

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1080 Session of
2007

INTRODUCED BY THOMAS, DALEY, BELFANTI, BRENNAN, BUXTON, CARROLL,
CLYMER, COHEN, D. EVANS, GEORGE, HERSHEY, JOSEPHS, KIRKLAND,
LEACH, MCGEEHAN, MYERS, SCAVELLO, SIPTROTH, WALKO, SOLOBAY,
PARKER AND CONKLIN, APRIL 18, 2007

REFERRED TO COMMITTEE ON COMMERCE, APRIL 18, 2007

AN ACT

1 Amending the act of December 12, 1980 (P.L.1179, No.219),
2 entitled "An act to define and regulate secondary mortgage
3 loans and providing penalties," further providing for
4 definitions, for license requirements and exemptions, for
5 application for license, for annual license fee, for issuance
6 of license, for license duration, for transfer of license,
7 for powers conferred on licensees, for licensee requirements,
8 for licensee limitations, for prepayment, for open-end loans,
9 for authority of Secretary of Banking, for surrender of
10 license, for suspension, for scope of act, for foreclosure,
11 for penalties, for preservation of existing powers and for
12 exclusions from act.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. The definitions of "broker's agent," "open-end
16 loan," "person," "secondary mortgage loan broker" and
17 "sponsoring broker" in section 2 of the act of December 12, 1980
18 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act,
19 added July 7, 1989 (P.L.222, No.36) and June 26, 1995 (P.L.73,
20 No.15), are amended and the section is amended by adding
21 definitions to read:

22 Section 2. Definitions.

1 The following words and phrases when used in this act shall
2 have, unless the context clearly indicates otherwise, the
3 meanings given to them in this section:

4 * * *

5 "Applicant." A person who applies for a license under this
6 act.

7 * * *

8 "Branch." An office or other place of business located in
9 this Commonwealth or any other state, other than the principal
10 place of business, where a person engages in the secondary
11 mortgage loan business which falls under the scope of this act.

12 ["Broker's agent." A category of secondary mortgage loan
13 broker's license that is issued to individuals who broker
14 secondary mortgage loans exclusively to one licensed secondary
15 mortgage loan broker, designated as a sponsoring broker, and who
16 are not employees of such sponsoring broker.]

17 "Consumer discount company." A licensee under the act of
18 April 8, 1937 (P.L.262, No.66), known as the "Consumer Discount
19 Company Act."

20 "Department." The Department of Banking of the Commonwealth.

21 * * *

22 "Mortgage originator." An individual not licensed as a
23 secondary mortgage lender or secondary mortgage loan broker
24 under this act who solicits, accepts or offers to accept
25 secondary mortgage loan applications, or negotiates secondary
26 mortgage loan terms, in other than a clerical or ministerial
27 capacity. The term does not include directors, partners or
28 ultimate equitable owners of 10% or more of a licensee.

29 "Open-end loan." A secondary mortgage loan made by a
30 secondary mortgage lender licensee under this act pursuant to an

1 agreement between the licensee and the borrower whereby:

2 (1) the licensee may permit the borrower to obtain
3 advances of money from the licensee from time to time or the
4 licensee may advance money on behalf of the borrower from
5 time to time as directed by the borrower;

6 (2) the amount of each advance, interest and permitted
7 charges and costs are debited to the borrower's account and
8 payments and other credits are credited to the same account;

9 (3) interest is computed on the unpaid principal balance
10 or balances of the account outstanding from time to time;

11 (4) the borrower has the privilege of paying the account
12 in full at any time without prepayment penalty or, if the
13 account is not in default, in monthly installments of fixed
14 or determinable amounts as provided in the agreement; and

15 (5) the agreement expressly states that it covers open-
16 end loans pursuant to this act.

17 "Person." An individual, association, joint venture or joint
18 stock company, partnership, limited partnership, limited
19 partnership association, limited liability company, a business
20 corporation, nonprofit corporation, or any other group of
21 individuals however organized.

22 "Primary market." The market wherein secondary mortgage
23 loans are originated between a lender and a borrower.

24 "Principal place of business." The primary office of the
25 licensee located in this Commonwealth which is staffed on a
26 full-time basis and at which books, records, accounts and
27 documents are to be maintained.

28 "Secondary mortgage lender." A person who directly or
29 indirectly originates and closes secondary mortgage loans with
30 its own funds in the primary market for consideration.

1 "Secondary mortgage loan broker." [A person who in the
2 ordinary course of business, for a fee, directly or indirectly
3 negotiates or arranges for others a secondary mortgage loan.] A
4 person who directly or indirectly negotiates or places secondary
5 mortgage loans for others in the primary market for
6 consideration.

7 * * *

8 "Secondary mortgage loan business." A person is deemed to be
9 engaged in the secondary mortgage loan business in this
10 Commonwealth if:

11 (1) the person advertises, causes to be advertised,
12 solicits, negotiates or arranges in the ordinary course of
13 business, offers to make or makes more than two secondary
14 mortgage loans in a calendar year in this Commonwealth,
15 whether directly or by any person acting for his benefit, but
16 this provision shall not prohibit advertising or solicitation
17 by a licensee under a general corporate name, logo or
18 trademark; or

19 (2) the person in the ordinary course of business
20 becomes the subsequent holder of more than two promissory
21 notes or mortgages, indentures or any other similar
22 instruments or documents received in a calendar year in
23 connection with a secondary mortgage loan; provided, however,
24 that a person will not be deemed to be engaged in the
25 secondary mortgage loan business if such person becomes the
26 subsequent holder of two or more promissory notes or
27 mortgages, indentures or any other similar instruments or
28 documents received in a calendar year in connection with a
29 secondary mortgage loan solely as an investment and such
30 person is not otherwise in the business of making or

1 servicing such loans.

2 * * *

3 "Service a mortgage loan." The collection or remittance of
4 payments for another or the right to collect or remit payments
5 for another of principal, interest, taxes, insurance and any
6 other payments pursuant to a secondary mortgage loan.

7 ["Sponsoring broker." A licensed secondary mortgage loan
8 broker who negotiates or arranges secondary mortgage loans on
9 behalf of a broker's agent and provides indemnification of such
10 broker's agent in order to protect borrowers from monetary
11 damages which may be a result of doing business with a broker's
12 agent.]

13 Section 2. Section 3 of the act, amended July 7, 1989
14 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
15 to read:

16 Section 3. License requirements and exemptions.

17 [(a) (1) No person shall engage in the business of making
18 secondary mortgage loans in this Commonwealth except a
19 business corporation organized under the laws of this
20 Commonwealth or any other state, after first obtaining a
21 license from the secretary in accordance with the provisions
22 of this act.

23 (2) No person shall engage in the business of being a
24 secondary mortgage loan broker until after first obtaining a
25 license from the secretary in accordance with the provisions
26 of this act.

27 (3) A State-chartered or National bank, bank and trust
28 company, savings bank, private bank, savings association or
29 savings and loan association, having its principal place of
30 business in this Commonwealth, or an individual making loans

1 to family members, shall not be required to be licensed under
2 this act in order to make loans secured by real property
3 under this act.

4 (4) Any agency or instrumentality of the United States
5 Government or a corporation otherwise created by an act of
6 the United States Congress which engages in the business of
7 purchasing secondary mortgage loans shall not be required to
8 be licensed under this act in order to purchase secondary
9 mortgage loans from licensees under this act. This shall
10 include but not be limited to the Federal National Mortgage
11 Association and the Federal Home Loan Mortgage Corporation.

12 (5) For the purpose of this act, a person is deemed to
13 be engaged in the secondary mortgage loan business in the
14 Commonwealth if:

15 (i) such person advertises, causes to be advertised,
16 solicits, negotiates or arranges in the ordinary course
17 of business, offers to make or makes more than two
18 secondary mortgage loans in a calendar year in this
19 Commonwealth, whether directly or by any person acting
20 for his benefit, but this provision shall not prohibit
21 advertising or solicitation by a licensee under a general
22 corporate name, logo or trade mark; or

23 (ii) such person in the ordinary course of business
24 becomes the subsequent holder of more than two promissory
25 notes or mortgages, indentures or any other similar
26 instruments or documents received in a calendar year in
27 connection with a secondary mortgage loan, provided,
28 however, that a person will not be deemed to be engaged
29 in the secondary mortgage loan business if such person
30 becomes the subsequent holder of two or more promissory

1 notes or mortgages, indentures or any other similar
2 instruments or documents received in a calendar year in
3 connection with a secondary mortgage loan solely as an
4 investment and such person is not otherwise in the
5 business of making or servicing such loans.

