

No. 358

AN ACT

HB 918

Amending the act of June 24, 1939 (P.L.872), entitled "An act to consolidate, amend and revise the penal laws of the Commonwealth," to control loansharking by providing for the crimes of making, financing and receiving proceeds of extortionate extensions of credit and conspiring to do so, for the crimes of collecting extensions of credit by extortionate means and conspiring to do so, for the crimes of engaging in, financing, receiving proceeds of, and maintaining or possessing records of criminal usury and conspiring to do so, and for penalties.

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

Section 1. The act of June 24, 1939 (P.L.872), known as "The Penal Code," is amended by adding nine sections to read:

Section 806.1. Definitions.—As used in sections 806.2 through 806.9 of this act—

(a) To "extend credit" means to make or renew any loan, or to enter into any agreement, express or implied, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred,

(b) "Creditor" means any person who extends credit, or any person claiming by, under, or through any such person,

(c) "Debtor" means any person who receives an extension of credit, or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person who receives an extension of credit to repay the same. Nothing in sections 806.2 through 806.9 of this act shall be construed as authorizing the conviction or punishment of a debtor because he receives, guarantees, repays or agrees to repay any extension of credit or indemnifies the creditor,

(d) "Repayment" of an extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit,

(e) To "collect" an extension of credit means to induce in any way any person to make repayment thereof,

(f) "Extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment may result in the use of extortionate means,

(g) An "extortionate means" is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, or property of any person, and

(h) "Criminal usury" is charging, taking or receiving any money, things in action or other property as interest on the loan or forbearance of any money, things in action or other property, at a rate exceeding thirty-six per cent per annum or the equivalent rate for a longer or shorter period, when not otherwise authorized by law.

Section 806.2. Making Extortionate Extensions of Credit.—(a) Whoever makes an extortionate extension of credit, or conspires to do so, is guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or to undergo imprisonment not exceeding twenty (20) years, or both. Offenses are in no way limited by the amount of the extension of credit or the interest rate charged thereon.

(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The extension of credit was made at a rate of interest at least equal to that established for criminal usury in section 806.1 (h) of this act.

(2) At the time credit was extended, the debtor reasonably believed that either

(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means, or

(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

(3) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars (\$100).

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence of the factor specified in subsection (b) (1) of this section, and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community at the time of the extension.

Section 806.3. Engaging in Criminal Usury.—Whoever engages in criminal usury, or conspires to do so, is guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding ten (10) years, or both.

Section 806.4. Financing Extortionate Extensions of Credit.—Whoever wilfully advances, or conspires to advance, money, things in action or other property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money, things in action or other property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, is guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or twice the value of the money, things in action or other property so advanced, whichever is greater, or to undergo imprisonment not exceeding twenty (20) years, or both.

Section 806.5. Financing Criminal Usury.—Whoever wilfully advances, or conspires to advance, money, things in action or other property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money, things in action or other property so advanced directly or indirectly for the purpose of engaging in criminal usury, is guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or twice the value of the money, things in action or other property so advanced, whichever is greater, or to undergo imprisonment not exceeding ten (10) years, or both.

Section 806.6. Collection of Extensions of Credit by Extortionate Means.—(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means to collect or attempt to collect any extension of credit, or to punish any person for the nonrepayment thereof, is guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or to undergo imprisonment not exceeding twenty (20) years, or both.

(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time credit was extended, of the circumstances described in section 806.2 (b) (1) of this act, and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have

been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant at the time of the collection or attempt at collection.

Section 806.7. Receiving Proceeds of Extortionate Extensions of Credit, and Collection of Extensions of Credit by Extortionate Means.—Whoever knowingly receives, or conspires to receive, the proceeds of an extortionate extension of credit, or the collection of an extension of credit by extortionate means, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or to undergo imprisonment not exceeding twenty (20) years, or both.

Section 806.8. Receiving Proceeds of Criminal Usury.—Whoever knowingly receives, or conspires to receive, the proceeds of criminal usury, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding ten (10) years, or both.

Section 806.9. Possession of Records of Criminal Usury.—Whoever, other than a public officer in the performance of his duty as such, maintains, causes to be maintained, conspires to maintain, or possesses any writing, paper, book, instrument or article used to record criminally usurious transactions, and who knows or has reasonable grounds to know that the contents record a criminally usurious transaction, is guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$2,500) or to undergo imprisonment not exceeding five (5) years, or both.

Section 2. If the provisions of any part of this act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

Section 3. This act shall take effect immediately.

APPROVED—The 29th day of December, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 358.



Secretary of the Commonwealth.