer has against a seller is not eliminated by assignment of the buyer's closed-end credit agreement or open-end credit agreement to a third party, regardless of whether the third party acquires the agreement in good faith and for value.

**Cross References.** Section 6306 is referred to in section 6305 of this title.

**§ 6307. Venue.**

An action on a closed-end credit agreement or an open-end credit agreement shall be commenced in a county where any of the following occurred:

- (1) The buyer signed the agreement.
- (2) The buyer resides at the commencement of the action.
- (3) The buyer resided when the agreement was entered into.
- (4) The goods purchased under the agreement have been so affixed to real property as to become a part of the real property.

**§ 6308. Attorney fees and costs.**

**(a) Award.**--Reasonable attorney fees and costs shall be awarded to the prevailing party in an action on a closed-end credit agreement or an open-end credit agreement, regardless of whether the action is instituted by the seller, holder or buyer.

**(b) Agreement.**--A seller may provide for the payment of attorney fees and costs under subsection (a) in an agreement signed by the buyer, if a copy of the agreement is given or furnished to the buyer.

**(c) Definition.**--For purposes of this section, a defendant is deemed to be a prevailing party if both of the following occur:

- (1) The defendant:
  - (i) Alleges in its answer that it tendered to the plaintiff the full amount to which the plaintiff was entitled.
  - (ii) Deposits the amount with the court.
- (2) The allegation in paragraph (1)(i) is found to be true.

**§ 6309. Repossession; acceleration; right to cure.**

**(a) Rights of holder.**--If a buyer defaults in the performance of an obligation under a closed-end credit agreement or an open-end credit agreement, the holder, pursuant to the rights granted under the agreement:

- (1) May proceed to recover judgment for the balance due or retake the goods.
- (2) Shall comply with and be limited by the requirements of 13 Pa.C.S. (relating to commercial code).

**(b) Prohibited actions.**--Unless the buyer is in default and the seller or holder provides the buyer with the notice under subsection (c), a seller or holder may not:

- (1) accelerate the maturity of the agreement; or

(2) commence legal action or repossess without legal process.

**(c) Notice.--**

(1) Notice under this section shall be:

- (i) sent by certified mail to the buyer's last known address; or
- (ii) delivered personally to the residence of the buyer.

(2) The notice shall inform the buyer of all the following:

(i) The right to cure the default within 21 days of the date of receipt of the notice upon the payment of all the following:

(A) The amount in default.

(B) Late fees under section 6343 (relating to late fees).

(C) Extension and deferment charges under section 6347 (relating to extension and deferment).

(D) Actual repossession costs.

(ii) The name, address and telephone number of the seller or holder.

(iii) The total amount due, which is the sum of the items in subparagraph (i).

(iv) The exact date by which the amount due must be paid.

(v) The name, address and telephone number of the person to whom payment must be made.

(vi) Other performance necessary to cure a default arising from other than nonpayment of the obligation.

(3) The seller or holder is not required to provide the notice under this subsection more than once in any 12-month period.

**(d) Rights of buyer; curing default.--**

(1) The buyer shall have the rights specified in the notice under subsection (c).

(2) The act of curing a default restores to the buyer the rights under the agreement as though no default had occurred.

**§ 6310. Lien.**

A contract, other than for services, may not provide for a lien on goods that are fully paid for or have not been sold by the seller.

**§ 6311. Validity.**

A provision in a closed-end credit agreement or an open-end credit agreement that is prohibited by this chapter is void but does not otherwise affect the validity of the agreement.

**§ 6312. Discharge of obligation.**

Unless a buyer has notice of the actual or intended assignment of a closed-end credit agreement or an open-end credit agreement, payment made by the buyer to the last known holder of the agreement shall, to the extent of the payment, discharge the buyer's obligation.

**§ 6313. Prepayment of obligation.**

**(a) Right to prepay.--**Notwithstanding the provisions of a closed-end credit agreement or an open-end credit agreement, a buyer may prepay without additional charge at any time all or part of the time balance under the agreement.

**(b) Refund credit.--**

(1) Pursuant to a closed-end credit agreement and subject to this chapter, the seller or holder may accelerate the balance due on the agreement but shall provide a refund credit calculated as of the date of the acceleration if:

(i) the finance charges had been computed and added to the unpaid balance at the time the agreement was entered into; and

(ii) the entire time balance under the agreement is prepaid prior to maturity.

(2) The amount of the refund credit shall be computed by the actuarial method.

(3) If the amount of the refund credit is less than \$1, a refund does not need to be made.

**Cross References.** Section 6313 is referred to in section 6327 of this title.

**§ 6314. Acknowledgment of payment in full.**

Upon a buyer's request and after the payment of all sums for which the buyer is obligated under a closed-end credit agreement or an open-end credit agreement, the holder shall deliver or mail to the buyer at the buyer's last known address an instrument that:

(1) Acknowledges that the obligation of the buyer under the agreement has been paid in full.

(2) Releases all security in the goods under the agreement.

**SUBCHAPTER B**

**CLOSED-END CREDIT AGREEMENTS**

**Sec.**

6321. General rules.

6322. Contents.

6323. Copy of agreement.

6324. Agreement resulting from telephone or mail communications.

6325. Purchase money loan; notice.

6326. Statement to buyer.

6327. Refinancing.

6328. New payment schedule.

6329. Add-on sales.

**§ 6321. General rules.**

(a) **Entire agreement.**--Except as provided in section 6329(c) (relating to add-on sales), a closed-end credit agreement shall contain the entire agreement of the parties regarding the costs and terms of payment for the goods and services, including a promissory note or other evidence of indebtedness between the parties relating to the transaction.

(b) **Signature.**--A seller may not obtain the signature of the buyer on the agreement if the agreement contains blank spaces to be filled in after it has been signed.

