

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 928 Session of  
1991

INTRODUCED BY F. TAYLOR, GALLEN, KREBS, REINARD, McCALL, GEIST, LaGROTTA, CARLSON, D. R. WRIGHT, BUNT, O'BRIEN, BARLEY, COY, GLADECK, G. SNYDER, VAN HORNE, PRESTON, HAGARTY, OLASZ, S. H. SMITH, COLE, RYAN, GODSHALL, NOYE, CAPPABIANCA, LANGTRY, LEE, CIVERA, CHADWICK, CESSAR, KENNEY, PERZEL, FARGO, NAILOR, SERAFINI, RAYMOND, RITTER, STEIGHNER, LESCOVITZ, FARMER, FLICK, LUCYK, COLAFELLA, MARKOSEK, PESCI, LAWLESS, WOZNIAK, WOGAN AND MAYERNIK, APRIL 2, 1991

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, APRIL 2, 1991

AN ACT

1 Amending the act of November 30, 1965 (P.L.847, No.356),  
2 entitled "An act relating to and regulating the business of  
3 banking and the exercise by corporations of fiduciary powers;  
4 affecting persons engaged in the business of banking and  
5 corporations exercising fiduciary powers and affiliates of  
6 such persons; affecting the shareholders of such persons and  
7 the directors, trustees, officers, attorneys and employes of  
8 such persons and of the affiliates of such persons; affecting  
9 national banks located in the Commonwealth; affecting persons  
10 dealing with persons engaged in the business of banking,  
11 corporations exercising fiduciary powers and national banks;  
12 conferring powers and imposing duties on the Banking Board,  
13 on certain departments and officers of the Commonwealth and  
14 on courts, prothonotaries, clerks and recorders of deeds;  
15 providing penalties; and repealing certain acts and parts of  
16 acts," providing for certain direct and indirect extensions  
17 of credit to individuals, partnerships and unincorporated  
18 associations; authorizing direct extensions of credit to  
19 finance installment sales of goods and services to be made  
20 through sellers and contractors as intermediaries; providing  
21 special rules for transaction accounts of individuals; and  
22 providing for compliance with Federal law regarding  
23 availability of withdrawal of items deposited.

24 (a) The General Assembly makes the following findings as the  
25 basis for this act:

1           (1) The Pennsylvania statutes and regulations which  
2 govern direct and indirect extensions of credit by banks to  
3 individuals and unincorporated entities have become  
4 voluminous and intricate by reason of separate amendments and  
5 supplements over several years and, in conjunction with  
6 Federal statutes and regulations, have failed to provide a  
7 stable basis for the offering of credit by banks. Such  
8 statutes and regulations have imposed a costly, confusing and  
9 needless complexity in the compliance requirements that banks  
10 must satisfy without providing a proportionate benefit to  
11 their customers.

12           (2) The interests of the public and the interests of the  
13 State have been adversely affected by economic limitations on  
14 direct and indirect extensions of credit under restrictions  
15 of Pennsylvania law.

16           (3) Recent changes in Federal laws regulating interest  
17 payable on deposits have enabled the public to obtain market  
18 rates of interest on funds deposited with banks, and such  
19 rates may be adjusted to reflect interest rate levels in the  
20 national economy. Pennsylvania law generally does not provide  
21 the same flexibility for interest rates on direct and  
22 indirect extensions of credit.

23           (4) States contiguous to Pennsylvania, as well as most  
24 other states of the United States, have changed bank lending  
25 laws in order to maintain a consistent availability of  
26 credit. A consequence of these changes has been that  
27 financial institutions located in other states have become  
28 the sources of a substantial and increasing percentage of the  
29 personal credit business in Pennsylvania, detrimentally  
30 affecting employment, business and tax revenues in this

1 State.

2 (5) The accelerating development of interstate banking  
3 will increase the significance of State laws which govern  
4 bank extensions of credit and their effect on the choice of  
5 places where activities will be located. The loss of jobs in  
6 Pennsylvania directly caused by its outdated credit laws will  
7 inevitably increase with changes in the banking industry  
8 unless those laws offer the same opportunities for  
9 competition by Pennsylvania organizations as do the laws of  
10 other states.

