

[First Reprint]
ASSEMBLY, No. 1907

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblymen BATEMAN and WEINGARTEN

1 AN ACT concerning bank revolving credit plans and supplementing
2 Title 17 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. The Legislature finds and declares that:

8 (1) Interest that can be charged by issuers of bank credit cards may
9 depend on the laws of the state under which a bank is chartered or in
10 which a federally chartered bank has its principal office, or the laws of
11 the state where such bank has a branch office;

12 (2) The United States Supreme Court has held, in accordance with
13 the provisions of federal law, that a national bank issuer of a bank
14 credit card can export the rate of interest allowed in its home state to
15 other states, and this holding is now equally applicable to national and
16 state banks;

17 (3) There has been significant and expensive litigation concerning
18 the extent to which certain related charges constitute part of the
19 exportable rate of interest, but federal and state courts and the
20 Comptroller of the Currency have taken the expansive view that
21 related charges constitute a part of the exportable rate of interest; and

22 (4) Consequently, issuers of bank credit cards have located and
23 continue to locate in states which have the least restrictive laws
24 regarding interest and related charges.

25 b. Therefore, the Legislature proposes to simplify State law with
26 respect to interest on bank credit cards to make this State as equally
27 attractive as other states for the location of bank credit card
28 operations.

29 c. Moreover, since the rules applicable to revolving credit plans
30 have been the subject of disputes by courts and regulators; since the
31 New Jersey Department of Banking has advised New Jersey based

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted May 13, 1996.

1 banks that under State parity law there are no limits on late fees and
2 related charges; and since any retroactive application of restrictions
3 would impose upon New Jersey based banks a competitive
4 disadvantage, the Legislature proposes to "level the playing field" for
5 New Jersey based banks and to preclude potentially costly litigation by
6 permitting this act to apply to all revolving credit plans entered into
7 before and after the effective date of this act.

8

9 2. As used in this act:

10 "Bank" means any state or federally chartered bank, savings bank or
11 savings and loan association.12 "Borrower" means any corporation, partnership, association,
13 government or governmental subdivision or agency, trust, individual
14 or other entity.15 "Individual borrower" means a borrower who is a natural person
16 borrowing for personal, household or family purposes.17 "Credit device" means any card, check, identification code or other
18 means of identification contemplated by the agreement governing the
19 plan.20 "Loans" means cash advances or loans to be paid to or for the
21 account of the borrower.22 "Outstanding unpaid indebtedness" means, on any day, an amount
23 not in excess of the total amount of purchases and loans charged to the
24 borrower's account under the plan which is outstanding and unpaid at
25 the end of the day, after adding the aggregate amount of any new
26 purchases and loans charged to the account as of that day and
27 deducting the aggregate amount of any payments and credits applied
28 to that indebtedness as of that day and, if the agreement governing the
29 plan so provides, may include the amount of any periodic interest,
30 interest charges and other charges permitted by this act, including late
31 or delinquency charges, which have accrued in the account and which
32 are unpaid at the end of the day.33 "Purchases" means payments for property of whatever nature, real
34 or personal, tangible or intangible, and payments for services, licenses,
35 taxes, official fees, fines, private or governmental obligations, or any
36 other thing of value.37 "Revolving credit plan" or "plan" means a plan contemplating the
38 extension of credit under an account governed by an agreement
39 between a bank and a borrower pursuant to which:40 (1) the bank permits the borrower, and if the agreement governing
41 the plan so provides, persons acting on behalf of or with authorization
42 from the borrower, from time to time to make purchases or to obtain
43 loans, or both, by use of a credit device;44 (2) the amounts of purchases made and loans obtained are charged
45 to the borrower's account under the plan;

46 (3) the borrower is required to pay the bank the amounts of all

1 purchases and loans charged to the borrower's account under the plan,
2 but has the privilege of paying the amounts outstanding from time to
3 time in full or in installments; and

4 (4) interest may be charged and collected by the bank from time to
5 time on the outstanding unpaid indebtedness under the plan.

