

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1255 Session of
1973

INTRODUCED BY ZEMPRELLI, LAMB, COPPERSMITH, HILL, MAZZEI, HOLL,
ORLANDO, ROVNER, ROSS AND SCALES, OCTOBER 26, 1973

REFERRED TO BANKING, OCTOBER 29, 1973

AN ACT

1 Regulating agreements for the loan or use of money; establishing
2 a maximum lawful interest rate in the Commonwealth; providing
3 for a legal rate of interest; detailing exceptions to the
4 maximum lawful interest rate for residential mortgages and
5 Federally guaranteed loans; providing protections to debtors
6 to whom loans are made including the provision for disclosure
7 of facts relevant to the making of residential mortgages and
8 the sale of residential property, provision for notice of
9 intention to foreclose and establishment of a right to cure
10 defaults on residential mortgage obligations, provision for
11 the payment of attorney's fees with regard to residential
12 mortgage obligations; prohibiting confession of judgment;
13 prohibiting waiver of provisions of this act, specifying
14 powers and duties of the Secretary of Banking, and
15 establishing remedies and providing penalties for violations
16 of this act.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 ARTICLE I

20 Preliminary Provisions

21 Section 101. Definitions.--As used in this act:

22 "Actual settlement costs" means reasonable sums paid for
23 title insurance premium, other insurance premiums except
24 mortgage credit insurance premiums, title examination fee,
25 credit report, appraisal, recording documents, actual legal

1 services on behalf of the borrower, conveyancing, surveying,
2 engineering, inspections, notary and for use of settlement
3 facilities.

4 "Finance charge" means the total cost of a loan or charge for
5 the use of money, which shall be amortized over the contract
6 term of the loan, including any extensions or grant of credit
7 regardless of the characterization of the same and includes any
8 interest, points, premiums, finder's fees, mortgage credit
9 insurance, and other charges levied directly or indirectly
10 against the person obtaining the loan or against the seller,
11 lender, mortgagee or any other party to the transaction except
12 any actual settlement costs and charges or premiums for
13 insurance against loss or damage to property or against
14 liability arising out of the use or ownership of property. The
15 finance charges plus the actual settlement costs charged by the
16 residential mortgage lender shall include all charges made by
17 the residential mortgage lender to the residential mortgage
18 debtor other than the principal of the loan.

19 "Monthly Index of Long Term United States Government Bond
20 Yields" means the monthly unweighted average of the daily
21 unweighted average of the closing bid yield quotations in the
22 over the counter market for all outstanding United States
23 Treasury Bond issues, based on available statistics, which are
24 either maturing or callable in ten years or more. This index is
25 expressed in terms of percentage interest per annum.

26 "Mortgage commitment" means a legally binding obligation to
27 loan money on the security of a residential mortgage.

28 "Person" means an individual, corporation, business trust,
29 estate trust, partnership or association or any other legal
30 entity, and shall include but not be limited to residential

1 mortgage lenders.

2 "Residential mortgage" means an obligation to pay a sum of
3 money in an original bona fide principal amount of fifty
4 thousand dollars (\$50,000) or less, evidenced by a security
5 document and secured by a lien upon real property located within
6 this Commonwealth containing two or fewer residential units or
7 on which two or fewer residential units are to be constructed
8 and shall include such an obligation on a residential
9 condominium unit.

10 "Residential mortgage debtor" means an individual mortgagor
11 who is obligated to a residential mortgage lender to repay in
12 whole or in part a residential mortgage and a successor record
13 owner of the property, if any.

14 "Residential mortgage intermediary" means a real estate
15 broker, mortgage broker or other person receiving directly or
16 indirectly from a residential mortgage lender a finder's fee,
17 commission, placement fee, service charge or other compensation
18 other than actual settlement costs in conjunction with the
19 issuance of a residential mortgage or mortgage commitment.

20 "Residential mortgage lender" means any person who lends
21 money or extends or grants credit and obtains a residential
22 mortgage to assure payment of the debt. The term shall also
23 include the holder at any time of a residential mortgage
24 obligation.

25 "Security document" means a mortgage, deed of trust, real
26 estate sales contract or other document creating upon
27 recordation a lien upon real estate.

