THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1071 Session of 2009

INTRODUCED BY BROWNE, FERLO, HUGHES, LOGAN, M. WHITE, ALLOWAY, MUSTO, WOZNIAK, KITCHEN AND WILLIAMS, AUGUST 10, 2009

REFERRED TO BANKING AND INSURANCE, AUGUST 10, 2009

AN ACT

1 2 3 4 5	Amending Titles 7 (Banks and Banking) and 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in Title 7, providing for short-term loan protection; and, in Title 18, further providing for deceptive or fraudulent business practices and providing for unlicensed short-term lending.
6	The General Assembly of the Commonwealth of Pennsylvania
7	hereby enacts as follows:
8	Section 1. Title 7 of the Pennsylvania Consolidated Statutes
9	is amended by adding a chapter to read:
10	CHAPTER 51
11	SHORT-TERM LOAN PROTECTION
12	Subchapter
13	A. Preliminary Provisions
14	B. Nature and Effect of Short-Term Loans
15	C. Administrative and Licensure Provisions
16	D. Miscellaneous Provisions
17	SUBCHAPTER A
18	PRELIMINARY PROVISIONS
19	Sec

- 1 <u>5101</u>. Scope of chapter.
- 2 5102. Definitions.
- 3 § 5101. Scope of chapter.
- 4 This chapter relates to consumer short-term loan protection.
- 5 § 5102. Definitions.
- 6 The following words and phrases when used in this chapter
- 7 shall have the meanings given to them in this section unless the
- 8 <u>context clearly indicates otherwise:</u>
- 9 <u>"Applicant." A person that applies for a license under this</u>
- 10 chapter.
- 11 "Check." A check as that term is defined in 13 Pa.C.S. §
- 12 3104(f) (relating to negotiable instrument) which is drawn on a
- 13 depository institution.
- 14 "Consumer." An individual who is the recipient of a short-
- 15 term loan or a renewal loan.
- 16 "Deferment period." The term of a loan or the number of days
- 17 a lender agrees to defer depositing or presenting a repayment
- 18 mechanism, as the context may require.
- 19 "Department." The Department of Banking of the Commonwealth.
- 20 "Depository institution." A person authorized to accept
- 21 deposits in accordance with Federal or State law.
- 22 <u>"Gross monthly income." Wages or commissions received by a</u>
- 23 consumer in the 30-day period immediately preceding the date of
- 24 the consumer's application for a loan or as otherwise determined
- 25 by the Department of Banking.
- 26 "Licensee." A person licensed by the Department of Banking
- 27 <u>under this chapter.</u>
- 28 "Loan." A short-term loan, deferred deposit loan or a
- 29 renewal loan, as the context may require.
- 30 "Loan agreement." A signed written agreement between a

- 1 lender and a consumer that complies with the requirements of
- 2 section 5112 (relating to loan agreement requirements)
- 3 evidencing a loan.
- 4 <u>"Person." An individual, association, joint venture or joint</u>
- 5 stock company, partnership, limited liability company, limited
- 6 partnership, limited partnership association, business
- 7 corporation or any other group of individuals, however
- 8 <u>organized</u>.
- 9 "Renewal loan." A short-term loan that a consumer obtains
- 10 from a short-term lender, the proceeds of which are applied to
- 11 the balance due on an existing short-term loan previously
- 12 <u>obtained by the consumer from the same short-term lender.</u>
- 13 "Repayment mechanism." Any method agreed to by a consumer
- 14 which a short-term lender may use to effect repayment of a loan,
- 15 including a present-dated or postdated check, electronic debit
- 16 <u>or assignment of a future deposit.</u>
- 17 "Short-term lender." A person who, as principal or agent,
- 18 markets, negotiates, arranges, places, makes, holds or
- 19 originates short-term loans for consumers for a fee, finance
- 20 charge or other consideration. The term includes a short-term
- 21 lender who acquires a short-term loan from another short-term
- 22 lender by purchase or assignment.
- 23 "Short-term loan." A loan or advance of money or credit to a
- 24 consumer by a short-term lender that, for a fee, finance charge
- 25 or other consideration, does all of the following:
- 26 (1) Accepts a check or other instrument from the
- 27 <u>consumer.</u>
- 28 (2) Agrees to hold the check or instrument for a
- 29 <u>deferment period</u>.
- 30 (3) Pays to the consumer a cash advance, a locally

- 1 cashable check, debit card or money order or credits to the
- 2 <u>consumer's account the amount of the check less finance</u>
- 3 <u>charges permitted under section 5113 (relating to authorized</u>
- 4 <u>finance charges, origination fees and loan verification</u>
- 5 <u>costs</u>). The term includes any arrangement in which a person
- 6 pays a cash advance to a consumer in return for a repayment
- 7 <u>mechanism and a fee, finance charge or other consideration.</u>
- 8 <u>"Short-term loan business." A person is deemed to be engaged</u>
- 9 in the short-term loan business in this Commonwealth if that
- 10 person, in the ordinary course of its business, advertises,
- 11 causes to be advertised, solicits, negotiates or arranges,
- 12 <u>offers to make, makes or holds a short-term loan or renewal loan</u>
- 13 <u>in this Commonwealth</u>, whether directly or through any other
- 14 person acting for his benefit.
- 15 "Tangible net worth." Net worth less all of the following:
- 16 (1) That portion of assets pledged to secure obligations
- of any person other than that of the applicant.
- 18 (2) Any asset due from officers or stockholders of the
- 19 <u>applicant or related companies in which the applicant's</u>
- 20 officers or stockholders have an interest.
- 21 (3) That portion of the value of any marketable
- 22 security, listed or unlisted, not shown at lower of either
- cost or market.
- 24 (4) Any investment shown on the applicant's balance
- 25 sheet in the applicant's joint ventures, subsidiaries,
- affiliates or related companies which is greater than the
- 27 <u>value of the assets at equity.</u>
- 28 (5) Goodwill.
- 29 (6) The value placed on insurance renewals, property
- 30 management contract renewals or other similar intangibles of

