

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1261 Session of
1981

INTRODUCED BY E. Z. TAYLOR, SHUPNIK, WILSON, D. R. WRIGHT,
COWELL, GALLAGHER, WILT, MILLER, FREIND, IRVIS AND DURHAM,
APRIL 22, 1981

REFERRED TO COMMITTEE ON EDUCATION, APRIL 22, 1981

AN ACT

1 Amending the act of August 7, 1963 (P.L.549, No.290), entitled,
2 as amended, "An act creating the Pennsylvania Higher
3 Education Assistance Agency; defining its powers and duties;
4 conferring powers and imposing duties on the Governor,
5 President Pro Tempore of the Senate, Speaker of the House of
6 Representatives, Superintendent of Public Instruction and the
7 Department of Auditor General; and making appropriations,"
8 providing for loan guarantees to parents of postsecondary
9 students, improving the loan collection process and
10 clarifying the loan repayment requirements of State employees.

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

13 Section 1. Section 2, act of August 7, 1963 (P.L.549,
14 No.290), referred to as the Pennsylvania Higher Education
15 Assistance Agency Act, amended January 18, 1968 (1967 P.L.952,
16 No.424), is amended to read:

17 Section 2. Purpose.--The purpose of such agency shall be to
18 improve the higher educational opportunities of persons who are
19 residents of this State and who are attending approved
20 institutions of higher education, in this State or elsewhere, by
21 guaranteeing, making or servicing loans or otherwise providing

1 loans [made] to such persons to assist them in meeting their
2 expenses of higher education in accordance with the provisions
3 of this act.

4 Section 2. The act is amended by adding a section to read:

5 Section 2.1. Definitions.--The following words and phrases
6 when used in this act shall have, unless the context clearly
7 indicates otherwise, the meanings given to them in this section:

8 "Resident." The term shall include, but not be limited to,
9 the parent of a student or a student who is accepted for
10 enrollment in or is attending an approved institution of higher
11 education.

12 Section 3. Clauses (1), (1.1), (1.2) and (11) of section 4
13 of the act, clauses (1), (1.1) and (1.2) amended or added
14 December 30, 1974 (P.L.1111, No.357) and clause (11) added
15 December 21, 1977 (P.L.338, No.99), are amended to read:

16 Section 4. Powers and Duties.--In furtherance of the
17 purposes set forth in this act, the board of directors shall
18 have the following powers:

19 (1) To guarantee, make, undertake commitments to make and
20 participate with lending institutions in the making of loans and
21 to purchase, sell, service or otherwise provide loans of money
22 upon such terms and conditions as the board may prescribe within
23 the limitations contained herein or applicable Federal law, at
24 such rates [of] and interest charges as are determined by the
25 [agency,] board of directors, to lenders and to persons who are
26 residents of this State and who plan to attend or are attending
27 any approved institution of higher education eligible under this
28 act or applicable Federal law, in this State or elsewhere to
29 assist them in meeting their expenses of higher education. No
30 such person shall receive any loan or loan guarantee in excess

1 of [one thousand five hundred dollars (\$1500) for any academic
2 year and no such person shall receive a total loan guarantee of
3 more than seventy-five hundred dollars (\$7500) except if such
4 loans are] annual and maximum limits as established by the board
5 of directors or in compliance with limits established for loans
6 funded, guaranteed or reinsured under Federal laws. Such loans
7 or loan guarantees shall become due and payable at the direction
8 of the board of directors. [and the board of directors may
9 extend the repayment period not to exceed fifteen years from the
10 date of execution of the note or other written evidence of the
11 loan or as allowed under Federal law when the loan is guaranteed
12 or reinsured under Federal laws.]

13 (1.1) As a public corporation and body politic subject to
14 examination by the Auditor General of the Commonwealth, the
15 agency shall be deemed an "eligible lender" as defined in Part B
16 of Title IV of the Federal Higher Education Act of 1965 and in
17 Part C of the Health Professions Education Assistance Act of
18 1976, and pursuant to the provisions of [the act] those acts and
19 any subsequent amendments thereto or other applicable Federal
20 programs, be entitled to exercise all the authority, rights and
21 privileges of an "eligible lender." Such authority, rights and
22 privileges shall include but not be limited to the following:

23 (i) To do whatever is necessary to enable [students with
24 whom the agency makes an insured loan] persons who are parties
25 to loans guaranteed, made or services under this act to qualify
26 for Federal interest subsidy, [and] special allowance, loan
27 forgiveness or other applicable benefits.