28 ARTICLE II

29 Maximum Lawful Interest Rate

30 Section 201. Maximum Lawful Interest Rate.--Except as

1 provided in Article III of this act, the maximum lawful rate of
2 interest for the loan or use of money in an amount of fifty
3 thousand dollars (\$50,000) or less in all cases where no express
4 contract shall have been made for a less rate shall be six per
5 cent per annum.

6 Section 202. Legal Rate of Interest.--Reference in any law
7 or document enacted or executed heretofore or hereafter to
8 "legal rate of interest" and reference in any document to an
9 obligation to pay a sum of money "with interest" without
10 specification of the applicable rate shall be construed to refer
11 to the rate of interest of six per cent per annum.

12 ARTICLE III

13 Exceptions to Maximum Lawful Interest Rate

14 Section 301. Residential Mortgage Interest Rates.--(a) The
15 General Assembly hereby finds that it is necessary and
16 appropriate to establish a flexible maximum lawful interest rate
17 for residential mortgages, as defined in this act, and that the
18 Monthly Index of Long Term United States Government Bond Yields
19 is an appropriate basis on which such a maximum rate of interest
20 may be established and that the monthly index of such long term
21 United States Government Bond Yields compiled by the Board of
22 Governors of the Federal Reserve System and as published by said
23 Board of Governors in the monthly Federal Reserve Bulletin
24 accurately reflects this function.

25 (b) The maximum lawful rate of interest for residential
26 mortgages, as defined in this act, entered into or contracted
27 for during any calendar month shall be equal to the Monthly
28 Index of Long Term United States Government Bond Yields for the
29 second preceding calendar month plus an additional two and one-
30 half per cent per annum rounded off to the nearest quarter of

1 one per cent per annum.

2 (c) On or before the twentieth day of each month, the
3 Secretary of Banking (i) shall determine, based on available
4 statistics, the Monthly Index of Long Term United States
5 Government Bond Yields for the preceding calendar month; and
6 (ii) shall determine the maximum lawful rate of interest for
7 residential mortgages for the next succeeding month, as defined
8 in subsection (b) of this section, and shall cause such maximum
9 lawful rate of interest to be filed with the Legislative
10 Reference Bureau for publication in the Pennsylvania Bulletin;
11 such maximum lawful rate of interest to be effective on the
12 first day of the next succeeding month.

13 (d) The total finance charges payable by the residential
14 mortgage debtor shall not exceed the maximum lawful rate of
15 interest for residential mortgages established in section 301
16 (b). The maximum lawful rate of interest at the contract rate
17 shall remain the constant rate for the term of the residential
18 mortgage.

19 (e) In all proceedings and in all legal actions, the maximum
20 lawful rate of interest for all residential mortgages, as
21 defined in this act, as published in the Pennsylvania Bulletin
22 by the Secretary of Banking shall be the maximum lawful rate of
23 interest for residential mortgages, as defined in this act.

24 (f) The maximum lawful rate of interest set forth in this
25 section and in section 201 of this act shall not apply to (i) an
26 obligation to pay a sum of money in an original bona fide
27 principal amount of more than fifty thousand dollars (\$50,000);
28 (ii) an obligation to pay a sum of money in an original bona
29 fide principal amount of less than fifty thousand dollars
30 (\$50,000), evidenced by a security document and secured by a

1 lien upon real property, other than a residential mortgage as
2 defined in this act or (iii) to a loan to a person subject to
3 the act of April 27, 1927 (P.L.404, No.260), entitled "An act
4 prohibiting corporations from pleading usury as a defense,"
5 section 313 of the act of May 5, 1933 (P.L.364, No.106), known
6 as the "Business Corporation Law," or Title 15 Pa.S. section
7 7544.

8 Section 302. Federally Guaranteed Loans.--The maximum lawful
9 rate of interest prescribed in sections 201 and 301 of this act
10 shall not apply to any loan insured or guaranteed in whole or in
11 part by the Federal Housing Administration, the Veterans
12 Administration or any other department or agency of the United
13 States Government: Provided, That any such loan is subject to a
14 maximum rate of interest established by law or by such
15 department or agency.

