

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 38

Session of
2007

INTRODUCED BY THOMAS, KULA, COHEN, CALTAGIRONE, BLACKWELL AND
JAMES, JANUARY 30, 2007

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 30, 2007

AN ACT

1 Amending the act of December 22, 1989 (P.L.687, No.90), entitled
2 "An act providing for the regulation and licensing of
3 mortgage bankers and mortgage brokers; imposing additional
4 powers and duties on the Department of Banking and the State
5 Real Estate Commission; and providing penalties," further
6 providing for licensee limitations, for legislative findings,
7 for limitations on covered loan terms and practices and for
8 civil liability; and repealing provisions relating to
9 restricted acts and practices.

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

12 Section 1. Section 309(a)(5) of the act of December 22, 1989
13 (P.L.687, No.90), known as the Mortgage Bankers and Brokers and
14 Consumer Equity Protection Act, amended June 25, 2001 (P.L.621,
15 No.55), is amended and subsection (a) is amended by adding
16 paragraphs to read:

17 Section 309. Licensee limitations.

18 (a) Prohibitions.--A licensee shall not:

19 * * *

20 (5) In the case of a mortgage broker or limited mortgage
21 broker, commit to close or close mortgage loans in its own

1 name, service mortgage loans, enter into lock-in agreements
2 or collect lock-in fees, provided, however, that a mortgage
3 broker or limited mortgage broker can provide a lender's
4 lock-in agreement to a borrower on behalf of that lender and
5 collect lock-in fees on the lender's behalf payable to that
6 lender[.]; nor shall a mortgage broker or limited mortgage
7 broker engage in any practice, utilize any business name or
8 make any representation that is likely to give the impression
9 to a consumer of average sophistication that the broker is a
10 lender.

11 (6) Contract for or receive any fee from a consumer on
12 whose behalf the licensee negotiated or placed a mortgage
13 loan without, prior to applying for any such loan, having a
14 written contract with the consumer that explains to the
15 consumer the nature and scope of the services to be provided,
16 including the terms of the loan being sought and a statement
17 that the licensee is representing the consumer and will be
18 seeking a suitable loan that meets the consumer's needs and
19 interests.

20 (7) Contract for or receive any fee, premium, commission
21 or other compensation from a lender where such compensation
22 is tied to an increase in the rate being charged to a
23 consumer on whose behalf the licensee negotiated or placed
24 the mortgage loan, unless the amount of such compensation and
25 the amount of the rate were disclosed in writing in advance
26 of any loan closing and the licensee does not receive any
27 separate fee, either in cash or out of the loan proceeds,
28 from the consumer, provided that a broker shall not contract
29 for or receive any such fee, premium, commission or other
30 compensation unless the broker offers the consumer the option

1 of paying all fees in cash or out of the loan proceeds in
2 order to obtain the lower rate.

3 * * *

4 Section 2. Sections 502 and 511 of the act, added June 25,
5 2001 (P.L.621, No.55), are amended to read:

6 Section 502. Legislative findings.

7 The General Assembly finds and declares as follows:

8 (1) All citizens are entitled to fair access to credit
9 and the ability to share in the American dream of
10 homeownership, including those whose financial or other
11 personal circumstances make them vulnerable to predatory
12 lenders who could take advantage of them by making or
13 arranging high-cost loans that borrowers may not be able to
14 repay and by refinancing mortgage loans with added fees that
15 result in the borrower's equity being stripped.

16 (2) The subprime lending market provides loans to many
17 borrowers who have impaired credit, and this lending market
18 performs a significant service to citizens of this
19 Commonwealth, particularly those in distressed urban areas.
20 However, this market has also given rise to abusive practices
21 that have targeted and exploited vulnerable consumers and
22 neighborhoods with damaging forms of mortgage-secured credit.

23 (3) Legislation affecting the subprime market should not
24 be overly broad and should restrict only those relatively few
25 lenders who are purposefully engaged in patterns and
26 practices of unfair treatment to vulnerable consumers
27 commonly referred to as predatory lending. However, this act
28 shall be liberally construed to effectuate its purpose of
29 protecting the homes and equity of Pennsylvania borrowers
30 from those lenders that are engaged in abusive, predatory and

1 unfair treatment.