- 1 the applicant.
- 2 (7) Organization costs of the applicant.
- 3 (8) Any real estate held for investment where
- 4 <u>development will not start within two years from the date of</u>
- 5 <u>its initial acquisition.</u>
- 6 (9) Any leasehold improvements not being amortized over
- 7 <u>the lesser of the expected life of the asset or the remaining</u>
- 8 term of the lease.
- 9 <u>SUBCHAPTER B</u>
- 10 NATURE AND EFFECT OF SHORT-TERM LOANS
- 11 Sec.
- 12 <u>5111. License requirements.</u>
- 13 5112. Loan agreement requirements.
- 14 5113. Authorized finance charges, origination fees and loan
- 15 verification costs.
- 16 <u>5114</u>. Maximum amount of loans, terms of loans and right of
- 17 rescission.
- 18 5115. Prohibitions.
- 19 5116. Renewal loans.
- 20 5117. Form of loan proceeds.
- 21 5118. Endorsement of check.
- 22 5119. Redemption of repayment mechanism.
- 23 5120. Authorized charge for dishonored repayment mechanisms.
- 24 5121. Posting of charges and notice of mandatory extended
- payment plan.
- 26 5122. Notice of assignment or sale of loans.
- 27 <u>5123. No criminal culpability.</u>
- 28 5124. Unfair or deceptive practices.
- 29 5125. Extended payment plan.
- 30 5126. Prohibited practices regarding loans.

- 1 <u>5127</u>. Commonwealth Financial Literacy Account.
- 2 5128. Licensee duties with respect to military personnel.
- 3 § 5111. License requirements.
- 4 (a) General rule. -- No person may market, service, arrange,
- 5 make, hold, originate, extend, contract or negotiate, whether
- 6 <u>electronically or by other means, a short-term loan or renewal</u>
- 7 <u>loan to an individual who resides in this Commonwealth or, if</u>
- 8 the person has a place of business in this Commonwealth, to any
- 9 individual regardless of his residence, without first obtaining
- 10 a license from the department under this chapter and otherwise
- 11 complying with all of the provisions of this chapter.
- 12 (b) Exemptions.--
- 13 (1) Except as provided under paragraph (2), this chapter
- shall not apply to depository institutions.
- 15 (2) A short-term lender that is an agent of a depository
- 16 <u>institution for the purpose of brokering short-term loans</u>
- 17 made by a depository institution shall be subject to all
- 18 provisions of this chapter except those provisions related to
- 19 finance charges. This paragraph shall be limited to the
- 20 brokering of short-term loans that are made and held by a
- 21 depository institution.
- 22 § 5112. Loan agreement requirements.
- 23 (a) General rule.--Each loan shall be documented by a loan
- 24 agreement which shall contain all of the following:
- 25 (1) The name and address of the consumer.
- 26 (2) The transaction date and a prominently labeled
- 27 <u>transaction number.</u>
- 28 (3) The amount of the loan or advance.
- 29 <u>(4) A statement of the total amount of finance charges</u>
- 30 charged, expressed both as a dollar amount and an annual

- 1 <u>percentage rate.</u>
- 2 (5) A specific date for the end of the deferment period
- 3 <u>or extended payment plan.</u>
- 4 (6) The name, address and telephone number of the short-
- 5 <u>term lender and the name and title of the individual employee</u>
- 6 who signs the loan agreement on behalf of the short-term
- 7 lender.
- 8 <u>(7) An itemization of the fees and interest charges to</u>
- 9 <u>be paid by the consumer.</u>
- 10 (8) Disclosures required by the Truth in Lending Act
- 11 (Public Law 90-321, 15 U.S.C. § 1601 et seq.), regardless of
- 12 <u>whether the Truth in Lending Act applies to the particular</u>
- 13 <u>loan.</u>
- 14 (9) A clear description of the consumer's payment
- obligations under the loan and a clear description of the
- 16 <u>repayment mechanism agreed to by the short-term lender and</u>
- the consumer.
- 18 (10) A clear description of the consumer's right to an
- 19 <u>extended payment plan under section 5125 (relating to</u>
- 20 extended payment plan) if a consumer does not have the
- ability to repay a loan when due.
- 22 (11) Disclosure in boldface print and in at least ten-
- 23 point type that the consumer may not obtain renewal for the
- short-term loan more than one time for an additional
- 25 <u>deferment period mutually agreed to by the consumer and the</u>
- 26 <u>short-term lender.</u>
- 27 (12) Disclosure in boldface print and in at least ten-
- 28 point type indicating the maximum loan amount and finance
- charge.
- 30 (13) Disclosure in boldface print and in at least ten-

1 point type indicating the restrictions on multiple loans

2 provided for under this chapter.

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(14) Disclosure in boldface print and in at least tenpoint type indicating the consumer's right of rescission
under this chapter. The disclosure of the consumer's right of
rescission shall be set forth immediately above the

consumer's signature line and shall state as follows:

This transaction is not meant to meet long-term

financial needs and should be used only to meet

short-term cash needs. Renewing a short-term loan

rather than repaying it in full at the end of its

term will result in further finance charges. You have

the right to rescind this transaction at any time

before the lender's close of business on the next

business day after the transaction date shown above.

In order to rescind, you must return all of the loan

proceeds you received to the lender. The lender will

refund to you all fees if you rescind this

transaction.

(15) Any other information as the department may require.

