

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 863 Session of
1993

INTRODUCED BY SCANLON, HOLL, MUSTO, SHAFFER, HART, AFFLERBACH,
STOUT, STAPLETON, FATTAH, LOEPER, WENGER, FISHER, BELAN,
GREENLEAF, TILGHMAN, BRIGHTBILL, BORTNER, HELFRICK,
SALVATORE, ARMSTRONG, JUBELIRER, PUNT, MADIGAN, REIBMAN,
DAWIDA, LEWIS, MELLOW, PETERSON AND LEMMOND, MARCH 31, 1993

REFERRED TO BANKING AND INSURANCE, MARCH 31, 1993

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; and
21 providing for compliance with Federal law regarding
22 availability of withdrawal of items deposited.

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

25 (1) The statutes and regulations of this Commonwealth
26 which govern direct and indirect extensions of credit by

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

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

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

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

30 (5) The accelerating development of interstate banking

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

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

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

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

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

29 (3) Maintenance of credit services for Pennsylvania
30 customers at local banks so that customer alternatives will

1 not be restricted to out-of-state companies as in the case of
2 past periods of high interest rates.

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

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

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

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

13 Section 322. Extensions of Credit to Individuals, Partnerships
14 and Unincorporated Associations

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

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

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

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

26 (i) the institution permits the customer and, if the
27 agreement governing the plan so provides, persons acting on
28 behalf of or with authorization from the customer from time
29 to time to make purchases or to obtain loans, or both, by use
30 of a credit device,

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

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

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

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

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

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

28 (i) which are secured by a first-lien, purchase money,
29 residential real estate mortgage,

30 (ii) which are student loans guaranteed by the

1 Pennsylvania Higher Education Assistance Agency, or
2 (iii) which are not subject to a maximum rate of
3 interest or finance charge, or as to which the pleading of
4 usury as a defense is prohibited, pursuant to Federal or
5 State law.

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

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

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

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

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

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

30 (v) charges which may be imposed in addition to

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

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

19 (vii) insurance coverages and premiums therefor.

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

23 (e) Computation of interest--A fixed rate of interest
24 included in a finance charge shall be computed either on a
25 simple interest basis by a generally accepted actuarial method,
26 including a method permitted for determination of an annual
27 percentage rate under Truth in Lending or, as to an extension of
28 credit with an initial maturity of not more than sixty months,
29 which is made within two years after the effective date of this
30 section, on an add-on or discount basis. The maximum amount that

1 may be charged on the basis of a variable rate of interest shall
2 be computed in accordance with or with reference to a schedule
3 or formula, at the times and for the periods provided in the
4 agreement. The periodic rate of interest, as so varied, will be
5 applicable to all outstanding unpaid indebtedness under the
6 agreement from the effective date of the variation if so
7 provided in the agreement.

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

10 (i) the agreement so provides,

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

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

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

22 If the agreement governing the plan so provides, a change of
23 terms pursuant to this subsection may, on and after the date it
24 becomes effective as to an account, apply to all then
25 outstanding unpaid indebtedness. A change in the amount of
26 interest imposed in accordance with or with reference to a
27 schedule or formula for a variable rate of interest shall not be
28 deemed to be a change in terms but a change in such schedule or
29 formula shall be deemed to be a change in terms. No change may
30 be made in a fixed rate of interest or other charges payable

1 with respect to the outstanding balance of indebtedness or in
2 the amount or due dates of required installment payments on
3 closed-end credit unless there is written consent of the
4 customer at the time of the change except for an extension of
5 any due date or an option granted by the institution to the
6 customer to omit payments and except as may be otherwise
7 provided in an agreement for an extension of credit which is not
8 for personal, family or household purposes.

9 (g) Prepayment--

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

12 (ii) If interest has been precomputed, then, in the
13 event of prepayment of an extension of credit, the
14 institution shall refund to the customer the unearned portion
15 of the precomputed interest. The refund shall be in an amount
16 not less than the amount of the unearned precomputed interest
17 calculated in accordance with a generally accepted actuarial
18 method including a method permitted for determination of an
19 annual percentage rate under Truth in Lending, except that
20 the amount of the unearned interest on an extension of credit
21 with an initial maturity of not more than sixty months which
22 is made within two years after the effective date of this
23 section for which interest is computed on an add-on or
24 discount basis as permitted by subsection (e) may be
25 calculated in accordance with the "sum of the balances"
26 method, and except that the customer shall not be entitled to
27 a refund which results in a net minimum charge of less than
28 an amount equal to the interest that would accrue in the
29 first month the extension of credit was scheduled to be
30 outstanding. The institution shall not be required to refund

1 the unearned portion of the interest if such amount is less
2 than one dollar (\$1).