6 (b) A real estate broker licensed pursuant to the provisions
7 of the law of this Commonwealth or an attorney authorized to
8 practice law in this Commonwealth shall not be required to
9 obtain a license to arrange a secondary mortgage loan in the
10 normal course of the business of a real estate broker or
11 attorney.

12 (c) A secondary mortgage loan broker who can demonstrate to
13 the satisfaction of the secretary that he does not accept
14 advance fees shall be exempt from the capital requirement of
15 section 4(b).

16 (d) A person who is deemed to be engaged in the secondary
17 mortgage loan business solely because he negotiates or arranges
18 secondary mortgage loans for others need not obtain a secondary
19 mortgage loan license but shall be required to be licensed as a
20 secondary mortgage loan broker.

21 (e) A secondary mortgage loan broker who is an individual
22 exempt from the capital requirement of section 4(b) and who can
23 also demonstrate to the satisfaction of the secretary that he
24 solicits secondary mortgage loan applications exclusively for
25 one secondary mortgage loan broker may apply for a broker's
26 agent license subject to the requirements in section 4(d).]

27 (a) On and after the effective date of this section, no
28 person shall engage in the secondary mortgage loan business in
29 this Commonwealth without a license as provided for in this act.
30 A mortgage originator may not engage in the secondary mortgage

1 loan business unless the mortgage originator is employed and
2 supervised by a licensed secondary mortgage lender or secondary
3 mortgage loan broker.

4 (b) (1) A secondary mortgage lender may act as a secondary
5 mortgage loan broker without a separate secondary mortgage
6 loan broker license and, if licensed as an individual, may
7 perform the services of a mortgage originator without a
8 separate mortgage originator license.

9 (2) A person licensed as a secondary mortgage loan
10 broker may only perform the services of a secondary mortgage
11 loan broker. If a secondary mortgage loan broker is licensed
12 as an individual, a secondary mortgage loan broker may
13 perform the services of a mortgage originator without a
14 separate mortgage originator license.

15 (c) The following persons shall not be required to be
16 licensed under this act in order to conduct the secondary
17 mortgage loan business but shall be subject to the provisions of
18 this act as specifically provided in this section:

19 (1) A State-chartered bank, bank and trust company,
20 savings bank, private bank or national bank, a State or
21 federally chartered savings and loan association, a federally
22 chartered savings bank or a State or Federal chartered credit
23 union.

24 (2) An attorney authorized to practice law in this
25 Commonwealth, who acts as a secondary mortgage loan broker in
26 negotiating or placing a mortgage loan in the normal course
27 of legal practice.

28 (3) A person who either originates or negotiates fewer
29 than three secondary mortgage loans in a calendar year in
30 this Commonwealth unless he is otherwise deemed to be engaged

1 in the secondary mortgage loan business.

2 (4) An agency or instrumentality of the Federal
3 Government or a corporation otherwise created by an act of
4 the Congress of the United States, including, but not limited
5 to, the Federal National Mortgage Association, the Government
6 National Mortgage Association, the Department of Veterans
7 Affairs, the Federal Home Loan Mortgage Corporation and the
8 Federal Housing Administration.

9 (5) Any agency or instrumentality of a State or local
10 government, the District of Columbia or any territory of the
11 United States, including the Pennsylvania Housing Finance
12 Agency and other government housing finance agencies.

13 (6) Except for consumer discount companies, subsidiaries
14 and affiliates of the following institutions: State-chartered
15 banks, bank and trust companies, savings banks, private
16 banks, savings and loan associations and credit unions or
17 national banks, federally chartered savings and loan
18 associations, federally chartered savings banks and federally
19 chartered credit unions, and such subsidiaries and affiliates
20 of institutions enumerated in this paragraph shall:

21 (i) Be subject to the provisions of sections 10, 16
22 and 22(b), excluding section 10(a)(1) and (b)(1).

23 (ii) Deliver as required to the department annually
24 copies of financial reports made to all supervisory
25 agencies.

26 (iii) Be registered with the department.

27 (7) Employees of a secondary mortgage lender or
28 secondary mortgage loan broker licensee, to the extent that
29 such employees are not otherwise required to be licensed as
30 mortgage originators.

1 (8) Any person who makes a secondary mortgage loan to an
2 employee of that person as an employment benefit, given he
3 does not hold himself out to the public as a secondary
4 mortgage lender.

5 (9) Employees of excepted persons enumerated in this
6 section.

7 (d) This act shall not apply to secondary mortgage loans
8 made for business or commercial purposes.

9 Section 3. Section 4 of the act, amended July 7, 1989
10 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
11 to read:

12 Section 4. Application for license.

13 (a) An application for a secondary mortgage [loan] lender
14 license or a secondary mortgage loan broker license shall be on
15 a form provided by the [secretary. Among other things, the]
16 department. The application shall set forth the following:

17 (1) The full name, corporate title and personal
18 residence address of each officer and director of the
19 proposed licensee corporation or the full name and address of
20 each owner of the proposed broker license if it is not a
21 corporation.

22 (2) Any or all other business entities in which an
23 equity or creditor interest is held by an officer or director
24 of the proposed licensee corporation or by any owner of the
25 proposed broker licensee if it is not a corporation.

26 (3) The dollar amount of such equity or creditor
27 holdings.

28 (4) Whether or not funds are or will be interchanged
29 between the licensee and such business entities.

30 (5) The address or addresses where the secondary

1 mortgage loan business is to be conducted.

2 (6) Any other information that may be required by the
3 department.

4 (a.1) In the case of a mortgage originator, the application
5 shall include the following:

6 (1) The name of the applicant.

7 (2) The name of the employer licensee of the applicant
8 and location of the employer licensee to which the applicant
9 is assigned.

10 (3) Any other information that may be required by the
11 department.

12 (b) [The] An applicant for a secondary mortgage [loan]
13 lender license shall have a minimum legal capitalization of
14 \$200,000. At the time of applying for a license under this act,
15 and at all times thereafter, the minimum paid in legal capital
16 shall be \$200,000. [An applicant for a secondary mortgage loan
17 broker license shall have a minimum legal capitalization of
18 \$25,000 at the time of applying for a license under this act and
19 at all times thereafter.]

20 (b.1) An applicant for a secondary mortgage loan broker
21 license shall have a minimum legal capitalization of \$25,000 at
22 the time of applying for a license under this act and at all
23 times thereafter. A secondary mortgage loan broker who can
24 demonstrate to the satisfaction of the secretary that he does
25 not accept advance fees shall be exempt from the capital
26 requirement of this section.

27 (c) (1) If the applicant is [a foreign corporation] not a
28 resident of this Commonwealth, said [corporation] applicant
29 shall be authorized to do business in this Commonwealth in
30 accordance with the law of this Commonwealth regulating

1 corporations[. Such corporations shall file with the
2 application an irrevocable] and other entities conducting
3 business in this Commonwealth and shall maintain at least one
4 office in this Commonwealth which is the office that shall be
5 licensed as the principal place of business for the purposes
6 of this act.

7 (2) An applicant shall file with the application an
8 irrevocable consent, duly acknowledged, that suits and
9 actions may be commenced against such [licensee] person in
10 the courts of this Commonwealth by the service of process or
11 any pleading upon the [secretary] department in the usual
12 manner provided for service of process and pleadings by the
13 statutes and court rule of this Commonwealth. Said consent
14 shall provide that such service shall be as valid and binding
15 as if service had been made personally upon the [licensee]
16 person in this Commonwealth. In all cases where process or
17 pleadings are served upon the [secretary] department pursuant
18 to the provisions of this section, such process or pleadings
19 shall be served in duplicate, one of which shall be filed in
20 the [office of the secretary] department and the other shall
21 be forwarded by the [secretary] department, by certified or
22 registered mail, return receipt, to the last known principal
23 place of business of the [licensee] person to whom such
24 process or pleadings is directed.

25 [(d) The applicant for a secondary mortgage loan broker
26 license may apply for a broker's agent license subject to the
27 following:

28 (1) The applicant must be an individual.