22 (a.1) Deferment period. -- A deferment period may not be in

23 excess of 60 days nor less than an individual's pay period or

24 <u>seven days</u>, whichever is greater. The deferment period shall be

25 <u>calculated from the date of the loan agreement.</u>

26 (b) Limitations.--A loan agreement, or any other document or

27 instrument signed by the consumer in connection with the loan,

28 shall not contain any of the following:

29 (1) A mandatory arbitration clause that does not comply
30 with the standards set forth in the statement of principles

- of the National Consumer Dispute Advisory Committee of the
- 2 American Arbitration Association in effect on the effective
- 3 date of this section.
- 4 (2) A hold harmless clause for the benefit of the short-
- 5 <u>term lender.</u>
- 6 (3) A confession of judgment clause.
- 7 (4) A waiver by the consumer of any contractual right or
- 8 <u>any provision of this chapter.</u>
- 9 § 5113. Authorized finance charges, origination fees and loan
- 10 <u>verification costs.</u>
- 11 (a) Interest. -- A short-term lender may charge and receive on
- 12 each loan interest at a simple annual rate that does not exceed
- 13 an annual percentage rate of 36%. The interest on the short-term
- 14 <u>loan shall be calculated in compliance with 15 U.S.C. § 1606</u>
- 15 (relating to determination of annual percentage rate), and for
- 16 the purpose of this section, the term "annual percentage rate"
- 17 shall have the same meaning as given to it in 15 U.S.C. §
- 18 1606(a). A licensee may also charge an origination fee as
- 19 provided under subsection (b) and a verification fee as provided
- 20 under subsection (c).
- 21 (b) Loan origination fee. -- A licensee may charge and receive
- 22 a loan origination fee in an amount not to exceed 10% of the
- 23 amount of the loan proceeds advanced to the borrower or \$50,
- 24 whichever is less.
- 25 (c) Verification fee.--A licensee may charge and receive a
- 26 verification fee in an amount not to exceed \$5 for a loan made
- 27 <u>under this chapter. The verification fee shall be used in part</u>
- 28 to defray the costs of submitting a database inquiry as provided
- 29 under section 5115 (relating to prohibitions). The verification
- 30 fee shall also include those amounts required by the lender

- 1 under section 5127 (relating to Commonwealth Financial Literacy
- 2 Account) for the Commonwealth Financial Literacy Account.
- 3 § 5114. Maximum amount of loans, terms of loans and right of
- 4 rescission.
- 5 <u>(a) General rule.--A short-term lender may not make a loan</u>
- 6 to a consumer in an amount that would result in the consumer
- 7 <u>having outstanding loans to the short-term lender in excess of</u>
- 8 the lesser of \$500 or 25% of the consumer's gross monthly income
- 9 <u>at any time. The short-term lender shall maintain records</u>
- 10 evidencing the consumer's gross monthly income as required under
- 11 <u>section 5136(a)(2) (relating to licensee requirements).</u>
- 12 (b) Right to rescind.--
- 13 (1) A consumer may rescind a loan before the short-term
- 14 <u>lender's close of business on the next business day</u>
- immediately following the day on which the loan was made.
- 16 (2) In order to rescind a loan, a consumer shall notify
- 17 the short-term lender of the consumer's desire to rescind the
- 18 loan and return to the short-term lender, at the time of
- 19 giving notice, the proceeds of the loan received by the
- 20 consumer from the short-term lender under section 5117
- 21 (relating to form of loan proceeds).
- 22 (3) No finance charge or other charge or fee may be
- 23 <u>charged or collected by the short-term lender if a loan is</u>
- 24 rescinded.
- 25 (4) Upon rescission of a loan, the short-term lender
- 26 shall return to the consumer any check given to the short-
- 27 <u>term lender in connection with the loan or shall agree in</u>
- writing that any other repayment mechanism shall not be
- 29 utilized.
- 30 (c) Completed transaction. -- A loan transaction shall be

- 1 completed when the short-term lender receives payment in full of
- 2 the loan or the consumer redeems the repayment mechanism being
- 3 held by the short-term lender by paying the full amount
- 4 <u>represented by the repayment mechanism to the short-term lender.</u>
- 5 The consumer may repay a loan at any office of the original
- 6 <u>short-term lender or the assignee of the short-term lender at</u>
- 7 the consumer's election.
- 8 § 5115. Prohibitions.
- 9 <u>(a) General rule.--A short-term lender shall not knowingly</u>
- 10 make a loan to a consumer who has an existing loan with the
- 11 <u>short-term lender or any other licensee if the aggregate amount</u>
- 12 of all loans outstanding to the consumer exceeds the maximum
- 13 amount permitted under section 5114(a) (relating to maximum
- 14 amount of loans, terms of loans and right of rescission) or who
- 15 <u>has entered into an extended payment plan under section 5125</u>
- 16 (relating to extended payment plan) which has not yet been paid
- 17 in full. A consumer may not have loans outstanding from more
- 18 than two short-term lenders at any one time.
- 19 (b) Excessive loans. -- A consumer shall be prohibited from
- 20 receiving more than eight small loans from all short-term
- 21 lenders in any 12-month period. A lender shall be prohibited
- 22 from making a short-term loan to a consumer if making that loan
- 23 would result in a consumer receiving more than eight small loans
- 24 from all lenders in any 12-month period, except that if a
- 25 <u>consumer is denied a short-term loan from a depository</u>
- 26 institution after the eighth loan, a consumer may borrow from a
- 27 <u>short-term lender. Any subsequent loan granted by a short-term</u>
- 28 lender must contain a consumer affidavit that the consumer was
- 29 rejected for a loan by a depository institution, whether or not
- 30 that depository institution participates in the Credit Union