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

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

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

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

23 (h) Insurance--The agreement may provide for life, health,
24 accident, loss-of-income or other permissible insurance related
25 to an extension of credit under a group or individual policy
26 subject to the option of the customer to furnish required
27 insurance through an authorized insurer of the customer's choice
28 as provided in section 11 of the act of September 2, 1961
29 (P.L.1232, No.540), known as the "Model Act for the Regulation
30 of Credit Life Insurance and Credit Accident and Health

1 Insurance," and, if premiums for such insurance are paid to the
2 institution, provisions shall be made for rebates of unearned
3 premiums, if any, upon prepayment. An institution may require
4 that insurance be maintained, from an insurer acceptable to the
5 institution, against loss or damage to property which is
6 collateral security for the extension of credit and against
7 liability arising out of the ownership or use of such property.
8 An institution may grant an extension of credit to finance the
9 premiums for such insurance.

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

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

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

29 An extension of credit made through an intermediary pursuant to
30 this section shall be subject to this act and other acts

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

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

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

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

29 Section 2. Section 506(a)(vi), (vii) and (viii) of the act,
30 amended December 21, 1988 (P.L.1416, No.173), are amended and

1 the subsection is amended by adding a clause to read:

2 Section 506. Lending Powers; Direct Leasing of Personal
3 Property

4 (a) A savings bank may:

5 * * *

6 (vi) in the case of a savings bank which has elected to
7 exercise the conditional powers provided in section 513, make
8 secured or unsecured loans for personal, family or household
9 purposes, including loans reasonably incident to the
10 provision of such credit, and subject to regulation by the
11 department, issue credit cards, extend credit in connection
12 therewith, and otherwise engage in or participate in credit
13 card operations, except that the total amount of such loans
14 or extensions of credit shall not exceed thirty percent of
15 the assets of such savings bank[. In any loan or extension of
16 credit made under the authority of this clause a savings bank
17 may charge or impose any rate or charge which could be
18 imposed by a bank in connection with any such loan or
19 extension of credit and shall be subject to the same
20 restrictions and limitations imposed upon a bank in
21 connection with such loan or extension of credit];

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

25 (viii) make loans for the payment of educational
26 expenses; and

27 (ix) in any loan or extension of credit made under the
28 authority of this section, charge or impose any rate or
29 charge which could be imposed by a bank in connection with
30 any such loan or extension of credit, make agreements in the

1 same manner and with the same terms, provisions and
2 conditions as a bank and, in addition to the restrictions of
3 this section, shall be subject only to the same disclosure
4 and other requirements, restrictions and limitations imposed
5 upon a bank in connection with such loan or extension of
6 credit.

7 [A savings bank may not lend money or discount or purchase
8 evidences of indebtedness or agreements for the payment of money
9 except as provided in sections 504 and 505 and in this
10 subsection (a).]

11 * * *

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

13 Section 611. Compliance with Federal Law Regarding Availability
14 of Withdrawal of Items Deposited

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

19 Section 4. The provisions of this act shall only govern
20 transactions between banks or savings banks and their customers
21 and, by reason of the references to "interest, finance charge,
22 rate, and/or terms" in section 701(a)(26) of the act of December
23 14, 1967 (P.L.746, No.345), known as the Savings Association
24 Code of 1967, transactions between savings associations and
25 their customers, and shall not affect acts and parts of acts
26 governing other creditors or sellers or contractors for goods or
27 services, or acts or parts of acts governing such other
28 creditors or sellers as to installment sales or contracts for
29 goods or services, including, but not limited to, the act of
30 June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle

1 Sales Finance Act, the act of August 14, 1963 (P.L.1082,
2 No.464), known as the Home Improvement Finance Act and the act
3 of October 28, 1966 (Sp.Sess., P.L.55, No.7), known as the Goods
4 and Services Installment Sales Act, or acts and parts of acts
5 governing rights, duties and procedures for enforcement of
6 obligations upon default on an extension of credit, or acts and
7 parts of acts governing credit life insurance or the act of
8 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
9 Practices and Consumer Protection Law, or 13 Pa.C.S. (relating
10 to commercial code). This act shall not repeal any act governing
11 criminal usury, extortionate extensions of credit or
12 racketeering activity or repeal or affect any law relating to
13 the preservation against an assignee of a consumer's claims and
14 defenses arising out of an agreement for the purchase of goods
15 or services.

16 Section 5. This amendatory act shall be known and may be
17 cited as the Simplification and Availability of Bank Credit Act.

18 Section 6. All acts and parts of acts are repealed insofar
19 as they are inconsistent with the provisions of this act.

20 Section 7. This act shall take effect immediately.