11 (6) The interests of individuals and unincorporated  
12 entities in continuing credit availability from banks located  
13 in this State, the interests of the State in augmenting  
14 employment and business of its residents and the interests of  
15 the State and political subdivisions in State and local taxes  
16 resulting from such employment and business will be promoted  
17 by simplification and flexibility of bank lending laws so  
18 that credit can be offered at market rates and competitive  
19 terms.

20 (b) On the basis of these findings, the purposes of this act  
21 are to provide:

22 (1) Uniform, adequate and simplified disclosure by  
23 adoption of the comprehensive Federal rules governing  
24 disclosure in consumer credit transactions.

25 (2) Availability from Pennsylvania banks of credit at  
26 competitive market rates of interest and charges so that  
27 customers may benefit from decreases in market rates and  
28 Pennsylvania banks may continue to offer credit, and compete  
29 with banks from other states, during periods of both  
30 increases and decreases in interest rates.

1           (3) Maintenance of credit services for Pennsylvania  
2 customers at local banks so that customer alternatives will  
3 not be restricted to out-of-state companies as in the case of  
4 past periods of high interest rates.

5           (4) Unification and simplification of rules governing  
6 bank credit to promote efficiency and to increase borrower  
7 comprehension of the terms of credit.

8           (c) The provisions of this statute shall be liberally  
9 construed to accomplish the foregoing purposes.

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

12          Section 1. The act of November 30, 1965 (P.L.847, No.356),  
13 known as the Banking Code of 1965, is amended by adding a  
14 section to read:

15 Section 322. Extensions of Credit to Individuals, Partnerships  
16 and Unincorporated Associations

17 (a) Definitions--As used in this section, the following  
18 words and phrases shall have the meanings given to them in this  
19 subsection:

20 "Credit device"--any card, check, identification code or  
21 other means of identification contemplated by the agreement  
22 governing a plan.

23 "Loans"--cash advances or loans to be paid to or for the  
24 account of the customer.

25 "Plan" or "open-end credit plan"--a plan contemplating the  
26 extension of credit under an account governed by an agreement  
27 between an institution and a customer pursuant to which:

28 (i) the institution permits the customer and, if the  
29 agreement governing the plan so provides, persons acting on  
30 behalf of or with authorization from the customer from time

1 to time to make purchases or to obtain loans, or both, by use  
2 of a credit device,

3 (ii) the amounts of purchases made and loans obtained  
4 are charged to the customer's account under the plan,

5 (iii) the customer is required to pay the institution  
6 the amounts of all purchases and loans charged to the  
7 customer's account under the plan but has the privilege of  
8 paying the amounts outstanding from time to time in full or  
9 installments, and

10 (iv) interest may be charged and collected by the  
11 institution from time to time on the outstanding unpaid  
12 indebtedness under such plan.

13 "Purchases"--payments for property of whatever nature, real  
14 or personal, tangible or intangible, and payments for services,  
15 licenses, taxes, official fees, fines, private or governmental  
16 obligations, or any other thing of value.

17 "Truth in Lending"--the Federal Truth in Lending Act (Public  
18 Law 90-321, 15 U.S.C. § 1601 et seq.) and regulations  
19 promulgated thereunder as in effect from time to time. The terms  
20 "finance charge," "annual percentage rate," "credit card,"  
21 "open-end credit" and "closed-end credit" have the same coverage  
22 and meanings as the definitions of those terms under Truth in  
23 Lending.

24 (b) Coverage--This section shall govern all direct and  
25 indirect extensions of credit by an institution for personal,  
26 family, household, business or agricultural purposes to an  
27 individual, a partnership or an unincorporated association,  
28 whether as closed-end credit or open-end credit, except  
29 extensions of credit:

30 (i) which are secured by a first-lien, purchase money,

1     residential real estate mortgage,

2             (ii) which are student loans guaranteed by the  
3     Pennsylvania Higher Education Assistance Agency, or

4             (iii) which are not subject to a maximum rate of  
5     interest or finance charge, or as to which the pleading of  
6     usury as a defense is prohibited, pursuant to Federal or  
7     State law.

