

No. 1994-167

AN ACT

SB 863

Amending the act of November 30, 1965 (P.L.847, No.356), entitled "An act relating to and regulating the business of banking and the exercise by corporations of fiduciary powers; affecting persons engaged in the business of banking and corporations exercising fiduciary powers and affiliates of such persons; affecting the shareholders of such persons and the directors, trustees, officers, attorneys and employes of such persons and of the affiliates of such persons; affecting national banks located in the Commonwealth; affecting persons dealing with persons engaged in the business of banking, corporations exercising fiduciary powers and national banks; conferring powers and imposing duties on the Banking Board, on certain departments and officers of the Commonwealth and on courts, prothonotaries, clerks and recorders of deeds; providing penalties; and repealing certain acts and parts of acts," providing for certain direct and indirect extensions of credit to individuals, partnerships and unincorporated associations; authorizing direct extensions of credit to finance installment sales of goods and services to be made through sellers and contractors as intermediaries; further providing for certain interest rates; and providing for compliance with Federal law regarding availability of withdrawal of items deposited.

(a) The General Assembly makes the following findings as the basis for this act:

(1) The statutes and regulations of this Commonwealth which govern direct and indirect extensions of credit by banks to individuals and unincorporated entities have become voluminous and intricate by reason of separate amendments and supplements over several years and, in conjunction with Federal statutes and regulations, have failed to provide a stable basis for the offering of credit by banks. These statutes and regulations have imposed a costly, confusing and needless complexity in the compliance requirements that banks must satisfy without providing a proportionate benefit to their customers.

(2) The interests of the public and the interests of this Commonwealth have been adversely affected by economic limitations on direct and indirect extensions of credit under restrictions of Pennsylvania law.

(3) Changes in Federal laws regulating interest payable on deposits have enabled the public to obtain market rates of interest on funds deposited with banks, and these rates may be adjusted to reflect interest rate levels in the national economy. Pennsylvania law generally does not provide the same flexibility for interest rates on direct and indirect extensions of credit.

(4) States contiguous to Pennsylvania, as well as most other states of the United States, have changed bank lending laws in order to maintain a consistent availability of credit. A consequence of these changes has been that financial institutions located in other states have become the sources of a substantial and increasing percentage of the personal credit business

in Pennsylvania detrimentally affecting employment, business and tax revenues in this State.

(5) The accelerating development of interstate banking will increase the significance of State laws which govern bank extensions of credit and their effect on the choice of places where activities will be located. The loss of jobs in Pennsylvania directly caused by its outdated credit laws will inevitably increase with changes in the banking industry unless those laws offer the same opportunities for competition by Pennsylvania organizations as do the laws of other states.

(6) The interests of individuals and unincorporated entities in continuing credit availability from banks located in this State, the interests of the State in augmenting employment and business of its residents and the interests of the State and political subdivisions in State and local taxes resulting from this employment and business will be promoted by simplification and flexibility of bank lending laws so that credit can be offered at market rates and competitive terms.

(b) On the basis of these findings, the purposes of this act are to provide:

(1) Uniform, adequate and simplified disclosure by adoption of the comprehensive Federal rules governing disclosure in consumer credit transactions.

(2) Availability from Pennsylvania banks of credit at competitive market rates of interest and charges so that customers may benefit from decreases in market rates and Pennsylvania banks may continue to offer credit and compete with banks from other states during periods of both increases and decreases in interest rates.

(3) Maintenance of credit services for Pennsylvania customers at local banks so that customer alternatives will not be restricted to out-of-State companies as in the case of past periods of high interest rates.

(4) Unification and simplification of rules governing bank credit to promote efficiency and to increase borrower comprehension of the terms of credit.

(c) The provisions of this statute shall be liberally construed to accomplish the foregoing purposes.

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

Section 1. The act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, is amended by adding a section to read:

Section 322. Extensions of Credit to Individuals, Partnerships and Unincorporated Associations

(a) ***Definitions***—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Credit device”—any card, check, identification code or other means of identification contemplated by the agreement governing a plan.

“Loans”—cash advances or loans to be paid to or for the account of the customer.

“Plan” or “open-end credit plan”—a plan contemplating the extension of credit under an account governed by an agreement between an institution and a customer pursuant to which:

(i) the institution permits the customer and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the customer from time to time to make purchases or to obtain loans or both by use of a credit device,

(ii) the amounts of purchases made and loans obtained are charged to the customer’s account under the plan,

(iii) the customer is required to pay the institution the amounts of all purchases and loans charged to the customer’s account under the plan but has the privilege of paying the amounts outstanding from time to time in full or installments, and

(iv) interest may be charged and collected by the institution from time to time on the outstanding unpaid indebtedness under such plan.