28 (ii) To charge premiums for insurance on loans.

29 (iii) To enter into contracts with schools, lenders,
30 individuals, and the Student Loan Marketing Association and

1 other agencies of the Commonwealth, other states and the Federal
2 Government to make, service, invest in, make commitments to
3 purchase or sell, take assignments of, or administer student
4 loans made or insured under this act, the Health Professions
5 Education Assistance Act of 1976, or other programs approved by
6 the board of directors and to provide for loan forgiveness, loan
7 consolidation, loan referral service and graduated repayment.
8 Loans to lenders made under this subsection may be made under
9 terms and conditions requiring that the funds so loaned be used
10 for the making of loans to categories of students as defined and
11 established by the board of directors.

12 (iv) To purchase stocks, securities, and obligations issued
13 by the Student Loan Marketing Association.

14 (v) To be issued certificates of loan insurance by the
15 Secretary of Health and Human Services as set forth in section
16 732, Part C, Title IV, of the Health Professions Education
17 Assistance Act of 1976 or other appropriate Federal legislation.

18 (vi) To use the agency's insured and other student loans as
19 security for loans and other forms of advances from the Student
20 Loan Marketing Association or others, including lenders
21 participating or investing in loans made under this act.

22 (1.2) To guarantee or make loans to parents as authorized by
23 Part B, Title IV, of the Federal Higher Education Act, as
24 amended, and to other persons for purposes of attending
25 postsecondary educational institutions from funds other than
26 those appropriated by the Commonwealth and to pay such interest
27 and costs or any parts thereof and for such period of time as
28 may be [established] authorized by the [agency] board of
29 directors of the agency and on loans guaranteed for individual
30 students and parents who [are unable to qualify for payment of

1 interest in their behalf by the Federal Government or other
2 sources of interest subsidy until such time as the individual
3 student qualifies for payment of interest in his behalf by the
4 Federal Government of other sources of interest subsidy or over
5 a period and in a manner to be determined by the agency or as
6 allowed under Federal law when the loan is guaranteed or
7 reinsured under Federal law, graduates, withdraws, is expelled
8 or dismissed, or otherwise ceases to be enrolled on at least a
9 half-time basis at an approved institution] otherwise would not
10 qualify for Federal or other interest subsidy.

11 * * *

12 (11) To execute by writ of execution upon wages, salaries or
13 commissions in the hands of an employer or any other person in
14 order to enforce money judgments for the repayment of all loans
15 authorized, serviced, made or guaranteed under this act or from
16 funds which include State funds or funds of an institution
17 receiving State aid: Provided, however, That such power of
18 execution may not be assigned to any other person or agency nor
19 be employed for any other purpose by the agency. Such power of
20 execution may be exercised at the discretion of the agency, but
21 under no circumstances may an amount in excess of ten percent of
22 the pay of an obligor be subject to execution during any given
23 pay period.

24 Section 4. Section 4.2 of the act, added November 26, 1978
25 (P.L.1291, No.308), is amended to read:

26 Section 4.2. Loans to State Employees.--Any person who has
27 received a loan made or guaranteed pursuant to this act or from
28 funds which include State funds or funds of an institution
29 receiving State aid and who at anytime becomes or is an employe
30 of the Commonwealth or any of its agencies shall be deemed to

1 have agreed as a condition of their employment with the
2 Commonwealth to repay such loan. Any such employee who [defaults]
3 has or does default on the repayment of such loan shall make
4 immediate arrangements with the employing agency [or loan
5 guarantor] which are acceptable to the agency to [set up] agree
6 to and establish a [revised] loan repayment schedule with the
7 salary-status employee [either making direct payments to the
8 lending institution, guarantor or its agent or] making such
9 payments through payroll deductions and employees in other than a
10 salary status making payment in accordance with a repayment plan
11 approved by the agency. Such employee shall [thereupon] be
12 notified that if such employee [thereafter defaults on the
13 revised loan repayment schedule,] fails to immediately establish
14 a repayment schedule or fails to meet the terms and conditions
15 of an agreed-to repayment as stipulated by this section, such
16 employee shall be deemed to have breached an essential condition
17 of employment and shall be dismissed from Commonwealth service
18 or the service of any of its agencies.

