

SENATE, No. 1307

STATE OF NEW JERSEY

INTRODUCED JUNE 13, 1996

By Senator INVERSO

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
32 banks that under State parity law there are no limits on late fees and
33 related charges; and since any retroactive application of restrictions
34 would impose upon New Jersey based banks a competitive
35 disadvantage, the Legislature proposes to "level the playing field" for
36 New Jersey based banks and to preclude potentially costly litigation by
37 permitting this act to apply to all revolving credit plans entered into

1 before and after the effective date of this act.

2

3 2. As used in this act:

4 "Bank" means any state or federally chartered bank, savings bank or
5 savings and loan association.

6 "Borrower" means any corporation, partnership, association,
7 government or governmental subdivision or agency, trust, individual
8 or other entity.

9 "Individual borrower" means a borrower who is a natural person
10 borrowing for personal, household or family purposes.

11 "Credit device" means any card, check, identification code or other
12 means of identification contemplated by the agreement governing the
13 plan.

14 "Loans" means cash advances or loans to be paid to or for the
15 account of the borrower.

16 "Outstanding unpaid indebtedness" means, on any day, an amount
17 not in excess of the total amount of purchases and loans charged to the
18 borrower's account under the plan which is outstanding and unpaid at
19 the end of the day, after adding the aggregate amount of any new
20 purchases and loans charged to the account as of that day and
21 deducting the aggregate amount of any payments and credits applied
22 to that indebtedness as of that day and, if the agreement governing the
23 plan so provides, may include the amount of any periodic interest,
24 interest charges and other charges permitted by this act, including late
25 or delinquency charges, which have accrued in the account and which
26 are unpaid at the end of the day.

27 "Purchases" means payments for property of whatever nature, real
28 or personal, tangible or intangible, and payments for services, licenses,
29 taxes, official fees, fines, private or governmental obligations, or any
30 other thing of value.

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

34 (1) the bank permits the borrower, and if the agreement governing
35 the plan so provides, persons acting on behalf of or with authorization
36 from the borrower, from time to time to make purchases or to obtain
37 loans, or both, by use of a credit device;

38 (2) the amounts of purchases made and loans obtained are charged
39 to the borrower's account under the plan;

40 (3) the borrower is required to pay the bank the amounts of all
41 purchases and loans charged to the borrower's account under the plan,
42 but has the privilege of paying the amounts outstanding from time to
43 time in full or in installments; and

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

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

18
19 4. A bank may charge and collect periodic interest under a
20 revolving credit plan on outstanding unpaid indebtedness in the
21 borrower's account under the plan at such daily, weekly, monthly,
22 annual or other periodic percentage rate or rates as the agreement
23 governing the plan provides or as established in the manner provided
24 in the agreement governing the plan. If the applicable periodic
25 percentage rate under the agreement governing the plan is other than
26 daily, periodic interest may be calculated on an amount not in excess
27 of the average outstanding unpaid indebtedness for the applicable
28 billing period, determined by dividing the total of the amounts of
29 outstanding unpaid indebtedness for each day in the applicable billing
30 period by the number of days in the billing period. If the applicable
31 periodic percentage rate under the agreement governing the plan is
32 monthly, a billing period shall be deemed to be a month or monthly if
33 the last day of each billing period is on the same day of each month or
34 does not vary by more than four days therefrom.

35
36 5. If the agreement governing the revolving credit plan so provides,
37 the periodic percentage rate or rates of interest under the plan may
38 vary in accordance with a schedule or formula. The periodic
39 percentage rate or rates may vary from time to time as the rate
40 determined in accordance with the schedule or formula varies and the
41 periodic percentage rate or rates, as so varied, may be made applicable
42 to all or any part of the outstanding unpaid indebtedness under the
43 plan on or after the effective date of the variation, including any
44 indebtedness arising out of purchases made or loans obtained prior to
45 the variation in the periodic percentage rate or rates. Without
46 limitation, a permissible schedule or formula hereunder may include

1 provision in the agreement governing the plan for a change in the
2 periodic percentage rate or rates of interest applicable to all or any
3 part of outstanding unpaid indebtedness, whether by variation of the
4 then applicable periodic percentage rate or rates of interest, variation
5 of an index or margin or otherwise, or whether contingent upon the
6 happening of any event or circumstance specified in the plan, which
7 event or circumstance may include the failure of the borrower to
8 perform in accordance with the terms of the plan.

