

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 7, 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," PERMITTING NATIONAL <—
23 ELECTRONIC LICENSING; further prohibiting disclosure of
24 certain information; FURTHER PROVIDING FOR CRIMINAL HISTORY; <—
25 and providing for conduct of administrative proceedings
26 relating to institutions and credit unions.

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

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

SECTION 1. SECTIONS 202, 302 AND 405B AND E OF THE ACT OF MAY 15, 1933 (P.L.565, NO.111), KNOWN AS THE DEPARTMENT OF BANKING CODE, AMENDED OR ADDED DECEMBER 9, 2002 (P.L.1604, NO.209), ARE AMENDED TO READ:

SECTION 202. GENERAL SCOPE OF SUPERVISION; EXERCISE OF DISCRETION.--A. IN ADDITION TO THE POWERS AND DUTIES PROVIDED FOR IN THIS ACT, THE DEPARTMENT SHALL EXERCISE ANY POWER AND FULFILL ANY DUTY IMPOSED UPON IT BY ANY OTHER LAW OF THIS COMMONWEALTH. EXCEPT WHERE OTHERWISE SPECIFICALLY PROVIDED, THE DEPARTMENT SHALL ENFORCE AND ADMINISTER ALL LAWS OF THIS COMMONWEALTH WHICH RELATE TO ANY INSTITUTION, AND SHALL EXERCISE SUCH GENERAL SUPERVISION OVER INSTITUTIONS AS WILL AFFORD THE GREATEST POSSIBLE SAFETY TO DEPOSITORS, OTHER CREDITORS, AND SHAREHOLDERS THEREOF, ENSURE THE SAFE AND SOUND CONDUCT OF THE BUSINESS OF SUCH INSTITUTIONS, CONSERVE THEIR ASSETS, MAINTAIN THE PUBLIC CONFIDENCE IN SUCH INSTITUTIONS AND PROTECT THE PUBLIC INTEREST.

B. WHENEVER UNDER THIS ACT, DISCRETION IS VESTED IN THE DEPARTMENT OR ANY BOARD THEREOF AS TO WHETHER, OR THE MANNER IN WHICH, TO EXERCISE A POWER OR FULFILL A DUTY, THE DEPARTMENT SHALL, AFTER SUCH EXAMINATION OR INVESTIGATION AS IT SHALL DEEM APPROPRIATE UNDER THE CIRCUMSTANCES, EXERCISE SUCH DISCRETION IN SUCH A MANNER AS IT SHALL DEEM NECESSARY TO ENSURE THE SAFE AND SOUND CONDUCT OF THE BUSINESS OF ANY INSTITUTION SUBJECT TO ITS SUPERVISION, CONSERVE ITS ASSETS, MAINTAIN PUBLIC CONFIDENCE IN THE BUSINESS OF SUCH INSTITUTIONS AND PROTECT THE PUBLIC INTEREST AND THE INTEREST OF DEPOSITORS, OTHER CREDITORS AND

1 SHAREHOLDERS THEREOF.

2 C. THE DEPARTMENT MAY PROMULGATE SUCH RULES AND REGULATIONS
3 NECESSARY AND APPROPRIATE TO ADMINISTER THIS ACT.

4 D. THE DEPARTMENT MAY ISSUE STATEMENTS OF POLICY AND
5 INTERPRETIVE LETTERS NECESSARY AND APPROPRIATE TO ADMINISTER
6 THIS ACT OR ANY OTHER STATUTE WITHIN THE DEPARTMENT'S
7 JURISDICTION TO ADMINISTER OR ENFORCE.

8 E. NOTWITHSTANDING ANY OTHER LAW OR PROVISION OF THIS ACT TO
9 THE CONTRARY, THE DEPARTMENT MAY REQUIRE LICENSEES TO USE A
10 NATIONAL ELECTRONIC LICENSING SYSTEM IN ORDER TO APPLY FOR OR
11 RENEW LICENSES ISSUED PURSUANT TO ANY STATUTE WITHIN THE
12 DEPARTMENT'S JURISDICTION TO ENFORCE. THE DEPARTMENT MAY REQUIRE
13 LICENSEES TO PAY A PROCESSING FEE FOR THE USE OF A NATIONAL
14 ELECTRONIC LICENSING SYSTEM. NOTWITHSTANDING ANY OTHER LAW, THE
15 DEPARTMENT MAY MODIFY, BY REGULATION, LICENSE RENEWAL AND
16 REPORTING DATES FOR ANY LICENSEES SUBJECT TO THIS SUBSECTION
17 THAT ARE INCONSISTENT WITH THE USE OF A NATIONAL ELECTRONIC
18 LICENSING SYSTEM. THE DEPARTMENT IS NOT AUTHORIZED TO REQUIRE A
19 PERSON OR CORPORATION WHICH WOULD OTHERWISE BE TOTALLY EXEMPT
20 FROM LICENSURE PURSUANT TO ANY STATUTE UNDER THE DEPARTMENT'S
21 JURISDICTION TO SUBMIT INFORMATION TO OR PARTICIPATE IN ANY
22 NATIONAL ELECTRONIC SYSTEM.