19 Section 5. The act is amended by adding a section to read:

20 Section 4.3. Administrative Loan Collection Process.--(a)

21 The agency is hereby authorized and directed to maintain a
22 record of all actions and proceedings which it undertakes in
23 regard to the collection of student loans. All such records
24 shall be kept in the administrative offices of the agency and
25 shall be available for public inspection at reasonable times.
26 The agency shall furnish, under seal of the agency when required
27 for evidence in court, any accounts of records of accounts,
28 papers, or documents filed in the agency, relative to the
29 granting of financial assistance to any borrower when required
30 as evidence in any court and such certification shall be

1 competent evidence thereof. The agency shall adopt and renew
2 from time to time a seal of office, an impression of which shall
3 be filed in the Office of the Secretary of the Commonwealth.

4 (b) In addition to the remedies and procedures provided by
5 law for the collection and enforcement of contractual rights,
6 the agency may initiate action against borrowers whom it deems
7 to be indebted to it by placing a statement of claim in the
8 records maintained by it. The statement of claim shall contain
9 such information as the agency deems necessary, but in all such
10 instances the statement of claim shall contain or have attached
11 thereto the following:

12 (1) Identification of the agency as the body corporate and
13 politic constituting a public corporation and government
14 instrumentality, together with its address to which the borrower
15 may respond.

16 (2) Name and last known address of the borrower.

17 (3) Principal amount of money which the agency claims is due
18 and owing to it including interest thereon and the material
19 facts on which the claim is based.

20 (4) A photocopy or other reproduction of the documents upon
21 which the agency bases its claim or a detailed reference to such
22 documents.

23 (5) The following notice which shall be prominently
24 displayed on the first page of the claim:

25 NOTICE

26 Legal action has been taken against you. If you do not
27 file in writing your response to this action within
28 thirty days, an order of default may be entered against
29 you. You may lose money or property or other rights
30 important to you. You should take this paper to your

1 lawyer immediately. If you do not have a lawyer or cannot
2 afford one, you should call or write the office set forth
3 below. You may qualify for free legal assistance.

4 (6) The name and address of a lawyer referral service
5 operated by the Pennsylvania Bar Association or one operating in
6 the county in which the borrower was last known to reside.

7 (7) A statement that an order of default may be entered
8 against the borrower without further notice.

9 (c) (1) The agency shall serve a copy of the statement of
10 claim filed by it upon the borrower by certified or other
11 appropriate mail, addressed to the borrower's last known
12 address. If the mail is returned to the agency unclaimed by the
13 borrower, the agency shall serve the statement of claim by
14 sending a true copy thereof to the borrower by first class mail
15 within thirty days after the previous mail was returned
16 unclaimed. At anytime after twenty days from the time of service
17 by first class mail, the executive director of the agency may
18 recommend to the board of directors of the agency that an order
19 be entered by default, and the board, in its discretion, may
20 enter such an order. If the borrower does not file a response
21 within the prescribed time, the executive director may transfer
22 the record and order to the court of common pleas of the
23 district in which the borrower resides or when residence within
24 the Commonwealth has not been ascertained, to the Court of
25 Common Pleas of Dauphin County, to be entered as a judgment.
26 Thereafter, it shall be the duty of the prothonotary, at the
27 request of the executive director, to issue execution, or such
28 other process as may be necessary and proper, to carry into
29 effect the judgment entered upon such order, subject to
30 applicable provisions of law or rules of procedure concerning

1 stay of execution upon judgment.