- 1 Better Choice program. Any subsequent loan that is made after
- 2 the eighth loan by a lender must contain the following:
- 3 (1) A written contract that contains a repayment plan
- 4 that exceeds the consumer's pay period, if the consumer
- 5 <u>elects a repayment plan.</u>
- 6 (2) Evidence that the consumer has contacted a consumer
- 7 <u>credit counseling agency within the previous year. In order</u>
- 8 to verify that the consumer has made an appointment with a
- 9 consumer credit counseling agency, the lender may require the
- 10 consumer to provide it with the name and telephone number of
- 11 the agency with which the consumer has made the appointment.
- 12 (3) A written statement that the loan is not secured by
- 13 <u>loan proceeds with any form of government assistance,</u>
- including unemployment or Social Security income.
- 15 <u>(4) Evidence that demonstrates the ability to repay the</u>
- loan.
- 17 (c) General cooling-off period.--A short-term lender may not
- 18 knowingly make a loan to a consumer if the loan will result in
- 19 the consumer being or having been indebted to one or two short-
- 20 term lenders for a period in excess of 60 consecutive days. If a
- 21 consumer has or has had loans outstanding for 60 consecutive
- 22 days, no short-term lender may offer or make a loan to the
- 23 consumer for at least ten continuous days from the date of
- 24 repayment of the last loan, except that a short-term lender may
- 25 enter into an extended payment plan agreement with a consumer in
- 26 accordance with section 5125. For purposes of this subsection,
- 27 the term "consecutive days" means a series of continuous days in
- 28 which the consumer is party to one or more loans with short-term
- 29 lenders, including up to six days between the loans.
- 30 (d) Verification. -- A consumer shall verify in writing at the

- 1 time of entering into a loan transaction:
- 2 (1) That the consumer does not have a loan outstanding
- from any short-term lender, the aggregate outstanding balance
- 4 of which exceeds the maximum loan amount permitted under
- 5 section 5114(a).
- 6 (2) That the consumer has not entered into an extended
- 7 payment plan under section 5125 which has not yet been paid
- 8 in full.
- 9 <u>(3) The date of repayment of the consumer's last loan,</u>
- if applicable.
- 11 (e) Confirmation.--A short-term lender shall confirm the
- 12 accuracy of the verification required under subsection (c) by
- 13 all of the following:
- 14 (1) A query of the short-term lender's own records.
- 15 (2) A query of the database under subsection (f)(1).
- 16 (f) Procedure to determine outstanding loans and repayment
- 17 dates.--
- 18 (1) The department shall engage a third-party provider
- 19 <u>capable of developing, implementing and maintaining a</u>
- 20 database with real time access for reporting of loan
- 21 <u>transactions and verifying the information required under</u>
- subsections (a), (b) and (c).
- 23 (2) Short-term lenders shall report to the database
- information determined by the department to be necessary to
- 25 verify the number and amount of loans a consumer has
- 26 outstanding with any short-term lender and the date of
- 27 repayment of a consumer's last loan.
- 28 (3) The department may charge licensees a fee, to be
- 29 <u>determined by the department, for each database transaction</u>
- in order to offset the department's costs in establishing and

- 1 <u>maintaining the database and any other information as may be</u>
- 2 reasonably and lawfully available to the short-term lender.
- 3 (g) Prohibited location. -- The location of a short-term loan
- 4 <u>business</u>, except a location in existence as of the effective
- 5 date of this subsection, may not be within 100 feet of any of
- 6 the following:
- 7 (1) A horse racetrack subject to the act of December 17,
- 8 1981 (P.L.435, No.135), known as the Race Horse Industry
- 9 Reform Act.
- 10 (2) A licensed gaming facility at which slot machine
- gaming is conducted under 4 Pa.C.S. Pt. II (relating to
- 12 gaming).
- 13 § 5116. Renewal loans.
- 14 <u>A short-term loan may not be renewed.</u>
- 15 § 5117. Form of loan proceeds.
- 16 (a) General rule. -- A short-term lender shall disburse the
- 17 proceeds of a loan to the consumer in the form of an immediately
- 18 and locally cashable check, money order, cash, debit card or
- 19 credit to the consumer's account at a depository institution.
- 20 (b) Prohibition. -- A short-term lender may not impose an
- 21 additional finance charge or fee for cashing the short-term
- 22 lender's check or money order or for otherwise affecting the
- 23 disbursement of loan proceeds.
- 24 § 5118. Endorsement of check.
- 25 A short-term lender may not negotiate or present a check for
- 26 payment of a loan unless the instrument is endorsed with the
- 27 actual business name of the short-term lender.
- 28 § 5119. Redemption of repayment mechanism.
- 29 Prior to the short-term lender's negotiating or presenting a
- 30 consumer's check, or utilizing any other repayment mechanism,

- 1 the consumer shall have the right to redeem the check or any
- 2 other repayment mechanism if the consumer pays the full amount
- 3 of the check or other repayment mechanism to the short-term
- 4 lender.
- 5 § 5120. Authorized charge for dishonored repayment mechanisms.
- 6 (a) General rule.--If a consumer's repayment mechanism is
- 7 dishonored due to insufficient funds in the consumer's account,
- 8 the short-term lender:
- 9 <u>(1) Shall have the right to exercise all civil means</u>
- 10 <u>authorized by law to collect the face value of the repayment</u>
- 11 mechanism.
- 12 (2) May contract for and collect from the consumer a
- charge not to exceed \$25.
- 14 (3) May not collect any other fees as a result of the
- dishonor, including damages available under 42 Pa.C.S. § 8304
- (relating to damages in actions on bad checks).
- 17 (b) When charge not allowed. -- A charge authorized by this
- 18 section shall not be allowed:
- 19 (1) if the consumer does not receive the loan proceeds
- from the short-term lender for any reason; or
- 21 (2) if the consumer places a stop-payment order due to
- forgery or theft.
- 23 § 5121. Posting of charges and notice of mandatory extended
- payment plan.
- 25 (a) Posting of charges. -- A short-term lender shall post, in
- 26 large type in plain view of the public at any place of business
- 27 where short-term loans are made, a notice of the finance charges
- 28 and any related charges, such as the charge for dishonored
- 29 <u>repayment mechanisms</u>, imposed for loans.
- 30 (b) Mandatory notice.--A short-term lender shall provide to