16 Section 303. Commitments to Enter Into Residential
17 Mortgages.--A residential mortgage commitment which provides for
18 consummation within some future time following the issuance of
19 the mortgage commitment may be consummated pursuant to the
20 provisions, including interest rate, of such commitment
21 notwithstanding the fact that the maximum lawful rate of
22 interest at the time the residential mortgage is entered into is
23 less than the commitment rate of interest, provided:

24 (1) The commitment rate of interest does not exceed the
25 maximum lawful interest rate in effect on the date the mortgage
26 commitment was issued;

27 (2) The mortgage commitment constituted a legally binding
28 obligation on the part of the residential mortgage lender to
29 make a residential mortgage loan within a specified time period
30 in the future.

1 ARTICLE IV

2 Protective Provisions

3 Section 401. Disclosure Requirements.--(a) Any residential
4 mortgage lender shall, at the time of issuance of a mortgage
5 commitment but at least ten days prior to consummation of a
6 residential mortgage, disclose to the residential mortgage
7 debtor or send to the residential mortgage debtor under such
8 circumstances that the disclosure would normally be received
9 five business days prior to consummation of the residential
10 mortgage, the finance charge, an estimated total of the actual
11 settlement costs to be paid by the residential mortgage debtor
12 at settlement, the actual settlement costs charged by the
13 residential mortgage lender, plus the number, amount and due
14 date or periods of payments scheduled to repay the entire
15 indebtedness, and the sum of such payments using the term "total
16 of payments," and the existence, identity and compensation, if
17 any, paid directly or indirectly by the residential mortgage
18 lender to a residential mortgage intermediary.

19 (b) The disclosure provided for in section 401 shall be made
20 in the manner provided by the Secretary of Banking by
21 regulation. The disclosure shall clearly and conspicuously set
22 forth all required disclosure information.

23 Section 402. Discount Points Prohibited.--With the exception
24 of those residential mortgages insured in whole or in part by
25 the Federal Government, or agency thereof, as enumerated in
26 section 302 of this act, it shall be unlawful for a residential
27 mortgage lender or any other person to make any charge, whether
28 or not denominated as "discount points" to be paid by the seller
29 of real estate that directly or indirectly affects the ability
30 of the buyer of the real estate to secure a residential

1 mortgage.

2 Section 403. Notice of Intention to Foreclose.--(a) Before
3 any residential mortgage lender may accelerate the maturity of
4 any residential mortgage obligation, commence any legal action
5 including mortgage foreclosure to recover any such obligation,
6 or take possession of any security of the residential mortgage
7 debtor for such residential mortgage obligation, such person
8 shall give the residential mortgage debtor notice of such
9 intention at least thirty days in advance as provided in this
10 section.

11 (b) Notice of intention to take action as specified in
12 subsection (a) of this section shall be in writing, sent to the
13 residential mortgage debtor by registered or certified mail at
14 his last known address and, if different, at the residence which
15 is the subject of the residential mortgage.

16 (c) The written notice shall clearly and conspicuously
17 state:

18 (1) The particular obligation or real estate security
19 interest;

20 (2) The nature of the default claimed;

21 (3) The right of the debtor to cure the default as provided
22 in section 404 of this act and exactly what performance
23 including what sum of money, if any, must be tendered to cure
24 the default;

25 (4) The method of computing the time within which the debtor
26 must cure the default;

27 (5) The possibility of and the method by which the debtor's
28 ownership or possession of the real estate may be terminated;
29 and

30 (6) The right of the debtor, if any, to transfer the real

1 estate to another person subject to the security interest or to
2 refinance the obligation and of the transferee's right, if any,
3 to cure the default.

4 Section 404. Right to Cure a Default.--(a) Notwithstanding
5 the provisions of any other law, after a notice of intention to
6 foreclose has been given pursuant to section 403 of this act, at
7 any time before the issuance of a judgment or decree of judicial
8 foreclosure or like action on a residential mortgage obligation,
9 the residential mortgage debtor or anyone in his behalf, may
10 cure his default and prevent sale or other disposition of the
11 real estate and avoid acceleration, if any, by tendering the
12 amount or performance specified in subsection (b) of this
13 section.

