
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2369 Session of
2012

INTRODUCED BY TRUITT, HESS, KILLION, REED AND GROVE,
JUNE 18, 2012

REFERRED TO COMMITTEE ON COMMERCE, JUNE 18, 2012

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 providing for
23 general scope of supervision and exercise of discretion, for
24 assessment of expenses of department upon institutions, for
25 disclosure of information forbidden, penalty and exceptions,
26 for examination of corporations or persons affiliated with
27 institutions and for orders by department; and providing for
28 implementation of the Consumer Financial Protection Act of
29 2010.

30 The General Assembly of the Commonwealth of Pennsylvania
31 hereby enacts as follows:

1 Section 1. Section 202D 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 202. General Scope of Supervision; Exercise of
5 Discretion.--* * *

6 D. The department may issue orders, statements of policy and
7 interpretive letters necessary and appropriate to administer
8 this act or any other statute within the department's
9 jurisdiction to administer or enforce.

10 * * *

11 Section 2. Section 204 of the act is amended by adding a
12 subsection to read:

13 Section 204. Assessment of Expenses of Department upon
14 Institutions.--* * *

15 C. This section also applies to licensees.

16 Section 3. Section 302A(5) of the act, amended July 8, 2008
17 (P.L.827, No.58), is amended to read:

18 Section 302. Disclosure of Information Forbidden; Penalty;
19 Exceptions.--A. * * *

20 (5) The department may provide to any person, corporation or
21 Federal, State or local government agency the following
22 information regarding licensees, institutions and credit unions
23 to the extent that the department has such information in its
24 possession: the type of license held by the licensee; whether a
25 license application submitted by any person or corporation has
26 been denied pursuant to a final order or adjudication issued by
27 the department; whether and for what time period a licensee's
28 license is current, suspended or revoked pursuant to a final
29 order or adjudication issued by the department; whether and for
30 what time period an individual is or has been suspended or

1 prohibited from working for or otherwise participating as a
2 licensee or in any other capacity in businesses regulated by the
3 department pursuant to a final order or adjudication issued by
4 the department; and whether and to what extent a corporation,
5 person, institution, credit union or licensee is or has been
6 subject to a fine, order or adjudication issued by the
7 department.

8 * * *

9 Section 4. Section 402 of the act, amended December 9, 2002
10 (P.L.1604, No.209), is amended to read:

11 Section 402. Examination of Corporations or Persons
12 Affiliated with Institutions.--The department shall have the
13 power to supervise, regulate, examine, limit, or prohibit the
14 activities of corporations or persons that are subsidiaries of
15 or are affiliated with institutions, including credit unions, to
16 the same extent as such activities of corporations or persons
17 that are subsidiaries of or are affiliated with national banking
18 associations, Federal savings associations or Federal credit
19 unions, or with members of a Federal Reserve Bank, are, or shall
20 be, supervised, regulated, examined, limited, or prohibited by
21 general law, by Federal statutes or by regulations issued by any
22 Federal authority pursuant to law, but in no event shall the
23 department's examination and enforcement authority over
24 subsidiaries and affiliates be less than is permissible for
25 banking institutions under the act of November 30, 1965
26 (P.L.847, No.356), known as the "Banking Code of 1965," savings
27 associations under the act of December 14, 1967 (P.L.746,
28 No.345), known as the "Savings Association Code of 1967," or
29 credit unions under 17 Pa.C.S. (relating to credit unions).

30 Section 5. Section 501 B of the act, amended December 9,

1 2002 (P.L.1604, No.209), is amended and the section is amended
2 by adding a subsection to read:

3 Section 501. Orders by Department.--* * *

4 B. Whenever it shall appear to the department that an
5 [attorney, officer,] officer or employe of an institution, and
6 in the case of an incorporated institution, a director or
7 trustee thereof, [shall have continued to violate] has violated
8 any law or order relating to such institution, or [shall have
9 continued] has engaged in any unsafe or unsound [practices]
10 practice or breach of fiduciary duty in conducting the business
11 of such institution, [after having been warned by the department
12 to discontinue such violations of law or such unsafe or unsound
13 practices,] the department may issue an order directing such
14 [attorney,] officer, employe, director, or trustee to appear on
15 the day fixed in such order before the department and show cause
16 why he should not be removed from his office or position at such
17 institution and such office or position declared vacant. A copy
18 of such order shall be sent to the institution of which such
19 person is an [attorney,] officer, employe, director, or trustee.

20 The office or position of any [attorney,] officer, employe,
21 director, or trustee, so ordered by the department to appear,
22 who does not appear on the day fixed in such order, shall,
23 unless the date for his appearance shall previously have been
24 extended by the department, upon such failure to appear, be
25 declared vacant.