29 (2) The applicant must be exempt from the capital
30 requirement of subsection (b) by satisfying the secretary

1 that no advance fees whatsoever are accepted or collected,
2 and no fees may be accepted or collected from borrowers.

3 (3) The applicant must demonstrate to the satisfaction
4 of the secretary that he solicits secondary mortgage loan
5 applications exclusively for one licensed secondary mortgage
6 loan broker known as the sponsoring broker.

7 (4) The principal office location of the holder of a
8 broker's agent license must be a Pennsylvania-licensed
9 principal or branch place of business of the sponsoring
10 broker.

11 (5) The holder of a broker's agent license, if he uses
12 advertising to solicit or obtain customers for his secondary
13 mortgage loan brokerage business, may not advertise in his
14 own name alone but shall advertise his own name only in
15 conjunction with the name of the sponsoring broker.]

16 (d.1) A mortgage originator shall be an employee of a single
17 secondary mortgage lender or secondary mortgage loan broker
18 licensed under this act. This licensee shall directly supervise,
19 control and maintain responsibility for the acts and omissions
20 of the mortgage originator. A mortgage originator shall be
21 assigned to a licensed location of the employer licensee.

22 [(e) The sponsoring broker shall enter into an
23 indemnification agreement in a form provided by the secretary to
24 protect borrowers from any monetary damages which may result
25 from doing business with a broker's agent.]

26 (f) (1) In order to obtain a license under this act, an
27 applicant shall submit to the department with its application
28 evidence that the applicant or an officer of the applicant
29 has successfully completed a minimum of 12 hours of
30 instruction and a testing program regarding the secondary

1 mortgage loan business and the provisions of this act, the
2 act of January 30, 1974 (P.L.13, No.6), referred to as the
3 Loan Interest and Protection Law, and relevant Federal law,
4 including the Real Estate Settlement Procedures Act of 1974
5 (Public Law 93-533, 88 Stat. 1724), the Truth in Lending Act
6 (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and the Equal
7 Credit Opportunity Act (Public Law 90-321, 88 Stat. 1521).

8 (2) In order to maintain a license:

9 (i) A secondary mortgage lender or secondary
10 mortgage loan broker shall demonstrate to the
11 satisfaction of the department that at least one
12 individual from each licensed office that is not a
13 mortgage originator and all mortgage originators employed
14 by the licensee have attended a minimum of six hours of
15 continuing education each year.

16 (ii) A mortgage originator licensee shall
17 demonstrate to the satisfaction of the department that he
18 has attended a minimum of six hours of continuing
19 education each year.

20 (3) The department shall delineate the requirements for
21 prequalification education and testing and continuing
22 education by regulation, including by permitting in-house
23 prequalification education and testing and continuing
24 education. The department may review and approve education
25 programs and providers to satisfy the education requirements.
26 The department may charge providers of education programs a
27 fee, to be determined by the department, for department
28 review of education programs and providers.

29 (g) All applicants and licensees shall be required to
30 provide the department with written notice of the change in any

1 information contained in an application for a license or for any
2 renewal of a license within ten days of an applicant or licensee
3 becoming aware of such change.

4 (h) Licenses shall be issued for terms of 12 months and may
5 be renewed by the department each year on a schedule set by the
6 department upon application by the licensee and the payment of
7 any and all applicable renewal fees. The licensee shall
8 demonstrate to the department that it is conducting the
9 secondary mortgage loan business in accordance with the
10 requirements of this act and that the directors, officers,
11 partners, employees, agents and ultimate equitable owners of 10%
12 or more of the licensee continue to meet all of the initial
13 requirements for licensure required by this act unless otherwise
14 determined by the department.

15 Section 4. Section 5 of the act, amended June 26, 1995
16 (P.L.73, No.15), is amended to read:

17 Section 5. Annual license fee.

18 [An applicant shall pay to the secretary at the time an
19 application is filed an initial license fee of \$500 for the
20 principal place of business and an additional initial license
21 fee of \$50 for each branch office in this Commonwealth, except
22 an applicant for a broker's agent license shall pay to the
23 secretary at the time an application is filed an initial license
24 fee of \$250. On or before July 1 of each year and thereafter, a
25 licensee shall pay a license renewal fee of \$200 for the
26 principal place of business and an additional license renewal
27 fee of \$25 for each branch office in this Commonwealth.

28 Notwithstanding the provision of section 603-A(6) of the act of
29 April 9, 1929 (P.L.177, No.175), known as "The Administrative
30 Code of 1929," a broker's agent licensee shall pay an annual

1 license renewal fee of \$200. No abatement of any license fee
2 shall be made if the license is issued for a period of less than
3 one year. The secretary shall be entitled to recover any cost of
4 investigation in excess of license or renewal fees from the
5 licensee, or from any person who is not licensed under this act
6 but presumed to be engaged in business contemplated by this
7 act.]

8 (a) An applicant shall pay to the department at the time an
9 application is filed an initial application fee as follows:

10 (1) For secondary mortgage lenders, \$1,500 for the
11 principal place of business in this Commonwealth and an
12 additional fee of \$1,500 for each branch office.

13 (2) For secondary mortgage loan brokers, \$1,000 for the
14 principal place of business in this Commonwealth and an
15 additional fee of \$250 for each branch office.

16 (3) For mortgage originators, \$200.

17 (b) Prior to each annual renewal of a license, a licensee
18 shall pay to the department a license renewal fee as follows:

19 (1) For secondary mortgage lenders, \$750 for the
20 principal place of business in this Commonwealth and an
21 additional fee of \$750 for each branch office.

22 (2) For secondary mortgage loan brokers, \$500 for the
23 principal place of business in this Commonwealth and an
24 additional fee of \$250 for each branch office.

25 (3) For mortgage originators, \$200.

26 (c) For a licensee that employs 50 or more mortgage
27 originators, the initial application fee and license renewal fee
28 shall be \$50 per mortgage originator, to a maximum of \$10,000
29 total per year.

30 (d) No abatement of a licensee fee shall be made if the

1 license is issued for a period of less than one year.

2 Section 5. Section 6 of the act is amended to read:

3 Section 6. Issuance of license.

4 [(a) Within 60 days after an application is received, the
5 secretary shall either issue a license or, for any reason for
6 which he may suspend, revoke or refuse to renew a license as
7 provided for by section 19, refuse to issue a license.

8 (b) If the secretary refuses to issue a license, he shall
9 notify the applicant, in writing, of his denial, the reason
10 therefor and of the applicant's right to appeal from such action
11 to the Commonwealth Court of Pennsylvania. An appeal from the
12 secretary's refusal to approve an application for a license may
13 be filed within 30 days of notice thereof.]

14 (a) Within 60 days after a complete application is received,
15 the department shall either issue a license or, for any reason
16 for which the department may suspend, revoke or refuse to renew
17 a license as provided for by section 19, refuse to issue a
18 license. Upon receipt of an application for license, the
19 department shall conduct such investigation of the applicant or
20 a director, officer, partner, employee, agent or ultimate
21 equitable owner of 10% or more of the applicant as it deems
22 necessary. The 60-day time limit specified in this subsection
23 may be extended by the department for an additional 30 days if
24 the department determines that such extension is necessary. The
25 department shall provide written notification to any applicant
26 whose application review has been extended and include the final
27 date by which a decision shall be rendered regarding the
28 application.

29 (b) If the department refuses to issue a license, it shall
30 notify the applicant in writing of the denial and the reason

1 therefor and of the applicant's right to appeal from such action
2 to the secretary. An appeal from the department's refusal to
3 approve an application for a license shall be filed by the
4 applicant within 30 days of notice thereof.

5 (c) Each license issued by the [secretary] department shall
6 specify:

7 (1) The name and address of the licensee, the address so
8 specified to be that of the licensee's principal place of
9 business within this Commonwealth.

10 (2) The licensee's reference number, which may remain
11 the same from year to year despite variations in annual
12 license numbers which may result from the renewal of licenses
13 by mechanical techniques.

14 (3) Such other information as the secretary shall
15 require in order to carry out the purposes of this act.