14 (b) To cure a default under this section, a residential
15 mortgage debtor shall:

16 (1) Pay or tender all sums which would have been due in the
17 absence of default and the exercise of an acceleration clause,
18 if any;

19 (2) Perform any other obligation which he would have been
20 bound to perform in the absence of default or the exercise of an
21 acceleration clause, if any;

22 (3) Pay or tender the reasonable costs of proceeding to
23 foreclosure as specified in writing by the residential mortgage
24 lender actually incurred to the date of payment.

25 (4) Pay any reasonable late penalty, if provided for in the
26 security document.

27 (c) Cure of a default pursuant to this section restores the
28 residential mortgage debtor to the same position as if the
29 default had not occurred.

30 Section 405. Prepayment Penalty Prohibited.--Residential

1 mortgage obligations contracted for on or after the effective
2 date of this act may be prepaid without any penalty or other
3 charge for such prepayment at any time before the end of the
4 period of the loan.

5 Section 406. Attorney's Fees Payable.--With regard to
6 residential mortgages, no residential mortgage lender shall
7 contract for or receive attorney's fees for a residential
8 mortgage debtor except as follows:

9 (1) Reasonable fees for actual settlement costs.

10 (2) Upon commencement of foreclosure or other legal action
11 with respect to the residential mortgage, reasonable fees not to
12 exceed five per cent of the outstanding obligation if a judgment
13 is obtained in favor of the residential mortgage lender or two
14 and one-half per cent of the outstanding obligation if the
15 dispute is settled prior to judgment: Provided, That no legal
16 fees may be charged for action taken during the thirty day
17 notice period provided in section 403 of this act.

18 Section 407. Confession of Judgment.--(a) Any judgment or
19 decree on confession, whether by amicable action or otherwise,
20 or on a note, bond or other instrument in writing confessing
21 judgment shall not serve as the basis for a levy, execution or
22 garnishment until plaintiff files an appropriate action and
23 proceeds to judgment or decree against defendant as in any
24 original action. The judgment by confession shall be changed as
25 may be appropriate by a judgment, order or decree entered by the
26 court in the action. After the above mentioned original action
27 has been prosecuted and a judgment obtained, that judgment shall
28 merge with the confessed judgment and shall be of the priority
29 of the confessed judgment in time and standing even though the
30 amount of the judgments may be different. The parties to the

1 action shall have the same rights as parties to other original
2 proceedings.

3 (b) Any debtor who prevails in any action to remove or
4 enforce a judgment entered by confession shall be entitled to
5 recover reasonable attorney's fees and costs as determined by
6 the court.

7 (c) Hereafter when any plaintiff has received satisfaction
8 for any judgment entered by confession he shall order the record
9 in the proceeding marked satisfied within thirty days of the
10 receipt thereof, and shall not require any action on the part of
11 the defendant or any payment by him to cover the cost of
12 satisfying the judgment. Any judgment entered by confession not
13 revived within one year from the date on which the lien of said
14 judgment has lapsed by operation of law shall be considered
15 satisfied and may not thereafter be revived.

16 Section 408. Waivers.--Notwithstanding any other law, the
17 provisions of this act may not be waived by any oral or written
18 agreement executed by any person.

19 ARTICLE V

20 Remedies and Penalties

21 Section 501. Excessive Interest Need Not Be Paid.--When a
22 rate of interest for the loan or use of money, exceeding that
23 provided by this act or otherwise by law, shall have been
24 reserved or contracted for, the borrower or debtor shall not be
25 required to pay to the creditor the excess over such maximum
26 interest rate and it shall be lawful for such borrower or
27 debtor, at his option, to retain and deduct such excess from the
28 amount of such debt.

29 Section 502. Usury Recoverable.--A person who has paid a
30 rate of interest for the loan or use of money at a rate in

1 excess of that provided for by this act or otherwise by law may
2 recover triple the amount of such excess in a suit at law
3 against the person who has collected such excess interest:
4 Provided, That no action to recover such excess shall be
5 sustained in any court of this Commonwealth unless the same
6 shall have been commenced within four years from and after the
7 time of such payment.