26 On the day fixed in the department's order such [attorney,]
27 officer, employe, director, or trustee shall be heard, in person
28 or by counsel, by the department. If, after such hearing, it
29 shall appear to the department that such [attorney,] officer,
30 employe, director, or trustee has not shown cause why he should

1 not be removed from his office or position at such institution
2 and such office or position declared vacant, the department
3 shall, within sixty days of such hearing, issue an order
4 [directing the institution to remove] removing such [attorney,]
5 officer, employe, director, or trustee from his office or
6 position, and declare such office or position vacant. A copy of
7 such order shall be sent to the [attorney,] officer, employe,
8 director, or trustee so removed.

9 The department shall set forth in its order the date upon
10 which any such removal and declaration of vacancy shall become
11 effective.

12 The department may immediately suspend any officer, employe,
13 director or trustee of an institution from his or her position
14 at the institution and from any further participation in the
15 conduct of the institution if, in the opinion of the department,
16 the institution or its shareholders or depositors have suffered
17 or may suffer any significant financial harm or other prejudice
18 by the officer, employe, director or trustee's continued
19 involvement in the affairs of the institution. To suspend an
20 officer, employe, director or trustee immediately, the
21 department shall provide a notice containing a statement of the
22 facts constituting grounds for removal and shall state a time
23 and place for a hearing. The hearing shall be fixed for a date
24 between thirty days and sixty days from the date of service of
25 notice unless an earlier or later date is set by the department
26 at the request of the affected officer, employe, director or
27 trustee.

28 If the institution, of which such person, ordered by the
29 department to appear is an [attorney,] officer, employe,
30 director, or trustee, is an interstate bank or is a member of a

1 Federal Reserve Bank, the Federal Deposit Insurance Corporation
2 or the Federal Home Loan Bank, the department may notify such
3 Federal Reserve Bank, Federal Deposit Insurance Corporation,
4 Federal Home Loan Bank, or other bank supervisory agencies
5 having jurisdiction over an interstate bank, as the case may be,
6 of its order directing such [attorney,] officer, employe,
7 director, or trustee to appear before the department and of its
8 decisions issued in such a case. At such hearing, any duly
9 authorized representative of such Federal Reserve Bank, Federal
10 Deposit Insurance Corporation, Federal Home Loan Bank or other
11 bank supervisory agencies having jurisdiction over such
12 interstate bank, as the case may be, may appear as a witness.

13 Except as otherwise specifically provided in this act, the
14 proceedings of the department and its decisions regarding
15 institutions shall not be published or divulged to anyone.

16 Any [attorney,] officer, employe, director, or trustee, who
17 is removed from his office or position as provided in this
18 section, shall thereafter be disqualified from acting as an
19 [attorney,] officer, employe, director, or trustee of any
20 institution, credit union or licensee in this Commonwealth, for
21 such period as the department shall prescribe.

22 * * *

23 H. The department may impose a civil penalty of up to
24 twenty-five thousand dollars (\$25,000) for each violation
25 against an institution, or any officer, employe, director or
26 trustee of an institution, for a violation of any law or order
27 relating to the institution or for any unsafe and unsound
28 practice or breach of fiduciary duty in conducting the business
29 of the institution.

30 Section 6. The act is amended by adding a section to read:

1 Section 506. Implementation of the Consumer Financial
2 Protection Act of 2010.--A. This section applies to matters
3 relating to institutions, credit unions, licensees, national
4 banks, Federal savings associations, foreign financial
5 institutions and other persons subject to the jurisdiction of
6 the bureau doing business in this Commonwealth.

7 B. The Attorney General is authorized to initiate
8 proceedings before courts of competent jurisdiction to enforce
9 requirements of the Consumer Financial Protection Act or
10 regulations adopted by the bureau to the extent authorized to do
11 so by sections 1042(a) and 1047 of the Consumer Financial
12 Protection Act (12 U.S.C. §§ 5552(a) and 25b(i)) except that
13 with respect to institutions, credit unions, licensees, foreign
14 financial institutions, national banks, Federal savings
15 associations or their subsidiaries, the Attorney General may
16 initiate proceedings only upon the request of, or with the
17 approval of, the department. If the Attorney General refuses to
18 bring a civil action at the request of the department, the
19 Office of General Counsel may initiate the action on behalf of
20 the Commonwealth.

21 C. The department is authorized to receive reports of
22 examinations by the bureau as authorized under section 1022(c)
23 (6)(C) of the Consumer Financial Protection Act (12 U.S.C. §
24 5512(c)(6)(C)) and to enter into agreements with the bureau
25 regarding the coordination of examinations as authorized under
26 section 1025(e)(2) of the Consumer Financial Protection Act (12
27 U.S.C. § 5515(e)(2)). The reports shall be subject to the
28 requirements of section 302, except that the department may
29 disclose, to the extent permitted by the bureau, the contents of
30 the reports relating to allegations of criminal conduct to the

1 Attorney General.

2 D. No agency of this Commonwealth, nor political
3 subdivision, may engage in the exercise of visitorial powers
4 with respect to a national bank or Federal savings association,
5 except in a manner consistent with Federal law, including
6 section 1047 of the Consumer Financial Protection Act (12 U.S.C.
7 § 25b(i)), and upon the request of, or as expressly and on a
8 case-by-case basis, authorized by the Office of the Comptroller
9 of the Currency.