“Purchases”—payments for property of whatever nature, real or personal, tangible or intangible, and payments for services, licenses, taxes, official fees, fines, private or governmental obligations or any other thing of value.

“Truth in Lending”—the Federal Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and regulations promulgated thereunder as in effect from time to time. The terms “finance charge,” “annual percentage rate,” “credit card,” “open-end credit” and “closed-end credit” have the same coverage and meanings as the definitions of those terms under Truth in Lending.

(b) **Coverage**—This section shall govern all direct and indirect extensions of credit by an institution for personal, family, household, business or agricultural purposes to an individual, a partnership or an unincorporated association, whether as closed-end credit or open-end credit, except extensions of credit:

(i) which are secured by a first-lien, purchase money, residential real estate mortgage,

(ii) which are student loans guaranteed by the Pennsylvania Higher Education Assistance Agency, or

(iii) which are not subject to a maximum rate of interest or finance charge or as to which the pleading of usury as a defense is prohibited pursuant to Federal or State law.

(c) **Disclosures**—In connection with an extension of credit, an institution shall make applicable disclosures required by Truth in Lending in lieu of any disclosure requirement which may be imposed by Pennsylvania law.

(d) **Agreements for extension of credit**—An institution may extend credit pursuant to this section on the basis of a written agreement. An agreement

shall be fully completed prior to signature by the customer. A completed copy of such agreement, including related statements, notices and documents, shall be given to the customer. An agreement shall have the form and contents required by Truth in Lending and shall, in addition, provide if applicable:

(i) the amounts of available credit and the procedure or means by which it may be obtained,

(ii) maturity provisions, installment payment requirements, prepayment privileges and rebates of unearned interest upon prepayment,

(iii) either the amounts or rates of interest, which may be fixed or variable rates, or the basis for determining such amounts or rates, which basis in the case of variable rates must be an objectively determinable basis other than a basis determined solely by the institution, subject to a maximum rate of interest determined by the higher of the rate established by the National Credit Union Administration Board under 12 U.S.C. § 1757(5)(A)(vi) or the rate yielded by the sum of the average percentage yield on United States Treasury notes for a constant five-year maturity as published by the Board of Governors of the Federal Reserve System rounded to the nearer quarter of one percent, determined on the first day of each calendar quarter, plus ten percent,

(iv) the method of determining balances of unpaid indebtedness to which periodic rates of interest are applicable which, in the case of an open-end credit plan, may, if the agreement governing the plan so provides, include the amount of any interest and other charges, including delinquency charges, which have accrued in the account,

(v) charges which may be imposed in addition to interest, in such amounts as the agreement provides, or as established in the manner the agreement provides, such as, but not limited to, minimum charges, check charges and maintenance charges related to extensions of credit pursuant to overdraft check plans, a delinquency charge of twenty dollars (\$20) or ten percent of each installment or payment, whichever is higher, which is in default for more than fifteen days and fees, extension charges and actual charges that may be incurred on default, including, but not limited to, court and other collection costs and reasonable attorney fees. Such additional charges may include a daily, weekly, monthly, annual or other periodic charge for the privileges made available to the customer under an open-end credit plan, transaction charges for each separate purchase or loan under the plan and a minimum charge for each scheduled billing period under the plan, during any portion of which there is an outstanding unpaid indebtedness under the plan,

(vi) collateral security and provisions relating thereto, except that there may not be any authorization for entry of judgment by confession nor any acceleration of a loan or repossession of collateral unless there is a default pursuant to the agreement, and

(vii) *insurance coverages and premiums therefor.*

Such agreements shall be valid and enforceable, and an institution may impose and collect the interest and other charges provided therein.

(e) *Computation of interest—A fixed rate of interest included in a finance charge shall be computed either on a simple interest basis by a generally accepted actuarial method, including a method permitted for determination of an annual percentage rate under Truth in Lending or, as to an extension of credit with an initial maturity of not more than sixty months, which is made within two years after the effective date of this section, on an add-on or discount basis. The maximum amount that may be charged on the basis of a variable rate of interest shall be computed in accordance with or with reference to a schedule or formula at the times and for the periods provided in the agreement. The periodic rate of interest, as so varied, will be applicable to all outstanding unpaid indebtedness under the agreement from the effective date of the variation if so provided in the agreement.*