8     (c) Disclosures--In connection with an extension of credit,  
9     an institution shall make applicable disclosures required by  
10    Truth in Lending in lieu of any disclosure requirement which may  
11    be imposed by Pennsylvania law.

12    (d) Agreements for extension of credit--An institution may  
13    extend credit pursuant to this section on the basis of a written  
14    agreement. Such agreement, including related statements, notices  
15    and documents (a completed copy of each of which shall be given  
16    to the customer), shall have the form and contents required by  
17    Truth in Lending and shall, in addition, provide if applicable:

18             (i) the amounts of available credit and the procedure or  
19     means by which it may be obtained,

20             (ii) maturity provisions, installment payment  
21     requirements, prepayment privileges and rebates of unearned  
22     interest upon prepayment,

23             (iii) either the amounts or rates of interest, which may  
24     be fixed or variable rates, or the basis for determining such  
25     amounts or rates, subject to subsection (m),

26             (iv) the method of determining balances of unpaid  
27     indebtedness to which periodic rates of interest are  
28     applicable which, in the case of an open-end credit plan,  
29     may, if the agreement governing the plan so provides, include  
30     the amount of any interest and other charges, including

1 delinquency charges, which have accrued in the account,  
2 (v) charges which may be imposed in addition to  
3 interest, in such amounts as the agreement provides, or as  
4 established in the manner the agreement provides, such as,  
5 but not limited to, minimum charges, check charges and  
6 maintenance charges related to extensions of credit pursuant  
7 to overdraft check plans, delinquency charges for each  
8 installment or payment which is in default and fees,  
9 extension charges and charges that may be incurred on  
10 default, including attorney fees, court and other collection  
11 costs. Such additional charges may include a daily, weekly,  
12 monthly, annual or other periodic charge for the privileges  
13 made available to the customer under an open-end credit plan,  
14 transaction charges for each separate purchase or loan under  
15 the plan and a minimum charge for each scheduled billing  
16 period under the plan, during any portion of which there is  
17 an outstanding unpaid indebtedness under the plan,

18 (vi) collateral security and provisions relating  
19 thereto, except that there may not be any authorization for  
20 entry of judgment by confession, and

21 (vii) insurance coverages and premiums therefor.

22 Such agreements shall be valid and enforceable and an  
23 institution may impose and collect the interest and other  
24 charges provided therein.

25 (e) Computation of interest--A fixed rate of interest  
26 included in a finance charge shall be computed either on a  
27 simple interest basis by a generally accepted actuarial method,  
28 including a method permitted for determination of an annual  
29 percentage rate under Truth in Lending or, as to an extension of  
30 credit with an initial maturity of not more than sixty months,

which is made within two years after the effective date of this section, on an add-on or discount basis. The maximum amount that may be charged on the basis of a variable rate of interest shall be computed in accordance with or with reference to a schedule or formula, at the times and for the periods provided in the agreement. The periodic rate of interest, as so varied, will be applicable to all outstanding unpaid indebtedness under the agreement from the effective date of the variation if so provided in the agreement.

(f) Changes in terms--An institution may change the terms of the agreement if:

(i) the agreement so provides,

(ii) there is compliance with applicable notice requirements of Truth in Lending prior to the effective date of the change,

(iii) such notice states that a customer for whose account a change in terms does not become effective may pay all outstanding amounts pursuant to the agreement as in effect prior to the notice, and

(iv) in the case of an increase in a fixed rate of interest or other charges payable by the customer under an open-end credit plan, the customer incurs additional indebtedness after the effective date of the change of terms.

If the agreement governing the plan so provides, a change of terms pursuant to this subsection may, on and after the date it becomes effective as to an account, apply to all then outstanding unpaid indebtedness. A change in the amount of interest imposed in accordance with or with reference to a schedule or formula for a variable rate of interest shall not be deemed to be a change in terms but a change in such schedule or



formula shall be deemed to be a change in terms. No change may be made in a fixed rate of interest or other charges payable with respect to the outstanding balance of indebtedness or in the amount or due dates of required installment payments on closed-end credit unless there is written consent of the customer at the time of the change except for an extension of any due date or an option granted by the institution to the customer to omit payments and except as may be otherwise provided in an agreement for an extension of credit which is not for personal, family or household purposes.

