

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1082 Session of  
2007

INTRODUCED BY MCGEEHAN, DALEY, D. EVANS, BOYD, BRENNAN,  
DePASQUALE, GALLOWAY, GEORGE, GIBBONS, HALUSKA, HERSHEY,  
KENNEY, MANDERINO, MELIO, PALLONE, PASHINSKI, ROEBUCK,  
SCAVELLO, SIPTROTH, SOLOBAY, STABACK, SURRA, THOMAS, WALKO  
AND HELM, APRIL 18, 2007

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, FEBRUARY 12, 2008

## AN ACT

1 Amending the act of May 15, 1933 (P.L.565, No.111), entitled "An  
2 act relating to the powers and duties of the Department of  
3 Banking and the Secretary of Banking in exercising  
4 supervision over, and taking possession of and conducting or  
5 liquidating the business and property of, corporations,  
6 associations, and persons receiving deposits or otherwise  
7 transacting a banking business, corporations acting as  
8 fiduciaries, and building and loan associations; providing  
9 for the payment of the expenses of the Department of Banking  
10 by supervised corporations, associations, or persons, and  
11 appropriating the Banking Department Fund; authorizing the  
12 Department of Banking, under certain circumstances, to  
13 examine corporations, associations, or persons affiliated, or  
14 having business transactions with supervised corporations,  
15 associations or persons; authorizing appeals to the Supreme  
16 Court, and prescribing and limiting the powers and duties of  
17 certain other courts and their prothonotaries, registers of  
18 wills, recorders of deeds, and certain State departments,  
19 commissions, and officers; authorizing certain local public  
20 officers and State departments to collect fees for services  
21 rendered under this act; providing penalties; and repealing  
22 certain acts and parts of acts," further prohibiting  
23 disclosure of certain information; AND PROVIDING FOR CONDUCT <—  
24 OF ADMINISTRATIVE PROCEEDINGS RELATING TO INSTITUTIONS AND  
25 CREDIT UNIONS.

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

1 Section 1. Section 302 of the act of May 15, 1933 (P.L.565,  
2 No.111), known as the Department of Banking Code, amended  
3 December 9, 2002 (P.L.1604, No.209), is amended to read:

4 Section 302. Disclosure of Information Forbidden; Penalty;  
5 Exceptions.--A. (1) This section applies to matters relating  
6 to institutions, credit unions and licensees.

7 (2) Neither the secretary nor any deputy, examiner, clerk,  
8 or other employe of the department, shall publish or divulge to  
9 anyone any information contained in or ascertained from any  
10 examination or investigation made by the department, or any  
11 letter, report, or statement sent to the department, or any  
12 other paper or document in the custody of the department, except  
13 when the publication or divulgement of such information is made  
14 by the department pursuant to the provisions of this act, or  
15 when the production of such information is required by subpoena  
16 or other legal process of a court of competent jurisdiction, or  
17 when it is used in deciding whether to prosecute or in  
18 prosecutions or other court actions instituted by or on behalf  
19 of or at the request of the department, or when referring for  
20 investigation to or in response to a request from any Federal,  
21 State or local law enforcement or any Federal or State financial  
22 regulatory agency, including banking, insurance and securities  
23 regulatory agencies, or when the department provides information  
24 to any Federal or State financial regulatory agency, including  
25 banking, insurance and securities regulatory agencies, when the  
26 information pertains to an enforcement concern. The information  
27 shall be provided as may be necessary or appropriate, as  
28 determined in the discretion of the secretary.

29 (3) The service of a subpoena upon the secretary, deputy,  
30 examiner, clerk or other employe of the department shall not be

1 construed as requiring such person to disclose any information,  
2 but such person shall have all the rights and privileges as any  
3 other subpoenaed party to object to production of information on  
4 the same basis as provided in the Rules of Civil Procedure,  
5 statute, regulation or common law. The department may condition  
6 the release of such information on an order from a court of  
7 competent jurisdiction protecting the information from general  
8 disclosure to the public. The department retains and may  
9 exercise any and all remedies at law and in equity to quash a  
10 subpoena.

11 (4) Any privileges available to Federal financial  
12 institution regulators under Federal statute, regulation or  
13 common law shall be available to the department.