2 (4) [The legitimate conventional and subprime markets
3 should not be subject to the same restrictions, prohibitions,
4 remedies and penalties as the high-cost loans which meet
5 thresholds that distinguish them from loans in other
6 markets.] For most individuals, their home is their most
7 important asset. It is critical, therefore, that consumers be
8 protected from unfair or abusive lending practices that put
9 this asset at risk. This risk is even greater in the case of
10 high-cost mortgage lending.

11 Section 511. Limitations on covered loan terms and practices.

12 [(a) Limitation of balloon payment.--No covered loan may
13 contract for a scheduled payment that is more than twice as
14 large as the average of earlier scheduled monthly payments
15 unless such balloon payment becomes due and payable not less
16 than 120 months after the date of the loan. This prohibition
17 does not apply when the payment scheduled is adjusted to account
18 for the seasonal or irregular income of the obligor or if the
19 purpose of the loan is a bridge loan connected with or related
20 to the acquisition or construction of a dwelling intended to
21 become the obligor's principal dwelling.

22 (b) No call provision.--No covered loan may contain a call
23 provision that permits the lender in its sole discretion to
24 accelerate the indebtedness. This prohibition does not apply
25 when repayment of the loan has been accelerated:

26 (1) by default;

27 (2) pursuant to a due-on-sale provision;

28 (3) where there is fraud or material misrepresentation
29 by an obligor in connection with the loan; or

30 (4) where there is any action or inaction by the obligor

1 that adversely affects the lender's security for the loan or
2 any rights of the lender in such security.

3 (c) No negative amortization.--Except for loans to obligors
4 with gross income in excess of 150% of median family income, no
5 covered loan may contract for a payment schedule with regular
6 periodic payments that cause the principal balance to increase.
7 This subsection shall not prohibit negative amortization as a
8 consequence of a temporary forbearance or restructure consented
9 to by the obligor.

10 (d) No increased interest rate upon default.--No covered
11 loan may contract for any increase in the interest rate as a
12 result of a default. This provision shall not apply to periodic
13 interest rate changes in a variable rate loan otherwise
14 consistent with the provisions of the loan agreement provided
15 the change in the interest rate is not occasioned by the event
16 of default or permissible acceleration of the indebtedness.

17 (e) No advance payments.--No covered loan may include terms
18 under which any periodic payments required under the loan are
19 paid in advance from the loan proceeds.

20 (f) Limitations on prepayment fees.--The following
21 limitation on prepayment fees shall be observed:

22 (1) A prepayment fee or penalty shall be permitted only
23 during the first 60 months after the date of execution of a
24 covered loan.

25 (2) A lender shall not include a prepayment fee in a
26 covered loan unless it also makes available a loan product
27 without a prepayment fee.

28 (3) No prepayment fee or penalty may be charged on a
29 refinancing of a covered loan with a covered loan if the
30 covered loan being refinanced is owned by the refinancing

lender at the time of such refinancing.]

In addition to the limitations imposed under the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law (Usury Law), covered loans shall be subject to the following limitations:

(1) No covered loan shall contain any term or be the product of any practice that violates section 129 of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1639), or the regulations adopted pursuant thereto by the Federal Reserve Board.

(2) No covered loan may contract for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments. This prohibition does not apply when the payment scheduled is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(3) No covered loan may contract for a payment schedule with regular periodic payments that has the effect of causing the principal balance to increase. This prohibition shall not prohibit negative amortization as a result of a temporary forbearance or restructure consented to by the obligor.

(4) No covered loan may refinance an existing residential mortgage that has a lower rate, unless a nonprofit housing counseling agency, certified by either the United States Department of Housing and Urban Development or the Pennsylvania Housing Finance Agency, reviews the proposed refinancing, provides counseling to the residential mortgage debtor and independently determines that the proposed

1 transaction provides a reasonable, tangible net benefit to
2 the residential mortgage debtor.

3 Section 3. Section 512 of the act, added June 25, 2001
4 (P.L.621, No.55), is repealed:

5 [Section 512. Restricted acts and practices.

6 (a) No lending without cautionary notice.--A lender may not
7 make a covered loan unless the lender or a mortgage broker has
8 given the following notice, or substantially similar notice, in
9 writing to the obligor not later than the time the notice is
10 required under the notice provision contained in 12 CFR
11 226.31(c) (relating to general rules) as amended from time to
12 time:

13 NOTICE TO BORROWER

14 If you obtain this loan, the lender will have a mortgage
15 on your home. You could lose your home and any money you
16 put into it if you do not meet your obligations under the
17 loan.