8 Section 503. Reasonable Attorney's Fees Recoverable.--(a) If
9 a borrower or debtor, including but not limited to a residential
10 mortgage debtor, prevails in an action arising under this act,
11 he shall recover the aggregate amount of costs and expenses
12 determined by the court to have been reasonably incurred on his
13 behalf in connection with the prosecution of such action,
14 together with a reasonable amount for attorney's fee.

15 (b) The award of attorney's fees shall be in an amount
16 sufficient to compensate attorneys representing debtors in
17 actions arising under this act as provided in subsection (a) of
18 this section. In determining the amount of the fee, the court
19 may consider:

20 (1) The time and labor required, the novelty and difficulty
21 of the questions involved and the skill requisite properly to
22 conduct the case.

23 (2) The customary charges of the bar for similar services.

24 (3) The amount involved in the controversy and the benefits
25 resulting to the client or clients from the services.

26 (4) The contingency or the certainty of the compensation.

27 Section 504. Individual and Class Actions Permitted.--(a)
28 Any person affected by a violation of the act shall have the
29 substantive right to bring an action on behalf of himself
30 individually or on behalf of himself and all persons similarly

1 situated for damages by reason of such conduct or violation,
2 together with costs including reasonable attorney's fees and
3 such other relief to which such person may be entitled under
4 law.

5 (b) One or more of the persons affected by violations of
6 this act may sue as representative parties on behalf of all
7 members of the class only if:

8 (1) The class is so numerous that joinder of all members is
9 impracticable;

10 (2) There are questions of law or fact common to the class;

11 (3) The claims of the representative parties are typical of
12 the claims of the class; and

13 (4) The representative parties will fairly and adequately
14 protect the interests of the class.

15 Section 505. Penalties.--Any person who knowingly and
16 intentionally violates the provisions of this act shall be
17 guilty of a misdemeanor of the third degree.

18 Section 506. Enforcement.--(a) The Attorney General may
19 recover on behalf of the Commonwealth in a civil action from a
20 person who violates the provisions of this act a civil penalty
21 of not less than one hundred dollars (\$100) and not more than
22 one thousand dollars (\$1,000) for each violation.

23 (b) In addition to the amount provided under subsection (a)
24 of this section, the Attorney General may recover on behalf of
25 the Commonwealth in a civil action from a person who knowingly
26 or wilfully violates the provisions of this act a civil penalty
27 of not less than one thousand dollars (\$1,000) and not more than
28 ten thousand dollars (\$10,000) for each violation.

29 (c) When the Attorney General has reason to believe that any
30 person has violated the provisions of this act, or the

1 regulations promulgated hereunder, he shall have standing to
2 bring a civil action for injunctive relief, damages as provided
3 in section 502 on behalf of those who have paid excessive
4 interest, and such other relief, including civil penalties, as
5 may be appropriate to secure compliance with this act or the
6 regulations promulgated hereunder.

7 ARTICLE VI

8 General Provisions

9 Section 601. Regulations.--The Secretary of Banking shall
10 prescribe regulations to carry out the purposes of this act.
11 These regulations may contain such classifications,
12 differentiations, or other provisions, and may provide for such
13 adjustments for any class of transactions, as in the judgment of
14 the department are necessary or proper to effectuate the
15 purposes of this act, to prevent circumvention or evasion
16 thereof, to facilitate compliance therewith, and to insure their
17 being supplemental to and not inconsistent with regulations
18 under the Federal Consumer Credit Protection Act.

19 Section 602. Construction; Title of Purchaser.--No provision
20 of this act shall be construed to adversely affect the title of
21 a bona fide purchaser of real estate who purchases such real
22 estate in good faith without notice of any deficiency in the
23 procedures provided herein.

24 Section 603. Repeals.--The act of May 28, 1858 (P.L.622, No.
25 557), entitled "An act Regulating the Rate of Interest," is
26 hereby repealed.

27 Section 604. Effect on Inconsistent Acts.--If any maximum
28 lawful rate of interest provided for in this act is inconsistent
29 with the provision of any other act establishing a maximum
30 interest rate, then the provision of such other act shall

1 prevail.

2 Section 605. Effective Date.--This act shall take effect
3 immediately.