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

26 (2) Neither the secretary nor any deputy, examiner, clerk,
27 or other employe of the department, shall publish or divulge to
28 anyone any information contained in or ascertained from any
29 examination or investigation made by the department, or any
30 letter, report, or statement sent to the department, or any

1 other paper or document in the custody of the department, except
2 when the publication or divulgement of such information is made
3 by the department pursuant to the provisions of this act, or
4 when the production of such information is required by subpoena
5 or other legal process of a court of competent jurisdiction, or
6 when it is used in deciding whether to prosecute or in
7 prosecutions or other court actions instituted by or on behalf
8 of or at the request of the department, or when referring for
9 investigation to or in response to a request from any Federal,
10 State or local law enforcement or any Federal or State financial
11 regulatory agency, including banking, insurance and securities
12 regulatory agencies, or when the department provides information
13 to any Federal or State financial regulatory agency, including
14 banking, insurance and securities regulatory agencies, when the
15 information pertains to an enforcement concern. The information
16 shall be provided as may be necessary or appropriate, as
17 determined in the discretion of the secretary.

18 (3) The service of a subpoena upon the secretary, deputy,
19 examiner, clerk or other employe of the department shall not be
20 construed as requiring such person to disclose any information,
21 but such person shall have all the rights and privileges as any
22 other subpoenaed party to object to production of information on
23 the same basis as provided in the Rules of Civil Procedure,
24 statute, regulation or common law. The department may condition
25 the release of such information on an order from a court of
26 competent jurisdiction protecting the information from general
27 disclosure to the public. The department retains and may
28 exercise any and all remedies at law and in equity to quash a
29 subpoena.

30 (4) Any privileges available to Federal financial

1 institution regulators under Federal statute, regulation or
2 common law shall be available to the department.

3 (5) The department may provide to any person, corporation or
4 Federal, State or local government agency the following
5 information regarding licensees to the extent that the
6 department has such information in its possession: the type of
7 license held by the licensee; whether a license application
8 submitted by any person or corporation has been denied, pursuant
9 to a final order or adjudication issued by the department;
10 whether and for what time period a [person's] licensee's license
11 is current, suspended or revoked pursuant to a final order or
12 adjudication issued by the department; whether and for what time
13 period an individual is or has been suspended or prohibited from
14 working for or otherwise participating as a licensee or in any
15 other capacity in businesses regulated by the department
16 pursuant to a final order or adjudication issued by the
17 department[.]; and whether and to what extent a corporation,
18 person or licensee is or has been subject to a fine, order or
19 adjudication issued by the department.

20 [(6) The department may condition the release of subpoenaed
21 information on an order from a court of competent jurisdiction
22 protecting the information from general disclosure to the
23 public.]

24 (7) If the department is subpoenaed for a report of
25 examination information, the department may refuse to release
26 the requested information as the secretary deems necessary and
27 appropriate under the circumstances for the following reasons:
28 safety and soundness; if the department requests and is denied a
29 protective order; or if the department requests and is denied
30 redaction of the report of examination to protect the privacy of

1 persons not involved in the litigation.

2 B. A violation of the provisions of this section by the
3 secretary, or by any deputy, examiner, clerk, or other employe
4 of the department, shall be sufficient ground for his removal
5 from office. In addition the secretary, deputy, examiner, clerk,
6 or other employe who willfully or knowingly commits such
7 violation shall be deemed guilty of a misdemeanor, and shall,
8 upon conviction thereof, be subject to imprisonment for a period
9 not exceeding one year, or a fine not exceeding one thousand
10 dollars, or both.

