

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1957 Session of 2020

INTRODUCED BY M. K. KELLER, TURZAI, BENNINGHOFF, BRIGGS, BROWN, SCHLEGEL CULVER, DUNBAR, EVERETT, GLEIM, GREINER, GROVE, HARKINS, JOZWIAK, KEEFER, KORTZ, LAWRENCE, LONGIETTI, MARSHALL, MILLARD, NEILSON, PEIFER, PICKETT, PYLE, READSHAW, ROTHMAN, RYAN, SAINATO, SAYLOR, WHEELAND, YOUNGBLOOD, ZABEL AND ZIMMERMAN, MARCH 10, 2020

REFERRED TO COMMITTEE ON COMMERCE, MARCH 10, 2020

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 Securities and the Secretary of Banking and
 4 Securities in exercising supervision over, and taking
 5 possession of and conducting or liquidating the business and
 6 property of, corporations, associations, and persons
 7 receiving deposits or otherwise transacting a banking
 8 business, corporations acting as fiduciaries, and building
 9 and loan associations; providing for the payment of the
 10 expenses of the Department of Banking by supervised
 11 corporations, associations, or persons, and appropriating the
 12 Banking Department Fund; authorizing the Department of
 13 Banking, under certain circumstances, to examine
 14 corporations, associations, or persons affiliated, or having
 15 business transactions with supervised corporations,
 16 associations or persons; authorizing appeals to the Supreme
 17 Court, and prescribing and limiting the powers and duties of
 18 certain other courts and their prothonotaries, registers of
 19 wills, recorders of deeds, and certain State departments,
 20 commissions, and officers; authorizing certain local public
 21 officers and State departments to collect fees for services
 22 rendered under this act; regulating securities; providing
 23 penalties; and repealing certain acts and parts of acts," in
 24 short title and preliminary provisions, further providing for
 25 definitions; in jurisdiction and maintenance of department,
 26 further providing for assessment of expenses of department
 27 upon institutions; and, in banking and securities, further
 28 providing for fund.

29 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The definition of "fund" in subsection A of
3 section 2 of the act of May 15, 1933 (P.L.565, No.111), known as
4 the Department of Banking and Securities Code, is amended to
5 read:

6 Section 2. Definitions.--A. The following terms shall be
7 construed in this act to have the following meanings, except in
8 those instances where the context clearly indicates otherwise:

9 * * *

10 "Fund." The Banking Fund [redesignated in section 1113-A as
11 a continuation of the Banking Department Fund] under section
12 1113-A.

13 * * *

14 Section 2. Section 204 of the act is amended to read:

15 Section 204. Assessment of Expenses of Department upon
16 Institutions.--A. [All] Except for expenses subject to
17 subsection A.1 or related to the department's duties under the
18 act of December 5, 1972 (P.L.1280, No.284), known as the
19 "Pennsylvania Securities Act of 1972," all the expenses of the
20 department, including those enumerated in this act or otherwise
21 authorized by law, shall be charged to and paid by all
22 institutions, including licensees, in such equitable amounts,
23 [at such times] on the first day of May and December of each
24 year or the next business day thereafter, and in such manner as
25 the department shall, by general rule or regulation, prescribe.
26 [The expenses incurred by the department in connection with any
27 examination or investigation, whether regular or special,
28 including a proportionate part of the salary of any examiner or
29 other employe of the department or third-party expenses,
30 including attorneys retained by the department, may be assessed

1 by the department upon the particular institution examined or
2 investigated.]

3 A.1. In the event the department incurs expenses relating to
4 the resolution of a bank, bank and trust company, trust company
5 or savings bank under Article X or the seizure and liquidation
6 of a credit union under 17 Pa.C.S. § 503(c) (relating to
7 regulation by department) in excess of amounts available in the
8 Institution Resolution Account established under section 1113-
9 A(g), including additional costs for salaries of examiners or
10 employees of the department or third-party expenses, including
11 amounts paid to attorneys retained by the department, the
12 department may impose a special assessment to recover such costs
13 by transmitting notice to the Legislative Reference Bureau for
14 publication in the Pennsylvania Bulletin and by giving notice of
15 the special assessment under subsection B. The proceeds of any
16 special assessment shall be paid into the Institution Resolution
17 Account.

18 B. The department shall give written notice to each
19 institution, including licensees, of the amount lawfully charged
20 against it under the provisions of this act. The institution
21 shall pay the amount of [such] the assessment under subsection A
22 or A.1 to the department within sixty days after the invoice
23 date on the notice. If payment is not made by any institution or
24 licensee within the sixty-day period, the department may impose
25 in addition to the money assessed a maximum penalty fee of one
26 hundred fifty dollars (\$150.00) for that sixty-day period and
27 each successive thirty-day period of delinquency. In addition,
28 the department, through the Office of Attorney General or its
29 authorized designee, may institute an appropriate action at law
30 for the amount lawfully assessed against such institution,

1 together with any additional costs incurred by the Department of
2 Banking or the Office of Attorney General or its authorized
3 designee by virtue of such failure to pay.