16 (d) (1) The department may deny a license if it finds that
17 the applicant or any person who is a director, officer,
18 partner, agent, employee or ultimate equitable owner of 10%
19 or more of the applicant has been convicted of a crime of
20 moral turpitude or felony in any jurisdiction or of a crime
21 which, if convicted in this Commonwealth, would constitute a
22 crime of moral turpitude or felony under the laws of this
23 Commonwealth. For the purposes of this act, a person shall be
24 deemed to have been convicted of a crime if the person:

25 (i) shall have pleaded guilty or nolo contendere to
26 a charge thereof before a court or Federal magistrate; or

27 (ii) shall have been found guilty thereof by the
28 decision or judgment of a court or Federal magistrate or
29 by the verdict of a jury, irrespective of the
30 pronouncement of sentence or the suspension thereof,

1 unless the plea of guilty or nolo contendere or the
2 decision, judgment or verdict shall have been set aside,
3 vacated, reversed or otherwise abrogated by lawful
4 judicial process.

5 (2) A license under this act shall be deemed to be a
6 "covered license" within the meaning of section 405 of the
7 act of May 15, 1933 (P.L.565, No.111), known as the
8 "Department of Banking Code." The department shall notify a
9 licensee if a covered individual within the meaning of
10 section 405 of the "Department of Banking Code" that is or
11 will be employed or contracted by the licensee has a criminal
12 background that renders the employee unfit for employment in
13 the secondary mortgage loan business.

14 (e) The department may deny a license or otherwise restrict
15 a license if it finds that the applicant or any person who is a
16 director, officer, partner, agent, employee or ultimate
17 equitable owner of 10% or more of the applicant:

18 (1) has had a license application or license issued by
19 the department denied, not renewed, suspended or revoked;

20 (2) is the subject of an order of the department;

21 (3) has violated or failed to comply with any provision
22 of this act or any regulation, statement of policy or order
23 of the department;

24 (4) does not possess the financial responsibility,
25 character, reputation, integrity and general fitness to
26 command the confidence of the public and to warrant the
27 belief that the secondary mortgage loan business will be
28 operated lawfully, honestly, fairly and within the
29 legislative intent of this act and in accordance with the
30 general laws of this Commonwealth; or

1 (5) has an outstanding debt to the Commonwealth or any
2 Commonwealth agency.

3 (f) The department may impose conditions on the issuance of
4 any license under this act. If the department determines that
5 conditions imposed upon a licensee have not been fulfilled, the
6 department may take any action authorized under this act against
7 such licensee that the department deems necessary. In the case
8 of mortgage originator applicants, the department may issue
9 mortgage originator licenses effective immediately upon receipt
10 of an application, which licenses shall be conditional licenses
11 issued under this subsection.

12 Section 6. Sections 7 and 8 of the act are amended to read:

13 Section 7. License duration.

14 A license issued by the secretary shall:

15 (1) Be renewed [on June 30 of each year upon payment of
16 the annual renewal fee, and after a determination by the
17 secretary that the licensee is conducting his business in
18 accordance with the provisions of this act] upon completion
19 of the requirements of section 4(h). No refund of any portion
20 of the license fee shall be made if the license is
21 voluntarily surrendered to the [secretary] department or
22 suspended or revoked by the [secretary] department prior to
23 its expiration date.

24 (2) Be immediately invalid if the licensee's [corporate
25 charter is voided in accordance with the provisions of any
26 law of this Commonwealth or any other state.] authority to
27 conduct business is voided under any law of this Commonwealth
28 or any other state, unless the licensee demonstrates to the
29 satisfaction of the department that the applicable court or
30 governmental entity was clearly erroneous in voiding the

1 licensee's authority to conduct business.

2 Section 8. Transfer of license.

3 A license shall not be assignable by operation of law or
4 otherwise [without the written consent of the secretary].

5 Section 7. Section 9 of the act, amended July 7, 1989
6 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
7 to read:

8 Section 9. Powers conferred on licensees.

9 (a) All secondary mortgage [loan] lender licensees shall
10 have power and authority:

11 (1) To make a secondary mortgage loan repayable in
12 installments, and charge, contract for and receive thereon
13 interest at a percentage rate not exceeding 1.85% per month.
14 No interest shall be paid, deducted or received in advance,
15 except that interest from the date of disbursement of funds
16 to the borrower to the first day of the following month shall
17 be permitted in the event the first installment payment is
18 more than 30 days after the date of disbursement. Interest
19 shall not be compounded and shall be computed only on unpaid
20 principal balances. However, the inclusion of earned interest
21 in a new note shall not be considered compounding. For the
22 purpose of computing interest, a month shall be any period of
23 30 consecutive days.

24 (2) To collect fees or premiums for title examination,
25 abstract of title, title insurance, credit reports, surveys,
26 appraisals, notaries, postage (including messenger and
27 express carrier), tax service or other costs or fees actually
28 related to the processing of a secondary mortgage loan
29 application or granting of a secondary mortgage loan, when
30 such fees are actually paid or incurred by the licensee and

1 to collect fees or charges prescribed by law which actually
2 are or will be paid to public officials for determining the
3 existence of or for perfecting or releasing or satisfying any
4 security related to the loan and include these in the
5 principal of the secondary mortgage loan.

6 (3) To collect reasonable attorney's fees, of an
7 attorney licensed to practice in this Commonwealth, upon the
8 execution of the secondary mortgage loan provided that such
9 fees represent actual fees charged the licensee in connection
10 with said mortgage loan and said fees are evidenced by a
11 statement for services rendered addressed to the licensee and
12 include these in the principal of the secondary mortgage
13 loan.

14 (4) To collect reasonable attorney's fees, of an
15 attorney licensed to practice in the Commonwealth, in the
16 collection of a delinquent second mortgage loan and any court
17 costs and fees actually incurred in the collection of such
18 loan account.

19 (5) To provide credit life, credit accident and health
20 and credit unemployment insurance. A borrower shall not be
21 compelled to purchase credit life, credit accident and health
22 or credit unemployment insurance as a condition of the
23 granting of a secondary mortgage loan and all contracts
24 utilized shall reflect a clear disclosure that the purchase
25 of credit life, credit accident and health or credit
26 unemployment insurance is not a prerequisite to obtaining a
27 loan; if, however, the borrower elects to obtain credit life,
28 credit accident and health or credit unemployment insurance,
29 the borrower shall consent thereto in writing. If borrowers
30 desire joint-life or joint accident and health insurance, all

1 such borrowers shall consent thereto in writing. Such
2 insurance shall be obtained from an insurance company
3 authorized by the laws of Pennsylvania to conduct business in
4 this Commonwealth. Any benefit or return to the licensee from
5 the sale or provision of such insurance shall not be included
6 in the computation of the maximum charge authorized under
7 this section and shall not be deemed a violation of this act
8 when the insurance is written pursuant to the laws of this
9 Commonwealth governing insurance.

10 (6) To require credit property insurance on security
11 against reasonable risks of loss, damage and destruction. The
12 amount and term of such insurance shall be reasonable in
13 relation to the amount and term of the loan contract and the
14 value of the security. A licensee shall not require property
15 insurance if to the licensee's knowledge, the borrower at the
16 time the loan is made has valid and collectible insurance
17 covering the property to be insured and has furnished a loss
18 payable endorsement sufficient for the protection of the
19 licensee. Such insurance shall be obtained from an insurance
20 company authorized by the laws of Pennsylvania to conduct
21 business in this Commonwealth. Any benefit or return to the
22 licensee from the sale or provision of credit insurance shall
23 not be included in the computation of the maximum charge
24 authorized under this section and shall not be deemed a
25 violation of this act when the insurance is written pursuant
26 to the laws of this Commonwealth governing insurance. The
27 premium for any credit insurance may be included in the
28 principal amount of the secondary mortgage loan requested by
29 the borrower. However, such premiums shall be disclosed as a
30 separate item on the face of the principal contract document

1 and the licensee's individual borrower ledger records. No
2 licensee shall grant any secondary mortgage loan on the
3 condition, agreement or understanding that the borrower
4 contract with any specific person or organization for
5 insurance services as agent, broker or underwriter.

6 (7) To collect a fee for a subsequent dishonored check
7 or instrument taken in payment, not to exceed the service
8 charge permitted to be imposed under 18 Pa.C.S. § 4105(e)(3)
9 (relating to bad checks).

10 (8) To charge and collect an application fee not
11 exceeding 3% of the original principal amount of the loan.
12 The fee shall be fully earned at the time the loan is made
13 and may be added to the principal amount of the loan. No
14 application fee may be collected on subsequent advances made
15 pursuant to an open-end loan if the full fee of 3% of the
16 credit limit was collected at the time the loan was made.