11 SECTION 405. CRIMINAL HISTORY RECORD INFORMATION.--* * * <—

12 B. FOR THE PURPOSES OF THIS SECTION, A "COVERED LICENSE"
13 MEANS [A MORTGAGE BROKER LICENSE OR LIMITED MORTGAGE BROKER
14 LICENSE UNDER THE ACT OF DECEMBER 22, 1989 (P.L.687, NO.90),
15 KNOWN AS THE "MORTGAGE BANKERS AND BROKERS AND CONSUMER EQUITY
16 PROTECTION ACT," A SECONDARY MORTGAGE BROKER LICENSE UNDER THE
17 ACT OF DECEMBER 12, 1980 (P.L.1179, NO.219), KNOWN AS THE
18 "SECONDARY MORTGAGE LOAN ACT," A CONSUMER DISCOUNT COMPANY
19 LICENSE USED ONLY IN THE CAPACITY OF A BROKER THAT IS NOT
20 ORIGINATING LOANS UNDER THE ACT OF APRIL 8, 1937 (P.L.262,
21 NO.66), KNOWN AS THE "CONSUMER DISCOUNT COMPANY ACT," A MONEY
22 TRANSMITTER LICENSE UNDER THE ACT OF SEPTEMBER 2, 1965 (P.L.490,
23 NO.249), REFERRED TO AS THE MONEY TRANSMISSION BUSINESS
24 LICENSING LAW, A CHECK-CASHER LICENSE UNDER THE ACT OF FEBRUARY
25 18, 1998 (P.L.146, NO.22), KNOWN AS THE "CHECK CASHER LICENSING
26 ACT," A PAWNBROKER LICENSE UNDER THE ACT OF APRIL 6, 1937
27 (P.L.200, NO.51), KNOWN AS THE "PAWNBROKERS LICENSE ACT," A
28 COLLECTOR-REPOSSESSOR LICENSE OR INSTALLMENT SELLER LICENSE
29 UNDER THE ACT OF JUNE 28, 1947 (P.L.1110, NO.476), KNOWN AS THE
30 "MOTOR VEHICLE SALES FINANCE ACT,"] A LICENSE THE DEPARTMENT MAY

1 GRANT PURSUANT TO ANY [OTHER] LICENSING STATUTE, OR THE ARTICLES
2 OF INCORPORATION OF A TRUST COMPANY UNDER THE ACT OF NOVEMBER
3 30, 1965 (P.L.847, NO.356), KNOWN AS THE "BANKING CODE OF 1965."

4 * * *

5 E. FOR THE PURPOSES OF THIS SECTION, "LICENSING STATUTE"
6 MEANS THE ACT OF DECEMBER 22, 1989 (P.L.687, NO.90), KNOWN AS
7 THE "MORTGAGE BANKERS AND BROKERS AND CONSUMER EQUITY PROTECTION
8 ACT," THE ACT OF DECEMBER 12, 1980 (P.L.1179, NO.219), KNOWN AS
9 THE "SECONDARY MORTGAGE LOAN ACT," THE ACT OF APRIL 8, 1937
10 (P.L.262, NO.66), KNOWN AS THE "CONSUMER DISCOUNT COMPANY ACT,"
11 THE ACT OF JUNE 28, 1947 (P.L.1110, NO.476), KNOWN AS THE "MOTOR
12 VEHICLE SALES FINANCE ACT," THE ACT OF SEPTEMBER 2, 1965
13 (P.L.490, NO.249), REFERRED TO AS THE MONEY TRANSMISSION
14 BUSINESS LICENSING LAW, THE ACT OF FEBRUARY 18, 1998 (P.L.146,
15 NO.22), KNOWN AS THE "CHECK CASHER LICENSING ACT," THE ACT OF
16 APRIL 6, 1937 (P.L.200, NO.51), KNOWN AS THE "PAWNBROKERS
17 LICENSE ACT," ANY OTHER STATUTE PURSUANT TO WHICH THE DEPARTMENT
18 MAY GRANT A LICENSE OR THE "BANKING CODE OF 1965" ONLY INsofar
19 AS IT RELATES TO THE BUSINESS OF A TRUST COMPANY.

20 * * *

21 Section 2. Section 503 heading of the act is amended and the
22 section is amended by adding a subsection to read:

23 Section 503. Quo Warranto or Injunction Proceedings; Conduct
24 of Administrative Proceedings Relating to Institutions and
25 Credit Unions.--* * *

26 E. (1) All administrative proceedings conducted by the
27 department pertaining to institutions, including credit unions,
28 shall be subject to the requirements of 2 Pa.C.S. (relating to
29 administrative law and procedure), known as the Administrative
30 Agency Law. For purposes of this subsection, the term

1 "administrative proceeding" means any proceeding other than a
2 judicial proceeding, the outcome of which is required to be
3 based on a record or documentation prescribed by law, or in
4 which law or regulation is particularized in application to an
5 institution or credit union. The provisions of this subsection
6 shall supplement and not repeal or limit requirements of the
7 Administrative Agency Law.

