

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1084 Session of
2007

INTRODUCED BY M. SMITH, DALEY, BRENNAN, CONKLIN, FABRIZIO,
GEORGE, KORTZ, KULA, MAHONEY, MANN, McCALL, McGEEHAN,
SIPTROTH, THOMAS, WALKO, D. EVANS, JOSEPHS AND PARKER,
APRIL 18, 2007

REFERRED TO COMMITTEE ON COMMERCE, APRIL 18, 2007

AN ACT

1 Amending the act of January 30, 1974 (P.L.13, No.6), entitled
2 "An act regulating agreements for the loan or use of money;
3 establishing a maximum lawful interest rate in the
4 Commonwealth; providing for a legal rate of interest;
5 detailing exceptions to the maximum lawful interest rate for
6 residential mortgages and for any loans in the principal
7 amount of more than fifty thousand dollars and Federally
8 insured or guaranteed loans and unsecured, noncollateralized
9 loans in excess of thirty-five thousand dollars and business
10 loans in excess of ten thousand dollars; providing
11 protections to debtors to whom loans are made including the
12 provision for disclosure of facts relevant to the making of
13 residential mortgages, providing for notice of intention to
14 foreclose and establishment of a right to cure defaults on
15 residential mortgage obligations, provision for the payment
16 of attorney's fees with regard to residential mortgage
17 obligations and providing for certain interest rates by banks
18 and bank and trust companies; clarifying the substantive law
19 on the filing of and execution on a confessed judgment;
20 prohibiting waiver of provisions of this act, specifying
21 powers and duties of the Secretary of Banking, and
22 establishing remedies and providing penalties for violations
23 of this act," defining "department"; and further providing
24 for the definition of "residential mortgage" and for the
25 duties of the Department of Banking.

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

28 Section 1. The definition of "residential mortgage" in

1 section 101 of the act of January 30, 1974 (P.L.13, No.6),
2 referred to as the Loan Interest and Protection Law, and more
3 commonly referred to as the Usury Law, amended April 6, 1979
4 (P.L.15, No.4), is amended and the section is amended by adding
5 a definition to read:

6 Section 101. Definitions.--As used in this act:

7 * * *

8 "Department" means the Department of Banking of the
9 Commonwealth.

10 * * *

11 "Residential mortgage" means an obligation to pay a sum of
12 money in an original bona fide principal amount of [fifty
13 thousand dollars (\$50,000) or less] one hundred ninety-seven
14 thousand dollars (\$197,000) or less, adjusted annually for
15 inflation by the Department of Banking through notice published
16 in the Pennsylvania Bulletin, evidenced by a security document
17 and secured by a lien upon real property located within this
18 Commonwealth containing two or fewer residential units or on
19 which two or fewer residential units are to be constructed and
20 shall include such an obligation on a residential condominium
21 unit.

22 * * *

23 Section 2. Section 201 of the act is amended to read:

24 Section 201. Maximum Lawful Interest Rate.--(a) Except as
25 provided in Article III of this act, the maximum lawful rate of
26 interest for the loan or use of money in an amount of fifty
27 thousand dollars (\$50,000) or less in all cases where no express
28 contract shall have been made for a less rate shall be six per
29 cent per annum.

30 (b) The maximum lawful rate of interest set forth in this

1 section shall not apply to:

2 (1) an obligation to pay a sum of money in an original bona
3 fide principal amount of more than fifty thousand dollars
4 (\$50,000);

5 (2) an unsecured, noncollateralized loan in excess of thirty-
6 five thousand dollars (\$35,000); or

7 (3) business loans of any principal amount.