- 1 each consumer at the time a loan agreement is signed, and
- 2 conspicuously display in the lending area of each business
- 3 location of the short-term lender, the following notice:
- 4 <u>Notice: If you are unable to repay your short-term loan,</u>
- 5 <u>you are entitled to an extended payment plan agreement</u>
- 6 <u>with a fully disclosed rate, term and payment plan before</u>
- 7 <u>you are committed to your first loan. The lender must</u>
- 8 <u>provide you with an extended payment plan agreement at</u>
- 9 <u>any time you declare an inability to repay a second loan</u>
- from the lender made within six days of the first loan
- 11 <u>prior to the loan's due date or any outstanding loans at</u>
- the end of 60 consecutive days of indebtedness. The
- 13 <u>lender may collect a finance charge for each extended</u>
- 14 payment plan. If the lender refuses to provide you with
- an extended payment plan, you should contact the
- 16 <u>Pennsylvania Department of Banking. In addition, you are</u>
- 17 required to enter into an extended payment plan under
- 18 certain circumstances that the lender is required to
- describe to you.
- 20 § 5122. Notice of assignment or sale of loans.
- 21 (a) General rule.--A short-term lender shall inform a
- 22 consumer in writing immediately of the name, address and
- 23 telephone number of the person to whom a loan is assigned or
- 24 sold. A short-term lender may only assign or sell a loan to
- 25 <u>another short-term lender or to a depository institution.</u>
- 26 (b) Notice.--Prior to the assignment or sale of a loan, a
- 27 <u>short-term lender shall provide the following notice to the</u>
- 28 buyer or assignee:
- The repayment mechanism associated with this loan has
- 30 been given by a consumer to secure a short-term loan

- 1 <u>transaction under Pennsylvania State law and the assignee</u>
- 2 <u>or buyer is deemed to have knowledge of and shall be</u>
- 3 <u>bound by the terms and conditions of the loan agreement</u>
- 4 <u>between the consumer and the original lender.</u>
- 5 § 5123. No criminal culpability.
- A consumer shall not be subject to a criminal penalty:
- 7 (1) For entering into a loan agreement.
- 8 (2) In the event that a consumer's repayment mechanism
- 9 is dishonored, unless the consumer's account on which the
- 10 repayment mechanism is drawn is closed by the consumer before
- the end of the agreed-upon deferment period, in which case
- the provisions of 18 Pa.C.S. § 4105 (relating to bad checks)
- or 4106 (relating to access device fraud), as applicable,
- shall apply.
- 15 § 5124. Unfair or deceptive practices.
- A person may not engage in unfair or deceptive acts,
- 17 practices or advertising in connection with a loan. A violation
- 18 of this section shall be deemed a violation of the act of
- 19 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
- 20 Practices and Consumer Protection Law.
- 21 § 5125. Extended payment plan.
- 22 (a) General rule.--
- 23 (1) A short-term lender shall offer a consumer an
- 24 extended payment plan agreement if at any time the consumer
- declares an inability to repay:
- (i) a second loan from a short-term lender when due,
- 27 <u>provided that the second loan was from the same short-</u>
- 28 term lender and entered into within six days of the due
- 29 <u>date of the prior short-term loan; or</u>
- 30 (ii) any outstanding loans at the end of 60

1	consecutive days of indebtedness as contemplated by
2	section 5115(b) (relating to prohibitions).
3	(2) The consumer shall accept an extended payment plan
4	agreement if the consumer declares an inability to repay:
5	(i) a single loan when due; or
6	(ii) any outstanding loans at the end of 60
7	consecutive days of indebtedness as contemplated by
8	section 5115(b).
9	(b) Extended payment plan agreement An extended payment
10	<pre>plan agreement shall be:</pre>
11	(1) considered an extension of the existing loan
12	obligation;
13	(2) subject to the requirements and restrictions of a
14	loan agreement as specified in section 5112 (relating to loan
15	agreement requirements), excluding section 5112(a)(4), (8),
16	(10), (11) and (13) and the form notice in section
17	5112(a)(14); and
18	(3) subject to the following terms:
19	(i) The principal balance due under the extended
20	payment plan shall be the outstanding principal balance
21	and finance charge due under the existing loan plus the
22	finance charge permitted under subparagraph (ii). The
23	short-term lender may encourage, but shall not require,
24	the consumer to reduce the balance of the existing loan
25	by paying the short-term lender cash on the date the
26	consumer enters into the extended payment plan agreement.
27	(ii) The short-term lender may not impose a finance
28	charge for entering into the extended payment plan. The
29	short-term lender may impose only the fees and charges
30	authorized in section 5120 (relating to authorized charge

1 for dishonored repayment mechanisms) in connection with 2 an extended payment plan. 3 (iii) The extended payment plan agreement shall allow the consumer to pay the sums due under the extended 4 5 payment plan over at least four 14-day terms. Each installment shall be in an amount arrived at by dividing 6 7 the total amount outstanding under subparagraph (i) to a 8 short-term lender by the number of 14-day terms of the extended payment plan. If the consumer has loans 9 outstanding to two lenders and is unable to pay both 10 11 loans, the consumer shall enter into an extended payment 12 plan with each short-term lender. A consumer may, at any 13 time, partially or entirely pay off an extended payment 14 plan. (iv) A short-term lender shall report to the 15 16 database described in section 5115 that the consumer is enrolled in an extended payment plan. 17 18 (v) Except when the consumer is required to enter 19 into an extended payment plan under the provisions of 20 this chapter, the consumer shall have the same right to 21 rescind an extended payment plan as is provided in 22 section 5114(b) (relating to maximum amount of loans, 23 terms of loans and right of rescission) for the 24 rescission of a loan. 25 (c) Eligibility requirements. -- In order to enter into an 26 extended payment plan, a consumer must: 27 (1) Have obtained a loan from the same short-term <u>lender</u>, or its assignee, that will enter into the extended 28 29 payment plan. 30 (2) Request an extended payment plan no later than the