14 (5) The department may provide to any person, corporation or  
15 Federal, State or local government agency the following  
16 information regarding licensees to the extent that the  
17 department has such information in its possession: the type of  
18 license held by the licensee; whether a license application  
19 submitted by any person or corporation has been denied, pursuant  
20 to a final order or adjudication issued by the department;  
21 whether and for what time period a [person's] licensee's license  
22 is current, suspended or revoked pursuant to a final order or  
23 adjudication issued by the department; whether and for what time  
24 period an individual is or has been suspended or prohibited from  
25 working for or otherwise participating as a licensee or in any  
26 other capacity in businesses regulated by the department  
27 pursuant to a final order or adjudication issued by the  
28 department[.]; and whether and to what extent a corporation,  
29 person or licensee is or has been subject to a fine, order or  
30 adjudication issued by the department.

1        [(6) The department may condition the release of subpoenaed  
2 information on an order from a court of competent jurisdiction  
3 protecting the information from general disclosure to the  
4 public.]

5        (7) If the department is subpoenaed for a report of  
6 examination information, the department may refuse to release  
7 the requested information as the secretary deems necessary and  
8 appropriate under the circumstances for the following reasons:  
9 safety and soundness; if the department requests and is denied a  
10 protective order; or if the department requests and is denied  
11 redaction of the report of examination to protect the privacy of  
12 persons not involved in the litigation.

13        B. A violation of the provisions of this section by the  
14 secretary, or by any deputy, examiner, clerk, or other employe  
15 of the department, shall be sufficient ground for his removal  
16 from office. In addition the secretary, deputy, examiner, clerk,  
17 or other employe who willfully or knowingly commits such  
18 violation shall be deemed guilty of a misdemeanor, and shall,  
19 upon conviction thereof, be subject to imprisonment for a period  
20 not exceeding one year, or a fine not exceeding one thousand  
21 dollars, or both.

22        SECTION 2. SECTION 503 HEADING OF THE ACT IS AMENDED AND THE <—  
23 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

24        SECTION 503. QUO WARRANTO OR INJUNCTION PROCEEDINGS; CONDUCT  
25 OF ADMINISTRATIVE PROCEEDINGS RELATING TO INSTITUTIONS AND  
26 CREDIT UNIONS.--\* \* \*

27        E. (1) ALL ADMINISTRATIVE PROCEEDINGS CONDUCTED BY THE  
28 DEPARTMENT PERTAINING TO INSTITUTIONS, INCLUDING CREDIT UNIONS,  
29 SHALL BE SUBJECT TO THE REQUIREMENTS OF 2 PA.C.S. (RELATING TO  
30 ADMINISTRATIVE LAW AND PROCEDURE), KNOWN AS THE ADMINISTRATIVE

1 AGENCY LAW. FOR PURPOSES OF THIS SUBSECTION, THE TERM  
2 "ADMINISTRATIVE PROCEEDING" MEANS ANY PROCEEDING OTHER THAN A  
3 JUDICIAL PROCEEDING, THE OUTCOME OF WHICH IS REQUIRED TO BE  
4 BASED ON A RECORD OR DOCUMENTATION PRESCRIBED BY LAW, OR IN  
5 WHICH LAW OR REGULATION IS PARTICULARIZED IN APPLICATION TO AN  
6 INSTITUTION OR CREDIT UNION. THE PROVISIONS OF THIS SUBSECTION  
7 SHALL SUPPLEMENT AND NOT REPEAL OR LIMIT REQUIREMENTS OF THE  
8 ADMINISTRATIVE AGENCY LAW.

9 (2) NOTICE REGARDING THE RECEIPT OF ANY APPLICATION OR  
10 NOTICE SUBMITTED TO THE DEPARTMENT BY AN INSTITUTION OR CREDIT  
11 UNION RELATING TO THE ISSUANCE, AMENDMENT OR CONVERSION OF A  
12 CHARTER; OR AN ABSORPTION, ACQUISITION, CONSOLIDATION, OR  
13 DISSOLUTION, SHALL BE PUBLISHED BY THE DEPARTMENT IN THE  
14 PENNSYLVANIA BULLETIN. WHENEVER THE DEPARTMENT PUBLISHES NOTICE  
15 IN THE PENNSYLVANIA BULLETIN, THE DEPARTMENT MAY DIRECT AN  
16 INSTITUTION OR CREDIT UNION SUBMITTING AN APPLICATION OR NOTICE  
17 TO ALSO PUBLISH NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION  
18 REGARDING ITS REQUEST.

