

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

AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 22, 1974

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 ~~for any loans in the principal amount of more than fifty~~
6 ~~thousand dollars and Federally insured or guaranteed loans;~~
7 PROVIDING FOR A MAXIMUM LAWFUL INTEREST RATE FOR RESIDENTIAL <—
8 MORTGAGES OF FIFTY THOUSAND DOLLARS OR LESS; providing
9 protections to debtors to whom loans are made including the
10 provision for disclosure of facts relevant to the making of
11 residential mortgages, provision for notice of intention to
12 foreclose and establishment of a right to cure defaults on
13 residential mortgage obligations, provision for the payment
14 of attorney's fees with regard to residential mortgage
15 obligations; clarifying the substantive law on the filing of
16 and execution on a confessed judgment; prohibiting waiver of
17 provisions of this act, specifying powers and duties of the
18 Secretary of Banking, and establishing remedies and providing
19 penalties for violations of this act.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 ARTICLE I

23 Preliminary Provisions

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

25 "Actual settlement costs" means reasonable sums paid for:

1 (a) Any insurance premiums which have been approved by the
2 Insurance Commissioner of the Commonwealth.

3 (b) Title examination and search, and examination of public
4 records.

5 (c) The preparation and recording of any or all documents
6 required by law or custom for settlement.

7 (d) Appraisal of property securing the loan.

8 (e) A single service charge, which shall include any
9 consideration paid by the residential mortgage debtor and
10 received and retained by the residential mortgage lender for or
11 related to the acquisition, making, refinancing or modification
12 of a residential mortgage loan, plus any consideration received
13 by the residential mortgage lender for making a mortgage
14 commitment, whether or not an actual loan follows such
15 commitment.

16 The service charge shall not exceed one per cent of the
17 original bona fide principal amount of the loan, except that in
18 the case of a construction loan, the service charge shall not
19 exceed two per cent of the original bona fide principal amount
20 of the loan.

21 (f) Charges and fees necessary for or related to the
22 transfer of the property or the closing of the residential
23 mortgage loan, paid by the residential mortgage debtor and
24 received by any party other than the residential mortgage
25 lender, whether or not paid by the residential mortgage debtor
26 directly to the third party or to the residential mortgage
27 lender for payment to the third party.

28 "Discount points" means any charges, whether or not actually
29 denominated as "discount points," which are paid by the seller
30 of residential real property to a residential mortgage lender

1 which directly or indirectly affects the ability of the buyer of
2 the real estate to secure a residential mortgage.

3 "Finance charge" means the total cost of a loan or charge for
4 the use of money, including any extensions or grant of credit
5 regardless of the characterization of the same and includes any
6 interest, time price differential, points, premiums, finder's
7 fees, and other charges levied by the residential mortgage
8 lender directly or indirectly against the person obtaining the
9 loan or against the seller, lender, mortgagee or any other party
10 to the transaction except any actual settlement costs. The
11 finance charges plus the actual settlement costs charged by the
12 residential mortgage lender shall include all charges made by
13 the residential mortgage lender to the residential mortgage
14 debtor other than the principal of the loan.

15 "Loan yield" means the annual rate of return obtained by a
16 residential mortgage lender from a residential mortgage debtor
17 over the term of the loan and shall be determined in accordance
18 with regulations issued by the Secretary of Banking. Such
19 regulations shall establish the method for calculating such rate
20 of return and shall provide that the finance charge be amortized
21 over the contract term of the loan.

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

29 "Mortgage commitment" means a legally binding obligation to
30 lend money on the security of a residential mortgage.

1 "Person" means an individual, corporation, business trust,
2 estate trust, partnership or association or any other legal
3 entity, and shall include but not be limited to residential
4 mortgage lenders.

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

13 "Residential mortgage debtor" means a non-corporate borrower
14 who is obligated to a residential mortgage lender to repay in
15 whole or in part a residential mortgage and a successor record
16 owner of the property, if any, who gives notice thereof to the
17 residential mortgage lender.

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

25 "Residential mortgage lender" means any person who lends
26 money or extends or grants credit and obtains a residential
27 mortgage to assure payment of the debt. The term shall also
28 include the holder at any time of a residential mortgage
29 obligation.