18 Mortgage loan rates and closing costs and fees vary based
19 on many factors, including your particular credit and
20 financial circumstances, your employment history, the
21 loan-to-value requested and the type of property that
22 will secure your loan. The loan rate and fees could also
23 vary based on which lender or broker you select. As an
24 obligor, you should shop around and compare loan rates
25 and fees.

26 You should also consider consulting a qualified
27 independent credit counselor or other experienced
28 financial advisor regarding the rate, fees and provisions
29 of this mortgage loan before you proceed. A list of
30 qualified counselors is available by contacting the

Pennsylvania Housing Finance Agency.

You are not required to complete this loan agreement merely because you have received these disclosures or have signed a loan application.

Remember, property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Also, your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

Provision of a consumer information pamphlet or other publication prepared by the Office of Consumer Protection of the Office of Attorney General regarding covered loans shall be deemed to constitute a substantially similar notice.

(b) No lending without due regard to repayment ability.--A lender shall not engage in a pattern or practice of making covered loans based on the consumer's collateral without regard to the consumer's repayment ability, including, but not limited to, the consumer's current and expected income, current obligations as disclosed to the lender by the loan application and the consumer's credit report, employment status and other financial resources other than the obligor's equity in the dwelling which secures repayment of the loan. An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's scheduled monthly payments as disclosed to the lender by the loan application and the consumer's credit report do not exceed 50% of the obligor's monthly gross income. For purposes of determining median income, the income of all obligors shall

1 be considered. The requirements of this subsection shall apply
2 only to obligors whose income, as reported on the loan
3 application, is no greater than 120% of the median family
4 income. No presumption shall arise that an obligor is not able
5 to make the scheduled payments if the obligor's scheduled
6 monthly payments exceed 50% of the obligor's monthly gross
7 income as determined pursuant to this subsection.

8 (c) Refinancing of existing covered loan with a new covered
9 loan.--A lender may not charge any points in connection with a
10 covered loan if the proceeds of the covered loan are used to
11 refinance an existing covered loan held by the lender and the
12 last financing was within one year of the current refinancing;
13 provided, however, this provision shall not prohibit a lender
14 from charging points in connection with any additional proceeds
15 paid to or for the account of the obligor, other than charges or
16 costs attributable to the covered loan, in connection with the
17 refinancing. For purposes of this subsection, additional
18 proceeds shall be defined as the amount over and above the
19 current principal balance of the existing covered loan;
20 provided, however, in the event the lender refunds all the
21 points on the covered loan being refinanced, the additional
22 proceeds shall be the principal balance of the new covered loan.

23 (d) No refinancing of certain low-rate loans.--A lender
24 shall not replace or consolidate a zero interest rate or low-
25 rate loan made by a governmental or nonprofit lender with a
26 covered loan within the first ten years of the zero interest or
27 low-rate loan unless the current holder of the loan consents in
28 writing to the financing. For purposes of this subsection, a
29 low-rate loan shall be defined as a loan that carries a current
30 interest rate two percentage points or more below the current

1 yield on United States Treasury securities with a comparable
2 maturity.

3 (e) Restrictions on covered loan proceeds to pay home
4 improvement contracts.--A lender shall not pay a contractor
5 under a home improvement contract from the proceeds of a covered
6 loan other than by an instrument payable to the obligor or
7 jointly to the obligor and the contractor or, at the election of
8 the obligor, through a third-party escrow agent in accordance
9 with terms established in a written agreement signed by the
10 obligor, the lender and the contractor prior to the disbursement
11 of funds to the contractor.

12 (f) Restrictions on single premium credit insurance.--A
13 lender shall not sell any individual or group credit life,
14 accident and health or unemployment insurance product on a
15 prepaid single premium basis in conjunction with a covered loan
16 unless the following conditions are met:

17 (1) After the expiration of 18 months from the date of
18 enactment of this chapter and for an additional six-month
19 period that may be necessary in order to secure any necessary
20 approvals for a monthly premium credit insurance product by
21 the Insurance Department, if a lender offers any individual
22 or group credit life, accident and health and unemployment
23 insurance products purchased on a prepaid single premium
24 basis in conjunction with a covered loan, the lender shall
25 offer the obligor the option of purchasing all such insurance
26 on a monthly premium basis.