19 (3) COMMENTS IN SUPPORT OR OPPOSITION TO APPLICATIONS OR  
20 NOTICES PUBLISHED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION  
21 SHALL BE CONSIDERED BY THE DEPARTMENT IF SUBMITTED TO THE  
22 DEPARTMENT WITHIN THIRTY DAYS OF THE PUBLICATION IN THE  
23 PENNSYLVANIA BULLETIN AND/OR NEWSPAPER OF GENERAL CIRCULATION,  
24 WHICHEVER IS LATER. THE DEPARTMENT MAY FOR GOOD CAUSE EXTEND OR  
25 SHORTEN THE THIRTY-DAY DEADLINE FOR THE SUBMISSION OF COMMENTS.

26 (4) AN INSTITUTION OR CREDIT UNION SUBMITTING AN  
27 APPLICATION, NOTICE, OR OTHER DOCUMENT; A PERSON SUBMITTING  
28 COMMENTS IN SUPPORT OR IN OPPOSITION TO ANY APPLICATION OR  
29 NOTICE TO THE DEPARTMENT; ANY OTHER PERSON SUBMITTING A DOCUMENT  
30 TO THE DEPARTMENT REGARDING ANY MATTER SUBJECT TO ITS

1 JURISDICTION; OR THE DEPARTMENT, MAY DESIGNATE ALL OR PORTIONS  
2 OF A DOCUMENT TO BE CONFIDENTIAL TO THE EXTENT THE DOCUMENT  
3 CONTAINS TRADE SECRETS, CONFIDENTIAL PROPRIETARY INFORMATION, OR  
4 OTHER PRIVILEGED OR CONFIDENTIAL INFORMATION THE DISCLOSURE OF  
5 WHICH WOULD CAUSE SUBSTANTIAL HARM TO AN INSTITUTION, CREDIT  
6 UNION OR PERSON, OR IMPAIR THE SAFETY OR SOUNDNESS OF AN  
7 INSTITUTION OR CREDIT UNION.

8 (5) IF ANY PORTION OF AN APPLICATION, NOTICE OR OTHER  
9 DOCUMENT SUBMITTED TO THE DEPARTMENT IS DESIGNATED AS  
10 CONFIDENTIAL PURSUANT TO PARAGRAPH (4), THE THIRTY-DAY DEADLINE  
11 FOR THE SUBMISSION OF COMMENTS PROVIDED BY PARAGRAPH (3) MAY BE  
12 EXTENDED UNTIL THE DEPARTMENT REVIEWS ANY SUCH CONFIDENTIALITY  
13 DESIGNATIONS AND DETERMINES THE EXTENT TO WHICH ALL OR ANY  
14 PORTION OF A DOCUMENT SHALL BE DEEMED CONFIDENTIAL.  
15 NOTWITHSTANDING THE REQUIREMENTS OF SECTION 302 AND 404, ANY  
16 PORTIONS THEREOF NOT DESIGNATED OR DETERMINED TO BE CONFIDENTIAL  
17 BY THE DEPARTMENT PURSUANT TO PARAGRAPH (4) SHALL BE MADE  
18 AVAILABLE FOR REVIEW BY ANY INTERESTED PERSON. EXCEPT FOR A  
19 PERSON DESIGNATING ALL OR A PORTION OF A DOCUMENT AS  
20 CONFIDENTIAL PURSUANT TO PARAGRAPH (4), NO OTHER PERSON MAY  
21 CONTEST A DECISION BY THE DEPARTMENT TO DESIGNATE OR NOT  
22 DESIGNATE ALL OR PORTIONS OF SUCH DOCUMENTS AS CONFIDENTIAL,  
23 UNLESS THE DEPARTMENT IS REQUIRED BY 2 PA.C.S. TO CONDUCT A  
24 HEARING REQUESTED PURSUANT TO PARAGRAPH (7) OF THIS SUBSECTION.

25 (6) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, NOTICE  
26 REGARDING FINAL ACTION TAKEN BY THE DEPARTMENT REGARDING ANY  
27 APPLICATION OR NOTICE FOR WHICH NOTICE IS PUBLISHED PURSUANT TO  
28 PARAGRAPH (2) OF THIS SUBSECTION SHALL BE PUBLISHED BY THE  
29 DEPARTMENT IN THE PENNSYLVANIA BULLETIN.

