

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 863** Session of
1993

INTRODUCED BY SCANLON, HOLL, MUSTO, SHAFFER, HART, AFFLERBACH,
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ARMSTRONG, JUBELIRER, PUNT, MADIGAN, REIBMAN, DAWIDA, LEWIS,
MELLOW, PETERSON AND LEMMOND, MARCH 31, 1993

AS REPORTED FROM COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 7, 1994

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

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

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

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

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

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5 Pennsylvania directly caused by its outdated credit laws will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

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

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

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

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

30 (3) Maintenance of credit services for Pennsylvania

1 customers at local banks so that customer alternatives will
2 not be restricted to out-of-state companies as in the case of
3 past periods of high interest rates.

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

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

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

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

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

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

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

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

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

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

1 of a credit device,

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

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

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

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

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

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

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

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

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

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

11 (d) Agreements for extension of credit--An institution may
12 extend credit pursuant to this section on the basis of a written
13 agreement. ~~Such AN AGREEMENT SHALL BE FULLY COMPLETED PRIOR TO~~ <—
14 SIGNATURE BY THE CUSTOMER. A COMPLETED COPY OF SUCH agreement,
15 including related statements, notices and documents ~~(a completed~~ <—
16 copy of each of which shall be given to the customer), SHALL BE <—
17 GIVEN TO THE CUSTOMER. AN AGREEMENT shall have the form and
18 contents required by Truth in Lending and shall, in addition,
19 provide if applicable:

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

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

25 (iii) either the amounts or rates of interest, which may
26 be fixed or variable rates, or the basis for determining such
27 amounts or rates, ~~subject to subsection (m),~~ <—

28 (iv) the method of determining balances of unpaid
29 indebtedness to which periodic rates of interest are
30 applicable which, in the case of an open-end credit plan,

1 may, if the agreement governing the plan so provides, include
2 the amount of any interest and other charges, including
3 delinquency charges, which have accrued in the account,

4 (v) charges which may be imposed in addition to
5 interest, in such amounts as the agreement provides, or as
6 established in the manner the agreement provides, such as,
7 but not limited to, minimum charges, check charges and
8 maintenance charges related to extensions of credit pursuant
9 to overdraft check plans, ~~A delinquency charges for~~ CHARGE OF <—
10 TWENTY DOLLARS (\$20) OR TEN PERCENT OF each installment or
11 payment, WHICHEVER IS HIGHER, which is in default FOR MORE <—
12 THAN FIFTEEN DAYS and fees, extension charges and ACTUAL <—
13 charges that may be incurred on default, including attorney <—
14 fees, court and other collection costs, BUT NOT LIMITED TO, <—
15 COURT AND OTHER COLLECTION COSTS AND REASONABLE ATTORNEY
16 FEES. Such additional charges may include a daily, weekly,
17 monthly, annual or other periodic charge for the privileges
18 made available to the customer under an open-end credit plan,
19 transaction charges for each separate purchase or loan under
20 the plan and a minimum charge for each scheduled billing
21 period under the plan, during any portion of which there is
22 an outstanding unpaid indebtedness under the plan,

23 (vi) collateral security and provisions relating
24 thereto, except that there may not be any authorization for
25 entry of judgment by confession NOR ANY ACCELERATION OF A <—
26 LOAN OR REPOSSESSION OF COLLATERAL UNLESS THERE IS A DEFAULT
27 PURSUANT TO THE AGREEMENT, and

28 (vii) insurance coverages and premiums therefor.

29 Such agreements shall be valid and enforceable and an
30 institution may impose and collect the interest and other

1 charges provided therein.

2 (e) Computation of interest--A fixed rate of interest
3 included in a finance charge shall be computed either on a
4 simple interest basis by a generally accepted actuarial method,
5 including a method permitted for determination of an annual
6 percentage rate under Truth in Lending or, as to an extension of
7 credit with an initial maturity of not more than sixty months,
8 which is made within two years after the effective date of this
9 section, on an add-on or discount basis. The maximum amount that
10 may be charged on the basis of a variable rate of interest shall
11 be computed in accordance with or with reference to a schedule
12 or formula, at the times and for the periods provided in the
13 agreement. The periodic rate of interest, as so varied, will be
14 applicable to all outstanding unpaid indebtedness under the
15 agreement from the effective date of the variation if so
16 provided in the agreement.

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

19 (i) the agreement so provides,

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

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

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

1 If the agreement governing the plan so provides, a change of
2 terms pursuant to this subsection may, on and after the date it
3 becomes effective as to an account, apply to all then
4 outstanding unpaid indebtedness. A change in the amount of
5 interest imposed in accordance with or with reference to a
6 schedule or formula for a variable rate of interest shall not be
7 deemed to be a change in terms but a change in such schedule or
8 formula shall be deemed to be a change in terms. No change may
9 be made in a fixed rate of interest or other charges payable
10 with respect to the outstanding balance of indebtedness or in
11 the amount or due dates of required installment payments on
12 closed-end credit unless there is written consent of the
13 customer at the time of the change except for an extension of
14 any due date or an option granted by the institution to the
15 customer to omit payments and except as may be otherwise
16 provided in an agreement for an extension of credit which is not
17 for personal, family or household purposes.