17 (9) To charge and collect a delinquency charge of \$20 or
18 10% of each payment, whichever is higher, for a payment which
19 is in default for more than 15 days.

20 (b) All secondary mortgage loan broker licensees shall have
21 power and authority:

22 (1) To collect title examination, credit report, and
23 appraisal fees actually related to the granting of a
24 secondary mortgage loan when such fees are actually paid or
25 incurred by the licensee, and to include the fees in the
26 principal of the secondary mortgage loan which is being
27 negotiated or arranged.

28 (2) To charge a reasonable broker's fee as determined by
29 regulation of the Department of Banking if the fee is
30 disclosed to the person for whom the loan is being negotiated

1 or arranged.

2 Section 8. Section 10 of the act, amended December 17, 1986
3 (P.L.1696, No.203), July 7, 1989 (P.L.222, No.36), July 2, 1992
4 (P.L.387, No.82) and June 26, 1995 (P.L.73, No.15), is amended
5 to read:

6 Section 10. Licensee requirements: records; reports;

7 examinations; receipts; information to be

8 furnished borrower.

9 (a) A secondary mortgage [loan] lender licensee shall:

10 (1) Conspicuously display [its license] at each licensed
11 place of business[.] its license and copies of licenses of
12 all mortgage originators assigned to that location. In the
13 case of a mortgage originator, the license shall be
14 maintained in the immediate possession of the licensee
15 whenever the licensee is engaged in the mortgage loan
16 business.

17 (2) Maintain at its principal place of business in this
18 Commonwealth, at a branch location or at such place within or
19 outside this Commonwealth, if agreed to by the [secretary,]
20 department either the original or a copy of the following
21 instruments, documents, accounts, books and records:

22 (i) Promissory note, contractual agreement, document
23 or instrument evidencing each borrower's secondary
24 mortgage loan indebtedness.

25 (ii) Mortgage, indenture or any other similar
26 instrument or document which creates a lien on the real
27 property which is taken as security for a secondary
28 mortgage loan.

29 (iii) Credit life and accident and health and
30 property insurance policy or a certificate of insurance

1 where such insurance is obtained in accordance with this
2 act.

3 (iv) Appraisal or search, where utilized.

4 (v) Individual ledger card or any other form of
5 record which shows all installment payments made by the
6 borrower and all other charges or credits to the
7 borrower's account.

8 (vi) Individual file in which the borrower's
9 application for a loan and any correspondence, including
10 collection letters, memorandums, notes or any other
11 written information pertaining to the borrower's account,
12 shall be kept.

13 (vii) A general ledger containing all asset,
14 liability and capital accounts, or a trial balance of the
15 same accounts, which shall be maintained on a 60-day
16 currented basis. In addition thereto, a disbursements
17 register, checkbook and related records as required by
18 the secretary shall be maintained on a current workday
19 basis.

20 (viii) A loan closing statement indicating the date,
21 amount and recipient of all loan proceeds, signed by the
22 borrowers to evidence approval of distribution of loan
23 proceeds and to acknowledge receipt of a copy of the loan
24 closing statement.

25 (ix) Such information as the department may require.

26 (3) Annually, before May 1, file a report with the
27 [secretary] department which shall set forth such information
28 as the secretary shall require concerning the business
29 conducted as a licensee during the preceding calendar year.

30 The report shall be in writing, under oath and on a form

1 provided by the [secretary.] department. Licensees failing to
2 file the required report by May 1 shall be subject to a
3 penalty of \$100 for each day after May 1 until the report is
4 filed.

5 (4) Be subject to an examination by the [secretary]
6 department at [least once every two calendar years] the
7 discretion of the department, at which time the [secretary]
8 department shall have free access, during regular business
9 hours, to the licensee's place or places of business in this
10 Commonwealth and to all instruments, documents, accounts,
11 books and records which pertain to the licensee's secondary
12 mortgage loan business. However, the [secretary] department
13 may examine the licensee at any time if the [secretary]
14 department deems such action necessary or desirable. The cost
15 of any such examination shall be borne by the licensee.

16 (5) Give to the borrower a copy of the promissory note
17 evidencing the loan and any second mortgage instrument or
18 other document evidencing the loan signed by the borrower.

19 (6) Give to the borrower written evidence of credit
20 life, credit and accident and health, credit unemployment and
21 property insurance, if any.

22 (7) When a payment is made in cash on account of a
23 secondary mortgage loan, give to the borrower at the time
24 such payment is actually received, a written receipt which
25 shall show the account number or other identification mark or
26 symbol, date, amount paid and upon request of the borrower
27 the unpaid balance of the account prior to and after the cash
28 payment.

29 (8) Upon written request from the borrower, give or
30 forward to the borrower within ten days from the date of

1 receipt of such request, a written statement of the
2 borrower's account which shall show the dates and amounts of
3 all installment payments credited to the borrower's account,
4 the dates, amounts and an explanation of all other charges or
5 credits to the account and the unpaid balance thereof. A
6 licensee shall not be required to furnish more than two such
7 statements in any 12-month period.

8 (9) Include in all advertisements language indicating
9 the licensee is licensed by the department.

10 (10) In regard to mortgage originators:

11 (i) Maintain supervision and control of, and
12 responsibility for, the acts and omissions of all
13 mortgage originators employed by the licensee.

14 (ii) Maintain a list of all current and former
15 mortgage originators employed by the licensee and the
16 dates of such employment.

17 (iii) In the event that a licensee has evidence that
18 a mortgage originator employed by the licensee has
19 engaged in any activity that is illegal or in violation
20 of this act or any regulation or statement of policy
21 promulgated pursuant to this act, the licensee shall
22 provide the department with written notification of such
23 evidence and the licensee's proposed corrective measures
24 within 30 days. A licensee shall not be liable to a
25 mortgage originator in connection with such notification.

26 (b) A secondary mortgage loan broker licensee shall:

27 (1) Conspicuously display [its license] at each licensed
28 place of business[.] its license and copies of licenses of
29 all mortgage originators assigned to that location. In the
30 case of a mortgage originator, the license shall be

1 maintained in the immediate possession of the licensee
2 whenever the licensee is engaged in the mortgage loan
3 business.

4 (2) Annually, before May 1, file with the [secretary]
5 department a report which shall set forth such information as
6 the [secretary] department shall require concerning the
7 business conducted as a licensee during the preceding
8 calendar year. The report shall be in writing, under oath and
9 on a form provided by the secretary. Licensees failing to
10 file the required report by May 1 shall be subject to a
11 penalty of \$100 for each day after May 1 until the report is
12 filed.

13 (3) Be subject to an examination by the [secretary]
14 department at [least once every two calendar years] the
15 discretion of the department, at which time the [secretary]
16 department shall have free access, during regular business
17 hours, to the licensee's place or places of business in this
18 Commonwealth and to all instruments, documents, accounts,
19 books and records which pertain to the licensee's secondary
20 mortgage loan broker business. The [secretary] department may
21 examine the licensee's place of business at any time if the
22 [secretary] department deems such action necessary or
23 desirable. The cost of any examination shall be borne by the
24 licensee.

25 (c) The licensee's accounting records must be constructed
26 and maintained in compliance with generally accepted accounting
27 principles and all of the aforementioned instruments, documents,
28 accounts, books and records shall be kept separate and apart
29 from the records of any other business conducted by the licensee
30 and shall be preserved and kept available for investigation or

1 examination by the [secretary] department for at least two years
2 after a secondary mortgage loan has been paid in full, but in
3 the case of an open-end loan the two-year period is measured
4 from the date of each entry. The provisions of this section
5 shall not apply to any instrument, document, account, book or
6 record which is assigned, sold or transferred to another
7 secondary mortgage loan licensee nor shall the two-year
8 requirement apply to an instrument or document which must be
9 returned to the borrower at the time a secondary mortgage loan
10 is paid in full.

11 (d) If copies of instruments, documents, accounts, books or
12 records are maintained under subsection (a)(2) or (b)(3), they
13 may be photostatic, microfilm, optically imaged, magnetic or
14 electronic copies or copies provided in some other manner
15 approved by the [secretary] department.