(c) **Installments.**--A closed-end credit agreement may provide for unequal or irregular installments.

(d) **Incorporation by reference.**--A holder may, in a buyer's subsequent closed-end credit agreement, incorporate by reference the buyer's previous closed-end credit agreement and a description of the collateral for the items purchased under the previous agreement.

**§ 6322. Contents.**

Except as provided in section 6329 (relating to add-on sales), a closed-end credit agreement shall contain all of the following:

(1) One of the following headings at the top of the agreement or directly above the space reserved for the signature of the buyer:

(i) "Security Agreement" if the seller retains a security interest in the goods as security for the goods or services purchased.

(ii) "Lien Contract" if the seller obtains a lien on other goods or nonresidential real estate as security for the goods or services purchased.

(iii) "Closed-End Credit Agreement" if the seller does not obtain security for the goods or services purchased.

(2) The names of the seller and buyer.

(3) The place of business of the seller.

(4) The residence or place of business of the buyer as specified by the buyer.

(5) A description of the goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms but in detail sufficient to identify them, in a separate writing.

(6) The purchase price of the goods and services that are the subject matter of the sale.

(7) The amount of the buyer's down payment, including the following:

(i) An itemization of the amount paid in money and goods.

(ii) A brief description of traded-in goods.

(8) The difference between the purchase price under paragraph (6) and the amount under paragraph (7).

(9) The amount included for insurance, including the specific coverage and cost.

(10) The amount of official fees.

(11) The unpaid balance, which is the sum of the amounts under paragraphs (8), (9) and (10).

(12) The amount of the finance charge.

(13) The time balance, which is the sum of the unpaid balance under paragraph (11) and the amount under paragraph (12), and the following:

(i) The number of installments required.

(ii) The amount of each installment expressed in dollars.

(iii) The due date or period for each installment.

(14) The time sale price.

(15) The following notice provision:

NOTICE TO THE BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completely filled-in copy of this agreement. You have the right to pay off in advance the full amount due. Under certain conditions, you may obtain a partial refund of the finance charge.

(16) The following notice provision:

NOTICE

A holder of this agreement is subject to all the claims and defenses that the buyer could assert against the seller of goods or services obtained by this agreement or with the proceeds of this agreement. Recovery under this agreement by the buyer may not exceed the amount paid by the buyer under the agreement.

(17) A statement that the seller may collect from the buyer late fees, costs of collection, costs from nonaffiliated entities and charges for deferment and extension as provided for in this chapter.

**Cross References.** Section 6322 is referred to in section 6329 of this title.

**§ 6323. Copy of agreement.**

**(a) Delivery of copy.--**Except as provided in section 6324(b) (relating to agreement resulting from telephone or mail communications), a seller shall provide a legible and complete copy of a closed-end credit agreement to a buyer when the buyer executes the agreement.

**(b) Obligation of buyer.--**Until the seller completes the obligation under subsection (a), the buyer is obligated to pay only the purchase price under the agreement.

**(c) Acknowledgment.--**

(1) The seller shall present an acknowledgment to the buyer specifying that the buyer has received a copy of the agreement.

(2) The acknowledgment may be a separate document or contained in the agreement.

(3) If the acknowledgment is contained in the agreement, it shall appear directly above the space reserved for the buyer's signature.

(4) The buyer's written acknowledgment of delivery of a copy of the agreement in conformity with this subsection shall be a rebuttable presumption of delivery and compliance with this subsection in an action or proceeding by or against an assignee of the agreement without knowledge to the contrary when the agreement is purchased.

**Cross References.** Section 6323 is referred to in section 6324 of this title.

**§ 6324. Agreement resulting from telephone or mail communications.**

**(a) General rule.--**A closed-end credit agreement that is negotiated and entered into by a buyer and seller by telephone or mail is permitted under this subchapter and subject to this section if:

(1) the seller did not personally solicit the sale; and

(2) a catalog or other printed solicitation that is generally available to the public clearly sets forth the purchase price, time sale price and other terms regarding the sale of the goods or services.

**(b) Applicability.--**For a sale under this section, section 6323(a) (relating to copy of agreement) does not apply.

**(c) Seller's completion of agreement.--**If a seller under this section receives a closed-end credit agreement from a buyer and the agreement contains blank spaces, the seller may insert in the appropriate blank spaces the purchase price, time sale price and other terms regarding the sale of the goods or services, as set forth in the seller's current catalog or other printed solicitation.

**(d) Copy of agreement or statement.--**Prior to the due date of the first installment under the agreement, the seller shall furnish to the buyer either a legible and complete copy of the agreement or a written statement of the items inserted in the blank spaces described in subsection (c).

**Cross References.** Section 6324 is referred to in section 6323 of this title.

**§ 6325. Purchase money loan; notice.**

**(a) General rule.--**Unless an instrument that evidences or embodies a debt arising from a purchase money loan contains the notice under subsection (b):

(1) a purchase money lender may not take or receive the instrument; and

(2) a seller may not accept the proceeds of the purchase money loan as full or partial payment for the sale.

**(b) Notice.**--An instrument under subsection (a) shall contain the following notice:

NOTICE

A holder of this agreement is subject to all the claims and defenses that the buyer could assert against the seller of goods or services obtained with the proceeds of this agreement. Recovery under this agreement by the buyer may not exceed the amount paid by the buyer under the agreement.

**(c) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

**"Purchase money lender."** Either a seller or financing agency making or extending a purchase money loan.

**"Purchase money loan."** An advance that is received by a buyer in return for a finance charge or interest that is applied to a purchase of goods or services from a seller who is affiliated, by common control or business arrangement, with the person extending the credit to the buyer.