9
10 6. In addition to or in lieu of interest at a periodic rate or rates as
11 provided pursuant to sections 4 and 5 of this act, a bank may, if the
12 agreement governing the revolving credit plan so provides, charge and
13 collect as interest, in the manner or form as the plan may provide, one
14 or more of the following:

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

18 b. A transaction charge or charges in the amount or amounts as the
19 agreement may provide for each separate purchase or loan under the
20 act.

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

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

33 e. Returned payment charges.

34 f. Documentary evidence charges.

35 g. Stop payment fees.

36 h. Over limit charges.

37 i. Automated teller machine charges or similar electronic or
38 interchange fees or charges.

39 j. Any other fee expressly disclosed to the borrower prior to the
40 imposition of the fee.

41
42 7. A bank may, if the agreement governing a revolving credit plan
43 so provides, impose different terms, including without limitation, the
44 terms governing the periodic percentage rate or rates used to calculate
45 interest, the method of computing the outstanding unpaid indebtedness
46 to which the rate or rates are applied, the amounts of other charges

1 and the applicable installment repayment schedule, in respect of
2 indebtedness arising out of purchases and loans made under the plan.

3
4 8. If credit under a revolving credit plan is offered and extended in
5 connection with a demand deposit account or other transaction
6 account maintained by the borrower with the bank pursuant to an
7 agreement or arrangement whereby the bank agrees to honor checks,
8 drafts or other debits to the account, which if paid would create or
9 increase a negative balance in the account, by making extensions of
10 credit to the borrower under a revolving credit plan, any charges
11 customarily imposed by the bank under the terms governing the
12 demand deposit or other transaction account in the absence of any
13 associated revolving credit plan, including, without limitation, check
14 charges, monthly maintenance charges, checkbook charges, charges
15 for a check drawn on funds in excess of an available line of credit and
16 other similar charges, may continue to be imposed on the account
17 without specific reference thereto or incorporation thereof by
18 reference in the agreement governing the revolving credit plan and the
19 amount of any charge, to the extent the balance in the demand deposit
20 or other transaction account is insufficient to pay the charge, may be
21 charged to the borrower's account under the plan as a loan thereunder
22 and may be included in the outstanding unpaid indebtedness in
23 accordance with the terms of the agreement governing the revolving
24 credit plan.

25
26 9. A bank may at any time and from time to time unilaterally
27 extend to a borrower under a revolving credit plan the option of
28 omitting one or more monthly installments.

29
30 10. a. A bank may request but not require an individual borrower
31 to be insured with respect to a revolving credit plan under a life,
32 health, accident, health and accident or other credit or other
33 permissible insurance policy, whether group or individual. If an
34 individual borrower's outstanding unpaid indebtedness under the plan
35 is secured by an interest in real or personal property, a bank may
36 require the borrower to obtain insurance, from an insurer acceptable
37 to the bank, against loss of or damage to the property, or against
38 liability arising out of the ownership or use of the property, and may
39 finance the premiums for the insurance.

40 b. In the case of a borrower borrowing under a revolving credit
41 plan for other than personal, household or family purposes, a bank may
42 require the borrower to obtain insurance, from an insurer acceptable
43 to the bank, under a life, health, accident, health and accident or other
44 credit or other permissible insurance policy, whether group or
45 individual. If the borrower's outstanding unpaid indebtedness under
46 the plan is secured by an interest in real or personal property, the bank

1 may require the borrower to obtain insurance, from an insurer
2 acceptable to the bank, against loss of or damage to the property, or
3 against liability arising out of the ownership or use of the property and
4 may finance the premiums for the insurance.