16 Section 9. Section 11 of the act, amended July 7, 1989
17 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
18 to read:

19 Section 11. Licensee limitations.

20 (a) A [secondary mortgage loan licensee and a secondary
21 mortgage loan broker] licensee shall not:

22 (1) Transact any business subject to the provisions of
23 this act under any other name except that designated in its
24 license or registered or otherwise qualified as a fictitious
25 business name. A mortgage originator may not use any name
26 other than the mortgage originator's personal legal name. A
27 licensee[, other than a broker's agent,] who changes its name
28 or place of business shall [immediately] notify the
29 [secretary who] department within ten days of the change
30 which shall issue a certificate, if appropriate, to the

1 licensee, which shall specify the licensee's new name or
2 address. [A broker's agent who changes its name or place of
3 business shall notify the secretary in writing at least 15
4 days prior to making such change in name or place of
5 business.]

6 (2) [Charge] In the case of a secondary mortgage lender
7 or secondary mortgage loan broker, charge, contract for,
8 collect or receive charges, fees, premiums, commissions or
9 other considerations in excess of those authorized by the
10 provisions of this act.

11 (3) Unless the secondary mortgage lender licensee shall
12 retain responsibility for servicing the loan, assign, sell or
13 transfer a secondary mortgage loan to any person except a
14 secondary mortgage lender licensee or a person excepted from
15 the licensing provisions of this act in accordance with
16 section 3 hereof without written permission of the
17 [secretary] department.

18 (4) Advertise, cause to be advertised or otherwise
19 solicit whether orally, in writing, by telecast, by broadcast
20 or in any other manner[:

21 (i) That it is licensed by, or that its business is
22 under the supervision of, the Commonwealth of
23 Pennsylvania or the Department of Banking except that a
24 licensee may advertise that it is "licensed pursuant to
25 the Secondary Mortgage Loan Act," provided, however, that
26 for the purpose of raising capital, no such advertisement
27 shall be permitted if it is to be used in connection with
28 a public solicitation for such funds except as otherwise
29 required by the act of December 5, 1972 (P.L.1280,
30 No.284), known as the "Pennsylvania Securities Act of

1 1972," or regulations promulgated under said acts, to be
2 disclosed in any prospectus.

3 (ii) Any] any statement or representation which is
4 false, misleading or deceptive.

5 (5) Conduct any business other than any business
6 regulated by the [secretary] department in any place of
7 business licensed pursuant to this act [if the secretary
8 determines such other business to be inappropriate] without
9 at least 90 days' prior written notification to the
10 department.

11 (6) Require a borrower to pay, to the licensee or any
12 other person, a broker's fee, finder's fee, commission,
13 premium or any other charges for obtaining, procuring or
14 placing of a secondary mortgage loan, except as provided in
15 this act. This restriction shall not prohibit a secondary
16 mortgage [loan] lender licensee from paying a fee to a
17 secondary mortgage loan broker in connection with the
18 placement or procurement of a secondary mortgage loan, nor
19 prohibit a borrower from requesting or directing a licensee
20 to pay such a fee from the proceeds of a loan or include it
21 in the amount to be financed.

22 (7) In the case of a mortgage originator:

23 (i) Accept any fees from consumers in the mortgage
24 originator's own name. A mortgage originator may accept
25 fees payable to the mortgage originator's employer
26 licensee and fees payable to third-party entities on
27 behalf of the mortgage originator's employer licensee. A
28 mortgage originator may not accept advance fees payable
29 to the mortgage originator's employer licensee unless
30 such licensee is authorized to collect advance fees under

1 this act.

2 (ii) Fail to include in all advertising the name of
3 the mortgage originator's employer.

4 (b) Nothing contained in this act shall prohibit any
5 licensee from closing any loans made under the provisions of
6 this act in the offices of attorneys-at-law licensed by and
7 located in this Commonwealth or of title insurance companies or
8 agencies licensed by and located in this Commonwealth.

9 Section 10. Sections 12 and 15 of the act, amended June 26,
10 1995 (P.L.73, No.15), are amended to read:

11 Section 12. Prepayment.

12 (a) A secondary mortgage lender licensee shall permit a
13 borrower to pay partially or wholly any contract or any
14 installment on a contract, without penalty, prior to the due
15 date.

16 (b) When a secondary mortgage loan is paid in full the
17 secondary mortgage lender licensee shall:

18 (1) Cancel any insurance provided by the licensee in
19 connection with the loan and refund to the borrower, in
20 accordance with regulations promulgated by the Pennsylvania
21 Insurance Department, any unearned portion of the premium for
22 such insurance.

23 (2) Stamp or write on the face of the loan agreement or
24 promissory note evidencing the borrower's secondary mortgage
25 loan indebtedness "Paid in Full" or "Cancelled", the date
26 paid and, within 60 days, return the loan agreement or
27 promissory note to the borrower.

28 (3) Release any lien on real property and cancel the
29 same of record and, at the time the loan agreement or
30 promissory note evidencing the borrower's secondary mortgage

1 loan indebtedness is returned, deliver to the borrower such
2 good and sufficient assignments, releases or any other
3 certificate, instrument or document as may be necessary to
4 vest the borrower with complete evidence of title, insofar as
5 the applicable secondary mortgage loan is concerned, to the
6 real property.

7 Section 15. Open-end loans.

8 (a) A secondary mortgage lender licensee may make open-end
9 loans and may contract for and receive thereon interest and
10 charges set forth in section 9.

11 (b) A secondary mortgage lender licensee shall not compound
12 interest by adding any unpaid interest authorized by this
13 section to the unpaid principal balance of the borrower's
14 account: Provided, however, That the unpaid principal balance
15 may include the additional charges authorized by section 9.

16 (c) Interest authorized by this section shall be deemed not
17 to exceed the maximum interest permitted by this act if such
18 interest is computed in each billing cycle by any of the
19 following methods:

20 (1) by converting the monthly rate to a daily rate and
21 multiplying such daily rate by the applicable portion of the
22 daily unpaid principal balance of the account, in which case
23 the daily rate shall be 1/30 of the monthly rate;

24 (2) by multiplying the monthly rate by the applicable
25 portion of the average monthly unpaid principal balance of
26 the account in the billing cycle, in which case the average
27 daily unpaid principal balance is the sum of the amount
28 unpaid each day during the cycle divided by the number of
29 days in the cycle; or

30 (3) by converting the monthly rate to a daily rate and

1 multiplying such daily rate by the average daily unpaid
2 principal balance of the account in the billing cycle, in
3 which case the daily rate shall be 1/30 of the monthly rate.

4 (d) For all of the above methods of computation, the billing
5 cycle shall be monthly and the unpaid principal balance on any
6 day shall be determined by adding to any balance unpaid as of
7 the beginning of that day all advances and other permissible
8 amounts charged to the borrower and deducting all payments and
9 other credits made or received that day.

10 (e) The borrower may at any time pay all or any part of the
11 unpaid balance in his account without prepayment penalty; or, if
12 the account is not in default, the borrower may pay the unpaid
13 principal balance in monthly installments. Minimum monthly
14 payment requirements shall be determined by the secondary
15 mortgage lender licensee and set forth in the secondary mortgage
16 open-end loan agreement.

17 (f) A secondary mortgage lender licensee may contract for
18 and receive the fees, costs and expenses permitted by this act
19 on other secondary mortgage loans, subject to all the conditions
20 and restrictions set forth, with the following variations:

21 (1) If credit life or disability insurance is provided
22 and if the insured dies or becomes disabled when there is an
23 outstanding open-end loan indebtedness, the insurance shall
24 be sufficient to pay the total balance of the loan due on the
25 date of the borrower's death in the case of credit life
26 insurance, or all minimum payments which become due on the
27 loan during the covered period of disability in the case of
28 credit disability insurance. The additional charge for credit
29 life insurance or credit disability insurance shall be
30 calculated in each billing cycle by applying the current

1 monthly premium rate for such insurance, as such rate may be
2 determined by the Insurance Commissioner, to the unpaid
3 balances in the borrower's account, using any of the methods
4 specified in subsection (c) for the calculation of loan
5 charges.

6 (2) No credit life or disability insurance written in
7 connection with a secondary mortgage open-end loan shall be
8 cancelled by the licensee because of delinquency of the
9 borrower in the making of the required minimum payments on
10 the loan unless one or more of such payments is past due for
11 a period of 90 days or more; and the licensee shall advance
12 to the insurer the amounts required to keep the insurance in
13 force during such period, which amounts may be debited to the
14 borrower's account.

