

No. 1978-264

AN ACT

HB 2393

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 variable interest rate mortgages, making changes in the definitions of "finance charge" and "loan yield" and providing for terms and conditions under which variable interest rate loans may be made.

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

Section 1. The definitions of "finance charge" and "loan yield" of section 101, act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, are amended to read:

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

* * *

"Finance charge" means the total cost of a loan or charge for the use of money, including any extensions or grant of credit regardless of the characterization of the same and includes any interest, time price differential, points, premiums, finder's fees, and other charges levied by the residential mortgage lender directly or indirectly against the person obtaining the loan or against the seller, lender, mortgagee or any other party to the transaction except any actual settlement costs. The finance charges plus the actual settlement costs charged by the residential mortgage lender shall include all charges made by the residential mortgage lender to the residential mortgage debtor other than the principal of the loan. *In computing finance charge on any mortgage which does not require the full amount of the first year's interest to be paid during the first year and on a variable interest rate mortgage interest shall be calculated at the rate applicable to the first year of the loan.*

"Loan yield" means the annual rate of return obtained by a residential mortgage lender from a residential mortgage debtor over the term of the loan and shall be determined in accordance with regulations issued by the

Secretary of Banking. Such regulations shall establish the method for calculating such rate of return and shall provide that the finance charge be amortized over the contract term of the loan. ***In computing loan yield on any mortgage which does not require the full amount of the first year's interest to be paid during the first year and on a variable interest rate mortgage interest shall be calculated at the rate applicable to the first year of the mortgage.***

* * *

Section 2. Subsections (d) and (e) of section 301 of the act are amended to read:

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

(d) The loan yield obtained by a residential mortgage lender from the residential mortgage debtor shall not exceed the maximum lawful rate of interest for residential mortgages established in section 301(b). A contract rate within the maximum lawful interest rate applicable to a residential mortgage at the time of the loan settlement shall be the maximum lawful interest rate for the term of the residential mortgage, ***except variable interest rate mortgages as set forth in section 301(e).***

(e) In all proceedings and in all legal actions, the maximum lawful rate of interest for all residential mortgages, as defined in this act, as published in the Pennsylvania Bulletin by the Secretary of Banking shall be the maximum lawful rate of interest for residential mortgages, as defined in this act, ***except that variable interest rate mortgages may be written provided no increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith shall be lawful unless such provision is set forth in such security document, or in any evidence of debt issued in connection therewith, or both, and such document or documents contain the following provisions:***

(1) ***That the index for determining increase or decrease in interest rate shall be the lawful rate of interest as determined under subsections (a), (b) and (c) for residential mortgages.***

(2) ***A requirement that when an increase in the interest rate is required by a movement in a particular direction of the prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.***

(3) ***The rate of interest shall change not more often than once during any semiannual period and at least six months shall elapse between any two such changes.***

(4) ***The change in the interest rate shall be one-fourth of one per cent in any semiannual period, and shall not result in a rate more or less than two and five-tenths percentage points greater or less than the rate for the first loan payment due after the closing of the loan.***

(5) ***The rate of interest shall not change during the first annual period of the loan.***

(6) Subject to the provisions of paragraphs (3), (4) and (5), an increase or decrease in the interest rate shall be effected when the index moves in such percentage that the difference between the present index rate and present mortgage rate varies not less than one-fourth of a percentage point from the difference between the index and mortgage rates at the date of the first contracted loan repayment.

(7) The contracted periodic payment may at the option of the borrower be increased or decreased in dollar amount equal to any periodic increase or decrease in interest requirement, or the contracted periodic payment may at the option of the borrower be retained constant provided the maturity of the mortgage is not extended beyond forty years from the date of said mortgage or five years beyond the original maturity date for which said mortgage was written, whichever is the shorter.

(8) When a change in the interest rate is required or permitted by a movement in the prescribed index, the lender shall give notice to the borrower by mail, addressed to the borrower's last known post office address, not less than thirty days prior to any change in interest rate, which notice shall clearly and concisely disclose:

- (i) The effective date of the interest rate change;*
- (ii) The interest rate change, and if an increase, the extent to which the increased rate will exceed the rate in effect immediately before the increase;*
- (iii) The changes in the index which caused the interest rate change;*
- (iv) The amount of the borrower's contractual monthly principal and interest payments before and after the effective date of the change in the interest rate, any change in the term of the mortgage and any option that the mortgage debtor may have to extend or reduce the mortgage term and retain constant periodic payments.*

*(9) A statement attached to the mortgage and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of the following language:
Notice to borrower: this document contains provisions for a variable interest rate.*

(10) No residential mortgage lender may take a residential mortgage providing for a variable interest rate unless it has clearly and conspicuously disclosed to the mortgage debtor in the mortgage application:

- (i) That the mortgage rate is subject to change in the future.*
- (ii) An explanation of the effect of changes in the index on the rate and term of the mortgage.*
- (iii) An explanation of the index.*
- (iv) A statement in 10-point bold type containing the following language:*

If the mortgage lender offers to give you a mortgage with a variable interest rate, you are entitled by law to also be offered a mortgage with an interest rate which will not change. By law, this fixed interest rate mortgage must be offered to you at reasonably competitive terms and rate.

(11) The Secretary of Banking may by regulation prescribe language and forms which shall be deemed to comply with these disclosure requirements with the exception of the language contained in subsection e(9) and 10(iv).

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Section 3. This act shall take effect immediately.

APPROVED—The 5th day of October, A. D. 1978.

MILTON J. SHAPP