**§ 6326. Statement to buyer.**

**(a) Request; contents.**--At any time after the execution of a closed-end credit agreement and within one year after the last payment is made under the agreement, the holder of the agreement shall upon the good faith written request of the buyer promptly give or forward to the buyer a detailed written statement that accurately states the total unpaid amount under the agreement.

**(b) Copies.**--

(1) The buyer shall be furnished with one statement under this section each year without charge.

(2) The holder shall, upon request, furnish the buyer a duplicate copy of the statement upon payment of a reasonable fee not to exceed the cost of production.

**(c) Applicability.**--This section does not apply to a transaction in which, instead of periodic statements of account, the buyer is provided with a passbook or payment book in which payments, credits, charges and the unpaid balance are entered.

**§ 6327. Refinancing.**

**(a) General rule.**--Upon agreement in writing with the buyer, the holder of a closed-end credit agreement may refinance the payment of the unpaid time balance of the agreement by providing for a new schedule of installment payments.

**(b) Charges.**--

(1) The holder may contract for and collect the payment of a refinance charge by the buyer.

(2) A refinance charge shall be based on the amount refinanced and include the following:

(i) The additional cost of insurance and official fees incident to the refinancing.

(ii) The deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 6313 (relating to prepayment of obligation) if the buyer had prepaid in full the obligations under the agreement.

(3) A refinance charge may not exceed the rate of finance charges under section 6345 (relating to finance charges).

(4) Subject to section 6342 (relating to insurance), an agreement may provide for payment of the additional cost of or premiums for continuing insurance coverage under the contract until the maturity of the contract.

**(c) Contents of agreement.**--The refinancing agreement shall set forth all of the following:

- (1) The amount of the unpaid time balance to be refinanced.
- (2) The amount of a refund credit.
- (3) The amount to be refinanced after the deduction of the refund credit.
- (4) The amount of the finance charge under the refinancing agreement.
- (5) The additional cost of insurance and official fees to the buyer.
- (6) The new unpaid time balance.
- (7) The new schedule of installment payments.

**(d) Consolidation of contracts.**--If there is a consolidation of two or more agreements, the provisions of section 6329(a) and (b) (relating to add-on sales) apply.

**Cross References.** Section 6327 is referred to in sections 6352, 6353 of this title.

**§ 6328. New payment schedule.**

**(a) Right to new payment schedule.**--If a closed-end credit agreement provides for the payment of an installment that is more than double the amount of the average of the preceding installments, the buyer upon default of this installment shall have an absolute right to obtain a new payment schedule.

**(b) Payments.**--Unless agreed to by the buyer, the periodic payments under the new schedule may not be greater than the average of the preceding installments.

**§ 6329. Add-on sales.**

**(a) Add-on provisions.**--A closed-end credit agreement that includes an add-on sales provision shall comply with the requirements of this chapter and may contain the following provisions:

- (1) The seller may add subsequent purchases made by the buyer to the agreement.
- (2) The total price of the goods or services covered by the agreement shall be increased by the price of the additional goods or services.
- (3) The seller may increase finance charges and installment payments proportionately.
- (4) The terms and conditions of the agreement shall apply equally to the additional goods or services.
- (5) The goods purchased under the previous agreement shall be security for the goods purchased under the subsequent agreement but only until the time sale price under the previous agreement is fully paid.

**(b) Allocation.**--

- (1) When a subsequent purchase is made, the entire amount of all previously made payments is deemed to have been applied toward the payment of the previous time sale price.
- (2) A payment received after a subsequent purchase is made is deemed to be allocated to all the various time sale prices in the same proportion or ratio as the original purchase prices of the various purchases bear to one another.
- (3) If the amount of each installment payment is increased in connection with the subsequent purchase, the



subsequent payments at the seller's election may be deemed to be allocated as follows:

(i) An amount equal to the original installment payment to the previous time sale price.

(ii) An amount equal to the increase to the subsequent time sale price.

(4) The amount of an initial or down payment on a subsequent purchase is deemed to be allocated in its entirety to the subsequent purchase.

**(c) New agreement.**--When a subsequent purchase is made, the seller shall deliver to the buyer prior to the due date of the first installment a new agreement that sets forth all of the following:

(1) The information under section 6322(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) (relating to contents) as it relates to the subsequent purchase.

(2) The unpaid time balance of the prior agreement with the seller.

(3) The new unpaid balance, which is the sum of the amount under paragraph (2) and the amount described in section 6322(11) for the subsequent purchase.

(4) The consolidated time balance, which is the sum of the unpaid balance under paragraph (3) and the amount of the finance charge payable by the buyer to the seller, including the following:

(i) The number of installments required.

(ii) The amount of each installment expressed in dollars.

(iii) The due date or period for each installment.

(5) A statement that the seller is adding the subsequent purchase to the buyer's existing agreement in accordance with the provisions of that agreement.

**Cross References.** Section 6329 is referred to in sections 6321, 6322, 6327, 6333, 6353 of this title.

## SUBCHAPTER C

### OPEN-END CREDIT AGREEMENTS

#### Sec.

6331. Establishment.

6332. Requirements.

6333. Applicability and effect of subchapter.

#### § 6331. Establishment.

**(a) Seller.**--A seller may enter into an open-end credit agreement upon the request of a buyer or prospective buyer.

**(b) Financing agency.**--Subject to the other provisions of this chapter, a financing agency may enter into an open-end credit agreement on behalf of a seller from whom the financing agency may, with the buyer's consent, purchase or acquire the buyer's indebtedness, to be paid according to the agreement.

#### § 6332. Requirements.

**(a) Signature.**--A seller may not obtain the signature of a buyer on an application for an open-end credit agreement if it contains blank spaces to be filled in after it has been signed.

**(b) Separate agreement unnecessary.**--A buyer does not need to sign a separate account agreement when a new purchase is made under an existing agreement.