30 "Security document" means a mortgage, deed of trust, real

1 estate sales contract or other document creating upon
2 recordation a lien upon real estate.

3 ARTICLE II

4 ~~Maximum Lawful Interest Rate~~ SCOPE OF ACT <—

5 ~~Section 201. Maximum Lawful Interest Rate. Except as~~ <—
6 ~~provided in Article III of this act, the maximum lawful rate of~~
7 ~~interest for the loan or use of money in an amount of fifty~~
8 ~~thousand dollars (\$50,000) or less in all cases where no express~~
9 ~~contract shall have been made for a less rate shall be six per~~
10 ~~cent per annum.~~

11 SECTION 201. SCOPE OF ACT.--THIS ACT APPLIES TO RESIDENTIAL <—
12 MORTGAGES AS DEFINED HEREIN IN THE BONA FIDE PRINCIPAL AMOUNT OF
13 FIFTY THOUSAND DOLLARS (\$50,000) OR LESS AND SHALL NOT AFFECT
14 ANY EXISTING LAW EXCEPT AS TO RESIDENTIAL MORTGAGES IN SUCH
15 AMOUNT.

16 Section 202. Legal Rate of Interest.--Reference in any law
17 or document enacted or executed heretofore or hereafter to
18 "legal rate of interest" and reference in any document to an
19 obligation to pay a sum of money "with interest" without
20 specification of the applicable rate shall be construed to refer
21 to the rate of interest of six per cent per annum.

22 ARTICLE III

23 ~~Exceptions to~~ Maximum Lawful Interest <—

24 Rate ON RESIDENTIAL MORTGAGES <—

25 Section 301. Residential Mortgage Interest Rates.--(a) The
26 General Assembly hereby finds that it is necessary and
27 appropriate to establish a flexible maximum lawful interest rate
28 for residential mortgages, as defined in this act, and that the
29 Monthly Index of Long Term United States Government Bond Yields
30 is the appropriate basis on which such a maximum rate of

1 interest may be established and that the ~~monthly index~~ MONTHLY <—
2 INDEX of such ~~long term~~ LONG TERM United States Government Bond <—
3 Yields compiled by the Board of Governors of the Federal Reserve
4 System and as published by said Board of Governors in the
5 monthly Federal Reserve Bulletin accurately reflects this
6 function.

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

14 (c) On or before the twentieth day of each month, the
15 Secretary of Banking (i) shall determine, based on available
16 statistics, the Monthly Index of Long Term United States
17 Government Bond Yields for the preceding calendar month; and
18 (ii) shall determine the maximum lawful rate of interest for
19 residential mortgages for the next succeeding month, as defined
20 in subsection (b) of this section, and shall cause such maximum
21 lawful rate of interest to be filed with the Legislative
22 Reference Bureau for publication in the Pennsylvania Bulletin;
23 such maximum lawful rate of interest to be effective on the
24 first day of the next succeeding month.

25 (d) The loan yield obtained by a residential mortgage lender
26 from the residential mortgage debtor shall not exceed the
27 maximum lawful rate of interest for residential mortgages
28 established in section 301 (b). A contract rate within the
29 maximum lawful interest rate applicable to a residential
30 mortgage at the time of the loan settlement shall be the maximum

1 lawful interest rate for the term of the residential mortgage.

2 (e) In all proceedings and in all legal actions, the maximum
3 lawful rate of interest for all residential mortgages, as
4 defined in this act, as published in the Pennsylvania Bulletin
5 by the Secretary of Banking shall be the maximum lawful rate of
6 interest for residential mortgages, as defined in this act.

7 (f) The maximum lawful rate of interest set forth in this
8 ~~section and in section 201 of this act~~ shall not apply to (i) an <—
9 obligation to pay a sum of money in an original bona fide
10 principal amount of more than fifty thousand dollars (\$50,000);
11 (ii) an obligation to pay a sum of money in an original bona
12 fide principal amount of fifty thousand dollars (\$50,000) or
13 less, evidenced by a security document and secured by a lien
14 upon real property, other than a residential mortgage as defined
15 in this act or (iii) to a loan to a person subject to the act of
16 April 27, 1927 (P.L.404, No.260), entitled "An act prohibiting
17 corporations from pleading usury as a defense," section 313 of
18 the act of May 5, 1933 (P.L.364, No.106), known as the "Business
19 Corporation Law," or Title 15 Pa.S. section 7544.