6
7 3. A bank may, subject to any limitations on lending authority
8 contained in its charter or otherwise imposed by law, and subject to
9 other provisions of this act, offer and extend credit under a revolving
10 credit plan to a borrower and in connection therewith may charge and
11 collect periodic interest, interest charges and other charges permitted
12 by this act and may take such security as collateral in connection
13 therewith as may be acceptable to the bank. Without limitation of the
14 foregoing, credit may be extended under a revolving credit plan by a
15 bank's acquisition of obligations arising out of the honoring by a
16 merchant, a bank or other financial institution, whether chartered or
17 organized under the laws of this or any other state, the District of
18 Columbia, the United States or any district, territory or possession of
19 the United States, or any foreign country, or a government or
20 governmental subdivision or agency, of a credit device made available
21 to a borrower under a plan, whether directly or indirectly by means of
22 telephone, point of sale terminal, automated teller machine or other
23 electronic or similar device, or through the mails.

24
25 4. A bank may charge and collect periodic interest under a
26 revolving credit plan on outstanding unpaid indebtedness in the
27 borrower's account under the plan at such daily, weekly, monthly,
28 annual or other periodic percentage rate or rates as the agreement
29 governing the plan provides or as established in the manner provided
30 in the agreement governing the plan. If the applicable periodic
31 percentage rate under the agreement governing the plan is other than
32 daily, periodic interest may be calculated on an amount not in excess
33 of the average outstanding unpaid indebtedness for the applicable
34 billing period, determined by dividing the total of the amounts of
35 outstanding unpaid indebtedness for each day in the applicable billing
36 period by the number of days in the billing period. If the applicable
37 periodic percentage rate under the agreement governing the plan is
38 monthly, a billing period shall be deemed to be a month or monthly if
39 the last day of each billing period is on the same day of each month or
40 does not vary by more than four days therefrom.

41
42 5. If the agreement governing the revolving credit plan so provides,
43 the periodic percentage rate or rates of interest under the plan may
44 vary in accordance with a schedule or formula. The periodic
45 percentage rate or rates may vary from time to time as the rate
46 determined in accordance with the schedule or formula varies and the

1 periodic percentage rate or rates, as so varied, may be made applicable
2 to all or any part of the outstanding unpaid indebtedness under the
3 plan on or after the effective date of the variation, including any
4 indebtedness arising out of purchases made or loans obtained prior to
5 the variation in the periodic percentage rate or rates. Without
6 limitation, a permissible schedule or formula hereunder may include
7 provision in the agreement governing the plan for a change in the
8 periodic percentage rate or rates of interest applicable to all or any
9 part of outstanding unpaid indebtedness, whether by variation of the
10 then applicable periodic percentage rate or rates of interest, variation
11 of an index or margin or otherwise, or whether contingent upon the
12 happening of any event or circumstance specified in the plan, which
13 event or circumstance may include the failure of the borrower to
14 perform in accordance with the terms of the plan.

15

16 6. In addition to or in lieu of interest at a periodic rate or rates as
17 provided pursuant to sections 4 and 5 of this act, a bank may, if the
18 agreement governing the revolving credit plan so provides, charge and
19 collect as interest, in the manner or form as the plan may provide, one
20 or more of the following:

21 a. A daily, weekly, monthly, annual or other periodic charge in the
22 amount or amounts as the agreement may provide for the privileges
23 made available to the borrower under the plan.

24 b. A transaction charge or charges in the amount or amounts as the
25 agreement may provide for each separate purchase or loan under the
26 act.

27 c. A minimum charge for each daily, weekly, monthly, annual or
28 other scheduled billing period under the plan during any portion of
29 which there is an outstanding unpaid indebtedness under the plan.

30 d. Reasonable fees for services rendered or for reimbursement of
31 expenses incurred in good faith by the bank or its agents in connection
32 with the plan, or other reasonable fees incident to the application for
33 and the opening, administration, and termination of a plan, including,
34 without limitation, commitment, application and processing fees,
35 official fees and taxes, costs incurred by reason of examination of title,
36 inspection, appraisal, recording, mortgage satisfaction or other formal
37 acts necessary or appropriate to the security for the plan, and filing
38 fees.

39 e. Returned payment charges.

40 f. Documentary evidence charges.

41 g. Stop payment fees.

42 h. Over limit charges.

43 i. Automated teller machine charges or similar electronic or
44 interchange fees or charges.

45 j. Any other fee expressly disclosed to the borrower prior to the
46 imposition of the fee.