**(c) Heading.**--The following heading shall appear at the top of the agreement or directly above the space reserved for the signature of the buyer:

(1) "Security Agreement" if the seller retains a security interest in the goods as security for the goods or services purchased.

(2) "Lien Contract" if the seller obtains a lien on other goods or nonresidential real estate as security for the goods or services purchased.

(3) "Open-End Credit Agreement" if the seller does not obtain security for the goods or services purchased.

**(d) Entire agreement.**--The written agreement shall contain the entire agreement of the parties regarding the costs and terms of payment for the goods and services.

**§ 6333. Applicability and effect of subchapter.**

**(a) Security interest.**--This subchapter does not prohibit the execution of an agreement between a buyer and seller whereby the seller retains a security interest in goods sold to the buyer until full payment has been made.

**(b) Allocation.**--Section 6329(b) (relating to add-on sales) governs goods sold under an agreement under subsection (a).

**(c) Notes; third party rights.**--An open-end credit agreement may not require or entail the execution of a note by the buyer that when separately negotiated will eliminate as to a third party a right of action or defense that the buyer may have against the seller.

**SUBCHAPTER D**  
**COSTS AND CHARGES**

**Sec.**

6341. Applicability.

6342. Insurance.

6343. Late fees.

6344. Costs of collection.

6345. Finance charges.

6346. Costs from nonaffiliated entity.

6347. Extension and deferment.

6348. Interest rate after maturity.

**§ 6341. Applicability.**

A seller may contract for or collect a fee, expense or charge only if the fee, expense or charge is specifically set forth in this chapter.

**§ 6342. Insurance.**

**(a) Compliance with law.**--The following shall comply with the act of September 2, 1961 (P.L.1232, No.540), known as the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance:

(1) The seller and buyer, if:

(i) the cost of the insurance is included in the closed-end credit agreement; and

(ii) a separate charge is made to the buyer for the insurance.

(2) The seller or holder, if the insurance is to be procured by the seller or holder under an open-end credit agreement.

**(b) Separate charge; agreement.**--

(1) If the cost of insurance is to be separately charged to the buyer under an open-end credit agreement, the buyer and seller must so specify in a signed agreement.

(2) A copy of the agreement under paragraph (1) shall be given or furnished to the buyer.

(3) The agreement shall state whether the insurance is to be procured by the buyer, seller or holder.

**Cross References.** Section 6342 is referred to in sections 6302, 6327, 6347 of this title.

**§ 6343. Late fees.**

**(a) Closed-end credit agreement.--**

(1) A closed-end credit agreement may provide for the payment by the buyer of a late fee on each installment in default for a period of not less than ten days in an amount not in excess of 5% of the installment or \$10, whichever is less.

(2) Only one late fee may be collected on an installment regardless of the period that it remains in default.

**(b) Open-end credit agreement.--**A late fee may be assessed on an open-end credit agreement regarding each minimum payment not paid in full on the payment due date of the statement on which the minimum payment first appears.

**Cross References.** Section 6343 is referred to in sections 6302, 6309, 6352, 6353 of this title.

**§ 6344. Costs of collection.**

A closed-end credit agreement or an open-end credit agreement may provide for payment of actual and reasonable costs of collection only if any of the following occurs:

(1) If the goods are subject to a security interest, the goods are removed from this Commonwealth without the written permission of the holder.

(2) The buyer fails to notify the holder of a change of residence.

(3) The buyer fails to communicate with the holder for a period of 45 days after a default in making payments due under the agreement.

**Cross References.** Section 6344 is referred to in sections 6302, 6352, 6353 of this title.

**§ 6345. Finance charges.**

**(a) General rule.--**Pursuant to this section and the provisions of a closed-end credit agreement or an open-end credit agreement, a seller and holder may charge, receive and collect a finance charge.

**(b) Closed-end credit agreement.--**A finance charge under a closed-end credit agreement shall be:

(1) measured for a period between the date of the agreement and the due date of the last installment; and

(2) calculated for the period according to the actuarial method or the United States Rule method, at a rate agreed to by the buyer and the seller or holder.

**(c) Open-end credit agreement.--**

(1) Except as provided in paragraph (2), a finance charge on an open-end credit agreement:

(i) shall be computed based on the outstanding monthly balances; and

(ii) may not exceed the rate agreed to by the buyer and the seller or holder.

(2) A minimum finance charge of \$1 per month may be made for each month, if the finance charge so computed is less than that amount.

**Cross References.** Section 6345 is referred to in sections 6327, 6352, 6353 of this title.

**§ 6346. Costs from nonaffiliated entity.**

A closed-end credit agreement and an open-end credit agreement may provide for the reimbursement from a buyer of

costs for a service provided by an entity that is not otherwise affiliated with the seller or holder if all the following conditions exist:

- (1) The buyer requests that the seller or holder provide the service.
- (2) The service is for the convenience of the buyer.
- (3) The seller or holder contracts with the entity to provide the service to the buyer or other buyers.
- (4) The seller or holder actually incurs the costs of the service provided by the entity.
- (5) The costs incurred for the service are reasonable and necessary.
- (6) The reimbursement costs received from the buyer do not exceed the costs incurred by the seller or holder.

**Cross References.** Section 6346 is referred to in section 6302 of this title.

**§ 6347. Extension and deferment.**

(a) **General rule.**--Upon agreement with the buyer, the holder of a closed-end credit agreement or an open-end credit agreement may extend the scheduled due date or defer the scheduled payment of all or part of an installment payable under the agreement.

(b) **Charges.**--

(1) A charge may not be made for an extension or a deferment unless the extension or deferment agreement is in writing and signed by the parties.

(2) Subject to paragraph (3), the holder may contract for and collect the payment of an extension or deferment charge from the buyer.