15 (3) The amount, terms and conditions of any insurance
16 against loss or damage to property must be reasonable in
17 relation to character and value of the property insured and
18 the maximum anticipated amount of credit to be extended.

19 (g) Notwithstanding any other provisions in this act to the
20 contrary, a secondary mortgage lender licensee may retain any
21 security interest in real or personal property until the open-
22 end account is terminated, provided that if there is no
23 outstanding balance in the account and there is no commitment by
24 the licensee to make advances, the licensee shall within ten
25 days following written demand by the borrower deliver to the
26 borrower a release of the mortgage or a request for reconveyance
27 of the deed of trust on any real property taken as security for
28 a loan and a release of any security interest in personal
29 property. The licensee shall include on all billing statements
30 provided in connection with an open-end credit loan a statement

1 that the licensee retains a security interest in the borrower's
2 real property whenever such security interest has not been
3 released.

4 (h) Paragraphs (7) and (8) of subsection (a) of section 10,
5 sections 12 and 13 shall not apply to open-end loans.

6 (i) A secondary mortgage lender licensee may charge,
7 contract for, receive or collect on any revolving loan account
8 an annual fee not to exceed \$50 per year.

9 Section 11. Section 16 of the act, amended July 7, 1989
10 (P.L.222, No.36), is amended to read:

11 Section 16. Authority of [Secretary of Banking] department.

12 [The secretary shall have authority to:

13 (1) Issue rules and regulations governing the
14 capitalization, public funding and the records to be
15 maintained by licensees, and such general rules and
16 regulations and orders as may be necessary for insuring the
17 proper conduct of the business and for the enforcement of
18 this act.

19 (2) Examine any instrument, document, account, book,
20 record or file for a licensee or any other person, or make
21 such other investigations as he shall deem necessary to
22 administer the provisions of this act.

23 (3) Conduct administrative hearings on any matter
24 pertaining to this act, issue subpoenas to compel the
25 attendance of witnesses and the production of instruments,
26 documents, accounts, books and records at any such hearing,
27 which may be retained by the secretary until the completion
28 of all proceedings in connection with which they were
29 produced, and administer oaths and affirmations to any person
30 whose testimony is required. In the event a person fails to

1 comply with a subpoena issued by the secretary or to testify
2 on any matter concerning which he may be lawfully
3 interrogated, on application by the secretary, the
4 Commonwealth Court may issue an order requiring the
5 attendance of such person, the production of instruments,
6 documents, accounts, books or records or the giving of
7 testimony.]

8 (a) The department shall have the authority to:

9 (1) Examine any instrument, document, account, book,
10 record or file of a licensee or any person having a
11 connection to the licensee or make such other investigation
12 as may be necessary to administer the provisions of this act.

13 Pursuant to this authority, the department may remove any
14 instrument, document, account, book, record or file of a
15 licensee to a location outside of the licensee's office
16 location. The costs of the examination shall be borne by the
17 licensee or the entity subject to the examination.

18 (2) Conduct administrative hearings on any matter
19 pertaining to this act, issue subpoenas to compel the
20 attendance of witnesses and the production of instruments,
21 documents, accounts, books and records at any such hearing.
22 The instruments, documents, accounts, books and records may
23 be retained by the department until the completion of all
24 proceedings in connection with which the materials were
25 produced. The department may administer oaths and
26 affirmations to persons whose testimony is required. In the
27 event a person fails to comply with a subpoena issued by the
28 department or to testify on a matter concerning which he may
29 be lawfully interrogated, on application by the department,
30 the Commonwealth Court may issue an order requiring the

1 attendance of the person, the production of instruments,
2 documents, accounts, books and records and the giving of
3 testimony.

4 (3) Request and receive information or records of any
5 kind, including reports of criminal history record
6 information from any Federal, State, local or foreign
7 government entity regarding an applicant for a license,
8 licensee or person related in any way to the business of the
9 applicant or licensee, at a cost to be paid by the applicant
10 or licensee.

11 (4) Issue regulations, statements of policy or orders as
12 may be necessary for the proper conduct of the secondary
13 mortgage loan business by licensees, the issuance and renewal
14 of licenses and the enforcement of this act.

15 (5) Prohibit or permanently remove an individual
16 responsible for a violation of this act from working in his
17 present capacity or in any other capacity related to
18 activities regulated by the department.

19 (6) Order a person to make restitution for actual
20 damages to consumers caused by any violation of this act.

21 (7) Issue cease and desist orders that are effective
22 immediately, subject to a hearing as specified in subsection
23 (b) within 14 days of the issuance of the order.

24 (8) Impose such other conditions as the department deems
25 appropriate.

26 (b) A person aggrieved by a decision of the department may
27 appeal the decision of the department to the secretary. The
28 appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A
29 (relating to practice and procedure of Commonwealth agencies).

30 (c) The department may maintain an action for an injunction

1 or other process against a person to restrain and prevent the
2 person from engaging in an activity violating this act.

3 (d) A decision of the secretary shall be a final order of
4 the department and shall be enforceable in a court of competent
5 jurisdiction. The department may publish final adjudications
6 issued under this section, subject to redaction or modification
7 to preserve confidentiality.

8 (e) A person aggrieved by a decision of the secretary may
9 appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A (relating to
10 judicial review of Commonwealth agency action).

11 (f) An order issued against a licensee is applicable to the
12 mortgage originators employed by the licensee.

13 Section 12. Sections 18 and 19 of the act are amended to
14 read:

15 Section 18. Surrender of license.

16 Upon satisfying the [secretary] department that all creditors
17 have been paid or that other arrangements satisfactory to the
18 creditors and the [secretary] department have been made, a
19 licensee may surrender its license to the [secretary] department
20 by delivering its license to the [secretary] department with
21 written notice that the license is being voluntarily surrendered
22 but such an action by a licensee shall not affect the licensee's
23 civil or criminal liability for acts committed prior to the date
24 on which the license was surrendered.

25 Section 19. Suspension; revocation or refusal.

26 [(a) The secretary may suspend, revoke or refuse to renew
27 any license issued pursuant to this act after giving 30 days
28 written notice forwarded to the licensee's principal place of
29 business, by registered or certified mail, return receipt,
30 stating the contemplated action and the reason therefor, if he

1 shall find, after the licensee has had an opportunity to be
2 heard, that the licensee has:

3 (1) Made any material misstatement in his application.

4 (2) Failed to comply with or violated any provision of
5 this act or any rule, regulation or order promulgated by the
6 secretary pursuant thereto.

7 The hearing and notice provisions of this section shall not
8 apply if the licensee's corporate charter is voided in
9 accordance with the provisions of any law of this or any other
10 state, in which event the secretary may suspend or revoke the
11 license forthwith.

12 (b) The secretary may subsequently reinstate a license which
13 has been suspended or revoked or renew a license which he had
14 previously refused to renew if the condition which warranted the
15 original action has been corrected, and he has reason to believe
16 that such condition is not likely to occur again and that the
17 licensee is worthy of such reinstatements.]

18 (a) The department may suspend, revoke or refuse to renew
19 any license issued pursuant to this act, if any fact or
20 condition exists or is discovered which, if it had existed or
21 had been discovered at the time of filing of the application for
22 such license, would have warranted the department in refusing to
23 issue such license or if a licensee or director, officer,
24 partner, employee or owner of a licensee has:

25 (1) Made any false or material misstatement in an
26 application or any report or submission required by this act
27 or any department regulation, statement of policy or order.

28 (2) Failed to comply with or violated any provision of
29 this act or any regulation, statement of policy or order
30 promulgated or issued by the department pursuant to this act.

1 (3) If licensed under section 4(b.1), accepted an
2 advance fee without establishing or maintaining the capital
3 required by section 4(b.1).

4 (4) Become insolvent; the liabilities of the applicant
5 or licensee exceed the assets of the applicant or licensee or
6 that the applicant or licensee cannot meet the obligations of
7 the applicant or licensee as they mature or is in such
8 financial condition that the applicant or licensee cannot
9 continue in business with safety to the customers of the
10 applicant or licensee.

