



1982

Legislation: Bank Credit Card Interest Rates in Maryland: How High Can They Go?

Hans Froelicher IV
University of Baltimore School of Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>

 Part of the [Law Commons](#)

Recommended Citation

Froelicher, Hans IV (1982) "Legislation: Bank Credit Card Interest Rates in Maryland: How High Can They Go?," *University of Baltimore Law Review*: Vol. 11: Iss. 3, Article 10.

Available at: <http://scholarworks.law.ubalt.edu/ublr/vol11/iss3/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

LEGISLATION

BANK CREDIT CARD INTEREST RATES IN MARYLAND: HOW HIGH CAN THEY GO?

Obtaining credit through the use of bank credit cards, a part of everyday life for most Americans, is becoming more expensive. Today, interest rates are rising, banks want less government control, and consumers want easy credit at a low price. These often conflicting demands have challenged state and federal legislatures to change the laws that govern credit card interest rates. This article examines Maryland's response in light of federal law and the law of other states.

I. INTRODUCTION

Consumers in the United States have developed an insatiable appetite for the easy credit offered by bank credit cards and, as a result, some are accumulating substantial debts.¹ This is due in part to aggressive marketing by the banking industry and in part to current economic conditions.² These economic conditions, particularly rising interest rates, have forced banks in Maryland, as well as banks in other states, to find ways to increase the income from their credit card plans. Consumers, on the other hand, are seeking relief from the higher cost of using these cards. The 1981 session of Maryland's General Assembly attempted to balance the needs of the banks with those of the consumer. This article examines legislation introduced in the 1981 Maryland General Assembly involving the credit card industry and explores the ultimate effect of such legislation on state and federal regulatory schemes.

1. The following 1978 statistics for the United States are illustrative:

	MASTERCHARGE	VISA
Card issuing banks	11,061	10,834
Participating merchants	1,974,097	1,972,500
Total accounts	34,859,304	36,017,254
Outstanding balances	\$10,654,212,132	\$10,347,365,000
Charge volume	\$22,385,584,245	\$22,097,813,000
Percentage of accounts active monthly	68%	67.3%
Average outstanding balance	\$305	\$282
	(69% of the active accounts had balances over \$650)	(71% of the active accounts had balances over \$625)
Average cash advance	\$ 130.36	\$ 130.77
Average purchase transaction	\$ 30.21	\$ 29.96

Kempkes, *Bank Credit Cards* — Marquette National Bank of Minneapolis v. First Omaha Service Corp. — *The Interstate Operation of the Interest Rate Provision of the National Bank Act*, 5 J. CORP. L. 189, 190 n.1 (1979) [hereinafter cited as Kempkes].

2. Recommendations of the Attorney General to the House Economic Matters Committee Concerning Banking Legislation at 7 (Feb. 10, 1981) (found in the Maryland House of Delegates Economic Matters Committee file on Senate Bill 1005).

II. BACKGROUND

A. Generally

The first credit cards were issued by oil companies as early as 1914.³ These were followed by credit coins, the forerunner of the charge plate, issued by individual department stores.⁴ Both of these credit plans, which continue today, have always been limited to the purchase of goods and services provided by the issuing oil company or department store.⁵ Such companies are large enough and have the financial resources to afford the expense and risk of extending credit to their customers.

The limitations of the single merchant credit card led to the development of a multi-merchant card by Diner's Club, Inc. in 1950.⁶ The Diner's Club card enabled the card holder to have credit extended by a variety of merchants, restaurants, and hotels, with the added convenience of paying only one monthly bill. The merchant was spared the expense, risk, and inconvenience of having to maintain and collect on credit accounts.⁷ The multi-merchant card created a tripartite transaction with separate contracts between the card issuer, card holder, and merchant.⁸ These multi-merchant cards, now referred to as travel and entertainment cards, were billed monthly, had to be paid in full, and included an annual membership fee.⁹ As a result they were used primarily by business people whose companies paid the cost.

In 1958 Bank of America and Chase Manhattan, two of the largest banks in the United States, developed credit card plans designed to provide credit to a much larger group of consumers.¹⁰ Presently known as VISA¹¹ and Mastercard,¹² these plans offer considerably more services than their older counterpart, the travel and entertainment card. After applying for a card and having one issued by a card issuing bank, the card holder may purchase goods and services from member

3. Rutter, *Consumer Credit Heads For a Peak*, N.Y. Times, May 10, 1959, § 3, at 1, col. 1.

4. Clontz, *Bank Credit Cards Under the UCC*, 87 BANKING L.J. 888, 889 (1970).

5. *Id.*

6. Diner's Club was followed by American Express in 1958 and Carte Blanche (the credit card plan of the Hilton Credit Corp.) in 1959. *Id.*

7. Comment, *Bank Credit Cards: The Service Charge Problem*, 77 DICK. L. REV. 139, 141 (1972) [hereinafter cited as *Bank Credit Cards*].

8. Comment, *The Tripartite Credit Card Transaction: A Legal Infant*, 48 CAL. L. REV. 459 (1960).

9. *Bank Credit Cards*, *supra* note 7, at 141. These conditions are still effective today.

10. BUS. WK., July 11, 1959, at 28.

11. VISA, formerly the Bank of America's BankAmericard, is now owned by VISA, USA Inc. VISA, USA Inc. is a corporation owned by its card issuing members (financial institutions) whose interest is proportionate to their respective volume of sales. U.S. NEWS & WORLD REP., Sept. 5, 1977, at 63.

12. Mastercard, in the process of changing its name from Master Charge, is owned by the Interbank Card Association, a non-profit organization, whose member card issuers share expenses and revenues. *Id.*

merchants on credit. The card holder is then billed by the card issuing bank and may pay part of the amount due on a revolving credit basis, thus incurring interest¹³ on the unpaid balance, or pay in full and avoid the interest.¹⁴ The card holder may also receive small loans,¹⁵ without separate applications, up to the amount of his credit limit. However, interest on these loans must be paid even if the loan is repaid in full when billed.¹⁶

The advantages of VISA and Mastercard plans to merchants are similar to those of the travel and entertainment plans. The merchants may attract credit customers without having to establish credit accounts for those customers and the risks associated with collections are materially diminished.¹⁷ These advantages have contributed to the growth of the credit card industry to such an extent that the VISA and Mastercard plans now play a dominant role in consumer credit transactions.¹⁸ This role, coupled with the rising costs both to the bank and to the consumer of borrowing money to finance these plans,¹⁹ has forced state

13. "Interest" is used broadly here, as most state statutes refer to the interest paid on credit card accounts as either a "finance charge" or "service charge." 1 CONS. CRED. GUIDE (CCH) ¶ 630 (1981).

14. Briefly, this is how the credit card transactions work:

The issuing bank (or other financial institution) accepts applications from consumers and, after a credit check, establishes a credit limit and issues the card. The card holder/consumer may then purchase goods and services or obtain cash advances from member merchants or banks respectively by presenting the card and signing the saleslip. The card holder may then pay the amount due at the beginning of a billing cycle within twenty-five (25) days without incurring a finance charge. If the card holder pays less, but at least the minimum required payment, a finance charge is imposed on the unpaid balance.

