

17:3B-29 to 17:3B-46

LEGISLATIVE HISTORY CHECKLIST  
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(Bank revolving credit plans)

NJSA: 17:3B-29 to 17:3B-46

LAWS OF: 1996 CHAPTER: 137

BILL NO: A1907

SPONSOR(S): Bateman and Weingarten

DATE INTRODUCED: May 6, 1996

COMMITTEE: ASSEMBLY: Financial Institution  
SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 27, 1997  
SENATE: October 24, 1996

DATE OF APPROVAL: December 9, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Attached: Delaware STATUTES as mentioned in statements.

KBP:pp

DEL. CODE ANN., TITLE 5, § 941-956

[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:**

**<sup>1</sup> 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 <sup>1</sup>【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 section<sup>1</sup> shall be <sup>1</sup>【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 both<sup>1</sup>.

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.

13

14

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16

17 \_\_\_\_\_  
Concerns bank revolving credit plans.

(1996)

1 c. of this section.

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

6

7 19. This act shall take effect immediately.

8

9

10 *SPONSORS'* STATEMENT

11

12 This bill provides New Jersey based banks, savings banks and  
13 savings and loan associations with a "level playing field" in relation to  
14 banks, savings banks and savings and loan associations located in other  
15 states with respect to offering and maintaining revolving credit plans.  
16 Under the bill, revolving credit plans may, if the agreement between  
17 a borrower and a bank so provides, include a provision that the lender  
18 who extends credit may charge and collect periodic interest, interest  
19 charges and other charges permitted under the bill. If contained in the  
20 agreement governing the revolving credit plan, the periodic percentage  
21 rate of interest may vary in accordance with a schedule or formula.  
22 The bill provides for the extension of credit in connection with a  
23 demand deposit account or other transaction account maintained by  
24 the borrower. The bill permits a bank to request but not require an  
25 individual borrower to be insured with respect to a revolving credit  
26 plan under a life, health, accident, health and accident or other credit  
27 insurance policy; however, if the borrower's outstanding indebtedness  
28 is secured by an interest in real or personal property, a bank may  
29 require the borrower to obtain insurance, from an insurer acceptable  
30 to the bank, against loss of or damage to the property or against  
31 liability arising out of the ownership or use of the property.

32 Under the bill, a bank may, if the agreement governing the plan so  
33 provides, amend the terms of the agreement at any time or from time  
34 to time, including the terms governing the periodic percentage rate or  
35 rates used to calculate interest, the method of computing the  
36 outstanding unpaid indebtedness to which the rate or rates are  
37 applicable, the amounts of other charges and the applicable installment  
38 repayment schedule. The bill requires any bank which amends its  
39 agreement to notify borrowers in writing clearly and conspicuously  
40 describing the amendment and setting the effective date of the  
41 amendment, which shall be no earlier than 30 days after the notice is  
42 mailed or delivered to the borrower. If an amendment is made that has  
43 the effect of increasing the periodic interest or interest charges to be  
44 paid by the borrower, the borrower has the option of accepting the  
45 amendment, either expressly in writing or by continuing to use the  
46 plan, or not accepting the amendment by notifying the bank to that

1 effect within 30 days of mailing or delivery of the notice, whichever is  
2 earlier, and not continuing to use the plan. If the borrower chooses  
3 not to accept the amendment, the bank is permitted to change the  
4 borrower's open-end account to a closed-end account under terms that  
5 are substantially similar or more favorable to the borrower than the  
6 ones existing under the revolving credit plan before the proposed  
7 amendment.

8 Pursuant to the intent of the Legislature to provide a "level playing  
9 field" for New Jersey banks the bill (1) is modeled after the successful  
10 Delaware revolving credit act which has resulted in Delaware's  
11 prominence as the state of choice for locating the offices and  
12 operations of banks extending credit through revolving credit plans,  
13 and (2) is applicable to revolving credit plans entered into prior to or  
14 on and after the effective date of the bill and, as applied to a revolving  
15 credit plan entered into prior to the effective date of the bill, the bill  
16 shall govern any limitations on fees and charges assessed under that  
17 plan, both before and after its effective date.

18

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20

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22 Concerns bank revolving credit plans.

SENATE STATE MANAGEMENT, INVESTMENT AND  
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 1907**

**STATE OF NEW JERSEY**

DATED: OCTOBER 7, 1996

The Senate State Management, Investment and Financial Institutions Committee reports favorably Assembly Bill No. 1907 (1R).