4 B.1. For fiscal year 2020-2021 and each fiscal year
5 thereafter, prior to the issuance of a notice under subsection B
6 for assessments levied under subsection A or A.1, the department
7 shall estimate the balance of the fund at the end of the fiscal
8 year and proportionally reduce such assessments by an amount to
9 avoid any increase in the fund balance, not to exceed twenty
10 million dollars (\$20,000,000). In estimating the fund balance at
11 the end of the fiscal year, the department may disregard any
12 contribution to the fund by special assessments levied under
13 subsection A.1:

14 (1) to the extent the special assessments cause the fund
15 balance to exceed twenty million dollars (\$20,000,000); and

16 (2) if the amounts are needed for the resolution of a bank,
17 bank and trust company, trust company or savings bank under
18 Article X or the seizure and liquidation of a credit union under
19 17 Pa.C.S. § 503(c).

20 B.2. A special assessment under subsection A.1 and any
21 revision made to the assessment schedule under subsection B.1
22 shall not be subject to review under section 205 of the act of
23 July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
24 Documents Law, section 204(b) of the act of October 15, 1980
25 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," or
26 the act of June 25, 1982 (P.L.633, No.181), known as the
27 "Regulatory Review Act."

28 C. This section also applies to licensees and credit unions.

29 Section 3. Section 1113-A(a), (e) and (g) of the act are
30 amended and the section is amended by adding subsections to

1 read:

2 Section 1113-A. Fund.

3 (a) [Continuation.--The Banking Department Fund is
4 redesignated as the Banking Fund.] Conversion.--The Banking Fund
5 is converted into a trust fund to be administered for the
6 benefit of institutions, including licensees, and customers. The
7 fund shall be administered by the department. All interest
8 earned from the investment or deposit of money accumulated in
9 the fund shall be deposited in the fund for the same use. All
10 money deposited into the fund shall be held in trust and shall
11 not be considered general revenue of the Commonwealth and may be
12 used only to effectuate the purposes of this section as
13 determined by the department. Money in the fund shall be subject
14 to audit by the Auditor General. No subsequent statute shall be
15 held to supersede or modify the provisions of this section
16 except to the extent that such statute shall do so expressly.

17 * * *

18 (e) Restrictions on appropriations.--

19 (1) For fiscal years beginning after June 30, 1995, and
20 ending before July 1, 2012, the General Assembly shall
21 appropriate funds as it determines to be necessary from the
22 fund for use by the department or other Commonwealth
23 agencies.

24 (2) For fiscal years beginning after June 30, 2012, and
25 ending before July 1, 2020, the General Assembly shall
26 appropriate the funds as it determines to be necessary from
27 the fund for use only by the department and not for any other
28 Commonwealth agency.

29 (3) For fiscal years beginning after June 30, 2020,
30 money in the fund may be expended upon direction of the

1 department for the purposes specified by this section.

2 * * *

3 (g) Institution Resolution Account.--

4 (1) The Institution Resolution Account is established as
5 a restricted account within the fund.

6 (2) The sources of the account are as follows:

7 (i) An amount determined by the secretary each
8 fiscal year based upon economic and regulatory conditions
9 from assessments, fees and administrative penalties
10 generated from statutes administered by the department
11 other than:

12 (A) the Pennsylvania Securities Act of 1972; or

13 (B) the Takeover Disclosure Law.

14 (ii) Amounts received from court litigation
15 involving the department.

16 (3) The secretary may use the money in the account to
17 pay for costs associated with any of the following:

18 (i) Resolution of an institution or an association,
19 under Article X. Money under this subparagraph may be
20 used in lieu of paying expenses from the assets of an
21 institution or association under section 1006.

22 (ii) Seizure and liquidation of a credit union under
23 17 Pa.C.S. § 503 (relating to regulation by department).

24 (4) Except for amounts received through special
25 assessments levied under section 204B, the balance of the
26 account shall not exceed \$15,500,000.

27 (h) Reserve.--Any balance in the fund in excess of the
28 amount in the Institution Resolution Account shall be held as a
29 reserve to protect the department from adverse economic
30 circumstances, including the loss of assessment revenue due to

1 the transfer of institutions to another primary regulator and
2 unanticipated expenses related to the regulation of
3 institutions, including licensees and credit unions.

4 (i) Dissolution.--In the event that the fund is
5 discontinued, any balance remaining in the fund, after deducting
6 administrative costs for liquidation, shall be returned to
7 institutions, including licensees and credit unions, in
8 proportion to their financial contributions to the fund in the
9 preceding calendar year.

10 Section 4. This act shall take effect in 60 days.