The merchant agrees with the card issuer to honor all cards presented and is responsible for checking the validity of the card and card holder by the signatures. There is usually a "floor limit" of \$50.00 per transaction above which the merchant must call an interchange center and have the transaction authorized. The merchant then presents the saleslip to the card issuer and is credited, at a discount, with the sale. At this point the card issuer assumes responsibility for collecting from the card holder. Kempkes, *supra* note 1, at 190-92; *Bank Credit Cards*, *supra* note 7, at 142-43. See also *Worthen Bank & Trust Co. v. National Bank Americard, Inc.*, 345 F. Supp. 1309, 1311 (E.D. Ark. 1972).

15. These small loans are generally referred to as "cash advances" in a credit card plan. 1 CONS. CRED. GUIDE (CCH) ¶ 630 (1981).

16. Kempkes, *supra* note 1, at 190-92. See also *Bank Credit Cards*, *supra* note 7, at 142, 144 n.33.

17. Davenport, *Bank Credit Cards and the Uniform Commercial Code*, 1 VAL. U. L. REV. 218, 233 (1967).

18. As one commentator has noted:

By 1985, VISA alone will be doing an estimated \$154 billion worth of business in the United States, about 75% of the total bank credit card business for the nation. In 1978, Master Charge card holders worldwide numbered 30,900,000, and VISA card holders numbered 31,000,000. In the United States alone, Master Charge grossed \$16,719,677,680 in 1977, while VISA generated a gross dollar volume of \$20,149,545,000 internationally.

Kempkes, *supra* note 1, at 190 n.13 (citations omitted).

19. Brophy, *State Usury Laws and National Banks*, 31 BAYLOR L. REV. 169 (1979).

legislatures to search for ways to regulate the credit card industry. Maryland, being no exception, has recently passed legislation seeking to meet the needs of the consumer as well as the needs of the banking industry.

B. Recent Maryland Background

Responding to the needs of Maryland's banking industry, the Maryland General Assembly in 1980 permitted the interest rates chargeable on credit card accounts to rise from twelve to eighteen percent on balances between five hundred and seven hundred dollars.²⁰ This did not solve the banks' profitability problem with credit cards because many card holders were using the purchase portion of their card and other services²¹ without ever paying interest. Card holders accomplish this by taking advantage of the option to pay in full within the billing cycle, thus avoiding the interest.²² Consequently, some of the card issuing banks announced that they would impose a fifteen dollar annual membership fee on each credit card issued.²³ The membership fee was designed as one means by which the costs of the plan could be diverted to the card holders.²⁴ The Attorney General, in a letter to the Commissioner of Consumer Affairs, opined that such a fee was "interest" and, if added to the interest already charged a card holder, would constitute a usurious transaction.²⁵ The banks successfully challenged this opinion and a broader range of other issues concerning interest rates in *Equitable Trust Co. v. Sachs*.²⁶

See also 46 Fed. Reg. 27,090 (1981) (to be codified in 12 C.F.R. §§ 201.51-53), where the Federal Reserve discount rates are fourteen or fifteen percent (depending on the circumstances of the credit) for depository institutions and seventeen percent for individuals, partnerships or corporations other than depository institutions as of May 5, 1981. This is an increase of one percent since December 5, 1980. *See* 12 C.F.R. §§ 201.51-53 (1980).

20. Law of Apr. 1, 1980, ch. 691, 1980 Md. Laws 2361 (codified at MD. COM. LAW CODE ANN. § 12-506(a) (Supp. 1980) (purchase portion of a credit card transaction) and § 12-103(c) (loan portion)).
21. The other services include use as a credit reference, identification for check cashing, and the use of automatic teller machines to transact business with the bank. Petitioners' Memorandum of Law in Support of Petitioners' Motion for Summary Judgment at 2, *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981).
22. The loan provision is an exception to this general rule. *See* text accompanying notes 15-16 *supra*.
23. Quick Reader Review of the 1981 Session of the General Assembly, Pt. VIII, at 2 (May 1, 1981).
24. *The Sun* (Baltimore) Feb. 11, 1981, at C4, col. 4 (reporting the testimony of Raymond C. Nichols, Vice President of Maryland National Bank, before the Senate Economic Affairs Committee, Feb. 10, 1981).
25. *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713, slip op. at 2 n.9 (Balt. City Cir. Ct. Md. Jan. 28, 1981) (referring to a letter from the Attorney General of Maryland to Commissioner of Consumer Credit, July 1, 1980). For a discussion on usury law in Maryland, see text accompanying notes 44-48 *infra*.
26. A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981).

The Circuit Court of Baltimore City, in *Equitable*, held that a membership fee did not fit the definitions of interest²⁷ or finance charge²⁸ under Maryland law.²⁹ Since the membership fee was to be assessed for the privilege of participating in the banks' credit card plans, and was not related to the extension of credit, it could not be interest.³⁰ The court also held the "most favored lender status"³¹ to be applicable to both nationally and state chartered, federally insured banks, thus entitling them to charge interest at the rate any other lender in Maryland may charge on comparable loans.³² Furthermore, it applied the most favored lender status to both the purchase and the loan or cash advance portions of a credit card plan.³³ The court reasoned

-
27. Interest is "any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money, including any loan fee, origination fee, service and carrying charge, investigator's fee, time-price differential, and any amount payable as a discount or point or otherwise payable for services." MD. COM. LAW CODE ANN. § 12-101(e) (1975).
28. A finance charge is "the amount, however expressed, in excess of the cash sale price which a seller or financial institution charges a buyer for the privilege of purchasing goods or services in a retail credit account transaction." *Id.* § 12-501(f).
29. A60063/120-A/Folio 713, slip op. at 9 (Balt. City Cir. Ct. Md. Jan. 28, 1981).
30. *Id.* The membership fee was to be assessed even if the card holder never used his credit card for purchases or loans.
31. The most favored lender in a state is that natural person or financial institution which is allowed to charge the highest interest rate permitted in that state. National banks in a given state are accorded the status of most favored lender for the purpose of determining what interest they may charge. This is true even if state law limits the status to natural persons or financial institutions other than banks. *Tiffany v. National Bank of Mo.*, 85 U.S. (18 Wall.) 409 (1873); 12 U.S.C. § 85 (Supp. IV 1980).
32. A60063/120-A/Folio 713, slip op. at 34, 36 (Balt. City Cir. Ct. Md. Jan. 28, 1981). The interest rate on loans less than \$2,000.00 and balances due of less than \$1,000.00 would be 33% annually. See text accompanying notes 63-66 *infra* for discussion of the interest rates that can be charged by consumer loan companies in Maryland.
- The court in *Equitable* relied on the court of appeals' decision in *Commissioner of Small Loans v. First Nat'l Bank*, 268 Md. 305, 300 A.2d 685 (1973) (see text accompanying notes 98-100 *infra*) and on the United States Supreme Court decision, *Tiffany v. National Bank of Mo.*, 85 U.S. (18 Wall.) 409 (1873) (see text accompanying notes 93-95 *infra*) in applying the most favored lender status to national banks. *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713, slip op. at 30, 31 (Balt. City Cir. Ct. Md. Jan. 28, 1981). In finding that the same status should be given to federally insured state banks, the court analogized the language of two federal statutes: the interest rate provision of the National Bank Act, 12 U.S.C. § 85 (Supp. IV 1980), which is the statutory authority for the most favored lender status; and the interest rate provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980, §§ 521-523, 12 U.S.C. §§ 1831d, 1730g, 1785(g) (Supp. IV 1980), which use practically the identical language in prescribing interest rates for state chartered, federally insured financial institutions and which expressly pre-empt state law to the contrary. *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713, slip op. at 35-37 (Balt. City Cir. Ct. Md. Jan. 28, 1981). See note 106 *infra* for text of 12 U.S.C. § 1831d (Supp. IV 1980).
33. *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713, slip op. at 34, 36, 40 (Balt. City Cir. Ct. Md. Jan. 28, 1981).