This bill provides New Jersey based banks, savings banks and savings and loan associations with a "level playing field" in relation to banks, savings banks and savings and loan associations located in other states with respect to offering and maintaining revolving credit plans. Under the bill, revolving credit plans may, if the agreement between a borrower and a bank so provides, include a provision that the lender who extends credit may charge and collect periodic interest, interest charges and other charges permitted under the bill. If contained in the agreement governing the revolving credit plan, the periodic percentage rate of interest may vary in accordance with a schedule or formula. The bill provides for the extension of credit in connection with a demand deposit account or other transaction account maintained by the borrower. The bill permits a bank to request but not require an individual borrower to be insured with respect to a revolving credit plan under a life, health, accident, health and accident or other credit insurance policy; however, if the borrower's outstanding indebtedness is secured by an interest in real or personal property, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to the property or against liability arising out of the ownership or use of the property. The bill requires that all insurance offered or placed with respect to revolving credit be offered and placed in a manner which is consistent with the regulations of the Department of Banking, N.J.A.C.3:1-13.1 or 3:1-13.2 or both.

Under the bill, a bank may, if the agreement governing the plan so provides, amend the terms of the agreement at any time or from time to time, including the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which the rate or rates are applicable, the amounts of other charges and the applicable installment

repayment schedule. The bill requires any bank which amends its agreement to notify borrowers in writing clearly and conspicuously describing the amendment and setting the effective date of the amendment, which shall be no earlier than 30 days after the notice is mailed or delivered to the borrower. If an amendment is made that has the effect of increasing the periodic interest or interest charges to be paid by the borrower, the borrower has the option of accepting the amendment, either expressly in writing or by continuing to use the plan, or not accepting the amendment by notifying the bank to that effect within 30 days of mailing or delivery of the notice, whichever is earlier, and not continuing to use the plan. If the borrower chooses not to accept the amendment, the bank is permitted to change the borrower's open-end account to a closed-end account under terms that are substantially similar or more favorable to the borrower than the ones existing under the revolving credit plan before the proposed amendment.

Pursuant to the intent of the Legislature to provide a "level playing field" for New Jersey banks the bill (1) is modeled after the successful Delaware revolving credit act which has resulted in Delaware's prominence as the state of choice for locating the offices and operations of banks extending credit through revolving credit plans, and (2) is applicable to revolving credit plans entered into prior to or on and after the effective date of the bill and, as applied to a revolving credit plan entered into prior to the effective date of the bill, the bill shall govern any limitations on fees and charges assessed under that plan, both before and after its effective date.

This bill is identical to Senate, No. 1307.

# ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 1907**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 13, 1996

The Assembly Financial Institutions Committee reports favorably Assembly Bill No. 1907 with committee amendments.

This bill provides New Jersey based banks, savings banks and savings and loan associations with a "level playing field" in relation to banks, savings banks and savings and loan associations located in other states with respect to offering and maintaining revolving credit plans. Under the bill, revolving credit plans may, if the agreement between a borrower and a bank so provides, include a provision that the lender who extends credit may charge and collect periodic interest, interest charges and other charges permitted under the bill. If contained in the agreement governing the revolving credit plan, the periodic percentage rate of interest may vary in accordance with a schedule or formula. The bill provides for the extension of credit in connection with a demand deposit account or other transaction account maintained by the borrower. The bill permits a bank to request but not require an individual borrower to be insured with respect to a revolving credit plan under a life, health, accident, health and accident or other credit insurance policy; however, if the borrower's outstanding indebtedness is secured by an interest in real or personal property, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to the property or against liability arising out of the ownership or use of the property. The bill requires that all insurance offered or placed with respect to revolving credit be offered and placed in a manner which is consistent with the regulations of the Department of Banking, N.J.A.C.3:1-13.1 or 3:1-13.2 or both.

Under the bill, a bank may, if the agreement governing the plan so provides, amend the terms of the agreement at any time or from time to time, including the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which the rate or rates are applicable, the amounts of other charges and the applicable installment repayment schedule. The bill requires any bank which amends its agreement to notify borrowers in writing clearly and conspicuously describing the amendment and setting the effective date of the



amendment, which shall be no earlier than 30 days after the notice is mailed or delivered to the borrower. If an amendment is made that has the effect of increasing the periodic interest or interest charges to be paid by the borrower, the borrower has the option of accepting the amendment, either expressly in writing or by continuing to use the plan, or not accepting the amendment by notifying the bank to that effect within 30 days of mailing or delivery of the notice, whichever is earlier, and not continuing to use the plan. If the borrower chooses not to accept the amendment, the bank is permitted to change the borrower's open-end account to a closed-end account under terms that are substantially similar or more favorable to the borrower than the ones existing under the revolving credit plan before the proposed amendment.