20 Section 302. Federally Guaranteed Loans.--The maximum lawful
21 rate of interest prescribed in sections 201 and 301 of this act
22 shall not apply to any loan insured or guaranteed in whole or in
23 part by the Federal Housing Administration, the Veterans
24 Administration or any other department or agency of the United
25 States Government: Provided, That any such loan is subject to a
26 maximum rate of interest established by law or by such
27 department or agency.

28 Section 303. Commitments to Enter Into Residential
29 Mortgages.--A residential mortgage commitment which provides for
30 consummation within some future time following the issuance of

1 the mortgage commitment may be consummated pursuant to the
2 provisions, including interest rate, of such commitment
3 notwithstanding the fact that the maximum lawful rate of
4 interest at the time the residential mortgage is entered into is
5 less than the commitment rate of interest, provided:

6 (1) The commitment rate of interest does not exceed the
7 maximum lawful interest rate in effect on the date the mortgage
8 commitment was issued;

9 (2) The mortgage commitment when agreed to by the borrower
10 shall constitute a legally binding obligation on the part of the
11 residential mortgage lender to make a residential mortgage loan
12 within a specified time period in the future at a rate of
13 interest not exceeding the maximum lawful rate of interest
14 effective as of the date of commitment offer.

15 ARTICLE IV

16 Protective Provisions

17 Section 401. Disclosure Requirements.--(a) Any residential
18 mortgage lender, simultaneous with the issuance of a mortgage
19 commitment but in any event at least five business days prior to
20 the loan settlement of a residential mortgage, shall disclose
21 directly to the residential mortgage debtor, or send to the
22 residential mortgage debtor under such circumstances that the
23 disclosure would normally be received at least five business
24 days prior to loan settlement of the residential mortgage, the
25 finance charge, an estimated total of the actual settlement
26 costs, as defined in this act, to be paid by the residential
27 mortgage debtor at settlement, the anticipated actual settlement
28 costs to be charged by the residential mortgage lender, plus the
29 number, amount and due date or periods of payments scheduled to
30 repay the entire indebtedness, and the sum of such payments

1 using the term "total of payments," and the existence, identity
2 and compensation, if any, paid directly or indirectly by the
3 residential mortgage lender to a residential mortgage
4 intermediary.

5 (b) The disclosure provided for in THIS section ~~401~~ shall be <—
6 made in the manner provided by the Secretary of Banking by
7 regulation. The disclosure shall clearly and conspicuously set
8 forth all required disclosure information.

9 Section 402. Discount Points Prohibited.--With the exception
10 of those residential mortgages guaranteed or insured in whole or
11 in part by the Federal Government, or agency thereof, as
12 enumerated in section 302 of this act, and with the exception of
13 any actual settlement costs (but not discount points, as defined
14 in this act) paid by a seller of real estate, it shall be
15 unlawful for a residential mortgage lender to charge to or
16 receive from a seller of real estate directly or indirectly any
17 discount points.

18 Section 403. Notice of Intention to Foreclose.--(a) Before
19 any residential mortgage lender may accelerate the maturity of
20 any residential mortgage obligation, commence any legal action
21 including mortgage foreclosure to recover under such obligation,
22 or take possession of any security of the residential mortgage
23 debtor for such residential mortgage obligation, such person
24 shall give the residential mortgage debtor notice of such
25 intention at least thirty days in advance as provided in this
26 section.

27 (b) Notice of intention to take action as specified in
28 subsection (a) of this section shall be in writing, sent to the
29 residential mortgage debtor by registered or certified mail at
30 his last known address and, if different, at the residence which

1 is the subject of the residential mortgage.

2 (c) The written notice shall clearly and conspicuously
3 state:

4 (1) The particular obligation or real estate security
5 interest;

6 (2) The nature of the default claimed;

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

11 (4) The time within which the debtor must cure the default;

12 (5) The method or methods by which the debtor's ownership or
13 possession of the real estate may be terminated; and

14 (6) The right of the debtor, if any, to transfer the real
15 estate to another person subject to the security interest or to
16 refinance the obligation and of the transferee's right, if any,
17 to cure the default.

