

DEPARTMENT OF BANKING CODE - SUPERVISION AND EXERCISE OF DISCRETION,
DISCLOSURE OF CERTAIN INFORMATION, CRIMINAL HISTORY RECORD
INFORMATION AND CONDUCT OF ADMINISTRATIVE PROCEEDINGS RELATING TO
INSTITUTIONS AND CREDIT UNIONS

Act of Jul. 8, 2008, P.L. 827, No. 58

Cl. 07

Session of 2008

No. 2008-58

SB 484

AN ACT

Amending the act of May 15, 1933 (P.L.565, No.111), entitled "An act relating to the powers and duties of the Department of Banking and the Secretary of Banking in exercising supervision over, and taking possession of and conducting or liquidating the business and property of, corporations, associations, and persons receiving deposits or otherwise transacting a banking business, corporations acting as fiduciaries, and building and loan associations; providing for the payment of the expenses of the Department of Banking by supervised corporations, associations, or persons, and appropriating the Banking Department Fund; authorizing the Department of Banking, under certain circumstances, to examine corporations, associations, or persons affiliated, or having business transactions with supervised corporations, associations or persons; authorizing appeals to the Supreme Court, and prescribing and limiting the powers and duties of certain other courts and their prothonotaries, registers of wills, recorders of deeds, and certain State departments, commissions, and officers; authorizing certain local public officers and State departments to collect fees for services rendered under this act; providing penalties; and repealing certain acts and parts of acts," further providing for general scope of supervision and exercise of discretion; prohibiting disclosure of certain information; further providing for criminal history record information; and providing for conduct of administrative proceedings relating to institutions and credit unions.

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

Section 1. Section 202 of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking Code, is amended by adding a subsection to read:

Section 202. General Scope of Supervision; Exercise of Discretion.--* * *

E. Notwithstanding any other law or provision of this act, the department may require licensees to use and to pay processing fees for using a national electronic licensing system in order to apply for or renew licenses issued pursuant to any statute within the jurisdiction of the department to enforce. Notwithstanding any other law, the department may modify, by publication of a notice in the Pennsylvania Bulletin, license renewal and reporting dates for any licensees subject to this subsection that are inconsistent with the use of a national electronic licensing system. The department is not authorized to require a person or corporation which would otherwise be totally exempt from licensure pursuant to any statute under the department's jurisdiction to submit

information to or participate in any national electronic licensing system.

Section 2. Section 302 of the act, amended December 9, 2002 (P.L.1604, No.209), is amended to read:

Section 302. Disclosure of Information Forbidden; Penalty; Exceptions.--A. (1) This section applies to matters relating to institutions, credit unions and licensees.

(2) Neither the secretary nor any deputy, examiner, clerk, or other employe of the department, shall publish or divulge to anyone any information contained in or ascertained from any examination or investigation made by the department, or any letter, report, or statement sent to the department, or any other paper or document in the custody of the department, except when the publication or divulgement of such information is made by the department pursuant to the provisions of this act, or when the production of such information is required by subpoena or other legal process of a court of competent jurisdiction, or when it is used in deciding whether to prosecute or in prosecutions or other court actions instituted by or on behalf of or at the request of the department, or when referring for investigation to **or in response to a request from** any Federal, State or local law enforcement or any Federal or State financial regulatory agency, including banking, insurance and securities regulatory agencies, or when the department provides information to any Federal or State financial regulatory agency, including banking, insurance and securities regulatory agencies, when the information pertains to an enforcement concern. The information shall be provided as may be necessary or appropriate, as determined in the discretion of the secretary.

(3) The service of a subpoena upon the secretary, deputy, examiner, clerk or other employe of the department shall not be construed as requiring such person to disclose any information, but such person shall have all the rights and privileges as any other subpoenaed party to object to production of information on the same basis as provided in the Rules of Civil Procedure, statute, regulation or common law. The department may condition the release of such information on an order from a court of competent jurisdiction protecting the information from general disclosure to the public. The department retains and may exercise any and all remedies at law and in equity to quash a subpoena.

(4) Any privileges available to Federal financial institution regulators under Federal statute, regulation or common law shall be available to the department.

(5) The department may provide to any person, **corporation or** Federal, State or local government agency the following information regarding licensees to the extent that the department has such information in its possession: **the type of license held by the licensee; whether a license application submitted by any person or corporation has been denied pursuant to a final order or adjudication issued by the department;** whether and for what time period a [person's] **licensee's** license is current, suspended or revoked pursuant to a final order **or adjudication** issued by the department; whether and for what time period an individual is or has been suspended or prohibited from working for or otherwise participating as a licensee **or in any other capacity in businesses regulated by the department** pursuant to a final order **or adjudication** issued by the department[.]; **and whether and to what extent a corporation, person or licensee is or has been subject to a fine , order or adjudication issued by the department.**

[(6) The department may condition the release of subpoenaed information on an order from a court of competent jurisdiction protecting the information from general disclosure to the public.]

(7) If the department is subpoenaed for a report of examination information, the department may refuse to release the requested information as the secretary deems necessary and appropriate under the circumstances for the following reasons: safety and soundness; if the department requests and is denied a protective order; or if the department requests and is denied redaction of the report of examination to protect the privacy of persons not involved in the litigation.

B. A violation of the provisions of this section by the secretary, or by any deputy, examiner, clerk, or other employe of the department, shall be sufficient ground for his removal from office. In addition the secretary, deputy, examiner, clerk, or other employe who willfully or knowingly commits such violation shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be subject to imprisonment for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both.