30 (7) ANY INSTITUTION OR CREDIT UNION SUBJECT TO AN ORDER,

1 DECREE, DECISION, DETERMINATION OR RULING ISSUED BY THE  
2 DEPARTMENT AND PUBLISHED PURSUANT TO PARAGRAPH (6) OF THIS  
3 SUBSECTION OR ANY OTHER INSTITUTION OR CREDIT UNION DIRECTLY  
4 AFFECTED BY THE DEPARTMENT'S ACTION WHICH WOULD BE ENTITLED TO A  
5 HEARING REGARDING THE DEPARTMENT'S ACTION PURSUANT TO 2 PA.C.S.,  
6 INCLUDING A FEDERALLY CHARTERED BANK, SAVINGS ASSOCIATION, OR  
7 CREDIT UNION, MAY REQUEST A HEARING TO REVIEW THE DEPARTMENT'S  
8 ACTION WITHIN FOURTEEN DAYS OF THE PUBLICATION OR RECEIPT OF  
9 NOTICE OF THE DEPARTMENT'S FINAL ACTION. THE FILING OF A REQUEST  
10 FOR A HEARING REGARDING A FINAL ACTION TAKEN BY THE DEPARTMENT  
11 SHALL NOT BE DEEMED TO AUTOMATICALLY STAY THE DEPARTMENT'S  
12 ACTION, BUT THE DEPARTMENT MAY FOR GOOD CAUSE GRANT A  
13 SUPERSEDEAS OF ITS ACTION PENDING THE OUTCOME OF ADVERSARY  
14 ADJUDICATION. WHERE THE DEPARTMENT PUBLISHES NOTICE OF A FINAL  
15 ACTION, OR AN INSTITUTION OR CREDIT UNION HAS NOTICE OF THE  
16 DEPARTMENT'S RECEIPT OF AN APPLICATION, NOTICE OR OTHER REQUEST  
17 THAT THE DEPARTMENT ISSUE AN ORDER, DECREE, DECISION,  
18 DETERMINATION OR RULING, AN INSTITUTION OR CREDIT UNION DIRECTLY  
19 AFFECTED BY THE DEPARTMENT'S FINAL ACTION, OTHER THAN THE  
20 INSTITUTION OR CREDIT UNION SUBJECT TO THE DEPARTMENT'S ACTION,  
21 MAY NOT REQUEST A HEARING TO REVIEW THE DEPARTMENT'S FINAL  
22 ACTION UNLESS THE INSTITUTION OR THE CREDIT UNION SUBMITTED  
23 COMMENTS PURSUANT TO PARAGRAPH (3).

24 (8) NOTWITHSTANDING THE REQUIREMENTS OF SECTIONS 302 AND  
25 404, IF A HEARING IS CONDUCTED BY THE DEPARTMENT PURSUANT TO 2  
26 PA.C.S., THE HEARING OFFICER MAY REVIEW AND REVISE  
27 DETERMINATIONS MADE BY THE DEPARTMENT TO CLASSIFY ALL OR ANY  
28 PORTION OF AN APPLICATION, NOTICE, OR DOCUMENT AS CONFIDENTIAL  
29 AND MAY DISCLOSE TO A PARTY PARTICIPATING IN THE HEARING ALL OR  
30 ANY PORTIONS THEREOF DETERMINED TO BE CONFIDENTIAL PURSUANT TO A

1 PROTECTIVE ORDER LIMITING OR RESTRICTING ACCESS TO AND THE USE  
2 OF SUCH DOCUMENTS. IF THE HEARING OFFICER DETERMINES THAT A  
3 PROTECTIVE ORDER CANNOT ADEQUATELY PROTECT THE INTERESTS OF AN  
4 INSTITUTION, CREDIT UNION OR PERSON SUBJECT TO THE SUPERVISION  
5 OF THE DEPARTMENT OR OF ANOTHER PERSON PARTICIPATING IN A  
6 HEARING, THE HEARING OFFICER MAY REDACT CONFIDENTIAL PORTIONS OR  
7 DENY ACCESS TO ANY DOCUMENTS PURSUANT TO THE STANDARDS  
8 CUSTOMARILY EMPLOYED BY COURTS OF THIS COMMONWEALTH.

9 (9) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS  
10 SUBSECTION. ANY REGULATIONS ADOPTED BY THE DEPARTMENT IN EFFECT  
11 UPON THE EFFECTIVE DATE OF THIS SUBSECTION ARE HEREBY REPEALED  
12 TO THE EXTENT INCONSISTENT WITH THIS SUBSECTION.

13 Section 2 3. This act shall take effect in 60 days.

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