that both cash advances and extensions of credit to purchase goods and services, obtained by the use of a credit card, are consumer loans and, therefore, any precedent concerning interest on loans should also be applicable to credit card transactions.³⁴

At the time of the trial in *Equitable*, a bill prohibiting membership fees was prefiled in the 1981 General Assembly.³⁵ After the court's decision in February 1981, three more bills³⁶ were introduced to counteract different aspects of the opinion. These later bills were designed to accomplish three things: (1) exempt Maryland from federal legislation deregulating interest rates and pre-empting state usury laws;³⁷ (2) provide choice of law provisions for Maryland residents using credit cards issued by banks located outside of Maryland;³⁸ and (3) require lenders charging interest rates authorized by a particular statute to also comply with the other duties imposed by that statute.³⁹ Only the prohibition on membership fees was passed and signed into law.⁴⁰

III. MARYLAND'S STATUTES

Maryland's statutes that control credit card transactions are primarily designed to limit interest rates and to insure credit opportunities for a broad range of consumer borrowers. There is no single act or codification of laws pertaining to credit card debtor/creditor relations; rather, the statutes are found in three different but related laws: the usury law;⁴¹ the Retail Credit Account Law (RCAL);⁴² and the Maryland Consumer Loan Law (MCLL).⁴³

A. Usury Law

The usury law, which determines the legal interest that can be

34. *Id.* at 40, 41.

35. S. 12, Md. Gen. Assembly, 1981 Sess. (prefiled on June 4, 1980).

36. S. 1005, S. 1006, S. 1007, Md. Gen. Assembly, 1981 Sess. (introduced Feb. 18, 1981).

37. Senate Bill 1005 expressly exempted Maryland from certain sections of the Depository Institutions Deregulation and Monetary Control Act of 1980, §§ 521-523, 12 U.S.C. §§ 1831d, 1730g, 1785(g) (Supp. IV 1980).

38. S. 1006, Md. Gen. Assembly, 1981 Sess.

39. S. 1007, Md. Gen. Assembly, 1981 Sess. (attempted to require a lender charging the interest allowed by the Maryland Consumer Loan Law, MD. COM. LAW CODE ANN. §§ 12-301 to -316 (Supp. 1981), to also comply with the duties imposed on the lender by § 12-308).

40. Law of May 19, 1981, ch. 509, 1981 Md. Laws 2121 (codified at MD. COM. LAW CODE ANN. § 12-506(h) (Supp. 1981)).

41. MD. CONST. art. 3, § 57; MD. COM. LAW CODE ANN. §§ 12-101 to -114 (1975 & Supp. 1980).

42. MD. COM. LAW CODE ANN. §§ 12-501 to -515 (1975 & Supp. 1980).

43. MD. FIN. INST. CODE ANN. §§ 11-201 to -419 (1980 & Supp. 1981); MD. COM. LAW CODE ANN. §§ 12-301 to -316 (1975 & Supp. 1980). Other statutes regulating credit cards in the areas of criminal penalties for misuse, MD. ANN. CODE art. 27, § 145 (Supp. 1980) and truth in lending requirements of the Commercial Law Article are not within the scope of this article.

charged on loans, governs all loans made in Maryland, including loans made under the loan portion of a credit card transaction.⁴⁴ Maryland's Constitution sets the legal interest rate at six percent unless otherwise provided by the General Assembly.⁴⁵ The usury law is the statutory provision for this legal rate and creates a number of exceptions.⁴⁶ One exception for consumer loans allows for eighteen percent interest on loans not secured by real property⁴⁷ and on unsecured loans.⁴⁸ The exception applies to loans made through the loan portion of a credit card plan.

B. Retail Credit Account Law

The RCAL expressly governs the purchase portion of a credit card transaction⁴⁹ and establishes the various rates and other requirements regarding the use of credit cards. The RCAL defines a retail credit account as a sale of goods or services by a retail seller for a time sale price and specifically includes credit card purchases.⁵⁰ The RCAL provides for two types of retail credit accounts: closed end⁵¹ and open end.⁵² The RCAL provides for finance charges on open end accounts

44. MD. COM. LAW CODE ANN. §§ 12-101 to -114 (1975 & Supp. 1980). *See also* Petitioners' Memorandum of Law in Support of Petitioners' Motion for Summary Judgment at 3, *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981).

45. MD. CONST. art. 3, § 57.

46. MD. COM. LAW CODE ANN. § 12-102 (1975).

47. *Id.* § 12-103(c) (Supp. 1980). This rate was raised from 12% to 18% in 1980.

48. *Id.* § 12-103(a)(3). The usury law also allows other exceptions not pertinent to credit cards. There is no limit on the interest rate if the loan is secured by real estate, *id.* § 12-103(b), or by investment securities, *id.* § 12-103(f), or if it is a commercial loan. *Id.* § 12-103(e). The interest is at the federal rate if the loan is guaranteed by a federal agency. *Id.* § 12-103(d). The lender may charge an 8% rate if the loan is part of a written agreement. *Id.* § 12-103(a)(1). If the loan is secured by a certificate of deposit, the rate is 2% above the interest the certificate pays. *Id.* § 12-103(a)(2). It is interesting to note this section does not contain a definition of loan.

49. *Id.* § 12-501(1)(2) (1975) (includes credit card transactions in the definition of retail credit account).

50. *Id.* § 12-501(1). The statute defines "time sale price" as the cash price plus a finance charge, *id.* § 12-501(o), and defines "finance charge" as the charge for the privilege of making purchases on credit. *Id.* § 12-501(f).

51. *Id.* § 12-501(e).

52. *Id.* § 12-501(j). The open end account section prescribes the finance charge (interest) assessment method used by credit card plans. The finance charges under the open end system are assessed on the outstanding balances from month to month. *Id.* Under the closed end account system, interest charges are computed in advance on the original unpaid balance. *Id.* § 12-501(e). A closed end account produces more interest income for a bank than the open end account. To illustrate, examine a \$1,000 loan at 18% interest per year for one year. With a closed end account the borrower would compute the interest in advance ($18\% \times \$1,000 = \180) and add it to the loan amount to determine the total owed (\$1,180), resulting in monthly payments of \$98.33. In an open end account the interest is computed on the outstanding balance due each month at 1.5% ($1/12 \times 18\%$) which, since the amount owed decreases at the rate of \$83.33 ($1/12$ of \$1,000) each

at an annual rate of eighteen percent on balances up to seven hundred dollars and at twelve percent on the excess.⁵³ On closed end accounts the RCAL allows up to twenty-two percent interest to be charged on balances up to one thousand dollars and eighteen percent on the excess.⁵⁴ The RCAL also includes the only choice of law provision expressly governing credit card transactions. This provision prevents non-resident sellers from requiring Maryland buyers to subject themselves to the laws of the seller's state.⁵⁵

C. Maryland Consumer Loan Law

While the RCAL governs the extension of credit for retail purchases, the MCLL, a consolidation of Maryland's laws relating to small and consumer loans,⁵⁶ governs the extension of credit for a cash loan. The MCLL does not include any provision for credit card transactions but, under the ruling in *Equitable Trust Co. v. Sachs*,⁵⁷ allows a credit card issuer to charge MCLL rates on the loan portion of such a transaction.