Pursuant to the intent of the Legislature to provide a "level playing field" for New Jersey banks the bill (1) is modeled after the successful Delaware revolving credit act which has resulted in Delaware's prominence as the state of choice for locating the offices and operations of banks extending credit through revolving credit plans, and (2) is applicable to revolving credit plans entered into prior to or on and after the effective date of the bill and, as applied to a revolving credit plan entered into prior to the effective date of the bill, the bill shall govern any limitations on fees and charges assessed under that plan, both before and after its effective date.

An amendment to the bill changes the language regarding the offer and placement of insurance with respect to a revolving credit plan that the offer and placement of insurance with respect to a revolving credit plan be subject in all respects to the applicable provisions of N.J.A.C.3:1-13.1 or 3:1-13.2, or both.

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a transfer of 1 or more accounts as described in the preceding subsections shall be removed as fiduciary of all such accounts without an accounting and without any order or decree of any court or public officer, and prospectively such fiduciary shall have no continuing duties, responsibilities, obligations or liabilities, financial or otherwise, with respect to the accounts so transferred. Such transfer shall not relieve a fiduciary of any liability it may have incurred for its action or inaction prior to the transfer. (65 Del. Laws, c. 422, § 1.)

**§ 939. Negotiable instruments.**

(a) For purposes of this section, "fiduciary" shall have the same meaning as in § 3301(b) of Title 12.

(b) If a negotiable instrument is drawn upon the account of a principal in a bank by a fiduciary who is empowered to draw upon the principal's account, the bank is authorized to pay such instrument without being liable to the principal for the application of the funds.

(c) If any negotiable instrument payable or endorsed to a fiduciary as such is endorsed by a fiduciary, or if any negotiable instrument payable or endorsed to a principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of the principal, the endorsee is not bound to inquire whether the fiduciary is committing a breach of its obligation as fiduciary by endorsing or delivering the instrument, and is not liable for the application of the funds. (65 Del. Laws, c. 422, § 1.)

*Subchapter II. Bank Revolving Credit*

**§ 941. Definitions.**

As used in this subchapter:

(1) "Bank" means any bank or bank and trust company organized under this title or any other law or laws of this State, any depository institution organized under the authority of the United States and having its principal place of business in this State and any foreign bank agency.

(2) "Borrower" means any corporation, partnership, association, government or governmental subdivision or agency, trust, individual or other entity.

(3) "Individual borrower" means a borrower who is a natural person borrowing for personal, household or family purposes.

(4) "Revolving credit plan" or "plan" means a plan contemplating the extension of credit under an account governed by an agreement between a bank and a borrower pursuant to which:

a. The bank permits the borrower and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the borrower, from time to time to make purchases and/or to obtain loans by use of a credit device;

b. The amounts of such purchases and loans are charged to the borrower's account under the revolving credit plan;

c. The borrower is required to pay the bank the amounts of all purchases and loans charged to such borrower's account under the plan but has the privilege of paying such amounts outstanding from time to time in full or in installments; and

d. Interest may be charged and collected by the bank from time to time on the outstanding unpaid indebtedness under such plan.

(5) "Purchases" mean 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.

(6) "Loans" mean cash advances or loans to be paid to or for the account of the borrower.

(7) "Credit device" means any card, check, identification code or other means of identification contemplated by the agreement governing the plan.

(8) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases and loans charged to the borrower's account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases and loans charged to the account as of that day and deducting the aggregate amount of any payments and credits applied to that indebtedness as of that day and, if the agreement providing the plan so provides, may include the amount of any periodic interest, interest charges and other charges permitted by this subchapter, including late or delinquency charges, which have accrued in the account and which are unpaid at the end of the day. (63 Del. Laws, c. 2, § 4; 65 Del. Laws, c. 444, § 3; 66 Del. Laws, c. 283, § 2.)