(f) *Changes in terms—An institution may change the terms of the agreement if:*

- (i) *the agreement so provides,*
- (ii) *there is compliance with applicable notice requirements of Truth in Lending prior to the effective date of the change,*
- (iii) *such notice states that a customer for whose account a change in terms does not become effective may pay all outstanding amounts pursuant to the agreement as in effect prior to the notice, and*
- (iv) *in the case of an increase in a fixed rate of interest or other charges payable by the customer under an open-end credit plan, the customer incurs additional indebtedness after the effective date of the change of terms.*

If the agreement governing the plan so provides, a change of terms pursuant to this subsection may, on and after the date it becomes effective as to an account, apply to all then outstanding unpaid indebtedness. A change in the amount of interest imposed in accordance with or with reference to a schedule or formula for a variable rate of interest shall not be deemed to be a change in terms, but a change in such schedule or formula shall be deemed to be a change in terms. No change may be made in a fixed rate of interest or other charges payable with respect to the outstanding balance of indebtedness or in the amount or due dates of required installment payments on closed-end credit unless there is written consent of the customer at the time of the change except for an extension of any due date or an option granted by the institution to the customer to omit payments and except as may be otherwise provided in an agreement for an extension of credit which is not for personal, family or household purposes.

(g) *Prepayment—*

(i) *A borrower or buyer may prepay an extension of credit in full at any time without any prepayment charge.*

(ii) *If interest has been precomputed, then, in the event of prepayment of an extension of credit, the institution shall refund to the customer the unearned portion of the precomputed interest. The refund shall be in an amount not less than the amount of the unearned precomputed interest calculated in accordance with a generally accepted actuarial method, including a method permitted for determination of an annual percentage rate under Truth in Lending, except that the amount of the unearned interest on an extension of credit with an initial maturity of not more than sixty months which is made within two years after the effective date of this section for which interest is computed on an add-on or discount basis as permitted by subsection (e) may be calculated in accordance with the "sum of the balances" method and except that the customer shall not be entitled to a refund which results in a net minimum charge of less than an amount equal to the interest that would accrue in the first month the extension of credit was scheduled to be outstanding. The institution shall not be required to refund the unearned portion of the interest if such amount is less than one dollar (\$1).*

(iii) *The amount of a refund under the "sum of the balances" method is determined by multiplying the precomputed interest by a fraction, the numerator of which is the sum of the balances, including interest, of the extension of credit scheduled to be outstanding after deducting the first of the payments scheduled to be made on or after the date of prepayment and the denominator of which is the sum of all the unpaid balances, including interest, of the extension of credit scheduled to be outstanding from its inception to and including the maturity of the final installment. Intervals between scheduled payments must be regular periods of one month or less except that the interval between the inception of an extension of credit and the due date of the first scheduled payment may be:*

(A) *one month and fifteen days when the regular payment interval is a month,*

(B) *one month when the regular payment interval is less than a month but more than a week, or*

(C) *eleven days when the regular payment interval is a week or less.*

(h) *Insurance—The agreement may provide for life, health, accident, loss-of-income or other permissible insurance related to an extension of credit under a group or individual policy subject to the option of the customer to furnish required insurance through an authorized insurer of the customer's choice as provided in section 11 of the act of September 2, 1961 (P.L.1232, No.540), known as the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance," and, if*

premiums for such insurance are paid to the institution, provisions shall be made for rebates of unearned premiums, if any, upon prepayment. An institution may require that insurance be maintained, from an insurer acceptable to the institution, against loss or damage to property which is collateral security for the extension of credit and against liability arising out of the ownership or use of such property. An institution may grant an extension of credit to finance the premiums for such insurance.

(i) Extensions of credit through intermediaries—An extension of credit to finance a sale of a motor vehicle, other than through an open-end credit plan, may be made by an institution through a seller licensed as an installment seller under the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance Act," as an intermediary if:

(i) the agreement governing the extension of credit conspicuously provides that the extension of credit is made by the institution to the buyer and is subject to the provisions of this section, and

(ii) either the institution has made a commitment to make the extension of credit or the agreement is subject to acceptance by the institution within two business days after the date of the agreement and the institution upon such acceptance sends written notice thereof to the buyer. The terms and conditions under which the seller acts as an intermediary between the institution and the buyer shall be determined by written agreement between the institution and the seller.