5 c. The offer and placement of insurance under this section shall be
6 subject in all respects to the applicable provisions of N.J.A.C.3:1-13.1
7 or 3:1-13.2, or both.

8
9 11. If the agreement governing a revolving credit plan so provides,
10 a bank may impose, as interest, a late or delinquency charge upon any
11 outstanding unpaid installment payments or portions thereof under the
12 plan which are in default, except that: no more than one late or
13 delinquency charge may be imposed with respect to any single
14 installment payment or portion thereof regardless of the period during
15 which it remains in default; and for the purpose only of the preceding
16 proviso, all payments by the borrower shall be deemed to be applied
17 to the satisfaction of installment payments in the order in which they
18 become due. Nothing contained in this section shall limit, restrict or
19 otherwise affect the right of the bank pursuant to section 5 of this act
20 to change the periodic percentage rate or rates of interest applicable
21 to the revolving credit plan between the bank and a borrower upon the
22 occurrence of a delinquency or default or other failure of the
23 borrower to perform in accordance with the terms of the plan.

24
25 12. If a borrower defaults under the terms of a plan and the bank
26 refers the borrower's account for collection to an attorney or
27 collection agency, not a regularly salaried employee of the bank, for
28 collection, the bank may, if the agreement governing the revolving
29 credit plan so provides, charge and collect from the borrower a
30 reasonable attorney's or collection agency's fee and, in addition, if the
31 agreement governing the plan so provides, the bank may recover from
32 the borrower all court or other collection costs actually incurred by the
33 bank.

34
35 13. a. A bank may, if the agreement governing a revolving credit
36 plan so provides, at any time, or from time to time, amend the terms
37 of the agreement, including without limitation, the terms governing the
38 periodic percentage rate or rates used to calculate interest, the method
39 of computing the outstanding unpaid indebtedness to which the rate
40 or rates are applied, the amounts of other charges and the applicable
41 installment repayment schedule, in accordance with the further
42 provisions of this section.

43 b. (1) The bank shall notify each affected borrower of an
44 amendment to the terms of the agreement in the manner set forth in the
45 agreement governing the plan and in compliance with the requirements
46 of the federal "Truth in Lending Act," 15 U.S.C. §1601 et seq, and

1 regulations promulgated thereunder, if applicable; except that if the
2 amendment has the effect of increasing the periodic interest or interest
3 charges to be paid by the borrower, the bank shall mail or deliver to
4 the borrower, at least 30 days before the effective date of the
5 amendment, a conspicuous written notice which shall clearly describe
6 the amendment and shall also set forth the effective date of the
7 amendment and the pertinent information contemplated by the
8 following provisions of this section.

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

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

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

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

29 (1) A decrease in the required amount of a periodic installment
30 payment.

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

34 (3) A change from a daily periodic rate to a periodic rate other
35 than daily or from a periodic rate other than daily to a daily periodic
36 rate under section 4 of this act.

37 e. The procedure for amendment by a bank of the terms of a plan
38 to which the borrower, other than an individual borrower, is a party
39 may, in lieu of the foregoing provisions of this section, be as the
40 agreement governing the plan may otherwise provide.

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42 14. Any other law of this State limiting the rate or amount of
43 interest, discount, points, finance charges, service charges or other
44 charges which may be charged, taken, collected, received or reserved
45 shall not apply to extensions of credit under a revolving credit plan
46 operated in accordance with this act; except that the periodic

1 percentage rate of interest which may be charged, taken, collected,
2 received or reserved under a revolving credit plan operated in
3 accordance with this act shall not exceed the percentage rate permitted
4 pursuant to N.J.S.2C:21-19.

5
6 15. The provisions of this act are not exclusive and a bank may
7 extend credit either pursuant to this act or as otherwise provided by
8 applicable law.