#### § 942. Extension of credit.

Any bank may, subject to any limitations on lending authorities contained in its charter or otherwise imposed by law and subject to the other provisions of this subchapter, offer and extend credit under a revolving credit plan to a borrower and in connection therewith may charge and collect periodic interest, interest charges and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the bank. Without limitation of the foregoing, credit may be extended under a revolving credit plan by a bank's acquisition of obligations arising out of the honoring by a merchant, a bank or other financial institution (whether chartered or organized under the laws of this or any other state, the District of Columbia, the United States or any district, territory or possession of the United States, or any foreign country), or a government or governmental subdivision or agency of a credit device made available to a borrower under a plan, whether directly or indirectly by means of telephone, point of sale terminal, automated teller machine or other electronic or similar device or through the mails. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 3.)

#### § 943. Periodic in

A bank may charge a plan on outstanding unpaid plan at such daily, week or rates as the agreement in manner provided in the periodic percentage rate under daily, periodic interest; average of outstanding indebtedness for each day in the billing period. If the agreement governing the plan month or monthly if the each month or does not 2, § 4; 66 Del. Laws, c.

#### § 944. Variable ra

If the agreement governing periodic percentage rate or variance with a schedule of vary from time to time a rule or formula varies and may be made applicable under the plan on or after such indebtedness arises such variation in the permissible schedule of agreement governing the rates of interest applicability, whether by variation rates of interest, variation upon the happening of an event or circumstance in accordance with the terms 303, § 21.)

**Revisor's note.** — Section 47 of 68 Del. Laws, c. 303, provides: "If any act or the application of any thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the validity of the provisions or applications of this act which shall be given effect without the invalid application."

Section 47 of 68 Del. Laws, c. 303, as amended by § 28 of 69 Del. Laws, c. 303, provides: "This act shall take effect upon its adoption except the

### § 943. Periodic interest.

A bank may charge and collect periodic interest under a revolving credit plan on outstanding unpaid indebtedness in the borrower's account under the plan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the plan provides or as established in the manner provided in the agreement governing the plan. If the applicable periodic percentage rate under the agreement governing the plan is other than daily, periodic interest may be calculated on an amount not in excess of the average of outstanding unpaid indebtedness for the applicable billing period, determined by dividing the total of the amounts of outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period. If the applicable periodic percentage rate under the agreement governing the plan is monthly, a billing period shall be deemed to be a month or monthly if the last day of each billing period is on the same day of each month or does not vary by more than 4 days therefrom. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, §§ 4, 5.)

### § 944. Variable rates.

If the agreement governing the revolving credit plan so provides, the periodic percentage rate or rates of interest under such plan may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid indebtedness under the plan on or after the effective date of such variation including any such indebtedness arising out of purchases made or loans obtained prior to such variation in the periodic percentage rate or rates. Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan. (63 Del. Laws, c. 2, § 4; 68 Del. Laws, c. 303, § 21.)

**Revisor's note.** — Section 46 of 68 Del. Laws, c. 303, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application."

Section 47 of 68 Del. Laws, c. 303, as amended by § 28 of 69 Del. Laws, c. 165, provides: "This act shall take effect immediately upon its adoption except that Sections 1, 25,

26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 shall become effective Jan. 1, 1993." The act was signed by the Governor on July 2, 1992.

Section 29 of 69 Del. Laws, c. 165, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this act which can be given effect without the invalid provision or application."

Section 30 of 69 Del. Laws, c. 165, provides: "This act shall take effect immediately upon its



**§ 947. Overdraft accounts.**

If credit under a revolving credit plan is offered and extended in connection with a demand deposit account or other transaction account maintained by the borrower with the bank pursuant to an agreement or arrangement whereby the bank agrees to honor checks, drafts or other debits to such account, which if paid would create or increase a negative balance in such account, by making extensions of credit to such borrower under such revolving credit plan, any charges customarily imposed by the bank under the terms governing such demand deposit or other transaction account in the absence of any associated revolving credit plan (including, without limitation, check charges, monthly maintenance charges, checkbook charges, charges for checks drawn on funds in excess of an available line of credit and other similar charges) may continue to be imposed on such account without specific reference thereto or incorporation thereof by reference in the agreement governing the revolving credit plan and the amount of any such charge, to the extent the balance in such demand deposit or other transaction account is insufficient to pay such a charge, may be charged to the borrower's account under the plan as a loan thereunder and may be included in outstanding unpaid indebtedness in accordance with the terms of the agreement governing such revolving credit plan. (63 Del. Laws, c. 2, § 4.)

**§ 948. Omitted installments.**

A bank may at any time and from time to time unilaterally extend to a borrower under a revolving credit plan the option of omitting monthly installments. (63 Del. Laws, c. 2, § 4.)