- 1 due date of the loan.
- 2 <u>(3) Reasonably inform the short-term lender</u>, either
- 3 orally or in writing, that the consumer requests an extended
- 4 <u>payment plan.</u>
- 5 (d) Prohibition. -- During any period in which all or part of
- 6 an extended payment plan is outstanding and during the seven-day
- 7 period following a consumer's payment in full of an extended
- 8 payment plan, no short-term lender may make or offer to make a
- 9 <u>short-term loan to the consumer.</u>
- 10 § 5126. Prohibited practices regarding loans.
- 11 The following are prohibited regarding loans:
- 12 (1) Taking or attempting to take any security other than
- the consumer's check or other repayment mechanism.
- 14 (2) Taking or attempting to take more than a single
- check or other repayment mechanism from the consumer in
- 16 <u>connection with a single transaction.</u>
- 17 (3) Selling, offering or soliciting any application for
- 18 credit insurance in connection with a transaction.
- 19 <u>(4) Tying a transaction to any other transaction, offer</u>
- 20 <u>or obligation of the consumer.</u>
- 21 (5) Assigning or selling a loan to another person other
- 22 than in accordance with the provisions of this chapter.
- 23 (6) Engaging in any device or subterfuge to evade the
- requirements of this chapter, including making loans
- 25 disguised as personal property sales and leaseback
- transactions or disquising loan proceeds as cash rebates for
- 27 <u>the pretextual installment sale of goods and services.</u>
- 28 (7) Failing to collect and provide information regarding
- the number, total and average transaction amounts and other
- information the department may request.

- 1 (8) Offering, arranging, negotiating, making, holding or
- 2 <u>acting as an agent or broker for the making of a loan unless</u>
- 3 <u>the short-term lender complies with all applicable provisions</u>
- 4 <u>of this chapter.</u>
- 5 (9) Altering or deleting the date on any loan agreement
- or repayment mechanism held by the short-term lender.
- 7 (10) Rolling over, refinancing, extending or
- 8 <u>consolidating short-term loans except as provided in sections</u>
- 9 <u>5116 (relating to renewal loans) and 5125 (relating to </u>
- 10 <u>extended payment plan</u>).
- 11 (11) Failing to immediately and accurately report a loan
- or an extended payment plan to the database provider as
- required by this chapter or by the department.
- 14 (12) Threatening to use or using the criminal process in
- any state to collect the balance due on a loan.
- 16 (13) Depositing a check or otherwise implementing any
- 17 repayment mechanism prior to the expiration of the agreed-
- 18 <u>upon deferment period</u>.
- 19 § 5127. Commonwealth Financial Literacy Account.
- 20 (a) Establishment of account. -- There is established within
- 21 the Banking Department Fund a restricted account to be known as
- 22 the Commonwealth Financial Literacy Account. Funds collected
- 23 under subsections (b) and (c) shall be deposited in the account.
- 24 (b) Required deposits. -- On December 1 of each year beginning
- 25 with the December immediately following the effective date of
- 26 this section, short-term lenders shall deposit into the account
- 27 50¢ for each short-term loan transaction entered into by the
- 28 short-term lender during the preceding 12-month period.
- 29 (c) Penalties and interest. -- In addition to any other remedy
- 30 provided by law, the department may enforce collection of the

- 1 amount of the deposit required by subsection (b) by imposing the
- 2 <u>following remedies:</u>
- 3 (1) When a short-term lender fails to make the deposit
- 4 <u>on the date required, the department shall add interest at</u>
- 5 the rate provided in section 806 of the act of April 9, 1929
- 6 (P.L.343, No.176), known as The Fiscal Code, to the unpaid
- 7 amount until the date it is paid.
- 8 (2) When a short-term lender fails to make the deposit
- 9 <u>in a timely manner or provide records or information to the</u>
- department for calculation of the amount owed, the department
- shall impose a penalty against the short-term lender in the
- amount of \$10,000, plus an additional amount of \$200 per day
- for each additional day that the short-term lender fails to
- 14 <u>provide the required information or records.</u>
- 15 (3) The department may waive all or part of the penalty
- 16 <u>assessed against a short-term lender under paragraph (2) for</u>
- 17 good cause shown by the short-term lender.
- 18 (d) Liens. -- Any amount owed by and interest and penalties
- 19 assessed against a short-term lender under this section shall be
- 20 <u>a lien on the real and personal property of the short-term</u>
- 21 lender in the manner provided by section 1401 of The Fiscal
- 22 Code. The lien may be entered by the department in the manner
- 23 provided by section 1404 of The Fiscal Code and shall continue
- 24 and retain priority in the manner provided in section 1404.1 of
- 25 The Fiscal Code.
- 26 § 5128. Licensee duties with respect to military personnel.
- 27 <u>(a) Collection activity.--A licensee shall defer collection</u>
- 28 activity against:
- 29 <u>(1) a consumer who is a member of the military that has</u>
- 30 been deployed to combat or a combat support posting, for the

- 1 <u>duration of the posting; or</u>
- 2 (2) a reserve or National Guard member called to active
- 3 duty.
- 4 (b) Military personnel.--A licensee shall not contact the
- 5 <u>military chain of command of a consumer who is a member of the</u>
- 6 military in an effort to collect a loan.
- 7 (c) Repayment agreement. -- A licensee shall honor the terms
- 8 of any repayment agreement that it has entered into with a
- 9 consumer who is a member of the military, including any
- 10 repayment agreement negotiated through military counselors or
- 11 <u>third-party credit counselors.</u>
- 12 (d) Compliance with Federal law. -- All lenders must comply
- 13 with any Federal statutes and provisions regarding military
- 14 personnel and their dependents.
- 15 <u>SUBCHAPTER C</u>
- 16 ADMINISTRATIVE AND LICENSURE PROVISIONS
- 17 Sec.
- 18 5131. Application for license.
- 19 5132. Annual license fee.
- 20 5133. Public notification.
- 21 5134. Issuance of license.
- 22 5135. License duration.
- 23 5136. Licensee requirements.
- 24 5137. Licensee limitations.
- 25 5138. Surrender of license.
- 26 5139. Authority of department.
- 27 <u>5140</u>. Suspension, revocation or refusal.
- 28 <u>5141. Penalties.</u>
- 29 § 5131. Application for license.
- 30 (a) Contents. -- An application for a license under this