9
10 16. Notwithstanding the characterization of certain charges in the
11 act as interest, all charges permitted by this act which may be deemed
12 interest by any rules, regulations or interpretations of the Comptroller
13 of the Currency for purposes of section 85 of "The National Bank
14 Act," 12 U.S.C. §85, shall be considered interest for purposes of this
15 act.

16
17 17. A revolving credit plan between a bank and an individual
18 borrower shall be governed by the laws of this State if the plan so
19 provides and the bank has its principal office in this State or makes its
20 loans from a branch or other facility in this State.

21
22 18. a. A bank may apply the provisions of this act to any of its
23 revolving credit plans.

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

28 c. The Department of Banking may request information from any
29 bank which applies this act to a revolving credit plan on the bank's
30 interest rates, fees and charges which are imposed by the bank with
31 respect to its revolving credit plan. A bank shall provide the
32 department with the information requested within 30 days of receipt
33 of the request. The department shall make the information received
34 pursuant to this subsection c. generally available to residents of the
35 State and any newspapers of general circulation in this State.

36 d. (1) Any bank which is requested to provide the Department of
37 Banking with information pursuant to subsection c. of this section and
38 fails to provide the information to the department within the time
39 period required shall not be precluded from applying this act to its
40 revolving credit plans, but shall be subject to a penalty of up to
41 \$25,000 for each revolving credit plan to which this act is applied,
42 which shall be paid to the department within a month of verification by
43 the department that the bank is subject to the provisions of subsection
44 c. of this section.

45 (2) Any bank which knowingly and with reckless disregard for the
46 truth misstates in the information provided the department, its interest

1 rates, fees or charges shall be assessed by and pay to the department
2 a penalty of not more than \$25,000 for each misstatement.

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4 19. This act shall take effect immediately.

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7 STATEMENT

8
9 This bill provides New Jersey based banks, savings banks and
10 savings and loan associations with a "level playing field" in relation to
11 banks, savings banks and savings and loan associations located in other
12 states with respect to offering and maintaining revolving credit plans.
13 Under the bill, revolving credit plans may, if the agreement between
14 a borrower and a bank so provides, include a provision that the lender
15 who extends credit may charge and collect periodic interest, interest
16 charges and other charges permitted under the bill. If contained in the
17 agreement governing the revolving credit plan, the periodic percentage
18 rate of interest may vary in accordance with a schedule or formula.
19 The bill provides for the extension of credit in connection with a
20 demand deposit account or other transaction account maintained by
21 the borrower. The bill permits a bank to request but not require an
22 individual borrower to be insured with respect to a revolving credit
23 plan under a life, health, accident, health and accident or other credit
24 insurance policy; however, if the borrower's outstanding indebtedness
25 is secured by an interest in real or personal property, a bank may
26 require the borrower to obtain insurance, from an insurer acceptable
27 to the bank, against loss of or damage to the property or against
28 liability arising out of the ownership or use of the property. The bill
29 requires that all insurance offered or placed with respect to revolving
30 credit be offered and placed in a manner which is consistent with the
31 regulations of the Department of Banking, N.J.A.C.3:1-13.1 or 3:1-
32 13.2 or both.

33 Under the bill, a bank may, if the agreement governing the plan so
34 provides, amend the terms of the agreement at any time or from time
35 to time, including the terms governing the periodic percentage rate or
36 rates used to calculate interest, the method of computing the
37 outstanding unpaid indebtedness to which the rate or rates are
38 applicable, the amounts of other charges and the applicable installment
39 repayment schedule. The bill requires any bank which amends its
40 agreement to notify borrowers in writing clearly and conspicuously
41 describing the amendment and setting the effective date of the
42 amendment, which shall be no earlier than 30 days after the notice is
43 mailed or delivered to the borrower. If an amendment is made that has
44 the effect of increasing the periodic interest or interest charges to be
45 paid by the borrower, the borrower has the option of accepting the
46 amendment, either expressly in writing or by continuing to use the

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

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

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23 Concerns bank revolving credit plans.