The MCLL is found in two different articles of the Maryland Code; the licensing provisions are in the Financial Institutions Article⁵⁸ and the credit provisions are in the Commercial Law Article.⁵⁹ The licensing provisions define various terms and generally prescribe the kind of financial institution that may loan money under its authority. The provisions define loan as "any loan or advance of money or credit made under" the credit provisions.⁶⁰ The licensing provisions limit the scope of the MCLL by licensing only small loan companies and expressly excluding banks, trust companies, savings banks, credit unions, and savings and loan institutions from extending high interest consumer loans.⁶¹ MCLL's provisions and powers are prohibited from being conferred on any other financial institution not included within the licensing provisions.⁶²

month, results in a total of \$97.50 in interest paid in the year (monthly payments would vary from \$98.33 to \$84.58).

53. *Id.* §12-506(a) (Supp. 1980).

54. *Id.* § 12-505(a)(1). All of these rates were increased to these levels by the 1980 General Assembly, Law of Apr. 1, 1980, ch. 691, 1980 Md. Laws 2361 (amending MD. COM. LAW CODE ANN. §§ 12-103(a), (c)(1), -506(a) (1975 & Supp. 1979)), in response to a tight money market that was forcing banks to limit loans. Untitled document at 3, part of Maryland State Senate Economic Affairs Committee file on S. 1005, Md. Gen. Assembly, 1981 Sess.

55. MD. COM. LAW CODE ANN. § 12-502(b) (Supp. 1980).

56. *See* purpose of S. 183, Md. Gen. Assembly, 1977 Sess., *found in* Law of May 26, 1977, ch. 693, 1977 Md. Laws 2818 (which accomplished the consolidation).

57. A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981).

58. MD. FIN. INST. CODE ANN. §§ 11-201 to -419 (1980 & Supp. 1981).

59. MD. COM. LAW CODE ANN. §§ 12-301 to -316 (1975 & Supp. 1980).

60. MD. FIN. INST. CODE ANN. § 11-201(d) (1980).

61. *Id.* § 11-202(b).

62. *Id.* § 11-202(a). *See also id.* §§ 11-301 to -304 (installment loans); *id.* §§ 11-401 to -419 (finance companies).

The credit provisions allow generous interest rates on small loans that must be repaid within a specified term. The interest rate is determined on a sliding scale that varies with the amount of the principal, the outstanding balance due, and the term of the loan. The maximum amount that can be loaned is six thousand dollars⁶³ and the maximum interest that can be charged is thirty-three percent.⁶⁴ This maximum interest rate is permitted only if the original principal was two thousand dollars or less and the outstanding balance due is less than one thousand dollars. Twenty-four percent may be charged if the principal was greater than two thousand dollars or the outstanding balance is one thousand dollars or more.⁶⁵ The term of the loan is also on a sliding scale. With an original principal of seven hundred dollars or less, the maximum term is thirty and one-half months; if more than seven hundred dollars but less than two thousand, the term may be up to thirty-six and one-half months and if two thousand dollars or more, the term may be up to seventy-two and a half months.⁶⁶

The MCLL also contains a choice of law provision which allows enforcement of a loan agreement made in another state under a similar law only if the total amount to be collected is not greater than that which could be collected if the transaction took place in Maryland.⁶⁷

IV. FEDERAL STATUTES

At present there are two federal statutes that have a direct effect upon the interest rates banks may charge on credit card transactions: the National Bank Act⁶⁸ and the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDA).⁶⁹ The National Bank Act was passed in 1864. Its purpose was to establish a national banking

63. MD. COM. LAW CODE ANN. § 12-303(a) (Supp. 1980).

64. *Id.* § 12-306(a)(2)(i).

65. *Id.* § 12-306(a), as amended by Law of June 1, 1982, ch. 753, 1982 Md. Laws 3863 (to be codified at MD. COM. LAW CODE ANN. § 2-306(a)(6)). The 1982 Maryland General Assembly did not repeal the former sliding scale with lower interest rates, as shown in the chart below, but superseded those rates for a three-year period from July 1, 1982 to July 1, 1985 by the enactment of House Bill 1853.

PRINCIPAL	BALANCE DUE	INTEREST RATE	
		PRE 1982	1982-1985
\$ 5,000 - 6,000	any	16.1%	24%
3,500 - 4,999	any	18	24
2,001 - 3,499	any	21	24
1 - 2,000	\$1,001 - 2,000	15	24
1 - 2,000	700 - 1,000	15	33
1 - 2,000	500 - 699	24	33
1 - 2,000	1 - 499	33	33

66. MD. COM. LAW CODE ANN. § 12-306(e) (Supp. 1980).

67. *Id.* § 12-314(c).

68. 12 U.S.C. §§ 21 to 215b (1976 & Supp. III 1979).

69. Pub. L. No. 96-221, 94 Stat. 132 (codified in scattered sections of 12, 15, 22, 38, 42 U.S.C.).

system whereby nationally chartered banks would be in parity with state chartered banks located in the same state.⁷⁰ This intention still exists today, as evidenced by section 85 of the National Bank Act, which allows national banks to charge interest on loans or other evidences of debt at the highest rate allowed a state chartered bank on similar loans under state law.⁷¹

In 1979 President Carter's administration proposed what is now DIDA to increase the interest paid on small savings accounts and to allow for the creation of interest bearing checking accounts.⁷² These two goals were accomplished by deregulating the interest rates on bank accounts and loans, thus allowing them to rise or fall as the market fluctuated. Additionally, there were to remain some provisions for monitoring the economic conditions and subsequent control of the interest rates by various federal agencies.⁷³ The original House of Representatives' version of this bill was primarily limited to interest bearing checking accounts.⁷⁴ The Senate version broadened this by lifting interest ceilings on bank accounts and loans, extending more lending power to savings and loan associations, and exempting home mortgages from state usury laws.⁷⁵ A joint conference merged the two versions and added the sections concerning express federal pre-emption of state usury laws for an even wider range of loans.⁷⁶ These additional sections have the potential to greatly affect credit card issuers and holders. They permit state chartered, federally insured banks, savings and loans, and credit unions to charge interest on loans and other evidences of debt at the higher of two rates, either one percent above the Federal Reserve discount rate⁷⁷ or the rate allowed by state law on similar loans.⁷⁸ The sections also expressly pre-empt any state constitutional or statutory provisions imposing a usury limit that would frustrate this deregulation.⁷⁹ However, DIDA also has a provision that allows a state to override this pre-emption by expressly stating its intention to do so.⁸⁰

70. Act of June 3, 1864, ch. 106, § 30, 13 Stat. 108 (current version at 12 U.S.C. § 85 (Supp. IV 1980)).

71. 12 U.S.C. § 85 (Supp. IV 1980).

72. 1 PUB. PAPERS: JIMMY CARTER 1979, at 929-31 (1979).

73. *Id.*

74. H.R. 4986, 96th Cong., 1st Sess., 125 CONG. REC. H7605 (daily ed. Sept. 10, 1979).

75. H.R. 4986, 96th Cong., 1st Sess., 125 CONG. REC. S14926 (daily ed. Oct. 23, 1979). Except for the enacting clause, the Senate version struck the entire House version and inserted an amended version of S. 1347, 96th Cong., 1st Sess., 125 CONG. REC. S7726 (1979).