8 Section 3. Section 301(f) of the act, amended October 5,
9 1978 (P.L.1100, No.258), is amended to read:

10 Section 301. Residential Mortgage Interest Rates.--* * *

11 (f) The maximum lawful rate of interest set forth in this
12 section [and in Article II of this act] shall not apply to (i)
13 an obligation to pay a sum of money in an original bona fide
14 principal amount of more than [fifty thousand dollars (\$50,000)]
15 one hundred ninety-seven thousand dollars (\$197,000), adjusted
16 annually for inflation by the department through notice
17 published in the Pennsylvania Bulletin; (ii) an obligation to
18 pay a sum of money in an original bona fide principal amount of
19 [fifty thousand dollars (\$50,000) or less] one hundred ninety-
20 seven thousand dollars (\$197,000) or less, adjusted annually for
21 inflation by the department through notice published in the
22 Pennsylvania Bulletin, evidenced by a security document and
23 secured by a lien upon real property, other than residential
24 real property as defined in this act; [(iii) to a loan to a
25 person subject to the act of April 27, 1927 (P.L.404, No.260),
26 entitled "An act prohibiting corporations from pleading usury as
27 a defense," section 313 of the act of May 5, 1933 (P.L.364,
28 No.106), known as the "Business Corporation Law," or Title 15
29 Pa.C.S. section 7544; or (iv) an unsecured, noncollateralized
30 loan in excess of thirty-five thousand dollars (\$35,000);] or

1 (v) business loans [the principal amount of which is in excess
2 of ten thousand dollars (\$10,000)] of any principal amount.

3 Section 4. Sections 505 and 506 of the act are amended to
4 read:

5 Section 505. Penalties.--(a) Any person who knowingly and
6 intentionally violates the provisions of this act shall be
7 guilty of a misdemeanor of the third degree.

8 (b) Any person who violates a provision of this act shall be
9 subject to a fine levied by the department of ten thousand
10 dollars (\$10,000) per offense.

11 Section 506. Enforcement.--(a) When the Attorney General
12 has reason to believe that any person has violated the
13 provisions of this act, or the regulations promulgated
14 hereunder, he shall have standing to bring a civil action for
15 injunctive relief and such other relief as may be appropriate to
16 secure compliance with this act or the regulations promulgated
17 hereunder.

18 (b) The department may examine any instrument, document,
19 account, book, record, electronic data or file of any person, or
20 make such other investigation as may be necessary to administer
21 the provisions of this act. Any person subject to such
22 examination or investigation shall pay the department any costs
23 associated with such examination or investigation. In connection
24 with any examination or investigation authorized by this act,
25 the department shall have the power to issue subpoenas requiring
26 the attendance of, or the production of pertinent books, papers,
27 electronic data or information of any kind which is in any form
28 by, the officers, directors, agents, employees, or members,
29 respectively, of any person which the department is authorized,
30 under the provisions of this act, to examine. The department

1 shall have power to issue subpoenas to any other person or
2 entity of any kind whatsoever provided that the information from
3 such person or entity is necessary for the enforcement of this
4 act. The department shall also have the power to question such
5 witnesses under oath or affirmation, and to examine such books
6 and papers. Any witness who refuses to obey a subpoena issued
7 under this section, or who refuses to be sworn or affirmed, or
8 to testify, or who is guilty of any contempt after summons to
9 appear, may be found in contempt of court. For this purpose, an
10 application may be made to Commonwealth Court or any court of
11 common pleas within whose territorial jurisdiction the offense
12 was committed, for which purpose such court is hereby given
13 jurisdiction.

14 (c) If the department determines that a person has violated
15 the provisions of this act, the department may do any of the
16 following:

17 (1) Suspend, revoke or refuse to renew any license issued to
18 the person by the department.

19 (2) Prohibit or permanently remove an individual responsible
20 for a violation of this act from working in his or her present
21 capacity or in any other capacity related to activities
22 regulated by the department.

23 (3) Order the person to cease and desist any violation of
24 this act and to make restitution for actual damages to any
25 aggrieved person.

26 (4) Require the person to pay costs associated with any
27 department enforcement action initiated under the provisions of
28 this act.

29 (5) Impose such other conditions by order or otherwise as
30 the department deems appropriate.

1 Section 5. This act shall take effect in 60 days.