10 E. The department, to the extent otherwise authorized by the
11 laws of this Commonwealth, may engage in the exercise of
12 visitorial powers with respect to institutions, credit unions,
13 licensees, foreign financial institutions or their subsidiaries,
14 or with respect to the subsidiaries of national banks or Federal
15 savings associations.

16 F. Nothing in this section may prevent an agency of this
17 Commonwealth, or political subdivision, from engaging in a civil
18 investigation, administrative enforcement action, examination,
19 information collection or any other administrative proceeding or
20 commencing civil proceedings before a court of competent
21 jurisdiction to determine compliance with or enforce a statute
22 of this Commonwealth, a regulation or order of a Commonwealth
23 agency, an ordinance or resolution of a political subdivision or
24 a Federal law or regulation, to the extent authorized by Federal
25 law, not relating to or incidental to the banking or financial
26 activities, operations or condition of an institution, credit
27 union, licensee, national bank, Federal savings association or
28 foreign financial institution and not otherwise preempted by
29 Federal law, but prior to doing so, the agency or political
30 subdivision shall give notice and consult with the department.

1 To the extent the department determines that such actions may
2 affect the banking or financial activities, operations or
3 condition, including safety and soundness, of any institution,
4 credit union, licensee, national bank, Federal savings
5 association, foreign financial institution or a subsidiary of
6 the foregoing; or interfere with the regulation of such entities
7 by the department, Federal regulatory agencies or regulatory
8 agencies of other states, the department shall have sole and
9 exclusive jurisdiction to initiate or participate in
10 administrative proceedings, or to request that the Attorney
11 General initiate or participate in judicial proceedings, to
12 enforce such laws or to determine that such proceedings are not
13 in the public interest.

14 G. Powers and responsibilities granted to the department by
15 this section may not be exercised by any other agency of the
16 Commonwealth, or political subdivision, except upon the request
17 of the department, or as expressly authorized by the department
18 on a case-by-case basis.

19 H. Nothing in this section may limit or restrict the power
20 of the Attorney General or law enforcement agencies of
21 municipalities to commence criminal proceedings.

22 I. Consumer financial laws of this Commonwealth not
23 preempted by Federal law pursuant to section 1044 or 1046 of the
24 Consumer Financial Protection Act (12 U.S.C. §§ 256 and 1461) or
25 other provision of Federal law, including statutes, regulations
26 adopted by Commonwealth agencies, orders issued by Commonwealth
27 agencies, ordinances or resolutions enacted by political
28 subdivisions or orders issued by political subdivisions, shall
29 apply to national banks, Federal savings associations and their
30 subsidiaries, only to the extent those laws apply to State-

1 chartered banks and savings associations and their subsidiaries.

2 J. Consumer financial laws of this Commonwealth applicable
3 to the activities of foreign financial institutions and their
4 subsidiaries, including statutes, regulations adopted by
5 Commonwealth agencies, orders issued by Commonwealth agencies,
6 ordinances or resolutions enacted by political subdivisions or
7 orders issued by political subdivisions, shall apply to foreign
8 financial institutions and their subsidiaries, only to the
9 extent those laws apply to State-chartered banks and savings
10 associations and their subsidiaries.

11 K. The following terms shall be construed in this section to
12 have the following meanings, except in those instances where the
13 context clearly indicates otherwise:

14 "Bureau." The Federal Bureau of Consumer Financial
15 Protection.

16 "Consumer Financial Protection Act." Title X of the Dodd-
17 Frank Wall Street Reform and Consumer Financial Protection Act
18 (Public Law 111-203, 12 U.S.C. § 5301 et seq.) or the Consumer
19 Financial Protection Act of 2010.

20 "Foreign financial institution." A person licensed,
21 registered or regulated by a state other than the Commonwealth
22 or a foreign country that provides financial services to or for
23 the benefit of persons in this Commonwealth.

24 "State." Any state, territory, or possession of the United
25 States, the District of Columbia, the Commonwealth of Puerto
26 Rico, the Commonwealth of the Northern Mariana Islands, Guam,
27 American Samoa or the United States Virgin Islands or any
28 federally recognized Indian tribe as defined by the Secretary of
29 the Interior under section 104(a) of the Federally Recognized
30 Indian Tribe List Act of 1994 (Public Law 103-454, 25 U.S.C. §

1 479a-1(a)).

2 "Visitorial powers." The conduct of a civil investigation,
3 administrative enforcement action, examination or any other
4 administrative proceeding, or a request for a report or
5 information, to determine compliance with or enforce a statute
6 of this Commonwealth, a regulation or order of a Commonwealth
7 agency, an ordinance or resolution of a political subdivision or
8 a Federal law or regulation relating or incidental to the
9 banking or the financial activities, operation or condition of
10 an institution, credit union, licensee, national bank, Federal
11 savings association or foreign financial institution.

12 Section 7. This act shall take effect in 60 days.