76. H.R. REP. No. 96-842, 96th Cong., 2d Sess., reprinted in [1980] U.S. CODE CONG. & AD. NEWS 298.

77. The Federal Reserve discount rate is established from time to time by the Federal Reserve Board. 12 C.F.R. §§ 201.51 -.53 (1980); see note 19 *supra*.

78. Depository Institutions Deregulation and Monetary Control Act of 1980, §§ 521 (banks), 522 (savings and loans), and 523 (credit unions), 12 U.S.C. §§ 1831d, 1730g, 1785(g) (Supp. IV 1980).

79. *Id.*

80. *Id.* § 525, 12 U.S.C. § 1730g note (Supp. IV 1980). A state legislature would have

V. ACTION TAKEN BY THE MARYLAND GENERAL ASSEMBLY

Various problems were created as a result of the passage of DIDA as well as the ruling in *Equitable Trust Co. v. Sachs*.⁸¹ The 1981 Maryland General Assembly sought to alleviate some of them. Its first action was to nullify the effect of the *Equitable* decision allowing credit card issuers to impose membership fees. This was accomplished by the enactment of Senate Bill 12.⁸² This bill, however, clearly excepted the travel and entertainment cards, such as American Express, which do not impose finance charges and require payment in full each month.

The legislature next sought to prevent lenders in other states from taking advantage of less restrictive usury laws and charging Maryland card holders the greater interest allowed in those other states. Senate Bill 1006 was proposed to correct this situation. The bill was intended to build upon the choice of law provisions of the RCAL⁸³ by adding a similar provision applicable to title 12 of the Commercial Law Article. It would have required lenders or sellers in other states who extended credit to a Maryland resident to abide by Maryland's usury laws and not charge interest at the rate allowed by the other state.⁸⁴ The bill received favorable action in the Senate, but was given an unfavorable vote by the House Economic Matters Committee.⁸⁵

An attempt was also made to exempt Maryland from those provisions of DIDA that limit the power of a state to regulate the interest rates charged by state chartered, federally insured banks. The bill was designed expressly to override the federal pre-emption of state usury laws and return control of interest rates to the state.⁸⁶ The bill received an unfavorable report from the Senate Economic Affairs Committee

to pass a bill expressly stating that it was overriding sections 521, 522 and 523 of DIDA as permitted by the authority of section 525. In Maryland, the interest on credit cards was limited to 12% on loans over \$700 by state law, MD. COM. LAW CODE ANN. § 12-506(a)(2) (Supp. 1981), until the enactment of House Bill 1853 in 1982. DIDA would allow these same banks to charge at least 18% on the excess by pre-empting the state law and imposing the federal law which allows interest to be charged at 1% over the federal discount rate, now at 17%. If Maryland overrides DIDA sections 521, 522 and 523, see text accompanying note 113 *infra*, then these banks would be controlled by the state law and limited to 12% annual interest. House Bill 1853, enacted in 1982, would change this to 24% in 1982 for a 3 year period.

81. A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981); see File memorandum from Delegate Frederick Rummage, Chairman of Maryland House of Delegates Economic Matters Committee (June 22, 1981).

82. MD. COM. LAW CODE ANN. § 12-506(h) (Supp. 1981).

83. *Id.* § 12-502.

84. Preamble to second printing of S. 1006, Md. Gen. Assembly, 1981 Sess., lines 106-15.

85. Legislative history section of second printing of S. 1006, Md. Gen. Assembly, 1981 Sess. (1981). See also Vote tally sheet in House of Delegates Economic Matters Committee file on S. 1006.

86. S. 1005, Md. Gen. Assembly, 1981 Sess., lines 46-55.

due to a lack of time to explore the ramifications of its passage.⁸⁷

The 1982 Maryland General Assembly increased the interest rate chargeable on credit card transactions to twenty-four percent regardless of the balance due.⁸⁸ This rate supersedes interest rates chargeable under the present statutes for a period of three years.

VI. ANALYSIS

The ultimate impact of the General Assembly's actions remains unclear. What is clear is that the combination of the General Assembly's failure to exempt Maryland from DIDA, the decision in *Equitable* and recent legislation in neighboring states such as Delaware and Pennsylvania have had the effect of enabling credit card issuers to dramatically increase the interest chargeable to Maryland card holders.⁸⁹ Consequently, the question facing the Maryland credit card consumer is not whether he will be paying higher interest rates, but rather, how high? The answer to this question is complex and is a function of two factors: (1) whether the card issuer is a nationally chartered as opposed to a state chartered bank; and (2) in what jurisdiction the credit card operation is located.

A. *Maryland Banks*

1. National Banks

National banks⁹⁰ are governed principally by the National Bank Act⁹¹ and the interest they charge is specifically controlled by section

87. File memorandum from Delegate Frederick Rummage, Chairman of Maryland House of Delegates Economic Matters Committee (June 22, 1981) (cited a need to study the impact more closely during the interim).

A third bill (S. 1007) that failed was introduced as a general reassertion of the legislature's power to regulate credit transactions in the wake of the decision in *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981). A note on the committee file copy of the bill indicated its questionable constitutionality without further explanation. Remarks by the Chairman of the Senate Economic Affairs Committee indicated the bill was only a delaying tactic to stall the banks from increasing interest rates. *The Sun* (Baltimore), Feb. 11, 1981, at C4, col. 4.

88. Law of June 1, 1982, ch. 753, 1982 Md. Laws 3863 (to be codified at MD. COM. LAW CODE ANN. § 2-306(a)(6)).

89. The number of financial institutions in Maryland that may be affected by DIDA is significant. All of the 107 banks, 78 of which are state chartered and 29 which are nationally chartered, would be affected. Of the 178 savings and loan associations, 121 are state chartered and insured and therefore not affected; however, the remaining 67, 13 state chartered and 54 federally chartered, are all federally insured and therefore affected. The 200 plus federal credit unions are only marginally affected, and the 28 state credit unions are state insured and unaffected. Md. Senate Economic Affairs Committee file on S. 1005, Md. Gen. Assembly, 1981 Sess.

90. A national bank is an association that is chartered by the Comptroller of the Currency, an agency of the federal government, to carry on the business of banking in a particular state. 12 U.S.C. § 21 (Supp. III 1979).

91. *Id.* §§ 21-215b.

85. Section 85 allows a national bank to charge interest on a loan or other evidences of debt at the greater of two alternative rates: either at the rate allowed by the laws of the state where the bank is located or at one percent above the federal discount rate established by the local Federal Reserve district.⁹²

The language of section 85 is virtually unchanged from the original 1864 version,⁹³ which was construed by the United States Supreme Court in *Tiffany v. National Bank of Missouri*⁹⁴ to allow national banks the advantage of the most favored lender status. In *Tiffany* the legal rate of interest permitted national banks was higher than that allowed to be charged by state chartered banks. A national bank located in Missouri had charged interest at a rate greater than that allowed state banks but less than the legal rate. The Court upheld this practice, stating that section 85 (then section 30) permits a national bank to charge at the rate allowed the most favored lender in the state.⁹⁵ The most favored lender doctrine has since been extended to credit card transactions. The United States District Court for the Western District of Missouri, in *United Missouri Bank of Kansas City v. Danforth*,⁹⁶ held credit card transactions to be "other evidences of debt."⁹⁷ In *Danforth* a national bank was charging higher interest rates on credit card transactions than state banks were permitted but not higher than that allowed small loan companies on similar loans. In a similar fact situation, *Commissioner of Small Loans v. First National Bank*,⁹⁸ the Court of Appeals of Maryland held that section 85 gave the most favored lender status to national banks in Maryland.⁹⁹ The facts in *First National Bank* dealt only with charges imposed by national banks on the loan or cash advance portion of a credit card transaction. The amounts loaned were within the limits established by the small loan law (now MCLL) that allow a small loan company to charge a higher interest rate than permitted by the legal rate set by the usury law.¹⁰⁰

It is well established that national banks in Maryland may charge interest on the loan or cash advance portion of a credit card transaction at the rates allowed in the MCLL, that is, up to thirty-three percent on

92. *Id.* § 85 (Supp. IV 1980).