- 1 chapter shall be on a form prescribed and provided by the
- 2 <u>department</u>. The application shall include the name of the
- 3 applicant, the address of the principal place of business of the
- 4 applicant and the address or addresses where the applicant's
- 5 short-term loan business is to be conducted, the full name,
- 6 official title and business address of each director and
- 7 principal officer of the short-term loan business and any other_
- 8 <u>information that may be required by the department. An applicant</u>
- 9 shall demonstrate to the department that policies and procedures
- 10 have been developed to receive and process consumer inquiries
- 11 and grievances promptly and fairly.
- 12 (b) Duty to update. -- All applicants and licensees shall be
- 13 required to provide the department with written notice of the
- 14 change in any information contained in an application for a
- 15 <u>license or for any renewal of a license promptly upon an</u>
- 16 <u>applicant or licensee becoming aware of such change.</u>
- 17 (c) Financial structure.--
- 18 (1) The applicant must establish that the applicant:
- (i) has, at the time of application, a minimum
- tangible net worth of \$250,000;
- 21 (ii) will at all times maintain the minimum tangible
- 22 net worth required by subparagraph (i); and
- 23 <u>(iii) has an otherwise adequate financial structure.</u>
- 24 (2) Prior to and as a condition of the issuance of a
- 25 license, an applicant for a license shall maintain a bond in
- the amount of \$100,000 in a form acceptable to the department
- from a surety company authorized to do business in this
- 28 Commonwealth. The bond shall be a penal bond conditioned on
- 29 compliance by the licensee with this chapter and subject to
- forfeiture and shall run to the Commonwealth for its use and

- shall be held by the department for the term of the license.
- 2 The bond shall also be for the use of any consumer against
- 3 <u>the licensee for failure to carry out the terms of any loan</u>
- 4 <u>or extended payment plan. If a consumer is aggrieved, he may,</u>
- 5 with the written consent of the department, recover the
- 6 amount by which the consumer is aggrieved from the bond by
- 7 filing a claim with the surety company or maintaining an
- 8 <u>action on the bond. In the alternative, an aggrieved consumer</u>
- 9 may recover the amount by which the consumer is aggrieved by
- filing a formal complaint against the licensee with the
- department which shall adjudicate the matter. Such an
- 12 adjudication shall be binding upon the surety company and
- enforceable by the department in Commonwealth Court and by an
- 14 aggrieved consumer in any court. An aggrieved consumer
- seeking to recover any amount from a bond that has already
- been forfeited by the licensee or which the department is in
- 17 the process of having forfeited may recover payment on such
- 18 bond if, after filing a petition with the department, the
- 19 department consents to the requested payment or portion
- thereof. The department may pay the aggrieved consumer from
- 21 the bond proceeds recovered by the department in such case.
- Nothing in this paragraph shall be construed as limiting the
- ability of any court or magisterial district judge to award
- to any aggrieved consumer other damages, court costs and
- 25 attorney fees permitted by applicable law, but those claims
- that are not directly related to the loan or extended payment
- 27 plan may not be recovered from the proceeds of the bond. The
- department, in its discretion, may consent to or order pro
- rata or other recovery on the bond for any aggrieved consumer
- if claims against the bond may or do exceed its full monetary

- 1 amount. No bond shall comply with the requirements of this
- 2 paragraph unless it contains a provision that it shall not be
- 3 canceled for any cause unless notice of intention to cancel
- 4 <u>is given to the department at least 30 days before the day</u>
- 5 upon which cancellation shall take effect. In such event, the
- 6 <u>licensee shall be required to replace the bond with a bond</u>
- 5 substantially in the same form as the original bond.
- 8 <u>Cancellation of the bond shall not invalidate the bond</u>
- 9 <u>regarding the period of time it was in effect.</u>
- 10 (d) License renewals. -- Licenses shall be issued for terms of
- 11 12 months and may be renewed by the department upon application
- 12 by the licensee and the payment of any and all applicable
- 13 <u>renewal fees. A licensee shall comply with the same requirements</u>
- 14 for renewal of its license as it did for the issuance of the
- 15 original license.
- 16 § 5132. Annual license fee.
- 17 (a) General rule. -- An applicant for a license shall pay to
- 18 the department at the time an application is filed, and upon
- 19 filing of each application for renewal thereof, a license fee
- 20 for the principal place of business of \$1,000 and an additional
- 21 license fee for each branch office of \$1,000.
- 22 (b) Recovery of costs. -- No abatement of a licensee fee shall
- 23 be made if the license is issued for a period of less than one
- 24 year. The department shall be entitled to recover any cost of
- 25 investigation in excess of license or renewal fees from the
- 26 licensee or from a person who is not licensed under this chapter
- 27 but who is believed to be engaged in the short-term loan
- 28 business.
- 29 § 5133. Public notification.
- 30 (a) General rule. -- Each applicant for a new license under