(3) Except as provided in paragraph (4), the charge under paragraph (2) may not exceed an amount equal to 1.5% per month simple interest on the full amount or part of the installment for the extension or deferment period, which may not exceed the period:

(i) from the date when the extended or deferred installment would have been payable in the absence of the extension or deferment; and

(ii) to the date when the installment is made payable under the extension or deferment agreement.

(4) A minimum charge of \$10 for the extension or deferment period may be made if the computed extension or deferment charge amounts to less than \$10.

(5) Subject to section 6342 (relating to insurance), the agreement may provide for payment of the additional cost of or premiums for continuing insurance coverage under the agreement until the end of the extension or deferment period.

**Cross References.** Section 6347 is referred to in sections 6302, 6309, 6352, 6353 of this title.

**§ 6348. Interest rate after maturity.**

If a balance remains unpaid at the expiration of the scheduled maturity date of a closed-end credit agreement, the rate of the finance charge for the period beginning at the date of the maturity until payment in full may not exceed the rate of the finance charge under the original agreement.

**Cross References.** Section 6348 is referred to in sections 6352, 6353 of this title.

**Sec.**

- 6351. Willful and intentional violations.
- 6352. Noncompliance; costs and charges.
- 6353. Willful violations regarding finance charges.
- 6354. Corrections.
- 6355. Unfair trade practice.

**§ 6351. Willful and intentional violations.**

A person who willfully and intentionally violates or directs or consents to the violation of a provision of this chapter commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both.

**§ 6352. Noncompliance; costs and charges.**

**(a) Bar to recovery.**--If a seller fails to comply with the provisions of this chapter, the seller or holder who acquires a closed-end credit agreement or an open-end credit agreement with knowledge of the noncompliance is barred from recovery of the following costs and charges imposed in connection with the agreement:

- (1) Refinance charges under section 6327 (relating to refinancing).
- (2) Late fees under section 6343 (relating to late fees).
- (3) Costs of collection under section 6344 (relating to costs of collection).
- (4) Finance charges under section 6345 (relating to finance charges).
- (5) Extension and deferment charges under section 6347 (relating to extension and deferment).
- (6) Interest after maturity under section 6348 (relating to interest rate after maturity).

**(b) Remedy of buyer.**--The buyer shall have the right to recover from the person under subsection (a) an amount equal to the charges under subsection (a) that were paid by the buyer.

**Cross References.** Section 6352 is referred to in section 6306 of this title.

**§ 6353. Willful violations regarding finance charges.**

**(a) Penalty.**--If a seller or holder willfully violates a provision of this chapter regarding the imposition, computation or disclosure of a finance charge on a consolidated total of two or more agreements under section 6329 (relating to add-on sales), the buyer may recover from the seller or holder an amount equal to three times the total of the following, which have been actually paid by the buyer:

- (1) Refinance charges under section 6327 (relating to refinancing).
- (2) Late fees under section 6343 (relating to late fees).
- (3) Costs of collection under section 6344 (relating to costs of collection).
- (4) Finance charges under section 6345 (relating to finance charges).
- (5) Extension and deferment charges under section 6347 (relating to extension and deferment).
- (6) Interest after maturity under section 6348 (relating to interest rate after maturity).

**(b) Bar to recovery.**--If a violation has occurred under this section, the seller or holder is barred from the recovery of the costs and charges under subsection (a).

**§ 6354. Corrections.**

(a) **General rule.**--Notwithstanding the provisions of this chapter and subject to subsection (b), a seller or holder may correct a failure to comply with a provision of this chapter in accordance with this section unless a willful violation has occurred.

(b) **Concurrence by buyer.**--A correction that will increase the amount owed by the buyer or the amount of a payment is not permitted unless the buyer concurs in writing with the correction.

(c) **No liability.**--If a seller or holder corrects a violation in accordance with this section, the seller and holder are not subject to penalty under this subchapter.

(d) **Delivery.**--Within 30 days of the execution of the original closed-end credit agreement or open-end credit agreement by the buyer, a correction may be delivered to the buyer in the form of a corrected copy of the agreement.

(e) **Credit.**--An amount improperly collected from the buyer shall be:

(1) credited against the indebtedness evidenced by the agreement; or

(2) refunded to the buyer if the debt has already been satisfied.

#### **§ 6355. Unfair trade practice.**

A violation of any provision of this chapter shall be deemed to be a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

### **PART X**

#### MISCELLANEOUS PROVISIONS

### **PART IX**

#### MISCELLANEOUS PROVISIONS

#### **Chapter**

97. Foreign Currency

98. Assembled Industrial Plant Doctrine

**Part Heading.** The heading of Part IX was added November 27, 2013, P.L.1081, No.98, effective in one year.

### **CHAPTER 97**

#### FOREIGN CURRENCY

#### **Sec.**

9701. Continuity of contract under European monetary union.

**Enactment.** Chapter 97 was added December 3, 1998, P.L.939, No.122, effective immediately.

**§ 9701. Continuity of contract under European monetary union.**

(a) **Continuity of contract.**--

(1) If a subject or medium of payment of a contract, security or instrument is a currency that has been substituted or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either:

(i) used in determining the value of that currency;

or

(ii) tendered;

in each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.

(2) If a subject or medium of payment of a contract, security or instrument is the ECU, the euro will be a commercially reasonable substitute and substantial equivalent that may be either:

(i) used in determining the value of that currency;

or

(ii) tendered;

in each case at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.

(3) Performance of any of the obligations described in paragraph (1) or (2) may be made in the currency or currencies originally designated in the contract, security or instrument so long as the currency or currencies remain legal tender or in euro, but not in any other currency, whether or not the other currency:

(i) has been substituted or replaced by the euro;

or

(ii) is a currency that is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

**(b) Effect of currency substitution on performance.**--None of the following shall have the effect of discharging or excusing performance under any contract, security or instrument or give a party the right unilaterally to alter or terminate any contract, security or instrument:

(1) Introduction of the euro.