1 7. A bank may, if the agreement governing a revolving credit plan
2 so provides, impose different terms, including without limitation, the
3 terms governing the periodic percentage rate or rates used to calculate
4 interest, the method of computing the outstanding unpaid indebtedness
5 to which the rate or rates are applied, the amounts of other charges
6 and the applicable installment repayment schedule, in respect of
7 indebtedness arising out of purchases and loans made under the plan.
8

9 8. If credit under a revolving credit plan is offered and extended in
10 connection with a demand deposit account or other transaction
11 account maintained by the borrower with the bank pursuant to an
12 agreement or arrangement whereby the bank agrees to honor checks,
13 drafts or other debits to the account, which if paid would create or
14 increase a negative balance in the account, by making extensions of
15 credit to the borrower under a revolving credit plan, any charges
16 customarily imposed by the bank under the terms governing the
17 demand deposit or other transaction account in the absence of any
18 associated revolving credit plan, including, without limitation, check
19 charges, monthly maintenance charges, checkbook charges, charges
20 for a check drawn on funds in excess of an available line of credit and
21 other similar charges, may continue to be imposed on the account
22 without specific reference thereto or incorporation thereof by
23 reference in the agreement governing the revolving credit plan and the
24 amount of any charge, to the extent the balance in the demand deposit
25 or other transaction account is insufficient to pay the charge, may be
26 charged to the borrower's account under the plan as a loan thereunder
27 and may be included in the outstanding unpaid indebtedness in
28 accordance with the terms of the agreement governing the revolving
29 credit plan.
30

31 9. A bank may at any time and from time to time unilaterally
32 extend to a borrower under a revolving credit plan the option of
33 omitting one or more monthly installments.
34

35 10. a. A bank may request but not require an individual borrower
36 to be insured with respect to a revolving credit plan under a life,
37 health, accident, health and accident or other credit or other
38 permissible insurance policy, whether group or individual. If an
39 individual borrower's outstanding unpaid indebtedness under the plan
40 is secured by an interest in real or personal property, a bank may
41 require the borrower to obtain insurance, from an insurer acceptable
42 to the bank, against loss of or damage to the property, or against
43 liability arising out of the ownership or use of the property, and may
44 finance the premiums for the insurance.

45 b. In the case of a borrower borrowing under a revolving credit
46 plan for other than personal, household or family purposes, a bank may

1 require the borrower to obtain insurance, from an insurer acceptable
2 to the bank, under a life, health, accident, health and accident or other
3 credit or other permissible insurance policy, whether group or
4 individual. If the borrower's outstanding unpaid indebtedness under
5 the plan is secured by an interest in real or personal property, the bank
6 may require the borrower to obtain insurance, from an insurer
7 acceptable to the bank, against loss of or damage to the property, or
8 against liability arising out of the ownership or use of the property and
9 may finance the premiums for the insurance.

10 c. The offer and placement of insurance ¹[on the life and on the
11 health or disability of the borrower shall be made pursuant to the
12 provisions of applicable law and other credit insurance] under this
13 section¹ shall be ¹[provided in accordance with applicable forms and
14 rates] subject in all respects to the applicable provisions of
15 N.J.A.C.3:1-13.1 or 3:1-13.2, or both¹.

16

17 11. If the agreement governing a revolving credit plan so provides,
18 a bank may impose, as interest, a late or delinquency charge upon any
19 outstanding unpaid installment payments or portions thereof under the
20 plan which are in default, except that: no more than one late or
21 delinquency charge may be imposed with respect to any single
22 installment payment or portion thereof regardless of the period during
23 which it remains in default; and for the purpose only of the preceding
24 proviso, all payments by the borrower shall be deemed to be applied
25 to the satisfaction of installment payments in the order in which they
26 become due. Nothing contained in this section shall limit, restrict or
27 otherwise affect the right of the bank pursuant to section 5 of this act
28 to change the periodic percentage rate or rates of interest applicable
29 to the revolving credit plan between the bank and a borrower upon the
30 occurrence of a delinquency or default or other failure of the
31 borrower to perform in accordance with the terms of the plan.