93. Act of June 3, 1864, ch. 106, § 30, 13 Stat. 108 (current version at 12 U.S.C. § 85 (Supp. IV 1980)).

94. 85 U.S. (18 Wall.) 409 (1873) (national bank may charge interest at the rate of the most favored lender in the state be it a natural person or state bank). *See also* *United Mo. Bank of Kansas City v. Danforth*, 394 F. Supp. 774, 779 (W.D. Mo. 1975).

95. 85 U.S. (18 Wall.) 409, 413 (1873).

96. 394 F. Supp. 774 (W.D. Mo. 1975).

97. *Id.* at 783.

98. 268 Md. 305, 300 A.2d 685 (1973).

99. *Id.* at 315, 300 A.2d at 690. *See also* 12 C.F.R. § 7.7310 (1980) (gives regulatory status to the doctrine of the most favored lender).

100. 268 Md. 305, 307, 300 A.2d 685, 686 (1973).

the first one thousand dollars.¹⁰¹ However, although there is no mandatory authority holding that the same applies to the purchase portion of a credit card transaction, there is persuasive authority that it should. In *Danforth* the national banks were charging interest on the purchase portion of their credit card transactions at the rate allowed small loan companies by state law. The federal district court held the language "other evidences of debt" in section 85 included the purchase portion of a credit card transaction despite the fact that state law distinguished between loans of money and extensions of credit.¹⁰² The reasoning in *Danforth* is sound in that the extension of credit for retail goods or services is an evidence of debt as the term is used in section 85. A small loan company loaning a consumer the exact amount needed to make a retail purchase is analogous to the consumer contracting with a credit card issuer to pay the exact amount for a retail purchase. In both situations, a lender extends credit to a consumer to pay a merchant and then must look to the consumer for repayment of the debt. Whether the transactions are loans or extensions of credit, they are still evidences of debt.

2. State Banks

State chartered banks¹⁰³ fall into two categories: those insured by an agency of the federal government and those that are state insured. State chartered, state insured banks are primarily regulated by state law and, at least as far as the interest rates chargeable on credit card transactions are concerned, federal law is inapplicable.¹⁰⁴ A credit card plan operated by a state chartered, state insured bank in Maryland would be limited to the rates allowed under the RCAL and usury law.¹⁰⁵

101. *Tiffany v. National Bank of Mo.*, 85 U.S. (18 Wall.) 409 (1873); *Commissioner of Small Loans v. First Nat'l Bank*, 268 Md. 305, 300 A.2d 685 (1973); see MD. COM. LAW CODE ANN. § 12-306 (Supp. 1980), as amended by Law of June 1, 1982, ch. 753, 1982 Md. Laws 3863 (to be codified at MD. COM. LAW CODE ANN. § 2-306(a)(6)). See also note 65 *supra*.

102. 394 F. Supp. 774, 783 (W.D. Mo. 1975). See also *Acker v. Provident Nat'l Bank*, 512 F.2d 729 (3d Cir. 1975), where the court held the purchase portion of credit card transactions is not a loan but is still governed by 12 U.S.C. § 85. Therefore a national bank can charge interest at the rates allowed by the Pennsylvania Sales Act.

103. The term "banks" here includes savings and loan associations and credit unions.

104. State chartered, state insured banks are controlled in certain limited areas by federal law: (1) Section 21 of the Banking Act of 1934, 12 U.S.C. § 378 (1976), bars an organization from engaging in both the securities exchange business and the banking business unless specifically chartered or licensed to do so; (2) Section 7 of the Securities Exchange Act of 1934, 15 U.S.C. § 78g(a) (1976), authorizes the Board of Governors of the Federal Reserve System to regulate the amount of credit extended for securities purchases; and (3) The Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-1848 (Supp. III 1979), limits acquisitions of banks by bank holding companies without the approval of the Federal Reserve.

105. MD. COM. LAW CODE ANN. §§ 12-506(a), -103(c) (Supp. 1980) (allow 18% interest on the first \$700.00 and 12% on the excess per year). House Bill 1853 amends this

State chartered, federally insured banks, on the other hand, come under the provisions of DIDA and are able to charge MCLL rates on both the loan and purchase portions of a credit card transaction. The language used by Congress in the DIDA sections governing federally insured state banks¹⁰⁶ is practically identical to that used in section 85¹⁰⁷ delineating the interest rates that may be imposed. Section 521 of DIDA states that its purpose is to prevent discrimination against state chartered, federally insured banks in the regulation of interest rates.¹⁰⁸ The legislative history supports this and compares it to section 85's purpose to create competitive equality between state and federal banks.¹⁰⁹ The main difference between the two is that section 521 of DIDA has a conditional clause which triggers the application of the section only if section 521 would raise the interest rate above that allowed by state law. Section 521 specifies that if the greater of either one percent over the federal discount rate or the rate allowed by state law exceeds the rate that would be allowed if the DIDA pre-emption of state law did not exist, then the federally insured state bank may charge the greater

to allow 24% in the next 3 years. Law of June 1, 1982, ch. 753, 1982 Md. Laws 3863 (to be codified at MD. COM. LAW CODE ANN. § 2-306(a)(6)).

106. *See, e.g.*, § 521, 12 U.S.C. § 1831d (Supp. IV 1980), which uses the following language:

In order to prevent discrimination against State-chartered insured banks, including insured savings banks and insured mutual savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, *take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.*

Id. § 521(a), 12 U.S.C. § 1831d(a) (emphasis added).

107. Section 85 provides:

Any association may *take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidence of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater*

12 U.S.C. § 85 (Supp. IV 1980) (emphasis added).

108. 12 U.S.C. § 1831d (Supp. IV 1980).