(g) Prepayment--

(i) A borrower or buyer may prepay an extension of credit in full at any time without any prepayment charge.

(ii) If interest has been precomputed, then, in the event of prepayment of an extension of credit, the institution shall refund to the customer the unearned portion of the precomputed interest. The refund shall be in an amount not less than the amount of the unearned precomputed interest calculated in accordance with a generally accepted actuarial method including a method permitted for determination of an annual percentage rate under Truth in Lending, except that the amount of the unearned interest on an extension of credit with an initial maturity of not more than sixty months which is made within two years after the effective date of this section for which interest is computed on an add-on or discount basis as permitted by subsection (e) may be calculated in accordance with the "sum of the balances" method, and except that the customer shall not be entitled to a refund which results in a net minimum charge of less than an amount equal to the interest that would accrue in the

1 first month the extension of credit was scheduled to be  
2 outstanding. The institution shall not be required to refund  
3 the unearned portion of the interest if such amount is less  
4 than one dollar (\$1).

5 (iii) The amount of a refund under the "sum of the  
6 balances" method is determined by multiplying the precomputed  
7 interest by a fraction, the numerator of which is the sum of  
8 the balances, including interest, of the extension of credit  
9 scheduled to be outstanding after deducting the first of the  
10 payments scheduled to be made on or after the date of  
11 prepayment, and the denominator of which is the sum of all  
12 the unpaid balances, including interest, of the extension of  
13 credit scheduled to be outstanding from its inception to, and  
14 including the maturity of the final installment. Intervals  
15 between scheduled payments must be regular periods of one  
16 month or less except that the interval between the inception  
17 of an extension of credit and the due date of the first  
18 scheduled payment may be:

19 (A) one month and fifteen days when the regular  
20 payment interval is a month,

21 (B) one month when the regular payment interval is  
22 less than a month but more than a week, or

23 (C) eleven days when the regular payment interval is  
24 a week or less.

25 (h) Insurance--The agreement may provide for life, health,  
26 accident, loss-of-income or other permissible insurance related  
27 to an extension of credit under a group or individual policy  
28 subject to the option of the customer to furnish required  
29 insurance through an authorized insurer of the customer's choice  
30 as provided in section 11 of the act of September 2, 1961

1 (P.L.1232, No.540), known as the "Model Act for the Regulation  
2 of Credit Life Insurance and Credit Accident and Health  
3 Insurance," and, if premiums for such insurance are paid to the  
4 institution, provisions shall be made for rebates of unearned  
5 premiums, if any, upon prepayment. An institution may require  
6 that insurance be maintained, from an insurer acceptable to the  
7 institution, against loss or damage to property which is  
8 collateral security for the extension of credit and against  
9 liability arising out of the ownership or use of such property.  
10 An institution may grant an extension of credit to finance the  
11 premiums for such insurance.

12 (i) Extensions of credit through intermediaries--An  
13 extension of credit to finance a sale of a motor vehicle, other  
14 than through an open-end credit plan, may be made by an  
15 institution through a seller licensed as an installment seller  
16 under the act of June 28, 1947 (P.L.1110, No.476), known as the  
17 "Motor Vehicle Sales Finance Act," as an intermediary if:

18 (i) the agreement governing the extension of credit  
19 conspicuously provides that the extension of credit is made  
20 by the institution to the buyer and is subject to the  
21 provisions of this section, and

22 (ii) either the institution has made a commitment to  
23 make the extension of credit or the agreement is subject to  
24 acceptance by the institution within two business days after  
25 the date of the agreement and the institution upon such  
26 acceptance sends written notice thereof to the buyer. The  
27 terms and conditions under which the seller acts as an  
28 intermediary between the institution and the buyer shall be  
29 determined by written agreement between the institution and  
30 the seller.