**§ 949. Insurance.**

(a) A bank may request but not require an individual borrower to be insured in respect of a revolving credit plan under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that an individual borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) In the case of a borrower borrowing under a revolving credit plan for other than personal, household or family purposes, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that the borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, the bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(c) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18. (63 Del. Laws, c. 2, § 4.)

### § 950. Delinquent installments.

If the agreement governing a revolving credit plan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided, however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding proviso all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a bank under and pursuant to § 944 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the bank and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 9; 68 Del. Laws, c. 303, § 22.)

**Revisor's note.** — Section 46 of 68 Del. Laws, c. 303, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application."

Section 47 of 68 Del. Laws, c. 303, as amended by § 28 of 69 Del. Laws, c. 165, provides: "This act shall take effect immediately upon its adoption except that Sections 1, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 shall become effective Jan. 1, 1993." The act was signed by the Governor on July 2, 1992.

Section 29 of 69 Del. Laws, c. 165, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this act which can be given effect without the invalid provision or application."

Section 30 of 69 Del. Laws, c. 165, provides: "This act shall take effect immediately upon its adoption." The act was signed by the Governor on July 16, 1993.

**Effect of amendments.** — 68 Del. Laws, c. 303, rewrote the language preceding the first proviso in the first sentence; and added the second sentence.

### § 951. Attorney's fees; costs.

In the event a borrower defaults under the terms of a plan and the bank refers the borrower's account to an attorney (not a regularly salaried employee of the bank) for collection, the bank may, if the agreement governing the revolving credit plan so provides, charge and collect from the borrower a reasonable attorney's fee and, in addition, if the agreement governing the revolving credit plan so provides, the bank may recover from the borrower all court or other collection costs actually incurred by the bank. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 10.)

### § 952. Amendmen

(a) A bank may, if it provides, at any time or (including, without limit rate or rates used to calculating unpaid indebtedness of other charges and the dance with the further

(b)(1) The bank shall manner set forth in with the requireme seq.), and regulatio time, if applicable: effect of increasing the borrower, the l days before the effi written notice wh forth the effective contemplated by t

(2) If the amend or interest charge except as otherwis lar borrower as o effective date of th case, in accordanc long as the borrow or delivery of the bank that the bor notice from the b rower's written n mailing or delive does not agree to become effective a and the address t election not to ac notice electing no outstanding unpa plan in accordanc without giving e borrower does no may convert the governed by subc identical to or m then-existing ag rower will contin the more favorab full. As a conditi

**§ 952. Amendment of agreement.**

(a) A bank may, if the agreement governing a revolving credit plan so provides, at any time or from time to time amend the terms of such agreement (including, without limitation, the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which such rate or rates are applied, the amounts of other charges and the applicable installment repayment schedule) in accordance with the further provisions of this section.

(b)(1) The bank shall notify each affected borrower of the amendment in the manner set forth in the agreement governing the plan and in compliance with the requirements of the Truth in Lending Act (15 U.S.C § 1601, et seq.), and regulations promulgated thereunder, as in effect from time to time, if applicable; provided, however, that if such amendment has the effect of increasing the periodic interest or interest charges to be paid by the borrower, the bank shall mail or deliver to the borrower, at least 30 days before the effective date of the amendment, a clear and conspicuous written notice which shall describe the amendment and shall also set forth the effective date of the amendment and the pertinent information contemplated by the following provisions of this section.

(2) If the amendment has the effect of increasing the periodic interest or interest charges to be paid by the borrower, such amendment shall, except as otherwise provided for herein, become effective as to a particular borrower as of the first day of the billing cycle during which the effective date of the amendment occurs or as of any later date, in either case, in accordance with this section and as stipulated in the notice, so long as the borrower does not, within 30 days of the earlier of the mailing or delivery of the notice of the amendment, furnish written notice to the bank that the borrower does not agree to accept such amendment. The notice from the bank shall include a statement that, absent the borrower's written notice to the bank within 30 days of the earlier of the mailing or delivery of the notice of the amendment that such borrower does not agree to accept such amendment, the proposed amendment will become effective and apply to such borrower and such borrower's account, and the address to which a borrower may send notice of the borrower's election not to accept the amendment. Any borrower who gives a timely notice electing not to accept an amendment shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the terms of the agreement governing the plan without giving effect to the amendment; provided, however, that if the borrower does not agree to accept such proposed amendment, the bank may convert the borrower's account to a closed end credit account as governed by subchapter III of this chapter, on credit terms substantially identical to or more favorable to the borrower than those set forth in the then-existing agreement governing the borrower's account and the borrower will continue to be subject to the terms of the existing agreement or the more favorable terms until the borrower's account balance is paid in full. As a condition to the effectiveness of any notice that a borrower does