(2) Tender of euros in connection with any obligation in compliance with subsection (a)(1) or (2).

(3) Determination of the value of any obligation in compliance with subsection (a)(1) or (2).

(4) Calculation or determination of the subject or medium of payment of a contract, security or instrument with reference to an interest rate or other basis that has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent.

**(c) References to ECU in contracts.**--When the euro first becomes the monetary unit of participating member states of the European Union, references to the ECU in a contract, security or instrument that also refers in substance to the definition of the ECU as set forth in subsection (g) shall be replaced by references to the euro at a rate of one euro to one ECU. References to the ECU in a contract, security or instrument without such a definition of the ECU shall be presumed, rebuttable by proof of the contrary intention of the parties, to be references to the currency basket that is from time to time used as the unit of account of the European Community.

**(d) Effect of agreements.**--This section shall not alter or impair and shall be subject to any agreements between parties with specific reference to the introduction of the euro.

**(e) Application.**--Notwithstanding the provisions of Title 13 (relating to commercial code) or any other law of this Commonwealth, this section shall apply to all contracts, securities and instruments, including contracts with respect to commercial transactions, and shall not be deemed to be displaced by any other law of this Commonwealth.

**(f) No application to other currency alteration.**--In circumstances of currency alteration other than the introduction

of the euro, this section shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of contracts, securities or instruments denominated in whole or part in a currency affected by that alteration.

**(g) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"ECU" or "European currency unit." The currency basket that is from time to time used as the unit of account of the European Community, as defined in European Council Regulation No.3320/94.

"Euro." The currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty on European Union signed February 7, 1992.

"Introduction of the euro." Includes, but is not limited to, the implementation from time to time of economic and monetary union in member states of the European Union in accordance with the Treaty on European Union signed February 7, 1992.

## CHAPTER 98

### ASSEMBLED INDUSTRIAL PLANT DOCTRINE

#### Sec.

9801. Assembled industrial plant doctrine abolished.

**Enactment.** Chapter 98 was added June 8, 2001, P.L.123, No.18, effective July 1, 2001.

#### **§ 9801. Assembled industrial plant doctrine abolished.**

**(a) General rule.**--The assembled industrial plant doctrine, sometimes referred to as the integrated industrial plant doctrine or the integrated industrial mortgage doctrine, is abolished. Whether personal property placed or installed in an industrial, commercial or other establishment is a fixture shall be determined by other law.

**(b) Eminent domain not affected.**--Subsection (a) shall not be construed to affect the application of the assembled economic unit doctrine in the context of eminent domain.

**(c) Applicability.**--This section shall not apply to actions or proceedings commenced before the effective date of this section, nor shall it affect construction of a mortgage or other instrument creating an interest in real estate entered into before the effective date of this section. Subsection (a) shall not be construed to affirm the continuing applicability or scope of the assembled industrial plant doctrine before the effective date of this section.

## APPENDIX TO TITLE 12 COMMERCE AND TRADE

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**Supplementary Provisions of Amendatory Statutes**  
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1993, DECEMBER 3, P.L.479, NO.70

§ 2. Statutory construction.



In applying and construing 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers), added by this act, comments or reports of the type referred to in 1 Pa.C.S. § 1939 (relating to use of comments and reports) shall control in the event of a conflict between such comments or reports and the policy of uniformity provided under 1 Pa.C.S. § 1927 (relating to construction of uniform laws).

**Explanatory Note.** Act 70 added Chapter 51 of Title 12.

**§ 4. Applicability.**

This act shall apply to transfers made or obligations incurred on or after the effective date of this act. With respect to transfers made or obligations incurred prior to the effective date of this act, the law in effect at the time the transfer was made or the obligation was incurred shall apply. For purposes of this section, transfers shall be deemed made and obligations shall be deemed incurred at the times provided in 12 Pa.C.S. § 5106 (relating to when transfer is made or obligation is incurred).

**2004, FEBRUARY 12, P.L.99, NO.12**

**§ 1. Legislative findings and declarations.**

The General Assembly finds and declares as follows:

(1) An economic stimulus program which provides direct immediate economic assistance to Pennsylvania businesses, industries, communities, their instrumentalities and economic development organizations is necessary for the preservation and creation of jobs within this Commonwealth.

(2) By targeting grant and loan assistance to these entities for job creation and site development, the Commonwealth will trigger needed redevelopment and economic growth within this Commonwealth.

(3) By targeting assistance to the greatest extent possible to previously used sites, the Commonwealth can foster the redevelopment of older communities, the reuse of industrial brownfield sites and the protection of open space while encouraging more efficient and effective use of existing environmental infrastructure, improving the environment and protecting the general public health and safety.

(4) By expanding tax-based financing of economic development projects, the Commonwealth will assist communities in retaining and recruiting employers to this Commonwealth.

(5) By targeting grant and loan assistance to the tourism and agriculture sectors of the Commonwealth's economy, the Commonwealth will provide additional financial support to those leading Commonwealth industries hard hit by world events and economic instability.

(6) By targeting capital investment to emerging and growth sector business, the Commonwealth will stimulate the growth and increase the stability of businesses within this Commonwealth.

(7) By preparing communities within this Commonwealth for the Federal Base Realignment and Closure (BRAC) process, the Commonwealth will increase the number of existing jobs it retains during the next round of Federal base realignment and closures.