1 An extension of credit made through an intermediary pursuant to  
2 this section shall be subject to this act and other acts  
3 governing transactions between banks and their customers and  
4 shall not be subject to the provisions or requirements of any  
5 other regulatory statute, rule or regulation and neither a  
6 seller who acts as an intermediary for an institution with  
7 respect to such an extension of credit nor an institution which  
8 makes such an extension of credit through a seller as an  
9 intermediary shall be deemed to be in violation of licensing or  
10 other requirements of any other regulatory statute, rule or  
11 regulation that would be applicable to extensions of credits by  
12 such a seller or contractor to its customers.

13 (j) Right of rescission--A person whose ownership interest  
14 in that person's principal dwelling is subject to a lien or  
15 security interest as collateral security for an extension of  
16 credit subject to this section shall have a right of rescission  
17 for the same types of transactions, on the same terms and  
18 conditions and for the same time periods as those provided for  
19 the right of rescission under Truth in Lending.

20 (k) Statement of account--Upon the written request of the  
21 customer, an institution shall provide, within ninety days after  
22 the end of each calendar year, a statement of the customer's  
23 account showing payments made during such year, the amount  
24 applied to interest and the balance of the account at the end of  
25 such year.

26 (l) Waiver of provisions--No provision of this section which  
27 confers rights on the customer or any other person may be waived  
28 or modified except to the extent and in the circumstances in  
29 which Truth in Lending permits a consumer to waive or modify the  
30 right of rescission.

1     (m) Maximum rates of interest for credit card purchases--The  
2     maximum rate of interest from time to time that may be imposed  
3     on amounts charged to a credit card account for purchases shall  
4     be the index rate under this subsection in effect at the time  
5     the interest is charged to the account and shall be applicable  
6     to all balances in the account for purchases and, if the  
7     agreement governing the account so provides, to interest and  
8     other charges accrued on unpaid balances for purchases. The  
9     index rate shall be determined for each calendar quarter  
10    commencing on the first day of January, April, July and October  
11    of each year. For the first calendar quarter which commences not  
12    less than ninety days after the date of approval of this  
13    subsection, the index rate shall be the sum of the average  
14    annual percentage yield on U.S. Government securities for a  
15    constant three-year maturity as published by the Board of  
16    Governors of the Federal Reserve System rounded to the nearer  
17    quarter of one percent ("U.S. Government three-year rate") for  
18    the first full calendar month after such date of approval plus  
19    eight percent. For each successive calendar quarter, the index  
20    rate shall be the average U.S. Government three-year rate for  
21    the second calendar month preceding such quarter plus eight  
22    percent. The index rate for a calendar quarter shall be the  
23    maximum rate of interest imposed in each billing cycle which  
24    begins in such calendar quarter on balances subject to this  
25    subsection. Notwithstanding any provision in this section or any  
26    other act to the contrary, there shall be no limitation on the  
27    rate, amount or manner of assessing or adjusting service  
28    charges, finance charges, interest, annual or other periodic  
29    fees or any other fees or charges imposed in connection with  
30    credit cards issued by any bank, savings bank or savings and

1 loan association located in Pennsylvania to cardholders  
2 domiciled outside Pennsylvania: Provided, however, That the  
3 rate, amount and manner of assessing and adjusting such service  
4 charges, finance charges, interest, fees and charges shall be  
5 set forth in writing and agreed to by the credit card issuer and  
6 the cardholder. This subsection (m), the annual or other  
7 periodic fees and any additional fees and charges, other than  
8 the service charge, finance charge or interest, shall all be  
9 deemed to be material to the determination of the rate of the  
10 service charge, finance charge and interest for purposes of  
11 Federal law. In determining whether a cardholder is domiciled in  
12 Pennsylvania, a credit card issuer may conclusively assume that  
13 such cardholder is domiciled outside Pennsylvania if the issuer  
14 has not mailed any solicitation to the cardholder at a  
15 Pennsylvania address, has not entered into a credit card  
16 agreement with a cardholder pursuant to a personal meeting at an  
17 office of the issuer in Pennsylvania and does not mail the  
18 cardholder's monthly billing statements to a Pennsylvania  
19 address.