not accept such amendment, the bank may require the borrower to return to it all credit devices. If after 30 days from the mailing or delivery by the bank of a proposed amendment, a borrower uses a credit device to obtain credit under a plan, notwithstanding that the borrower has prior to such use given the bank notice that the borrower does not accept an amendment, the amendment shall be deemed to have been accepted and shall become effective as to the borrower and the borrower's account as of the date that such amendment would have become effective but for the giving of notice by the borrower.

(3) Notwithstanding paragraph (2) of this subsection, the bank may also amend the agreement governing the plan by requiring that any amendment shall become effective only if the borrower uses the plan after a date specified in the notice of the proposed amendment which is at least 30 days after the giving of the notice (but which need not be the date the amendment becomes effective) by making a purchase, obtaining a loan or if the borrower indicates to the bank in writing such borrower's express agreement to the amendment. Any such amendment may become effective as to a particular borrower as of the first day of the billing period during which such borrower so used such borrower's account or so indicated agreement to the amendment. Any borrower who fails to use such borrower's account or so to indicate agreement to an amendment shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the terms of the agreement governing the plan without giving effect to the amendment subject to the right of the bank to convert the borrower's account to a closed end credit account as provided in paragraph (2) of this subsection.

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

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

(1) A decrease in the required amount of periodic installment payments;

(2) A change in the schedule or formula used under a variable rate plan under § 944 of this title provided that the initial interest rate resulting from such change is not an increase; and

(3) A change from a daily periodic rate to a periodic rate other than daily or from a periodic rate other than daily to a daily periodic rate under § 943 of this title.

(e) The procedures for amendment by a bank of the terms of a plan to which a borrower other than an individual borrower is a party may, in lieu of the foregoing provisions of this section be as the agreement governing the plan may otherwise provide. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 11; 66 Del. Laws, c. 403, § 1.)

### § 953. Application

Any other law of this State relating to points, finance charges, interest, fees, charges, taken, collected, or credit under a revolving credit plan shall apply. (63 Del. Laws, c. 2)

### § 954. Nonexclusiv

(a) The provisions of this section shall not be construed to limit the meaning or intent of any other law of this State which provides for its option elect to extend the provisions otherwise permitted by application of this section.

(b) Section headings and subtitles shall apply only as a matter of convenience and shall be construed to, define, limit, or modify the meaning or intent of the provisions of this section.

### § 955. Materiality

All terms, conditions, and provisions contained in this subsection which are more favorable than those which are contained in the Uniform Consumer Credit Code, provisions relating to unpaid indebtedness on revolving credit plans, interest charges may be waived in default, rights to accelerate, and other terms requirements, rights of collection costs and the provisions of this section shall be and hereby are made applicable to a plan under this title, and under § 85 of the Depository Institutions Act (12 U.S.C. § 1831d). (66 Del. Laws, c. 283, § 11.)

### § 956. Governing

A revolving credit plan governed by the laws of this State shall be governed by the laws of this State.

**§ 953. Application of other state laws.**

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a revolving credit plan operated in accordance with this subchapter. (63 Del. Laws, c. 2, § 4.)

**§ 954. Nonexclusivity; captions.**

(a) The provisions of this subchapter are not exclusive and a bank may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not, and shall not be construed to, define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof. (63 Del. Laws, c. 2, § 4.)

**§ 955. Materiality of terms.**

All terms, conditions and other provisions of and relating to a plan as contained in this subchapter or in the agreement governing the plan (other than those which are interest under this subchapter), including, without limitation, provisions relating to the method of determining the outstanding unpaid indebtedness on which interest is applied, time periods within which interest charges may be avoided, reasons for default and the right to cure any default, rights to accelerate, account cancellation, choice of law, change in terms requirements, rights to charge and collect attorney's fees, court and collection costs and the compounding of periodic interest or interest charges, shall be and hereby are deemed to be material to the determination of interest applicable to a plan under Delaware law, under the most favored lender doctrine, and under § 85 of the National Bank Act (12 U.S.C. § 85) or § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. § 1831d). (66 Del. Laws, c. 283, § 21.)