109. 126 CONG. REC. S3170 (daily ed. Mar. 27, 1980) (Remarks of Sen. Proxmire, referring to section 521 of DIDA (12 U.S.C. § 1831d (Supp. IV 1980)), expressing the opinion the section "provided parity, or competitive equality, between national . . . and state chartered depository institutions on lending limits"); *see text accompanying note 70 supra.*

of the two rates.¹¹⁰ The judicial interpretation of section 85, which conferred the most favored lender status on national banks, would also confer that status on the federally insured state banks by the use of almost identical language in DIDA.¹¹¹ What section 85 of the National Bank Act does for national banks, DIDA does for federally insured state banks.¹¹²

DIDA's language expressly abrogates any other law or constitutional provision that may attempt to prevent parity between state and federal banks. Nevertheless, it provides the means through which a state can by express legislation or referendum exempt itself from DIDA's control.¹¹³ Maryland Senate Bill 1005 was proposed to effectuate this override. Senate Bill 1005's failure to pass, however, means that the provisions of DIDA will continue to govern the interest on credit card plans issued by federally insured state banks in Maryland. If Maryland's General Assembly had overridden the DIDA sections, Maryland card holders could have avoided higher interest rates on credit cards issued by state chartered, federally insured banks because the state law, with lower interest rates, would then have prevailed.¹¹⁴

B. Out-of-State Banks

Even with an override of DIDA, the Maryland General Assembly may still be powerless to control the interest rates charged by card issuers who are located in or have moved their credit card operations to another state. Such card issuers may, in some situations, still be able to charge Maryland card holders the rate allowed in that state. Presently, the neighboring states of Pennsylvania and Delaware have attracted the attention of a large segment of the banking industry. Both Penn-

110. 12 U.S.C. § 1831d (Supp. IV 1980).

111. 126 CONG. REC. S3170 (daily ed. Mar. 27, 1980) (Remarks of Sen. Proxmire, referring to section 521 of DIDA (12 U.S.C. § 1831d (Supp. IV 1980)), stating that "state chartered depository institutions are given the benefits of 12 U.S.C. § 85"). See also Opinion letter from F. Douglas Birdzell, Gen. Counsel's Office of the Federal Deposit Insurance Corporation (FDIC), to Alan S. Kaplinsky (Jan. 30, 1981), which supports this extension of the most favored lender status to state chartered, federally insured savings and loans by § 522 of DIDA. A similar interpretive letter from the Federal Home Loan Bank Board (FHLBB) granted most favored lender status for credit card transactions. WASH. FIN. REP. (BNA) No. 44, at A-1 (Nov. 10, 1980).

112. The holding in *United Mo. Bank of Kansas City v. Danforth*, 394 F. Supp. 774, 783 (W.D. Mo. 1975), applying most favored lender status of 12 U.S.C. § 85 to the purchase portion of credit card transactions, would also apply to federally insured state banks. This was followed in *Equitable Trust Co. v. Sachs*, A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981).

113. § 525, 12 U.S.C. § 1730g note (Supp. IV 1980).

114. The Attorney General of Maryland opined that competition from state chartered banks, with lower interest rates, would keep the national banks' rates lower also. Report of the Attorney General to the House Economic Matters Committee Concerning the Status of Bank Litigation and Related Legislation at 6 (Feb. 10, 1981) (found in the Md. House of Delegates Economics Matters Committee file on Senate Bill 1005).

sylvania¹¹⁵ and Delaware¹¹⁶ allow the interest on any loan to be charged at five percent over the current Federal Reserve discount rate. In addition, the recent enactment of the Financial Center Development Act¹¹⁷ in Delaware has created a particularly favorable climate for the banking industry. The Act's purpose was to attract bank holding companies from other states and have them locate in Delaware. To accomplish this goal the bill removed any statutory limit on the interest rates of revolving credit accounts (credit cards) by permitting the rate to be determined by the agreement between the card issuer and holder.¹¹⁸ Under this provision a Maryland bank could move its credit card operations to Delaware and charge its Maryland customers Delaware's higher rates.¹¹⁹

1. National Banks

If a national bank is located in another state, it is not subject to the usury laws of Maryland even though it issues credit cards to Maryland residents. The Supreme Court in *Marquette National Bank of Minneapolis v. First Omaha Service Corp.*¹²⁰ ruled that title 12, section 85 of the United States Code clearly allows a national bank to charge interest at the rates set by the laws of the state where it is located, and not by those where the borrower lives.¹²¹ *Marquette* involved a national bank organized in Nebraska that extended credit, via its credit card plan, to Minnesota residents. In determining where the bank was "located," the Court looked beyond the fact that Nebraska was listed as the location on the organization certificate¹²² and considered the fact that the credit approvals were made, cards issued, finance charges assessed, and payments received in Nebraska.¹²³

For a national bank presently located in Maryland to take advan-

115. PA. STAT. ANN. tit. 7, § 318 (Purdon Supp. 1981).

116. DEL. CODE ANN. tit. 6, § 2301 (Supp. 1980).

117. *Id.* tit. 5, §§ 801-826 (Interim Supp. 1981).

118. *Id.* § 943.

119. This would be limited to the larger banks as the Act requires \$10 million in capital stock to begin and \$25 million by the end of the first year, the employment of at least 100 people within the first year, and the banks may not operate to the detriment of Delaware banks. *Id.* § 803(b)-(d). See also Swayze, Small & Spivack, *New Delaware Act Designed to Accommodate Modern Banking and Financial Needs*, BUS. L. MEMO, May 1981, at 5, for a short summary of the entire Act.

120. 439 U.S. 299 (1978).

121. *Id.* at 308. Two federal courts of appeals have extended this holding to allow a national bank located in one state to charge the interest allowed in the customer's state if it is higher. *Fisher v. First Nat'l Bank of Chicago*, 548 F.2d 255, 258 (8th Cir. 1977); *Fisher v. First Nat'l Bank of Chicago*, 538 F.2d 1284, 1291 (7th Cir. 1976), cert. denied, 429 U.S. 1062 (1977).

122. 439 U.S. 299, 310 (1978). Every nationally chartered bank must file an organization certificate with the Comptroller of the Currency that, among other things, requires the bank to state where its operations are carried on. 12 U.S.C. § 22 (1976).

123. 439 U.S. 299, 311-12 (1978).

tage of Delaware's law, it will have to locate there, as suggested in *Marquette*. Because interstate branches are not authorized by the National Bank Act,¹²⁴ a national bank could not locate in another state by establishing a branch there. A national bank in Maryland may, however, charter a separate bank in Delaware and then affiliate with it through a bank holding company.¹²⁵ The national bank must also comply with the restrictions of the Delaware Financial Center Development Act¹²⁶ and gain the approval of Delaware's Bank Commissioner.¹²⁷

2. State Banks

A federally insured bank chartered in Maryland may have an affiliate in Delaware and could charge the Delaware rates following the *Marquette* decision.¹²⁸ In order for a bank to affiliate in Delaware, it would first have to appear before Maryland's Banking Board¹²⁹ which would in turn make a recommendation to the Bank Commissioner¹³⁰ regarding whether such affiliation is appropriate in light of the interests of the general public, the bank's depositors, and the bank's shareholders.¹³¹ Because of the newness of this provision, it remains unclear how

124. 12 U.S.C. § 36(c) (1976).

125. *Id.* § 1842(d); DEL. CODE ANN. tit. 5, §§ 801-826, 901-974 (Interim Supp. 1981). If a national bank with its principal banking operations in Maryland is owned by a bank holding company, all that must occur is the chartering of a Delaware bank by the bank holding company and it is then affiliated with the bank in Maryland. If the national bank is not under the umbrella of a bank holding company, then such a company must first be formed in conformance with the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1842-1843 (Supp. IV 1980). Only foreign bank holding companies are prohibited in Maryland. MD. FIN. INST. CODE ANN. § 12-204 (1980); Interview with E. Trial Mathias, Vice President of First National Bank of Maryland, in Baltimore (Sept. 22, 1981). In Maryland a bank holding company is defined as a corporation that owns of record or beneficially 25% or more of the outstanding voting shares of a state or national bank that has its principal banking office in Maryland. MD. FIN. INST. CODE ANN. § 12-201(c) (Supp. 1981).