20 Section 2. Section 506(a)(vi), (vii) and (viii) of the act,  
21 amended December 21, 1988 (P.L.1416, No.173), are amended and  
22 the subsection is amended by adding a clause to read:

23 Section 506. Lending Powers; Direct Leasing of Personal  
24 Property

25 (a) A savings bank may:

26 \* \* \*

27 (vi) in the case of a savings bank which has elected to  
28 exercise the conditional powers provided in section 513, make  
29 secured or unsecured loans for personal, family or household  
30 purposes, including loans reasonably incident to the

1 provision of such credit, and subject to regulation by the  
2 department, issue credit cards, extend credit in connection  
3 therewith, and otherwise engage in or participate in credit  
4 card operations, except that the total amount of such loans  
5 or extensions of credit shall not exceed thirty percent of  
6 the assets of such savings bank[. In any loan or extension of  
7 credit made under the authority of this clause a savings bank  
8 may charge or impose any rate or charge which could be  
9 imposed by a bank in connection with any such loan or  
10 extension of credit and shall be subject to the same  
11 restrictions and limitations imposed upon a bank in  
12 connection with such loan or extension of credit];

13 (vii) make overdraft loans specifically related to  
14 deposits which are subject to withdrawal by check or by  
15 negotiable order of withdrawal; [and]

16 (viii) make loans for the payment of educational  
17 expenses; and

18 (ix) in any loan or extension of credit made under the  
19 authority of this section, charge or impose any rate or  
20 charge which could be imposed by a bank in connection with  
21 any such loan or extension of credit, make agreements in the  
22 same manner and with the same terms, provisions and  
23 conditions as a bank and, in addition to the restrictions of  
24 this section, shall be subject only to the same disclosure  
25 and other requirements, restrictions and limitations imposed  
26 upon a bank in connection with such loan or extension of  
27 credit.

28 [A savings bank may not lend money or discount or purchase  
29 evidences of indebtedness or agreements for the payment of money  
30 except as provided in sections 504 and 505 and in this

1 subsection (a).]

2 \* \* \*

3 Section 3. The act is amended by adding a section to read:

4 Section 611. Compliance with Federal Law Regarding Availability  
5 of Withdrawal of Items Deposited

6 An institution shall comply with the "Expedited Funds  
7 Availability Act" (Public Law 100-86, 12 U.S.C. § 4001 et seq.)  
8 and any amendments thereof and any regulations, interpretations  
9 and rulings issued thereunder from the effective date thereof.

10 Section 4. The provisions of this act shall only govern  
11 transactions between banks or savings banks and their customers  
12 and, by reason of the references to "interest, finance charge,  
13 rate, and/or terms" in section 701(a)(26) of the act of December  
14 14, 1967 (P.L.746, No.345), known as the Savings Association  
15 Code of 1967, transactions between savings associations and  
16 their customers, and shall not affect acts and parts of acts  
17 governing other creditors or sellers or contractors for goods or  
18 services, or acts or parts of acts governing such other  
19 creditors or sellers as to installment sales or contracts for  
20 goods or services, including, but not limited to the act of June  
21 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales  
22 Finance Act, the act of August 14, 1963 (P.L.1082, No.464),  
23 known as the Home Improvement Finance Act and the act of October  
24 28, 1966 (Sp.Sess., P.L.55, No.7), known as the Goods and  
25 Services Installment Sales Act, or acts and parts of acts  
26 governing rights, duties and procedures for enforcement of  
27 obligations upon default on an extension of credit, or acts and  
28 parts of acts governing credit life insurance or the act of  
29 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade  
30 Practices and Consumer Protection Law, or 13 Pa.C.S. (relating



1 to commercial code). This act shall not repeal any act governing  
2 criminal usury, extortionate extensions of credit or  
3 racketeering activity or repeal or affect any law relating to  
4 the preservation against an assignee of a consumer's claims and  
5 defenses arising out of an agreement for the purchase of goods  
6 or services.

7 Section 5. All acts and parts of acts are repealed insofar  
8 as they are inconsistent with the provisions of this act.

9 Section 6. This amendatory act shall be known and may be  
10 cited as the Simplification and Availability of Bank Credit Act.

11 Section 7. This act shall take effect immediately.