18 (d) The notice of intention to foreclose provided in this
19 section shall not be required where the residential mortgage
20 debtor, has abandoned or voluntarily surrendered the property
21 which is the subject of a residential mortgage.

22 Section 404. Right to Cure a Default.--(a) Notwithstanding
23 the provisions of any other law, after a notice of intention to
24 foreclose has been given pursuant to section 403 of this act, at
25 any time at least one hour prior to the commencement of bidding
26 at a sheriff sale or other judicial sale on a residential
27 mortgage obligation, the residential mortgage debtor or anyone in
28 his behalf, not more than three times in any calendar year, may
29 cure his default and prevent sale or other disposition of the
30 real estate and avoid acceleration, if any, by tendering the

1 amount or performance specified in subsection (b) of this
2 section.

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

5 (1) Pay or tender in the form of cash, cashier's check or
6 certified check, all sums which would have been due at the time
7 of payment or tender in the absence of default and the exercise
8 of an acceleration clause, if any;

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

12 (3) Pay or tender any reasonable fees allowed under section
13 406 (2) and the reasonable costs of proceeding to foreclosure as
14 specified in writing by the residential mortgage lender actually
15 incurred to the date of payment.

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

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

21 Section 405. Prepayment Penalty Prohibited.--Residential
22 mortgage obligations contracted for on or after the effective
23 date of this act may be prepaid without any penalty or other
24 charge for such prepayment at any time before the end of the
25 period of the loan.

26 Section 406. Attorney's Fees Payable.--With regard to
27 residential mortgages, no residential mortgage lender shall
28 contract for or receive attorney's fees from a residential
29 mortgage debtor except as follows:

30 (1) Reasonable fees for services included in actual

1 settlement costs.

2 (2) Upon commencement of foreclosure or other legal action
3 with respect to a residential mortgage, attorney's fees which
4 are reasonable and actually incurred by the residential mortgage
5 lender may be charged to the residential mortgage debtor. No
6 attorney's fees may be charged for legal expenses incurred
7 during the thirty day notice period provided in section 403 of
8 this act or before actual commencement of foreclosure or other
9 legal action.

10 Section 407. Confession of Judgment.--(a) As to any
11 residential mortgage, a plaintiff shall not have the right to
12 levy, execute or garnish on the basis of any judgment or decree
13 on confession, whether by amicable action or otherwise, or on a
14 note, bond or other instrument in writing confessing judgment
15 until plaintiff, utilizing such procedures as may be provided in
16 the Pennsylvania Rules of Civil Procedure, files an appropriate
17 action and proceeds to judgment or decree against defendant as
18 in any original action. The judgment by confession shall be
19 changed as may be appropriate by a judgment, order or decree
20 entered by the court in the action. After the above mentioned
21 original action has been prosecuted and a judgment obtained,
22 that judgment shall merge with the confessed judgment and the
23 confessed judgment shall be conformed as to amount and execution
24 shall be had on the confessed judgment. The parties to the
25 action shall have the same rights as parties to other original
26 proceedings. Nothing in this act shall prohibit a residential
27 mortgage lender from proceeding by action in mortgage
28 foreclosure in lieu of judgment by confession if the residential
29 mortgage lender so desires.

30 (b) Any debtor who prevails in any action to remove, suspend

1 or enforce a judgment entered by confession shall be entitled to
2 recover reasonable attorney's fees and costs as determined by
3 the court.

4 (c) Hereafter when any plaintiff has received payment in
5 full for any judgment entered by confession he shall order the
6 record in the proceeding marked satisfied within thirty days of
7 the receipt thereof, and shall not require any action on the
8 part of the defendant or any payment by him to cover the cost of
9 satisfying the judgment.

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

13 ARTICLE V

14 Remedies and Penalties

15 Section 501. Excessive Interest Need Not Be Paid.--When a
16 rate of interest for the loan or use of money, exceeding that
17 provided by this act ~~or otherwise by law~~ FOR A RESIDENTIAL <—
18 MORTGAGE COVERED BY THIS ACT, shall have been reserved or
19 contracted for, the borrower or debtor shall not be required to
20 pay to the creditor the excess over such maximum interest rate
21 and it shall be lawful for such borrower or debtor, at his
22 option, to retain and deduct such excess from the amount of such
23 debt providing the borrower or debtor gives notice of the
24 asserted excess to the creditor.