11 (5) Engaged in dishonest, fraudulent or illegal
12 practices or conduct in any business or unfair or unethical
13 practices or conduct in connection with the secondary
14 mortgage loan business.

15 (6) Been convicted of or pleaded guilty or nolo
16 contendere to a crime of moral turpitude or felony.

17 (7) Permanently or temporarily been enjoined by a court
18 of competent jurisdiction from engaging in or continuing any
19 conduct or practice involving any aspect of the secondary
20 mortgage loan business.

21 (8) Become the subject of an order of the department
22 denying, suspending or revoking a license under the
23 provisions of this act.

24 (9) Become the subject of a United States Postal Service
25 fraud order.

26 (10) Failed to comply with the requirements of this act
27 to make and keep records prescribed by regulation, statement
28 of policy or order of the department, to produce such records
29 required by the department or to file any financial reports
30 or other information the department by regulation, statement

1 of policy or order may require.

2 (11) Become the subject of an order of the department
3 denying, suspending or revoking a license under the
4 provisions of any other law administered by the department.

5 (12) Demonstrated negligence or incompetence in
6 performing any act for which the licensee is required to hold
7 a license under this act.

8 (13) Failed to complete the qualifying or continuing
9 education as required by section 4(f).

10 (14) In the case of a secondary mortgage lender or
11 secondary mortgage loan broker, conducted the secondary
12 mortgage loan business through an unlicensed mortgage
13 originator.

14 (15) Failed to comply with the terms of any agreement
15 under which the department authorizes a licensee to maintain
16 records at a place other than the licensee's principal place
17 of business.

18 (b) The department may subsequently reinstate a license
19 which has been suspended or revoked or renew a license which had
20 previously been refused for renewal if the condition which
21 warranted the original action has been corrected and the
22 department has reason to believe that such condition is not
23 likely to occur again and the licensee satisfies the
24 requirements of this act.

25 Section 13. Section 20 of the act, amended July 2, 1992
26 (P.L.387, No.82) and June 26, 1995 (P.L.73, No.15), is amended
27 to read:

28 Section 20. Scope of act.

29 (a) The provisions of this act shall apply to any secondary
30 mortgage loan [(except loans secured by real property made

1 pursuant to a license issued under any other law of this
2 Commonwealth)] which:

3 (1) is negotiated, offered, or otherwise transacted
4 within this Commonwealth, in whole or in part, whether by the
5 ultimate lender or any other person;

6 (2) is made or executed within this Commonwealth; or

7 (3) notwithstanding the place of execution, is secured
8 by real property located in this Commonwealth.

9 (a.1) The provisions of this act shall apply to any person
10 who engages in the secondary mortgage loan business in this
11 Commonwealth.

12 (b) Notwithstanding subsection (a), the secretary may
13 license a branch office in another state provided that the
14 licensee maintains a place of business in this Commonwealth
15 which is licensed under the provisions of this act.

16 [(c) Nothing contained in this act shall prohibit any
17 licensee from closing any loans made under the provisions of
18 this act in the offices of attorneys-at-law licensed by and
19 located in this Commonwealth or of title insurance companies or
20 agencies licensed by and located in this Commonwealth.

21 (d) If a secondary mortgage loan is made in good faith in
22 conformity with an interpretation of this act by the appellate
23 courts of the Commonwealth or in compliance with a rule,
24 regulation, order, interpretation or other issuance promulgated
25 by the secretary, no provisions of this act imposing any penalty
26 shall apply, notwithstanding that, after such contract is made,
27 such interpretation, rule or regulation is amended, rescinded or
28 determined by judicial or other authority to be invalid for any
29 reason.]

30 Section 14. Section 21 of the act is amended to read:

1 Section 21. Foreclosure, default, confession of judgment.

2 With regard to foreclosure, default, right to cure a default
3 and confession of judgment, nothing contained in this act shall
4 be deemed to supersede section 403, 404 or 407 of the act of
5 January 30, 1974 (P.L.13, No.6), referred to as the Loan
6 Interest and Protection Law, which shall apply to all loans made
7 pursuant to this act. The lien granted or provided in connection
8 with a secondary mortgage loan shall not be deemed to constitute
9 a sale of the property with regard to any prior existing lien,
10 for the purpose of permitting foreclosure of or execution on
11 such prior lien.

12 Section 15. Section 22 of the act, amended June 26, 1995
13 (P.L.73, No.15), is amended to read:

14 Section 22. Penalties.

15 [(a) Any person who is not licensed by the secretary or
16 exempted from the licensing requirements in accordance with the
17 provisions of this act and who shall engage in the business of
18 negotiating or making secondary mortgage loans and charge,
19 collect, contract for or receive interest, fees, premiums,
20 charges or other considerations which aggregate in excess of the
21 interest that the lender would otherwise be permitted by law to
22 charge if not licensed under this act on the amount actually
23 loaned or advanced, or on the unpaid principal balances when the
24 contract is payable by stated installments, shall be guilty of a
25 misdemeanor, and upon conviction thereof, shall be sentenced to
26 pay a fine of not less than \$500 or more than \$5,000, and/or
27 undergo imprisonment not less than six months nor more than
28 three years, in the discretion of the court. This subsection
29 shall not apply to real property secured loans made by a
30 licensee under the act of April 8, 1937 (P.L.262, No.66), known

1 as the "Consumer Discount Company Act."

2 (b) Except as the result of unintentional error, a
3 corporation licensed under the provisions of this act or any
4 director, officer, employee or agent who shall violate any
5 provision of this act or shall direct or consent to such
6 violations, shall be subject to a fine of \$2,000 for the first
7 offense, and for each subsequent offense a like fine and/or
8 suspension of license. A licensee shall have no liability for
9 unintentional error if within 15 days after discovering an error
10 the licensee notifies the person concerned of the error and
11 makes adjustments in the account as necessary to assure that the
12 person will not be required to pay any interest, fees, premiums,
13 charges or other considerations which aggregate in excess of the
14 charges permitted under this act.

15 (b.1) A sponsoring broker or broker's agent who violates any
16 provision of this act shall be subject to a fine to be levied by
17 the Department of Banking of up to \$2,000 for each offense.

18 (c) If a contract is made in good faith in conformity with
19 an interpretation of this act by the appellate courts of the
20 Commonwealth or in compliance with a rule or regulation
21 officially promulgated by the secretary no provision of this
22 section imposing any penalty shall apply, notwithstanding that
23 after such contract is made, such interpretation, rule or
24 regulation is amended, rescinded, or determined by judicial or
25 other authority to be invalid for any reason.

26 (d) The lien granted or provided in connection with a
27 secondary mortgage loan shall not be deemed to constitute a sale
28 of the property with regard to any prior existing lien, for the
29 purpose of permitting foreclosure of or execution on such prior
30 lien.]

1 (a) Any person who is not licensed by the department or is
2 not exempted from the licensing requirements in accordance with
3 the provisions of this act and who engages in the secondary
4 mortgage loan business commits a felony of the third degree.

5 (b) Any person who is subject to the provisions of this act,
6 even though not licensed hereunder, or any person who is not
7 licensed by the department or is not exempt from the licensing
8 requirements, who violates any of the provisions to which it is
9 subject shall be subject to a fine levied by the department or
10 commission of up to \$10,000 for each offense.

11 (c) Any person licensed under this act or any director,
12 officer, employee or agent of a licensee who violates this act
13 or directs or consents to such violations shall be subject to a
14 fine levied by the department of up to \$10,000 for each offense.

15 Section 16. Sections 23 and 24 of the act are repealed:
16 [Section 23. Preservation of existing powers.

17 Nothing in this act shall be construed as restricting the
18 powers otherwise conferred by law upon financial institutions,
19 such as State and national banks, State and Federal savings and
20 loan associations, savings banks and insurance companies, to
21 engage in the secondary mortgage business as defined in section
22 2, and no such financial institution, in exercising any power
23 otherwise so conferred upon it, shall be subject to any
24 provision of this act. A State-chartered or national bank, bank
25 and trust company, savings bank or savings and loan association
26 located in this State shall have all the powers of a licensee
27 under this act but shall not be subject to the license
28 requirement or any other provision of this act relating to the
29 requirements imposed on licensees.

30 Section 24. Exclusions from act.

1 No provisions of this act shall apply to Federally-chartered
2 or State-chartered credit unions.]

3 Section 17. This act shall take effect in 90 days.