2 (2) At anytime after entry of an order of default, the
3 borrower may apply to the court of common pleas of the
4 jurisdictional district in which the borrower resides or to the
5 Court of Common Pleas of Dauphin County to vacate such order. At
6 anytime after entry of judgment, the borrower may apply to the
7 court in which the judgment is entered to set aside such
8 judgment. Such relief shall be granted by a judge of such court
9 if the borrower proves by a preponderance of the evidence that
10 notice of the action was not made in the manner specified above,
11 and that the borrower has a good faith defense to the statement
12 of claim.

13 (d) The borrower shall file a response to the statement of
14 claim within thirty days after service by certified or other
15 appropriate mail or within twenty days after service by first
16 class mail. The response shall admit or deny all averments
17 contained in the statement of claim. An averment in the
18 statement of claim shall be deemed to be denied only if proof
19 thereof is demanded and the borrower states either:

20 (1) That after reasonable investigation the borrower is
21 without knowledge or information sufficient to form a belief as
22 to the truth of the averment; or

23 (2) That the borrower is without such knowledge or
24 information because the means of proof are within the exclusive
25 control of an adverse party or hostile person. The response
26 shall set forth all defenses and objections which the borrower
27 has to the statement of claim and any objections or defenses not
28 so presented shall be deemed to have been waived. The pleadings
29 in any action pursuant to this act shall be limited to a
30 statement of claim and a response thereto.

1 (e) The rules relating to discovery as promulgated by the
2 Pennsylvania Supreme Court, and as amended from time to time,
3 shall be applicable to all proceedings initiated pursuant to
4 this act. All disputes relating to discovery, including but not
5 limited to those requiring entry of a protective order or
6 sanctions, shall be resolved by a hearing examiner. Any order
7 entered by a hearing examiner relating to discovery shall be
8 interlocutory in nature and shall not be the subject of an
9 appeal until a final order has been entered by the agency board
10 of directors.

11 (f) The board of directors of the agency shall appoint such
12 hearing examiners as shall be necessary to conduct hearings in
13 the administration of this act. All cases in which a response
14 has been filed to the statement of claim of the agency shall be
15 promptly referred to a hearing examiner for disposition. After a
16 case has been so referred, the hearing examiner shall have
17 authority to control the procedure regarding it, and the hearing
18 examiner shall thereby have authority to make appropriate
19 interlocutory orders. Notwithstanding anything herein to the
20 contrary, the hearing examiner shall not have authority to take
21 action inconsistent with the provisions of this act or with the
22 provisions of the Pennsylvania Rules of Civil Procedure which
23 have been incorporated herein.

24 (g) After a case has been referred to a hearing examiner,
25 the hearing examiner shall promptly examine the statement of
26 claim and the response which have been filed in that case. If
27 the hearing examiner determines after an examination of the
28 statement of claim and the response that either the statement of
29 claim or response have no basis in fact or in law or have been
30 frivolously filed, the hearing examiner may make an appropriate

recommendation to the board of directors of the agency regarding disposition of the case without holding any further hearings regarding the matter.

(h) After a hearing examiner examines the statement of claim and response filed in a particular case and determines that there is a basis in fact or in law for the filing of such pleadings, the hearing examiner shall promptly schedule a hearing regarding the matter and notify the borrower that a hearing shall be held in Dauphin County or, by request of the borrower, in the county in which the borrower resides. The hearing examiner shall have the authority to issue a subpoena under the seal of the agency to compel the attendance of witnesses whose testimony will be relevant or to compel the production of relevant documents. At such hearing, the agency shall have the burden of proving by a preponderance of the evidence that the borrower is indebted to the agency. The borrower shall have the opportunity to be represented by counsel at such hearing and shall have the opportunity to cross-examine all agency witnesses and the borrower shall have the opportunity to present any relevant evidence purporting to show that the borrower is not indebted to the agency. It shall not be a defense to a statement of claim that a borrower did not receive full value from the educational institution from which the borrower elected to attend with the money obtained from or through the agency. A stenographic transcript shall be made of the hearing at the expense of the agency and the transcript shall be maintained by the agency in such manner that the borrower may review the transcript at reasonable times, but the agency shall not be required to furnish a copy of the transcript to the borrower, although nothing herein shall prohibit the

1 borrower from purchasing a copy thereof from the stenographer.