**§ 956. Governing law.**

A revolving credit plan between a bank and an individual borrower shall be governed by the laws of this State. (66 Del. Laws, c. 283, § 22.)

person's duties pursuant to the depository institution's or depository institution affiliates' by laws or operations manual, management responsibility for the operations, records, employees or activities being examined or evaluated by the compliance review committee.

(2) This section shall not be construed to limit the discovery or admissibility in any civil action of any documents that are not compliance review documents.

(3) This section shall not apply if, after an in camera review by the court consistent with applicable rules of procedure, the court determines that the compliance review was initiated or used to enable persons serving on the compliance review committee or the depository institution or the depository institution affiliate which created such committee to commit or plan to commit what the committee knew or reasonably should have know to be a crime. (70 Del. Laws, c. 359, § 1.)

**Revisor's note.** — This section became effective upon the signature of the Governor on June 10, 1996.

### Subchapter II. Bank Revolving Credit

#### § 945. Interest charges.

(a) In addition to or in lieu of interest at a periodic percentage rate or rates as provided in §§ 943 and 944 of this title, a bank may, if the agreement governing the revolving credit plan so provides, charge and collect, as interest, in such manner or form as the plan may provide, 1 or more of the following:

(1) A daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

(2) A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

(3) A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

(4) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the bank or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration and termination of a plan including, without limitation, commitment, application and processing fees, official fees and taxes, costs incurred by reason of examination of title, inspection, appraisal, recording, mortgage satisfaction or other formal acts necessary or appropriate to the security for the plan, and filing fees;

(5) Returned payment charges or charges imposed for the return of a draft drawn on a revolving credit plan evidencing an extension of credit under such plan;

(6) Documentary evidence charges;

(7) Stop payment fees;

(8) Overlimit charges; and

(9) Automated teller machine charges or similar electronic or interchange fees or charges.

(b) No charges assessed by a bank deemed void as a penalty or otherwise common law. (63 Del. Laws, c. 2, § 4; Laws, c. 327, §§ 25, 26.)

**Revisor's note.** — Section 50 of 70 Del. Laws, c. 327, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application."

Section 51 of 70 Del. Laws, c. 327, provides:

#### § 950. Delinquent installme

(a) If the agreement governing a r may impose, as interest, a late or de unpaid installment payments or porti default; provided however, that no mo may be imposed in respect of any sin; thereof, regardless of the period du provided further, however, that for the payments by the borrower shall be installment payments in the order contained in this section shall limit, bank under and pursuant to § 94 percentage rate or rates of interest between the bank and a borrower u default or other failure of the borrowe of the plan.

(b) No charges assessed by a bank deemed void as a penalty or otherwis common law. (63 Del. Laws, c. 2, § 4; c. 303, § 22; 70 Del. Laws, c. 327, §

**Revisor's note.**

Section 50 of 70 Del. Laws, c. 327, provides "If any provision of this act or the application o any section or part thereof to any person o circumstance is held invalid, such invalidit shall not affect other provisions or application of this act that can be given effect without th

#### § 952. Amendment of agree

(b) (3) Notwithstanding paragra also amend the agreement gov amendment shall become effecti a date specified in the notice of t 30 days after the giving of the n amendment becomes effective) t

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ued to limit the discovery or admis- sents that are not compliance review

ter an in camera review by the court procedure, the court determines that r used to enable persons serving on c the depository institution or the eated such committee to commit or ew or reasonably should have know § 1.)

**Revolving Credit**

t a periodic percentage rate or rates tle, a bank may, if the agreement rides, charge and collect, as interest, provide, 1 or more of the following: al or other periodic charge in such may provide for the privileges made lan;

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harges imposed for the return of a n evidencing an extension of credit

ges or similar electronic or inter-

(b) No charges assessed by a bank in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, §§ 6-8; 70 Del. Laws, c. 327, §§ 25, 26.)

**Revisor's note.** — Section 50 of 70 Del. Laws, c. 327, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application."

Section 51 of 70 Del. Laws, c. 327, provides:

"This act shall take effect immediately upon its adoption." The act was signed by the Governor on May 2, 1996.

**Effect of amendments.** — 70 Del. Laws, c. 327, added (b); and added "or charges imposed for the return of a draft drawn on a revolving credit plan evidencing an extension of credit under such plan" in (a)(5).

**§ 950. Delinquent installments.**

(a) If the agreement governing a revolving credit plan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof, regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding proviso all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a bank under and pursuant to § 944 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the bank and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan.

(b) No charges assessed by a bank in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 9; 68 Del. Laws, c. 303, § 22; 70 Del. Laws, c. 327, § 27.)