25 Section 502. Usury and Excess Charges Recoverable.--A person
26 who has paid a rate of interest for the loan or use of money at
27 a rate in excess of that provided for by this act ~~or otherwise~~ <—
28 ~~by law~~ FOR A RESIDENTIAL MORTGAGE COVERED BY THIS ACT or has <—
29 paid charges prohibited or in excess of those allowed by this
30 act ~~or otherwise by law~~ FOR A RESIDENTIAL MORTGAGE COVERED BY <—

1 THIS ACT may recover triple the amount of such excess interest
2 or charges in a suit at law against the person who has collected
3 such excess interest or charges: Provided, That no action to
4 recover such excess shall be sustained in any court of this
5 Commonwealth unless the same shall have been commenced within
6 four years from and after the time of such payment. Recovery of
7 triple the amount of such excess interest or charges, but not
8 the actual amount of such excess interest or charges, shall be
9 limited to a four-year period of the contract.

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

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

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

25 (2) The customary charges of the members of the bar for
26 similar services.

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

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

30 Section 504. Individual Actions Permitted.--Any person

1 affected by a violation of the act shall have the substantive
2 right to bring an action on behalf of himself individually for
3 damages by reason of such conduct or violation, together with
4 costs including reasonable attorney's fees and such other relief
5 to which such person may be entitled under law.

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

9 Section 506. Enforcement.--When the Attorney General has
10 reason to believe that any person has violated the provisions of
11 this act, or the regulations promulgated hereunder, he shall
12 have standing to bring a civil action for injunctive relief and
13 such other relief as may be appropriate to secure compliance
14 with this act or the regulations promulgated hereunder.

15 ARTICLE VI

16 General Provisions

17 Section 601. Regulations.--The Secretary of Banking shall
18 prescribe regulations to carry out the purposes of this act.
19 These regulations may contain such classifications,
20 differentiations, or other provisions, and may provide for such
21 adjustments for any class of transactions, as in the judgment of
22 the department are necessary or proper to effectuate the
23 purposes of this act, to prevent circumvention or evasion
24 thereof, to facilitate compliance therewith, to insure
25 meaningful disclosure to the user of residential mortgage
26 credit, and to insure their being supplemental to and not
27 inconsistent with regulations under the Federal Consumer Credit
28 Protection Act.

29 Section 602. Construction; Title of Purchaser.--No provision
30 of this act shall be construed to adversely affect the title of

1 a bona fide purchaser of real estate who purchases such real
2 estate in good faith without notice of any deficiency in the
3 procedures provided herein.

4 Section 603. Repeals.--The act of May 28, 1858 (P.L.622, No.
5 557), entitled "An act Regulating the Rate of Interest," is
6 hereby repealed ONLY TO THE EXTENT APPLICABLE TO RESIDENTIAL
7 MORTGAGES WITHIN THE SCOPE OF THIS ACT. <—

8 Section 604. Effect on Inconsistent Acts.--If any maximum
9 lawful rate of interest provided for in this act is inconsistent
10 with the provision of any other act establishing, permitting or
11 removing a maximum interest rate, or prohibiting the use of
12 usury as a defense, then the provision of such other act shall
13 prevail. This shall include but not be limited to the provisions
14 of the act of April 8, 1937 (P.L.262, No.66).

15 Section 605. Effective Date.--This act shall take effect
16 immediately except that sections 401, 403 and 404 shall take
17 effect in sixty days. Notwithstanding any other provision of
18 this act, the Secretary of Banking, immediately upon final
19 enactment of this act, shall determine the maximum lawful rate
20 of interest for residential mortgages as provided in section 301
21 of this act, for the month in which this act becomes effective
22 and for the next succeeding month. Such rates shall be
23 immediately published in the Pennsylvania Bulletin and shall
24 become effective upon such publication for the respective
25 months. Thereafter the secretary shall determine and publish the
26 maximum lawful rate of interest for residential mortgages in
27 conformity with the other provisions of this act.