

CONSUMER DISCOUNT COMPANY ACT - OMNIBUS AMENDMENTS

Act of Dec. 12, 1994, P.L. 1060, No. 144

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Session of 1994

No. 1994-144

HB 2156

AN ACT

Amending the act of April 8, 1937 (P.L.262, No.66), entitled, as amended, "An act relating to consumer credit; requiring licenses from the Secretary of Banking; restricting licenses to domestic business corporations; fixing minimum capital requirements; conferring certain powers on the Secretary of Banking; limiting interest and other charges; providing certain exemptions; and imposing penalties," further providing for requirement and issuance of license, for examinations by Secretary of Banking, for revolving loan accounts and for penalties; and providing for restricting certain advertising.

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

Section 1. Section 3 of the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, is amended by adding a subsection to read:

Section 3. License Required.--\* \* \*

**C. Notwithstanding subsection A, the Secretary of Banking may license a branch office in another state provided the licensee maintains a place of business in this Commonwealth which is licensed under the provisions of this act.**

Section 2. Section 8 of the act is amended to read:

Section 8. Issuance of License.--The Secretary of Banking, if he approves the application for license, shall issue to each applicant a certificate showing the name of the corporation and address of the place of business. Such license shall be posted in a conspicuous place in the office of the licensee [so that it will be in full view of the public at all times]. A license may not be transferred or assigned. A licensee may, [with the approval of] **upon prior written notification to** the Secretary of Banking, change [his] **its** place of business to another location within the same [municipality] **city, town, borough or township**. A licensee desiring to change [his] **its** place of business **to other than the same city, town, borough or township** shall give written notice thereof to the Secretary of Banking and return the license certificate to the Secretary of Banking for amendment. The Secretary of Banking, if he approves the removal of the place of business, shall endorse on the license his approval of the change of address and the date thereof, which shall thereafter be the authority for the operation of such business under such license at the new location. [No] **Except as provided herein, no** change in the place of business of a licensee to a location outside the original municipality shall be permitted: Provided, however, A licensee may obtain a new license for a place of business in a new location in a municipality other than that in which the original place of business was located. Only one place of business may be operated under the same license.

A licensee may operate more than one place of business, **in Pennsylvania or another state**, by obtaining a separate license by filing an application for each additional place of business, and by furnishing a bond for each additional place of business and by

paying the license fee provided [in this act] **by law** for each additional place of business.

**No license shall be required for any place of business at which payments on contracts are received and processed, records are maintained or servicing of contracts is performed. Any such place of business may be located outside of this Commonwealth, and the licensee shall provide the Secretary of Banking with the address of such place of business. The licensee shall maintain at its principal place of business within this Commonwealth or at such place within or outside this Commonwealth, subject to the prior written approval of the Secretary of Banking or designee, either the original or a copy of such books, accounts, records and documents, or electronic or other similar access thereto, of the business conducted under the license as may be prescribed by the department to enable it to determine whether the business of the licensee is being conducted in accordance with the provisions of this act and the orders, rules and regulations issued under this act.**

Section 3. Section 11 of the act, amended December 9, 1982 (P.L.1072, No.249), is amended to read:

Section 11. Examinations by the Secretary of Banking.--The Secretary of Banking, and any person designated by him for that purpose, shall at least [annually] **once every two calendar years** investigate the business and affairs and examine the books, accounts, papers, records, documents, and files therein of every licensee and of every person who shall be engaged in business contemplated by this act, whether such person shall act or claim to act as principal, agent or broker, or under or without the authority of this act. For this purpose the Secretary of Banking shall have [free] access **during normal business hours** to the offices and places of business, books, accounts, papers, records, documents, files, safes and vaults of all such persons. A person, who is not licensed under this act, shall be presumed to be engaged in business contemplated by this act if he advertises or solicits business as principal, agent or broker for which a license is required by the provisions of this act, and the Secretary of Banking, and any person designated by him for that purpose, is in such cases authorized to examine the books, accounts, papers, records, documents, files, safes and vaults of such persons for the purpose of discovering violations of this act.