**Revisor's note.**

Section 50 of 70 Del. Laws, c. 327, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the

invalid provision or application."

Section 51 of 70 Del. Laws, c. 327, provides: "This act shall take effect immediately upon its adoption." The act was signed by the Governor on May 2, 1996.

**Effect of amendments.**

70 Del. Laws, c. 327, added (b).

**§ 952. Amendment of agreement.**

(b) (3) Notwithstanding paragraph (2) of this subsection, the bank may also amend the agreement governing the plan by requiring that any amendment shall become effective only if the borrower uses the plan after a date specified in the notice of the proposed amendment which is at least 30 days after the giving of the notice (but which need not be the date the amendment becomes effective) by making a purchase or obtaining a loan

or if the borrower indicates to the bank such borrower's express agreement to the amendment. Any such amendment may become effective as to a particular borrower as of the first day of the billing period during which such borrower so used such borrower's account or so indicated agreement to the amendment. Any borrower who fails to use such borrower's account or so to indicate agreement to an amendment shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the terms of the agreement governing the plan without giving effect to the amendment subject to the right of the bank to convert the borrower's account to a closed end credit account as provided in paragraph (2) of this subsection.

(70 Del. Laws, c. 217, § 1)

**Effect of amendments.** — 70 Del. Laws, c. 217, effective July 12, 1995, in the first sentence of (b)(3), substituted "purchase or obtaining" for "purchase, obtaining" and deleted "in

writing" following "indicates to the bank."

As the rest of this section was not amended, it is not reprinted in this Supplement.

## CHAPTER 10. CONSUMER CREDIT BANKS

### Subchapter II. Formation

Sec.

1024. Prohibition against new consumer credit banks on or after September 29, 1995.

### Subchapter III. Conduct of Internal Corporate Affairs

1039. Merger and consolidation — Authorized; procedure.

### Subchapter IV. Powers, Conditions and Prohibitions

Sec.

1056. [Repealed.]

### *Subchapter II. Formation*

#### § 1024. Prohibition against new consumer credit banks on or after September 29, 1995.

Notwithstanding any other provision of this chapter, no consumer credit bank shall be formed under this chapter on or after September 29, 1995. (70 Del. Laws, c. 112, § 49.)

**Revisor's note.** — Section 79 of 70 Del. Laws, c. 112, provides: "Sections 1-5, 7-13, 15-32 and 38-78 of this act are effective as of September 29, 1995."

Section 82 of 70 Del. Laws, c. 112, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application; provided, however, that if any court of competent jurisdiction issues a final order, that by lapse of time or

otherwise is no longer subject to appeal, invalidating the provisions in § 15 of this act that relate to an "existing Delaware bank" with respect to the age required of such bank that is either a state or national bank in order to be a party to a merger pursuant to the provisions of § 15 of this act, then, in such event, §§ 33-37 of this act shall become invalid, except that any transaction that has been lawfully consummated pursuant to §§ 33-37 of this act before such invalidity shall be unaffected by such invalidity."

### *Subchapter III. Conduct*

#### § 1039. Merger and consolidation procedure.

(a) Subject to § 1040 of this title, this chapter may merge or consolidate any 1 of the merging or consolidating the merger or consolidation of such such merger or consolidation and the shall be as prescribed in Chapter 1 of 2 or more corporations organized under or consolidation of corporations created filed by the Secretary of State or before until the proposed agreement of merger submitted to the State Bank Commission in substance and in form by the State

(b) A consumer credit bank created consolidate with other banks by conform this title, and then merging or consolidating Subchapters VI and VII of Chapter 7 Del. Laws, c. 112, § 50.)

**Revisor's note.** — Section 79 of 70 Del. Laws, c. 112, provides: "Sections 1-5, 7-15-32 and 38-78 of this act are effective as September 29, 1995."

Section 82 of 70 Del. Laws, c. 112, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application; provided, however, that if any court of competent jurisdiction issues a final order, that by lapse of time or otherwise is no longer subject to appeal, inv-

### *Subchapter IV. Powers,*

#### § 1056. Merger with or consolidation

Repealed by 70 Del. Laws, c. 112

**Revisor's note.** — Section 79 of 70 Del. Laws, c. 112, provides: "Sections 1-5, 7-15-32 and 38-78 of this act are effective as September 29, 1995."

Section 82 of 70 Del. Laws, c. 112, provides: "If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application; provided, however,