**Explanatory Note.** Act 12 added Parts I, II and III of Title 12.

**§ 4. Continuation of prior law.**

Chapters 3, 7, 13, 17 and 30 of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, are continued by this codification as follows:

(1) The addition of 12 Pa.C.S. Ch. 3 is a continuation of Chapter 3 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 3, all activities initiated under Chapter 3 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 3. Orders, regulations, rules and decisions which were made under Chapter 3 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(i) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 3. Contracts, obligations and collective bargaining agreements entered into under Chapter 3 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 3 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 3 and Chapter 3 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 3 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to the addition of 12 Pa.C.S. § 303.

(2) The addition of 12 Pa.C.S. Ch. 5 is a continuation of Chapter 17 of the Job Enhancement Act. The following apply:

(i) All activities initiated under Chapter 17 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 5. Orders, regulations, rules and decisions which were made under Chapter 17 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(iv) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 5. Contracts, obligations and collective bargaining agreements entered into under Chapter 17 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 17 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 5 and Chapter 17 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 17 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to the following:

(A) The addition of 12 Pa.C.S. § 502.

(B) The addition of 12 Pa.C.S. § 503.

(iv) The members of Small Business Council in office on the effective date of section 3(2)(iv) of this act

shall continue in office under the addition of 12 Pa.C.S. Ch. 5.

(3) The addition of 12 Pa.C.S. Ch. 21 is a continuation of Chapter 7 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 21, all activities initiated under the Chapter 7 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 21. Orders, regulations, rules and decisions which were made under Chapter 7 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(ii) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 21. Contracts, obligations and collective bargaining agreements entered into under Chapter 7 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 7 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 21 and Chapter 7 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 7 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to any of the following provisions:

(A) The addition of 12 Pa.C.S. § 2106(2).

(B) The addition of 12 Pa.C.S. § 2109.

(4) The addition of 12 Pa.C.S. Ch. 23 is a continuation of Chapter 13 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 23, all activities initiated under Chapter 13 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 23. Orders, regulations, rules and decisions which were made under Chapter 13 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(iii) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 23. Contracts, obligations and collective bargaining agreements entered into under Chapter 13 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 13 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 23 and Chapter 13 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 13 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to any of the following provisions:

(A) The addition of 12 Pa.C.S. § 2305(a).

(B) The addition of 12 Pa.C.S. § 2306(a), (b), (c) and (e).

(C) The addition of 12 Pa.C.S. § 2308(a), (b) and (c).

(D) The addition of 12 Pa.C.S. § 2309(b).

(E) The addition of 12 Pa.C.S. § 2310(b).

(iv) In continuation of section 1302 of the Job Enhancement Act, all funds, accounts, assets, encumbrances and liabilities located in or associated with the Air Quality Improvement Fund, the Storage Tank Loan Fund and the Recycling Incentive Development Account shall be transferred to the Pollution Prevention Assistance Account and shall be administered in accordance with 12 Pa.C.S. §§ 2304 and 2309. The Department of Community and Economic Development shall report annually to the Department of Environmental Protection on the status of the Pollution Prevention Assistance Account and the loans made under 12 Pa.C.S. § 2309.

(v) In continuation of section 1309(a) of the Job Enhancement Act, as of July 1, 1997, all funds, accounts, assets, encumbrances and liabilities located in or associated with the Capital Loan Fund shall be transferred to the Small Business First Fund and shall thereafter be administered in accordance with 12 Pa.C.S. Ch. 23.

(vi) In continuation of section 1309(b) of the Job Enhancement Act, annually on July 1, the State Treasurer may transfer, upon approval by the Governor, up to \$2,000,000 from the Hazardous Sites Cleanup Fund into the Pollution Prevention Assistance Account. This transfer shall be in addition to other appropriations, Federal funding and private contributions received by the account.

(5) The addition of 12 Pa.C.S. Ch. 29 is a continuation of Chapter 30 of the Job Enhancement Act. The following apply:

(i) Except as otherwise provided in 12 Pa.C.S. Ch. 29, all activities initiated under Chapter 30 of the Job Enhancement Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 29. Orders, regulations, rules and decisions which were made under Chapter 30 of the Job Enhancement Act and which are in effect on the effective date of section 2(1)(v) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 29. Contracts, obligations and collective bargaining agreements entered into under Chapter 30 of the Job Enhancement Act are not affected nor impaired by the repeal of Chapter 30 of the Job Enhancement Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 12 Pa.C.S. Ch. 29 and Chapter 30 of the Job Enhancement Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Chapter 30 of the Job Enhancement Act.

(iii) Subparagraph (ii) does not apply to any of the following:

(A) The addition of the definitions of "business enterprise" and "medical facility" in 12 Pa.C.S. § 2902.

(B) The addition of 12 Pa.C.S. § 2905(a) and (c).

(C) The following provisions in the addition of 12 Pa.C.S. § 2906:

(I) Subsection (c)(3), (4) and (8).

(II) The introductory paragraph of subsection (e).

(D) The following provisions in the addition of 12 Pa.C.S. § 2911:

(I) The introductory paragraph of subsection (a).

(II) Paragraphs (2), (3), (4) and (5) of subsection (a).

(E) The addition of 12 Pa.C.S. § 2912.

**§ 5. Appropriation to Base Retention and Conversion  
Pennsylvania Action Committee (Repealed).**

**2004 Repeal.** Section 5 was repealed April 1, 2004, P.L.163, No.22, effective immediately.

**2004, FEBRUARY 19, P.L.143, NO.14**

**§ 3. Construction and application of law.**

In applying and construing 12 Pa.C.S. Ch. 53, comments or reports of the type referred to in 1 Pa.C.S. § 1939 shall control in the event of a conflict between such comments or reports and the policy of uniformity provided under 1 Pa.C.S. § 1927.

**Explanatory Note.** Act 14 added Chapter 53 of Title 12 and amended section 3930 of Title 18.

**§ 4. Misappropriations occurring prior to Act 14.**

This act shall not apply to misappropriation occurring prior to the effective date of this act, including a continuing misappropriation that began prior to the effective date of this act and which continues to occur after the effective date of this act.

