

No. 2008-57

## AN ACT

SB 483

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

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

Section 1. The definition of "residential mortgage" in section 101 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law and more commonly referred to as the Usury Law, amended April 6, 1979 (P.L.15, No.4), is amended and the section is amended by adding definitions to read:

Section 101. Definitions.—As used in this act:

\* \* \*

*"Base figure" means two hundred seventeen thousand eight hundred seventy-three dollars (\$217,873), as adjusted annually for inflation by the department through notice published in the Pennsylvania Bulletin.*

*"Department" means the Department of Banking of the Commonwealth.*

\* \* \*

"Residential mortgage" means an obligation to pay a sum of money in an original bona fide principal amount of **[fifty thousand dollars (\$50,000) or less]** *the base figure or less*, evidenced by a security document and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium unit.

\* \* \*

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

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

(b) *The maximum lawful rate of interest set forth in this section shall not apply to:*

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

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

(3) *business loans of any principal amount.*

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

Section 301. Residential Mortgage Interest Rates.—\* \* \*

(f) The maximum lawful rate of interest set forth in this section [and in Article II of this act] shall not apply to (i) an obligation to pay a sum of money in an original bona fide principal amount of more than [fifty thousand dollars (\$50,000)] *the base figure*; (ii) an obligation to pay a sum of money in an original bona fide principal amount of [fifty thousand dollars (\$50,000) or less] *the base figure or less*, evidenced by a security document and secured by a lien upon real property, other than residential real property as defined in this act; (iii) to a loan to a person subject to the act of April 27, 1927 (P.L.404, No.260), entitled “An act prohibiting corporations from pleading usury as a defense,” section 313 of the act of May 5, 1933 (P.L.364, No.106), known as the “Business Corporation Law,” or Title 15 Pa.C.S. section 7544; or (iv) an unsecured, noncollateralized loan in excess of thirty-five thousand dollars (\$35,000);] or (v) business loans [the principal amount of which is in excess of ten thousand dollars (\$10,000)] *of any principal amount.*

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

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

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

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

(b) *The department may examine any instrument, document, account, book, record, electronic data or file of any person, or make such other investigation as may be necessary to administer the provisions of this act.*

*Any person subject to such examination or investigation shall pay the department any costs associated with such examination or investigation. In connection with any examination or investigation authorized by this act, the department shall have the power to issue subpoenas requiring the attendance of, or the production of pertinent books, papers, electronic data or information of any kind which is in any form by, the officers, directors, agents, employees or members, respectively, of any person which the department is authorized, under the provisions of this act, to examine. The department shall have power to issue subpoenas to any other person or entity of any kind whatsoever provided that the information from such person or entity is necessary for the enforcement of this act. The department shall also have the power to question such witnesses under oath or affirmation and to examine such books and papers. Any witness who refuses to obey a subpoena issued under this section, or who refuses to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be found in contempt of court. For this purpose, an application may be made to the Commonwealth Court or any court of common pleas within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.*

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

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

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

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

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

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

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

APPROVED—The 8th day of July, A.D. 2008.

EDWARD G. RENDELL