27 (2) A lender shall not sell credit life, accident and
28 health or unemployment insurance products in conjunction with
29 a covered loan other than where the insurance premiums are
30 calculated, earned and paid on a monthly or other regular

1 periodic basis without providing a separate disclosure with a
2 copy acknowledged by the insured no later than the time of
3 closing in a form substantially similar to the following:

4 INSURANCE NOTICE TO BORROWER(S)

5 You have elected to purchase credit life, accident and
6 health and/or unemployment insurance in conjunction with
7 this mortgage loan. The cost of this insurance is being
8 prepaid and financed at the interest rate provided for in
9 the loan.

10 This insurance is NOT required as a condition of closing
11 this loan and has been included with the loan at your
12 request.

13 At any time you have the right to cancel any or all such
14 policies purchased in conjunction with this loan. You may
15 cancel your policy or policies by signing and returning a
16 copy of this notice to your lender or you may contact
17 your lender directly.

18 If you cancel your insurance within 30 days of the date
19 of your loan, then you will receive either a full refund
20 or a credit against your loan account. If you cancel your
21 insurance at any other time, you will receive either a
22 refund or credit against your loan account of any
23 unearned premium.

24 YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO
25 RECEIVE A FULL REFUND.

26 CREDIT INSURANCE CANCELLATION

27 I (we) request that the lender cancel the _____
28 insurance that I (we) purchased in conjunction with my (our)
29 mortgage loan dated _____.

30 _____Date

1 _____Borrower

2 ACKNOWLEDGMENT OF RECEIPT

3 I (we) acknowledge receipt of the above notice.

4 _____Date

5 _____Borrower

6 (3) If an obligor elects to cancel, within 30 days of
7 the date of the covered loan, any individual or group credit
8 life, accident and health or unemployment insurance product
9 purchased on prepaid single premium basis in conjunction with
10 a covered loan, the lender or the insurance company who sold
11 the insurance or the insurance company providing the product
12 shall give the obligor either a full premium refund or a full
13 premium credit against the unpaid loan balance. If the
14 obligor elects to cancel any individual or group credit
15 insurance purchased in conjunction with a covered loan at any
16 other time, the refund or credit shall be computed as
17 provided or permitted by State law. The lender or insurance
18 company shall decide whether the return of premium shall be
19 by means of credit to the account or by refund to the
20 obligor.

21 This subsection shall not apply to credit life, accident, health
22 and unemployment insurance sold by the lender for which the
23 obligor chooses the primary beneficiary.]

24 Section 4. Section 522 of the act, added June 25, 2001
25 (P.L.621, No.55), is amended to read:

26 Section 522. Civil liability.

27 [(a) Damages for material violations.--If a lender
28 purposefully engages in a pattern or practice of material
29 violations of this chapter, an obligor on a covered loan may
30 initiate a civil action to recover damages.

1 (b) Exclusive remedies.--The remedies provided in this
2 subchapter shall be the sole and exclusive remedies for any
3 violation of any provision of this chapter. Persons engaged in
4 the purchase, sale, assignment, securitization or servicing of
5 covered loans shall not be held liable for the action or
6 inactions of persons originating such loans.]

7 (a) Unfair trade practices.--A lender who violates any
8 provision of this chapter, a person who arranges a loan that
9 violates any provision of this chapter and any other person who
10 participates in a violation of this chapter shall be deemed to
11 have violated the act of December 17, 1968 (P.L.1224, No.387),
12 known as the Unfair Trade Practices and Consumer Protection Law.

13 (b) Additional remedy.--In addition to any other remedies
14 available under the law, a person who becomes obligated on a
15 covered loan that was made in violation of any provision of this
16 act may bring an action for rescission of the loan in a court of
17 competent jurisdiction against the current holder of the loan,
18 together with reasonable attorney fees and costs.

19 (c) Liability for punitive damages in case of pattern and
20 practice of violations.--A person who purposefully engages in a
21 pattern or practice that violates this chapter shall, in
22 addition to any other remedies provided under this or any other
23 applicable law, be liable for punitive damages as determined by
24 a court of competent jurisdiction.

25 (d) Borrower defenses to foreclosure.--In any action brought
26 to enforce a covered loan obligation, including mortgage
27 foreclosure, a borrower may assert, by way of recoupment, claims
28 under this section against any holder of the covered loan
29 obligation.

30 Section 5. This act shall take effect immediately.