**2004, NOVEMBER 30, P.L.1708, NO.218**

**§ 6. Applicability.**

The following shall apply:

(1) In order to facilitate the repair or rehabilitation of existing water and wastewater systems, the Commonwealth shall, by December 31, 2005, incur not less than \$50,000,000 nor more than \$100,000,000 of additional debt from the debt authorized under the act of March 16, 1992 (P.L.10, No.5), known as the Small Water Systems Assistance Act, and approved by the electorate at the April 28, 1992, General Election. The additional debt shall be incurred by the issuance of general obligation bonds issued in accordance with section 17 of the act of March 1, 1988 (P.L.82, No.16), known as the Pennsylvania Infrastructure Investment Authority Act.

(2) Proceeds from the sale of bonds required by paragraph (1) shall be transferred to the Pennsylvania Infrastructure Investment Authority.

(3) The Pennsylvania Infrastructure Investment Authority shall use the proceeds from the sale of bonds required by paragraph (1) to finance projects of existing water and wastewater systems which, when complete, do any of the following:

(i) Repair, rehabilitate or modernize existing water or wastewater systems to meet environmental or public health standards.

(ii) Eliminate existing combined or sanitary wastewater overflow problems.

(iii) Construct water or wastewater infrastructure to improve public health or eliminate environmental concerns.

(iv) Construct wastewater infrastructure utilizing nutrient reduction technology.

**Explanatory Note.** Act 218 amended or added sections 3402, 3404, 3405 and 3406 and Chapter 39 of Title 12.

**2013, NOVEMBER 27, P.L.1081, NO.98**

**§ 8. Applicability.**

The following apply:

(1) The remedies under 12 Pa.C.S. Ch. 62 for violations of a provision of 12 Pa.C.S. Ch. 62 are not exclusive and shall be in addition to other procedures or remedies for a violation or conduct provided for in other law.

(2) The provisions of 12 Pa.C.S. Ch. 62 shall apply to any license, license renewal and license application issued or made on or after the effective date of this act.

(3) The provisions of 12 Pa.C.S. Ch. 62 do not apply to or affect the validity of the following:

(i) A license issued prior to the effective date of this act.

(ii) A contract that is otherwise within the purview of 12 Pa.C.S. Ch. 62 and was made prior to the effective date of this act.

(4) Nothing in 12 Pa.C.S. Ch. 63 shall affect the validity of an agreement or contractual relationship entered into prior to April 1, 1967, except that a rate in excess of that allowed by 12 Pa.C.S. Ch. 63 shall be reduced to the permissible rate on or before April 1, 1967.

(5) The remedies under 12 Pa.C.S. Ch. 63 for violation of a provision of 12 Pa.C.S. Ch. 63 are not exclusive and shall be in addition to other procedures or remedies for a violation or conduct provided for in other law.

**Explanatory Note.** Act 98 amended or added sections 6102 and 6112 of Title 7, Part IV heading, Part V and Part IX heading of Title 12 and sections 6902 and 6911 of Title 42.

**2014, OCTOBER 22, P.L.2569, NO.161**

**§ 1. Legislative findings and declarations.**

The General Assembly finds and declares as follows:

(1) The successful operation and enhancement of the active, reserve and the National Guard components of our nation's military are essential to the well-being and safety of our nation and to the citizens of this Commonwealth.

(2) The United States military installations, organizations and defense-related regions comprised of military bases and supporting private sector enterprises located in this Commonwealth are of vital importance to the efficient and effective operation of the various branches

of the military and are a significant contributor to the Commonwealth's economy.

(3) There is a need to have an integrated approach among Federal, State and local agencies, the general public and private businesses in the economic enhancement and preservation of the military installations and organizations.

(4) The Commonwealth shall promote the health, safety, employment, business opportunities, economic activity and general welfare of our citizens by establishing, within the Department of Community and Economic Development, a commission to carry out these goals.

**Explanatory Note.** Act 161 amended, added, repealed or deleted section 302, Chapter 4, sections 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2310.1, 2311, 2902, 2903, 2905, 2906, 2907, 2908, 2909, 2910, 2911 and 2912, Chapter 30 and the Part IV heading of Title 12 and the heading and Subchapters A, B, C, D of Chapter 11 of Title 64.

#### **§ 11. Continuation of prior law.**

The addition of 12 Pa.C.S. Ch. 30 is a continuation of sections 6, 7 and 7.1 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act. Except as otherwise provided in 12 Pa.C.S. Ch. 30, all activities initiated under sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act shall continue and remain in full force and effect and may be completed under 12 Pa.C.S. Ch. 30. Orders, regulations, rules and decisions which were made under sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act and which are in effect on the effective date of section 10(2)(ii), (iii) and (iv) of this act shall remain in full force and effect until revoked, vacated or modified under 12 Pa.C.S. Ch. 30. Contracts, obligations and collective bargaining agreements entered into under sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act are not affected nor impaired by the repeal of sections 6, 7 and 7.1 of the Pennsylvania Industrial Development Authority Act.

**2017, DECEMBER 22, P.L.1249, NO.78**

#### **§ 7. Applicability.**

This act shall apply as follows:

(1) This act shall apply to transfers made or obligations incurred on or after the effective date of this act.

(2) This act shall not apply to transfers made or obligations incurred before the effective date of this act.

(3) This act shall not apply to rights of action that have accrued before the effective date of the enacting legislation.

(4) For a purpose specified under this section, transfers are made and obligations are incurred at the time provided under 12 Pa.C.S. § 5106.

**Explanatory Note.** Act 78 amended, added or renumbered the heading of Chapter 51 and sections 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112, 5113 and 5114 of Title 12 and section 4352 of Title 23.