The cost of every examination of the business of a licensee by the Secretary of Banking, or his duly authorized representative, shall be paid by the licensee so examined, and the Secretary of Banking may collect such costs from the licensee or from the surety company which has executed the bond required under this act, and he may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Section 4. The act is amended by adding a section to read:

**Section 16.1. Certain Advertising Restricted.--Advertisement by use of a negotiable check, money order, draft or other instrument which may be used for the transfer of funds is restricted unless (i) the instrument is negotiable for not more than six (6) months and the consumer is advised to destroy the instrument if it is not going to be negotiated, and (ii) the solicitation, or any document physically attached to the solicitation, prominently contains the following statement in ten-point print:**

**"THIS IS A SOLICITATION FOR A LOAN--READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"**

Section 5. Subsection B of section 17.1 of the act, added December 30, 1970 (P.L.959, No.301), is amended to read:

Section 17.1. Revolving Loan Accounts.--\* \* \*

B. [Revolving] **Variable or fixed rate revolving** loan accounts may be made under the provisions of this section. In lieu of the statement required by section 15 before making a loan pursuant to a revolving loan account, the licensee shall disclose to the borrower the maximum amount that may be borrowed, the method by which loans or advances are to be made, whether by check or draft drawn on the licensee or otherwise; a simple statement of the method by which the amount of the charges is to be calculated; a simple statement of the insurance coverages to be afforded the borrower, if obtained by or through the licensee, and if a charge for insurance is to be made a simple statement of the amount of such charge or the method by which it will be calculated. If, during a billing cycle, the licensee makes a loan or advance or the borrower makes a payment the licensee shall give to the borrower within a reasonable time after the end of the billing cycle a written statement of (i) the outstanding balance at the beginning of the billing cycle, (ii) the loans or advances made during the billing period excluding charges, (iii) the amount of charges accrued or debited during the period, (iv) payments made by the borrower, (v) the balance at the end of the billing cycle, and (vi) the amount which must be paid and the date by which it must be paid to avoid a default.

Section 6. Section 18 of the act, amended December 18, 1984 (P.L.1083, No.216), is amended to read:

Section 18. Penalties.--Any person who has not obtained a license from the Secretary of Banking of the Commonwealth of Pennsylvania in accordance with the provisions of this act, and who shall engage in the business of negotiating or making loans or advances of money or credit, in the amount or value of fifteen thousand dollars (\$15,000) or less, and charge, collect, contract for or receive interest, discount, bonus, fees, fines, commissions, charges or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned or advanced, or on the unpaid principal balances when the contract is payable by stated installments, shall be guilty of a misdemeanor, upon conviction thereof shall be sentenced to pay a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), and/or suffer imprisonment not less than six (6) months nor more than three (3) years, in the discretion of the court.

Except as the result of an accidental bona fide error, a corporation licensed under the provisions of this act or any director, officer, employe or agent who shall violate any provision of this act or shall direct or consent to such violations, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than two thousand dollars (\$2,000) for the first offense, and for each subsequent offense a like fine, and/or suffer imprisonment not to exceed one year, in the discretion of the court.

The payment of fifteen thousand dollars (\$15,000) or less, in money, credit, goods or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under this act, be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall for the purpose of regulation under this act, be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transactions shall be governed by and subject to the provisions of this act.

The payment of fifteen thousand dollars (\$15,000) or less, in money, credit, goods or things in action as consideration for any sale of real or personal property which is made on condition or agreement, expressed or implied, that such property be sold back at a greater price shall, for the purpose of this act, be deemed to be a loan secured by such property, and the amount by which the repurchase price exceeds such original purchase price actually paid shall be deemed interest or charges upon such loan from the date such original payment is made until the date such repurchase price is paid. Such transaction shall be governed by and subject to the provisions of this act.

When real or personal property is pledged as security on a loan of fifteen thousand dollars (\$15,000) or less, and the lender requires the borrower to pay for insurance thereon, such charge for insurance shall be construed as interest under this act when the lender has failed to have such insurance written by an insurance company legally authorized to conduct business in Pennsylvania. When the amount charged for such insurance is in excess of the standard cost of similar insurance in other insurance companies legally authorized to conduct business in Pennsylvania, the excess shall be construed as interest under this act.

**If a contract is made in good faith in conformity with an interpretation of this act by the appellate courts of the Commonwealth or in compliance with a rule or regulation promulgated by the Secretary of Banking, no provision of this section imposing any penalty shall apply, notwithstanding that after such contract is made, such interpretation, rule or regulation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.**

Section 7. This act shall take effect immediately.

APPROVED--The 12th day of December, A. D. 1994.

ROBERT P. CASEY