32

33 12. If a borrower defaults under the terms of a plan and the bank
34 refers the borrower's account for collection to an attorney or
35 collection agency, not a regularly salaried employee of the bank, for
36 collection, the bank may, if the agreement governing the revolving
37 credit plan so provides, charge and collect from the borrower a
38 reasonable attorney's or collection agency's fee and, in addition, if the
39 agreement governing the plan so provides, the bank may recover from
40 the borrower all court or other collection costs actually incurred by the
41 bank.

42

43 13. a. A bank may, if the agreement governing a revolving credit
44 plan so provides, at any time, or from time to time, amend the terms
45 of the agreement, including without limitation, the terms governing the
46 periodic percentage rate or rates used to calculate interest, the method

1 of computing the outstanding unpaid indebtedness to which the rate
2 or rates are applied, the amounts of other charges and the applicable
3 installment repayment schedule, in accordance with the further
4 provisions of this section.

5 b. (1) The bank shall notify each affected borrower of an
6 amendment to the terms of the agreement in the manner set forth in the
7 agreement governing the plan and in compliance with the requirements
8 of the federal "Truth in Lending Act," 15 U.S.C. §1601 et seq, and
9 regulations promulgated thereunder, if applicable; except that if the
10 amendment has the effect of increasing the periodic interest or interest
11 charges to be paid by the borrower, the bank shall mail or deliver to
12 the borrower, at least 30 days before the effective date of the
13 amendment, a conspicuous written notice which shall clearly describe
14 the amendment and shall also set forth the effective date of the
15 amendment and the pertinent information contemplated by the
16 following provisions of this section.

17 (2) If the amendment has the effect of increasing the periodic
18 interest or interest charges to be paid by the borrower, the amendment
19 shall, except as otherwise provided for in this section, become
20 effective as to a particular borrower as of the first day of the billing
21 cycle during which the effective date of the amendment occurs or as
22 of any later date, in either case, in accordance with this section and as
23 stipulated in the notice, so long as the borrower does not, within 30
24 days of the mailing or the delivery of the notice of the amendment,
25 whichever is earlier, furnish written notice to the bank that the
26 borrower does not agree to accept the amendment. The notice from
27 the bank shall include: a statement that, absent the borrower's written
28 notice to the bank, within 30 days of the earlier of the mailing or
29 delivery of the notice of the amendment, that the borrower does not
30 agree to accept the amendment, the proposed amendment will become
31 effective and apply to the borrower and the borrower's account; and
32 the address to which a borrower may send notice of the borrower's
33 election not to accept the amendment. Any borrower who gives timely
34 notice electing not to accept an amendment shall be permitted to pay
35 the outstanding unpaid indebtedness in the borrower's account under
36 the plan in accordance with the terms of the agreement governing the
37 plan without giving effect to the amendment; except that if the
38 borrower does not agree to accept the proposed amendment, the bank
39 may convert the borrower's account to a closed-end credit account on
40 credit terms substantially identical to or more favorable to the
41 borrower than those set forth in the then existing agreement governing
42 the borrower's account and the borrower will continue to be subject to
43 the terms of the existing agreement or the more favorable terms until
44 the borrower's account balance is paid in full. As a condition to the
45 effectiveness of any notice that a borrower does not accept the
46 amendment, the bank may require the borrower to return all credit

1 devices. If after 30 days from mailing or delivery by the bank of a
2 proposed amendment, a borrower uses a credit device to obtain credit
3 under a plan, notwithstanding that the borrower has, prior to the use,
4 given the bank notice that the borrower does not accept an
5 amendment, the amendment shall be deemed to have been accepted
6 and shall become effective as to the borrower and the borrower's
7 account as of the date that the amendment would have become
8 effective but for the giving of notice by the borrower.

9 (3) Notwithstanding paragraph (2) of this subsection b., the bank
10 may also amend the agreement governing the plan to require that any
11 amendment shall become effective only if the borrower uses the plan
12 after a date specified in the notice of the proposed amendment which
13 is at least 30 days after the giving of the notice, but which need not be
14 the date the amendment becomes effective, by making a purchase or
15 obtaining a loan or if the borrower indicates to the bank the borrower's
16 express agreement to the amendment. Any such amendment may
17 become effective as to a particular borrower as of the first day of the
18 billing period during which the borrower used the borrower's account
19 or indicated agreement to the amendment. Any borrower who fails to
20 use the borrower's account or to indicate agreement to an amendment
21 shall be permitted to pay the outstanding unpaid indebtedness in the
22 borrower's account under the plan in accordance with the terms of the
23 agreement governing the plan without giving effect to the amendment
24 subject to the right of the bank to convert the borrower's account to
25 a closed-end credit account as provided in paragraph (2) of this
26 subsection b.