2 (i) After the hearing has been concluded, and after the
3 submission of briefs, if any, the hearing examiner shall make a
4 recommendation to the board of directors of the agency regarding
5 the disposition of the case. Such recommendation shall include
6 proposed findings of fact, conclusions of law, and final order.
7 Upon receipt of the recommendation, the board of directors may
8 adopt or amend it, or remand the matter to the hearing examiner
9 for further proceedings consistent with this act. A final order
10 of the board of directors shall be lodged in the agency files,
11 and copies served upon the borrower and the borrower's counsel,
12 if any.

13 (j) Any person aggrieved by a final order of the board of
14 directors may appeal such order to the court of common pleas of
15 the district in which the borrower resides or the Court of
16 Common Pleas of Dauphin County. All such appeals shall be
17 governed by the provisions of Chapter 15 of the Pennsylvania
18 Rules of Appellate Procedure as heretofore adopted and
19 subsequently amended by the Pennsylvania Supreme Court.
20 Notwithstanding any of the foregoing, if the court determines
21 that the petition for review and the answer thereto, if any,
22 allege facts which would require a trial by jury, the court may
23 schedule a hearing de novo. Any party to the action shall
24 thereupon be entitled to a trial by jury. Such trial by jury
25 shall be governed by the Rules of Civil Procedure as heretofore
26 adopted and subsequently amended by the Pennsylvania Supreme
27 Court.

28 (k) After a final order has been entered by the board of
29 directors and the time for appeal has expired, the agency may
30 execute upon the wages, salaries or commissions in the hands of

1 an employer or any other person in order to enforce a money
2 judgment for the repayment of any sums due to the agency as
3 determined by the provisions of this act. An employer shall
4 include any person, partnership, association, corporation,
5 institution, governmental body, unit or agency, school district
6 or municipality, or any other entity employing one or more
7 persons for a salary, wage, commission, or other compensation.
8 The agency shall initiate such action by sending to the
9 borrower's employer a notice of execution upon wages. Upon
10 receipt of such notice, the employer shall certify to the agency
11 the amount of wages, salary, commissions or other compensation
12 earned by the borrower and shall pay to the agency such
13 percentage of that amount as the agency demands, not to exceed
14 ten percent of the wages, salary, commissions or other
15 compensation of the borrower during a given pay period. Such
16 payment shall be made to the agency on each occasion that the
17 employer pays wages, salary, commissions, or other compensation
18 to the borrower, but not less than once per month, unless
19 otherwise agreed to by the agency. Nothing herein shall deny to
20 any judgment debtor the rights afforded debtors under Federal
21 and State exemption laws.

22 (1) The agency may recover from a borrower against whom a
23 final order has been entered as a judgment, a reasonable amount
24 of money which the agency shall determine, to defray those costs
25 which might ordinarily be taxed in a court of law for filing and
26 serving a complaint and entering judgment. The agency may
27 recover from a borrower against whom a final order has been
28 entered as a judgment, a reasonable amount of money as
29 attorney's fees if the promissory note or notes underlying the
30 claim of the agency authorize recovery of attorney's fees. The

1 agency may recover from a borrower against whom a final order
2 has been entered as a judgment, in addition to interest and
3 principal, interest at the rate or rates provided in the
4 promissory note or notes upon which the statement of claim is
5 based, to be computed from the date the statement of claim was
6 entered into the records of the agency.

7 (m) There shall be no limitation of time restricting the
8 initiation of a statement of claim or the entering of a judgment
9 pursuant to this act, and no statute of limitations heretofore
10 enacted shall apply to any claims or judgments of the agency. If
11 the agency initiates a statement of claim against any person
12 upon a default occurring more than twenty years before the
13 initiation of that claim, it shall be presumed that such
14 underlying debt has been paid in full, but the agency may rebut
15 that presumption by a preponderance of the evidence.

16 (n) The board of directors of the agency shall have the
17 power and its duty shall be to adopt rules and regulations not
18 inconsistent with law governing matters relating to this
19 section.

20 Section 6. Sections 1, 2, 3 and 4 of this act shall take
21 effect immediately and section 5 shall take effect in 90 days.