An extension of credit made through an intermediary pursuant to this section shall be subject to this act and other acts governing transactions between banks and their customers and shall not be subject to the provisions or requirements of any other regulatory statute, rule or regulation, and neither a seller who acts as an intermediary for an institution with respect to such an extension of credit nor an institution which makes such an extension of credit through a seller as an intermediary shall be deemed to be in violation of licensing or other requirements of any other regulatory statute, rule or regulation that would be applicable to extensions of credits by such a seller or contractor to its customers.

(j) Right of rescission—A person whose ownership interest in that person's principal dwelling is subject to a lien or security interest as collateral security for an extension of credit subject to this section shall have a right of rescission for the same types of transactions on the same terms and conditions and for the same time periods as those provided for the right of rescission under Truth in Lending.

(k) Statement of account—Upon the written request of the customer, an institution shall provide, within ninety days after the end of each calendar year, a statement of the customer's account showing payments made during such year, the amount applied to interest and the balance of the account at the end of such year.

(l) Waiver of provisions—No provision of this section which confers rights on the customer or any other person may be waived or modified except to the extent and in the circumstances in which Truth in Lending permits a consumer to waive or modify the right of rescission.

(m) Balloon payments—No agreement for an extension of credit under this section containing terms of which principal is repayable in installments may provide for a final payment which is more than double the regularly scheduled payment exclusive of overdue or extended payments, except in the case of automobile financing transactions.

Section 2. Section 506(a)(vi), (vii) and (viii) and last paragraph of the act, amended December 21, 1988 (P.L.1416, No.173), are amended and the subsection is amended by adding a clause to read:

Section 506. Lending Powers; Direct Leasing of Personal Property

(a) A savings bank may:

* * *

(vi) in the case of a savings bank which has elected to exercise the conditional powers provided in section 513, make secured or unsecured loans for personal, family or household purposes, including loans reasonably incident to the provision of such credit, and subject to regulation by the department, issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, except that the total amount of such loans or extensions of credit shall not exceed thirty percent of the assets of such savings bank[. In any loan or extension of credit made under the authority of this clause a savings bank may charge or impose any rate or charge which could be imposed by a bank in connection with any such loan or extension of credit and shall be subject to the same restrictions and limitations imposed upon a bank in connection with such loan or extension of credit];

(vii) make overdraft loans specifically related to deposits which are subject to withdrawal by check or by negotiable order of withdrawal; [and]

(viii) make loans for the payment of educational expenses; and

(ix) in any loan or extension of credit made under the authority of this section, charge or impose any rate or charge which could be imposed by a bank in connection with any such loan or extension of credit, make agreements in the same manner and with the same terms, provisions and conditions as a bank and, in addition to the restrictions of this section, shall be subject only to the same disclosure and other requirements, restrictions and limitations imposed upon a bank in connection with such loan or extension of credit.

[A savings bank may not lend money or discount or purchase evidences of indebtedness or agreements for the payment of money except as provided in sections 504 and 505 and in this subsection (a).]

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Section 3. The act is amended by adding a section to read:

***Section 611. Compliance with Federal Law Regarding Availability of
Withdrawal of Items Deposited***

An institution shall comply with the Expedited Funds Availability Act (Public Law 100-86, 12 U.S.C. § 4001 et seq.) and any amendments thereof and any regulations, interpretations and rulings issued thereunder from the effective date thereof.

Section 4. The provisions of this act shall only govern transactions between banks or savings banks and their customers and, by reason of the references to "interest, finance charge, rate, and/or terms" in section 701(a)(26) of the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967, transactions between savings associations and their customers and shall not affect acts and parts of acts governing other creditors or sellers or contractors for goods or services or acts or parts of acts governing such other creditors or sellers as to installment sales or contracts for goods or services, including, but not limited to, the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act, the act of August 14, 1963 (P.L.1082, No.464), known as the Home Improvement Finance Act and the act of October 28, 1966 (Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act, or acts and parts of acts governing rights, remedies, duties and procedures for enforcement of obligations upon default on an extension of credit, including, but not limited to, acts governing repossession and foreclosure, or acts and parts of acts governing credit life insurance, the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.), or the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, or 13 Pa.C.S. (relating to commercial code). This act shall not repeal any act governing criminal usury, extortionate extensions of credit or racketeering activity or repeal or affect any law relating to the preservation against an assignee of a consumer's claims and defenses arising out of an agreement for the purchase of goods or services.

Section 5. This amendatory act shall be known and may be cited as the Simplification and Availability of Bank Credit Act.

Section 6. All acts and parts of acts are repealed insofar as they are inconsistent with the provisions of this act.

Section 7. This act shall take effect in 90 days.

APPROVED—The 28th day of December, A.D. 1994.

ROBERT P. CASEY