27 c. If the terms of the agreement governing the plan, as originally
28 drawn or as amended pursuant to this section, so provide, any
29 amendment may, on and after the date upon which it becomes effective
30 as to a particular borrower, apply to all then outstanding unpaid
31 indebtedness in the borrower's account under the plan, including any
32 indebtedness which shall have arisen out of purchases made or loans
33 obtained prior to the effective date of the amendment.

34 d. For purposes of this section, the following shall not be deemed
35 an amendment which has the effect of increasing the interest to be paid
36 by the borrower:

37 (1) A decrease in the required amount of a periodic installment
38 payment.

39 (2) A change in the schedule or formula used under a variable rate
40 plan under section 5 of this act so long as the initial interest rate
41 resulting from the change is not an increase.

42 (3) A change from a daily periodic rate to a periodic rate other
43 than daily or from a periodic rate other than daily to a daily periodic
44 rate under section 4 of this act.

45 e. The procedure for amendment by a bank of the terms of a plan
46 to which the borrower, other than an individual borrower, is a party

1 may, in lieu of the foregoing provisions of this section, be as the
2 agreement governing the plan may otherwise provide.

3
4 14. Any other law of this State limiting the rate or amount of
5 interest, discount, points, finance charges, service charges or other
6 charges which may be charged, taken, collected, received or reserved
7 shall not apply to extensions of credit under a revolving credit plan
8 operated in accordance with this act; except that the periodic
9 percentage rate of interest which may be charged, taken, collected,
10 received or reserved under a revolving credit plan operated in
11 accordance with this act shall not exceed the percentage rate permitted
12 pursuant to N.J.S.2C:21-19.

13
14 15. The provisions of this act are not exclusive and a bank may
15 extend credit either pursuant to this act or as otherwise provided by
16 applicable law.

17
18 16. Notwithstanding the characterization of certain charges in the
19 act as interest, all charges permitted by this act which may be deemed
20 interest by any rules, regulations or interpretations of the Comptroller
21 of the Currency for purposes of section 85 of "The National Bank
22 Act," 12 U.S.C. §85, shall be considered interest for purposes of this
23 act.

24
25 17. A revolving credit plan between a bank and an individual
26 borrower shall be governed by the laws of this State if the plan so
27 provides and the bank has its principal office in this State or makes its
28 loans from a branch or other facility in this State.

29
30 18. a. A bank may apply the provisions of this act to any of its
31 revolving credit plans.

32 b. A bank may apply this act to a revolving credit plan entered into
33 prior to the effective date of this act and the act shall govern any
34 limitations on fees and charges assessed under that plan, both before
35 and after the effective date of this act.

36 c. The Department of Banking may request information from any
37 bank which applies this act to a revolving credit plan on the bank's
38 interest rates, fees and charges which are imposed by the bank with
39 respect to its revolving credit plan. A bank shall provide the
40 department with the information requested within 30 days of receipt
41 of the request. The department shall make the information received
42 pursuant to this subsection c. generally available to residents of the
43 State and any newspapers of general circulation in this State.

44 d. (1) Any bank which is requested to provide the Department of
45 Banking with information pursuant to subsection c. of this section and
46 fails to provide the information to the department within the time

1 period required shall not be precluded from applying this act to its
2 revolving credit plans, but shall be subject to a penalty of up to
3 \$25,000 for each revolving credit plan to which this act is applied,
4 which shall be paid to the department within a month of verification by
5 the department that the bank is subject to the provisions of subsection
6 c. of this section.

7 (2) Any bank which knowingly and with reckless disregard for the
8 truth misstates in the information provided the department, its interest
9 rates, fees or charges shall be assessed by and pay to the department
10 a penalty of not more than \$25,000 for each misstatement.

11

12 19. This act shall take effect immediately.

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16

17 Concerns bank revolving credit plans.