8 (2) Notice regarding the receipt of any application or
9 notice submitted to the department by an institution or credit
10 union relating to the issuance, amendment or conversion of a
11 charter; or an absorption, acquisition, consolidation, or
12 dissolution, shall be published by the department in the
13 Pennsylvania Bulletin. Whenever the department publishes notice
14 in the Pennsylvania Bulletin, the department may direct an
15 institution or credit union submitting an application or notice
16 to also publish notice in a newspaper of general circulation
17 regarding its request.

18 (3) Comments in support or opposition to applications or
19 notices published pursuant to paragraph (2) of this subsection
20 shall be considered by the department if submitted to the
21 department within thirty days of the publication in the
22 Pennsylvania Bulletin and/or newspaper of general circulation,
23 whichever is later. The department may for good cause extend or
24 shorten the thirty-day deadline for the submission of comments.

25 (4) An institution or credit union submitting an
26 application, notice, or other document; a person submitting
27 comments in support or in opposition to any application or
28 notice to the department; any other person submitting a document
29 to the department regarding any matter subject to its
30 jurisdiction; or the department, may designate all or portions

1 of a document to be confidential to the extent the document
2 contains trade secrets, confidential proprietary information, or
3 other privileged or confidential information the disclosure of
4 which would cause substantial harm to an institution, credit
5 union or person, or impair the safety or soundness of an
6 institution or credit union.

7 (5) If any portion of an application, notice or other
8 document submitted to the department is designated as
9 confidential pursuant to paragraph (4), the thirty-day deadline
10 for the submission of comments provided by paragraph (3) may be
11 extended until the department reviews any such confidentiality
12 designations and determines the extent to which all or any
13 portion of a document shall be deemed confidential.
14 Notwithstanding the requirements of section 302 and 404, any
15 portions thereof not designated or determined to be confidential
16 by the department pursuant to paragraph (4) shall be made
17 available for review by any interested person. Except for a
18 person designating all or a portion of a document as
19 confidential pursuant to paragraph (4), no other person may
20 contest a decision by the department to designate or not
21 designate all or portions of such documents as confidential,
22 unless the department is required by 2 Pa.C.S. to conduct a
23 hearing requested pursuant to paragraph (7) of this subsection.

24 (6) Notwithstanding any other law to the contrary, notice
25 regarding final action taken by the department regarding any
26 application or notice for which notice is published pursuant to
27 paragraph (2) of this subsection shall be published by the
28 department in the Pennsylvania Bulletin.

29 (7) Any institution or credit union subject to an order,
30 decree, decision, determination or ruling issued by the

1 department and published pursuant to paragraph (6) of this
2 subsection or any other institution or credit union directly
3 affected by the department's action which would be entitled to a
4 hearing regarding the department's action pursuant to 2 Pa.C.S.,
5 including a federally chartered bank, savings association, or
6 credit union, may request a hearing to review the department's
7 action within fourteen days of the publication or receipt of
8 notice of the department's final action. The filing of a request
9 for a hearing regarding a final action taken by the department
10 shall not be deemed to automatically stay the department's
11 action, but the department may for good cause grant a
12 supersedeas of its action pending the outcome of adversary
13 adjudication. Where the department publishes notice of a final
14 action, or an institution or credit union has notice of the
15 department's receipt of an application, notice or other request
16 that the department issue an order, decree, decision,
17 determination or ruling, an institution or credit union directly
18 affected by the department's final action, other than the
19 institution or credit union subject to the department's action,
20 may not request a hearing to review the department's final
21 action unless the institution or the credit union submitted
22 comments pursuant to paragraph (3).

23 (8) Notwithstanding the requirements of sections 302 and
24 404, if a hearing is conducted by the department pursuant to 2
25 Pa.C.S., the hearing officer may review and revise
26 determinations made by the department to classify all or any
27 portion of an application, notice, or document as confidential
28 and may disclose to a party participating in the hearing all or
29 any portions thereof determined to be confidential pursuant to a
30 protective order limiting or restricting access to and the use

1 of such documents. If the hearing officer determines that a
2 protective order cannot adequately protect the interests of an
3 institution, credit union or person subject to the supervision
4 of the department or of another person participating in a
5 hearing, the hearing officer may redact confidential portions or
6 deny access to any documents pursuant to the standards
7 customarily employed by courts of this Commonwealth.

8 (9) The department may adopt regulations to implement this
9 subsection. Any regulations adopted by the department in effect
10 upon the effective date of this subsection are hereby repealed
11 to the extent inconsistent with this subsection.

12 Section 3. This act shall take effect in 60 days.