18 (g) Prepayment--

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

21 (ii) If interest has been precomputed, then, in the
22 event of prepayment of an extension of credit, the
23 institution shall refund to the customer the unearned portion
24 of the precomputed interest. The refund shall be in an amount
25 not less than the amount of the unearned precomputed interest
26 calculated in accordance with a generally accepted actuarial
27 method including a method permitted for determination of an
28 annual percentage rate under Truth in Lending, except that
29 the amount of the unearned interest on an extension of credit
30 with an initial maturity of not more than sixty months which

1 is made within two years after the effective date of this
2 section for which interest is computed on an add-on or
3 discount basis as permitted by subsection (e) may be
4 calculated in accordance with the "sum of the balances"
5 method, and except that the customer shall not be entitled to
6 a refund which results in a net minimum charge of less than
7 an amount equal to the interest that would accrue in the
8 first month the extension of credit was scheduled to be
9 outstanding. The institution shall not be required to refund
10 the unearned portion of the interest if such amount is less
11 than one dollar (\$1).

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

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

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

30 (C) eleven days when the regular payment interval is

1 a week or less.

2 (h) Insurance--The agreement may provide for life, health,
3 accident, loss-of-income or other permissible insurance related
4 to an extension of credit under a group or individual policy
5 subject to the option of the customer to furnish required
6 insurance through an authorized insurer of the customer's choice
7 as provided in section 11 of the act of September 2, 1961
8 (P.L.1232, No.540), known as the "Model Act for the Regulation
9 of Credit Life Insurance and Credit Accident and Health
10 Insurance," and, if premiums for such insurance are paid to the
11 institution, provisions shall be made for rebates of unearned
12 premiums, if any, upon prepayment. An institution may require
13 that insurance be maintained, from an insurer acceptable to the
14 institution, against loss or damage to property which is
15 collateral security for the extension of credit and against
16 liability arising out of the ownership or use of such property.
17 An institution may grant an extension of credit to finance the
18 premiums for such insurance.

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

25 (i) the agreement governing the extension of credit
26 conspicuously provides that the extension of credit is made
27 by the institution to the buyer and is subject to the
28 provisions of this section, and

29 (ii) either the institution has made a commitment to
30 make the extension of credit or the agreement is subject to

1 acceptance by the institution within two business days after
2 the date of the agreement and the institution upon such
3 acceptance sends written notice thereof to the buyer. The
4 terms and conditions under which the seller acts as an
5 intermediary between the institution and the buyer shall be
6 determined by written agreement between the institution and
7 the seller.

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

20 (j) Right of rescission--A person whose ownership interest
21 in that person's principal dwelling is subject to a lien or
22 security interest as collateral security for an extension of
23 credit subject to this section shall have a right of rescission
24 for the same types of transactions, on the same terms and
25 conditions and for the same time periods as those provided for
26 the right of rescission under Truth in Lending.

27 (k) Statement of account--Upon the written request of the
28 customer, an institution shall provide, within ninety days after
29 the end of each calendar year, a statement of the customer's
30 account showing payments made during such year, the amount

1 applied to interest and the balance of the account at the end of
2 such year.

3 (1) Waiver of provisions--No provision of this section which
4 confers rights on the customer or any other person may be waived
5 or modified except to the extent and in the circumstances in
6 which Truth in Lending permits a consumer to waive or modify the
7 right of rescission.

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

11 Section 506. Lending Powers; Direct Leasing of Personal
12 Property

13 (a) A savings bank may:

14 * * *

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

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

4 (viii) make loans for the payment of educational
5 expenses; and

6 (ix) in any loan or extension of credit made under the
7 authority of this section, charge or impose any rate or
8 charge which could be imposed by a bank in connection with
9 any such loan or extension of credit, make agreements in the
10 same manner and with the same terms, provisions and
11 conditions as a bank and, in addition to the restrictions of
12 this section, shall be subject only to the same disclosure
13 and other requirements, restrictions and limitations imposed
14 upon a bank in connection with such loan or extension of
15 credit.

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

20 * * *

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

22 Section 611. Compliance with Federal Law Regarding Availability
23 of Withdrawal of Items Deposited

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

28 Section 4. The provisions of this act shall only govern
29 transactions between banks or savings banks and their customers
30 and, by reason of the references to "interest, finance charge,

1 rate, and/or terms" in section 701(a)(26) of the act of December
2 14, 1967 (P.L.746, No.345), known as the Savings Association
3 Code of 1967, transactions between savings associations and
4 their customers, and shall not affect acts and parts of acts
5 governing other creditors or sellers or contractors for goods or
6 services, or acts or parts of acts governing such other
7 creditors or sellers as to installment sales or contracts for
8 goods or services, including, but not limited to, the act of
9 June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle
10 Sales Finance Act, the act of August 14, 1963 (P.L.1082,
11 No.464), known as the Home Improvement Finance Act and the act
12 of October 28, 1966 (Sp.Sess., P.L.55, No.7), known as the Goods
13 and Services Installment Sales Act, or acts and parts of acts
14 governing rights, duties and procedures for enforcement of
15 obligations upon default on an extension of credit, or acts and
16 parts of acts governing credit life insurance or the act of
17 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
18 Practices and Consumer Protection Law, or 13 Pa.C.S. (relating
19 to commercial code). This act shall not repeal any act governing
20 criminal usury, extortionate extensions of credit or
21 racketeering activity or repeal or affect any law relating to
22 the preservation against an assignee of a consumer's claims and
23 defenses arising out of an agreement for the purchase of goods
24 or services.

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

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

29 Section 7. This act shall take effect ~~immediately~~ IN 90
30 DAYS.

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