126. DEL. CODE ANN. tit. 5, § 803 (Interim Supp. 1981). See note 119 *supra* for the minimum it would cost for a bank to affiliate in Delaware. This does not include such costs as rental or purchase of a building and equipment or relocation of personnel.

127. DEL. CODE ANN. tit. 5, § 804 (Interim Supp. 1981).

128. 439 U.S. 299 (1978); see Letter from H. Robert Erwin, Jr., Chief, Consumer Protection Division, Attorney General of Maryland to Sen. Harry McGuirk, Chairman, Economic Affairs Committee, Maryland Senate (Jan. 30, 1981).

129. MD. FIN. INST. CODE ANN. §§ 2-201 to -203 (Supp. 1981). The Banking Board advises the Bank Commissioner on matters concerning the business of banking in Maryland, including applications of banking institutions to expand.

130. *Id.* § 2-302(a), (b)(1).

131. *Id.* § 2-302(b)(2). A bank has the burden of proving the need for the change as the generally accepted rule in administrative law is that the burden of proof is on the party appearing before an agency to establish its claim, obtain a license, or obtain an increase in rates. 1 F. COOPER, STATE ADMINISTRATIVE LAW 355-56 (1965). See also *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231, 156 A.2d 657, 662 (1959) (burden of proof on party asserting the affirmative of an issue before a state agency), *appeal dismissed*, 363 U.S. 419 (1960).

the Banking Board will apply this test.¹³²

To avoid the process of having to gain the Maryland Banking Board's approval, a state chartered bank has the alternative of converting to a national bank. This is accomplished by complying with the requirements of the National Bank Act and gaining the permission of the Comptroller of the Currency.¹³³ If a Maryland state bank does convert to a nationally chartered bank, it may take advantage of Delaware's interest rates as outlined above.¹³⁴

If a state bank successfully affiliates in Delaware and locates its credit card operations there, it will be able to charge its Maryland card holders the interest allowed in Delaware. Senate Bill 1006 was an attempt to provide Maryland consumers with some relief from this situation. Specifically, Senate Bill 1006 would have created a choice of law provision whereby non-Maryland grantors of consumer credit could only charge interest at the rate allowed in Maryland.¹³⁵ However, while the bill would have applied to out-of-state mail order houses and retail stores, it would not have affected credit card issuers that are located in Delaware. Therefore, it would not have affected state chartered, federally insured banks, which because of DIDA have the same most favored lender status as national banks, that are located outside of Maryland. Thus these banks could have continued to charge the higher, out-of-state rates.¹³⁶

VII. CONCLUSION

The balance between the needs of the bank card issuer and those of the card holder in Maryland is weighed heavily in the issuer's favor. Other than prohibiting membership fees, Maryland's General Assembly has done little to expand its control over the credit card industry.¹³⁷

132. Under the prior law a bank had to gain the approval of the Bank Regulation Board. This meant a state bank had to convince the Bank Regulation Board that the affiliation was reasonably necessary to protect the welfare and general economy of Maryland in addition to the bank's well being. MD. FIN. INST. CODE ANN. § 5-403(c)(i) (1980) (repealed by Law of May 19, 1981, ch. 753, 1981 Md. Laws 2809). Additionally, the affiliation could not be detrimental to the public interest. *Id.* § 5-403(c)(ii). The Bank Regulation Board has been merged with the Banking Board and the power of the new Banking Board is advisory only. *Id.* § 2-203(a).

133. 12 U.S.C. § 35 (1976) (requires the approval of the Board of Directors and 51% of the shareholders, an application, a fee of \$2500 to the Comptroller of the Currency, and notice to Maryland's Bank Commissioner of intent to convert).

134. See text accompanying notes 124-27 *supra*.

135. S. 1006, Md. Gen. Assembly, 1981 Sess., lines 144-45. The bill was modeled after a Pennsylvania statute, PA. STAT. ANN. tit. 69, § 1103 (Purdon Supp. 1980), held constitutional in *Aldens v. Packell*, 524 F.2d 38 (3d Cir. 1975), *cert. denied*, 425 U.S. 943 (1976).

136. See text accompanying note 128 *supra*.

137. During the 1981 session of the General Assembly, Attorney General Sachs supported the legislation that would have increased Maryland's control of credit card interest rates. However, in January of 1982 he dropped his opposition to the de-regulation of interest rates. Sachs felt Maryland was powerless to stop the

The General Assembly's inaction coupled with the recent Delaware legislation and the application of the most favored lender doctrine to both national banks and federally insured state banks means that the Maryland credit card holder can be subjected to much higher interest rates than the Maryland Code provisions allow. An override of DIDA would return at least some control of the interest rates to Maryland by denying the most favored lender status to state chartered, federally insured banks. Nevertheless, the option of a bank to change its charter and/or to relocate in Delaware would still be open to some banks.

If the deregulation emphasized by DIDA is where the future of the banking industry lies, then Maryland is behind the times in attempting to maintain or tighten its regulatory powers. If regulation is the better alternative, then it is essential for Maryland to override DIDA and retain some control of credit card interest rates.

Hans Froelicher, IV

ADDENDUM

Since the initial printing of this article, *Equitable Trust Co. v. Sachs*¹³⁸ has been affirmed in part, reversed in part, and vacated in part by the Court of Appeals of Maryland.¹³⁹ In reversing the trial court in part, the court of appeals held that credit card issuers cannot apply the interest rates allowed by the MCLL to purchase transactions. The court rejected the theory that the purchase transaction portion of a credit card plan is the same class of loan as MCLL loans under the most favored lender doctrine. The court reasoned that Congress' intent in creating the doctrine was not to obliterate the state's system of classifying the loans. The court of appeals did not follow the trial court's holding that the language "evidences of debt" in 12 U.S.C. § 85 included the purchase transactions. The court instead applied a two-step analysis to determine the applicable interest rate. First, it determined what interest the state allowed for this type of transaction, and then it looked to see if another statute governed the same type of transaction but allowed a different type of lender to charge a higher rate. In applying this analysis, the court found, in step one, that the RCAL establishes the interest rate for the purchase portion of a credit card transaction and, in step two, that the MCLL does not include the same type of transaction. Therefore, the court did not look any further to determine if another lender may charge a higher rate.

As a result of this decision, Maryland credit card issuers may

financial "revolution" started by DIDA. Sachs said, "The financial world is bigger than Maryland, and I'm now convinced that it's shortsighted and indeed counterproductive to fight it." *Washington Post*, Jan. 15, 1982, at B1, col. 2 (quoting Stephen H. Sachs, Attorney General of the State of Maryland). Additionally he is proposing criminal sanctions for unconscionable interest rates and requiring disclosure of rate increases. *Id.*

138. A60063/120-A/Folio 713 (Balt. City Cir. Ct. Md. Jan. 28, 1981).

139. *Attorney General v. Equitable Trust Co.*, No. 128 (Ct. App. Md. Oct. 6, 1982).

charge interest on the purchase portion of a credit card transaction only as allowed in the RCAL. This does not apply to those credit card issuers who have moved their operations to Delaware and are regulated by Delaware law.¹⁴⁰

140. The remainder of the decision concerns the issue of what provisions of the MCLL must be complied with when credit card issuers charge MCLL interest rates on cash advances and is not within the scope of this article.