Section 3. Subsection B of section 405 of the act, added December 9, 2002 (P.L.1604, No.209), is amended and the section is amended by adding a subsection to read:

Section 405. Criminal History Record Information.--* * *

B. For the purposes of this section, a "covered license" means [a mortgage broker license or limited mortgage broker license under the act of December 22, 1989 (P.L.687, No.90), known as the "Mortgage Bankers and Brokers and Consumer Equity Protection Act," a secondary mortgage broker license under the act of December 12, 1980 (P.L.1179, No.219), known as the "Secondary Mortgage Loan Act," a consumer discount company license used only in the capacity of a broker that is not originating loans under the act of April 8, 1937 (P.L.262, No.66), known as the "Consumer Discount Company Act," a money transmitter license under the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, a check-casher license under the act of February 18, 1998 (P.L.146, No.22), known as the "Check Casher Licensing Act," a pawnbroker license under the act of April 6, 1937 (P.L.200, No.51), known as the "Pawnbrokers License Act," a collector-repossessor license or installment seller license under the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance Act,"] a license the department may grant pursuant to any [other] licensing statute, or the articles of incorporation of a trust company under the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965."

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K. The provisions of 18 Pa.C.S. § 9121(b)(2) (relating to general regulations) shall not apply to national criminal history information or other criminal history information requested or received under this section.

Section 4. Section 503 heading of the act, amended December 9, 2002 (P.L.1604, No.209), is amended and the section is amended by adding a subsection to read:

Section 503. Quo Warranto or Injunction Proceedings; **Conduct of Administrative Proceedings Relating to Institutions and Credit Unions.**--* * *

E. (1) All administrative proceedings conducted by the department pertaining to institutions, including credit unions, shall be subject to the requirements of 2 Pa.C.S. (relating to administrative law and procedure). For purposes of this subsection, the term "administrative proceeding" means any proceeding other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to an institution or credit union. The provisions of this subsection shall supplement and not repeal or limit requirements of 2 Pa.C.S.

(2) Notice regarding the receipt of any application or notice submitted to the department by an institution or credit union relating to the issuance, amendment or conversion of a charter, or an absorption, acquisition, consolidation, or dissolution, shall be published by the department in the Pennsylvania Bulletin. Whenever the department publishes notice in the Pennsylvania Bulletin, the department may direct an institution or credit union submitting an application or notice to also publish notice in a newspaper of general circulation regarding its request.

(3) Comments in support or opposition to applications or notices published pursuant to paragraph (2) shall be considered by the department if submitted to the department within thirty days of the publication in the Pennsylvania Bulletin and/or newspaper of general circulation, whichever is later. The department may, for good cause, extend or shorten the thirty-day deadline for the submission of comments.

(4) An institution or credit union submitting an application, notice or other document; a person submitting comments in support or in opposition to any application or notice to the department; any other person submitting a document to the department regarding any matter subject to its jurisdiction; or the department may designate all or portions of a document to be confidential to the extent the document contains trade secrets, confidential proprietary information or other privileged or confidential information the disclosure of which would cause substantial harm to an institution, credit union or person or impair the safety or soundness of an institution or credit union.

(5) If any portion of an application, notice or other document submitted to the department is designated as confidential pursuant to paragraph (4), the thirty-day deadline for the submission of comments provided by paragraph (3) may be extended until the department reviews any such confidentiality designations and determines the extent to which all or any portion of a document shall be deemed confidential. Notwithstanding the requirements of sections 302 and 404, any portions thereof not designated or determined to be confidential by the department pursuant to paragraph (4) shall be made available for review by any interested person. Except for a person designating all or a portion of a document as confidential pursuant to paragraph (4), no other person may contest a decision by the department to designate or not designate all or portions of such documents as confidential, unless the department is required by 2 Pa.C.S. to conduct a hearing requested pursuant to paragraph (7).

(6) Notwithstanding any other law to the contrary, notice regarding final action taken by the department regarding any application or notice for which notice is published pursuant to paragraph (2) shall be published by the department in the Pennsylvania Bulletin.

(7) Any institution or credit union subject to an order, decree, decision, determination or ruling issued by the department and published pursuant to paragraph (6) or any other institution or credit union directly affected by the department's action which would be entitled to a hearing regarding the department's action pursuant to 2 Pa.C.S., including a federally chartered bank, savings association or credit union, may request a hearing to review the department's action within fourteen days of the publication or receipt of notice of the department's final action. The filing of a request for a hearing regarding a final action taken by the department shall not be deemed to automatically stay the department's action, but the department may, for good cause, grant a supersedeas of its action pending the outcome of an administrative proceeding. Where the department publishes notice of the receipt of an application under paragraph (2) or an institution or credit

union has notice of the department's receipt of an application, notice or other request that the department issue an order, decree, decision, determination or ruling, an institution or credit union directly affected by the department's final action, other than the institution or credit union subject to the department's action, may not request a hearing to review the department's final action unless the institution or the credit union submitted comments pursuant to paragraph (3).

(8) Notwithstanding the requirements of sections 302 and 404, if a hearing is conducted by the department pursuant to 2 Pa.C.S., the hearing officer may review and revise determinations made by the department to classify all or any portion of an application, notice or document as confidential and may disclose to a party participating in the hearing all or any portions thereof determined to be confidential pursuant to a protective order limiting or restricting access to and the use of such documents. If the hearing officer determines that a protective order cannot adequately protect the interests of an institution, credit union or person subject to the supervision of the department or of another person participating in a hearing, the hearing officer may redact confidential portions or deny access to any documents pursuant to the standards customarily employed by courts of this Commonwealth.

(9) The department may adopt regulations to implement this subsection. Any regulations adopted by the department in effect upon the effective date of this subsection are hereby repealed to the extent inconsistent with this subsection.

Section 5. This act shall take effect as follows:

(1) The amendment of section 503 of the act shall take effect in 30 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 8th day of July, A. D. 2008.

EDWARD G. RENDELL