- 1 this chapter shall be required to post a notice for public
- 2 <u>display at any location in this Commonwealth where licensing is</u>
- 3 being requested. The purpose of the notice is to identify to the
- 4 <u>public that an application to operate a short-term loan office</u>
- 5 at the location has been filed with the department. The
- 6 applicant shall:
- 7 (1) Be required to post a notice commencing on the day
- 8 the application was filed with the department.
- 9 (2) Be required to maintain the notice until a decision
- 10 to approve or disapprove the license has been made by the
- department.
- 12 (3) Be responsible for posting the notice in a
- conspicuous location that is as close as possible to the main
- 14 <u>entrance of the location requesting licensure.</u>
- 15 (4) Be required to use a notice that is in a size and
- form as determined by the department.
- 17 (b) Applicability. -- This section shall not apply to any
- 18 location where a short-term loan business was being conducted in
- 19 this Commonwealth on the effective date of this chapter.
- 20 § 5134. Issuance of license.
- 21 (a) Time limit. -- Upon receipt of an application for a
- 22 license, the department may conduct such investigation as it
- 23 deems necessary to determine that the applicant and its
- 24 officers, directors and principals are of good character and
- 25 ethical reputation. Within 60 days of receipt of a completed
- 26 application, the department shall:
- 27 <u>(1) issue a license; or</u>
- 28 (2) refuse to issue a license for any reason which the
- 29 department may refuse to issue a license under this section
- or for which the department may suspend, revoke or refuse to

- 1 renew a license under section 5140 (relating to suspension,
- 2 revocation or refusal).
- 3 (b) Appeal of denial.--If the department refuses to issue a
- 4 <u>license</u>, it shall notify the applicant in writing of the denial,
- 5 the reason therefor and the applicant's right to appeal the
- 6 <u>denial to the Secretary of Banking. The department shall require</u>
- 7 that an appeal from refusal to approve an application for a
- 8 <u>license shall be filed by the applicant within 30 days of notice</u>
- 9 <u>of refusal.</u>
- 10 (c) Contents of license. -- Every license issued by the
- 11 <u>department shall specify:</u>
- 12 (1) The name and address of the licensee and the address
- or addresses covered by the license.
- 14 <u>(2) The licensee's reference number.</u>
- 15 (3) Any other information the department shall require
- 16 <u>to carry out the purposes of this chapter.</u>
- 17 (d) Denial of license due to conviction.--
- 18 (1) The department may deny a license if it finds that
- 19 the applicant or a director, officer, partner or ultimate
- 20 equitable owner of 10% or more of the applicant has been
- 21 convicted of a felony or a crime of moral turpitude in any
- jurisdiction or convicted of a crime which, if committed in
- this Commonwealth, would constitute a felony or a crime of
- 24 moral turpitude. For the purposes of this chapter, a person
- 25 <u>shall be deemed to have been convicted of a crime if the</u>
- 26 person:
- 27 <u>(i) enters a guilty plea or plea of nolo contendere</u>
- to a criminal charge before a Federal magistrate or a
- 29 <u>court, unless the guilty plea or plea of nolo contendere</u>
- is set aside, vacated, reversed or otherwise abrogated by

1	lawful judicial process; or
2	(ii) is found guilty by the verdict of a jury or the
3	decision or judgment of a Federal magistrate or court,
4	irrespective of pronouncement or suspension of sentence,
5	unless the decision or judgment is set aside, vacated,
6	reversed or otherwise abrogated by lawful judicial
7	process.
8	(2) A license under this chapter shall be deemed to be a
9	"covered license" within the meaning of section 405 of the
10	act of May 15, 1933 (P.L.565, No.111), known as the
11	Department of Banking Code. The department shall notify a
12	licensee if a covered individual who is or will be employed
13	or contracted by the licensee has a criminal background that
14	renders the employee unfit for employment in the short-term
15	<u>loan business.</u>
16	(e) Denial of license for other reason The department may
17	deny a license or otherwise restrict a license if it finds that
18	the applicant or a director, officer, partner, employee, agent
19	or ultimate equitable owner of 10% or more of the applicant:
20	(1) has had a license application or license issued by
21	the department denied, suspended or revoked;
22	(2) is the subject of an order of the department;
23	(3) has violated or failed to comply with any provisions
24	of this chapter or any regulation or order of the department;
25	(4) is not of good character and ethical reputation in
26	the opinion of the department; or
27	(5) has an outstanding debt to the Commonwealth or any
28	Commonwealth agency.
29	§ 5135. License duration.
30	A license issued by the department:

1 (1) Must be renewed on February 1 of each year upon	1	(1)	Must	be	renewed	on	February	<i>y</i> 1	of	each	vear	upon
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- 2 payment of the annual renewal fee and after the department
- determines that the licensee is conducting business in
- 4 <u>accordance with this chapter. No refund of any portion of the</u>
- 5 <u>license fee shall be made if the license is voluntarily</u>
- 6 <u>surrendered to the department or suspended or revoked by the</u>
- 7 <u>department prior to its expiration date.</u>
- 8 (2) Shall be invalid if the licensee's authority to
- 9 conduct business is voided under any law of this Commonwealth
- or any other state unless the licensee demonstrates that the
- 11 <u>applicable court or governmental entity was clearly erroneous</u>
- 12 <u>in voiding the licensee's authority to conduct business.</u>
- 13 (3) Is not assignable or transferable by operation of
- 14 <u>law or otherwise.</u>
- 15 § 5136. Licensee requirements.
- 16 (a) Requirements of a licensee.--A licensee shall do all of
- 17 the following:
- 18 (1) Conspicuously display its license at each licensed
- 19 place of business.
- 20 (2) Maintain at its principal place of business within
- 21 this Commonwealth, or at a place outside this Commonwealth if
- 22 agreed to by the department, the original, a copy or
- 23 electronic access to books, accounts, records and documents
- of the business conducted under the license as prescribed by
- 25 the department to enable the department to determine whether
- the business of the licensee is being conducted in accordance
- with the provisions of this chapter and the orders,
- regulations and statements of policy issued under this
- 29 <u>chapter. The department shall have free access to and</u>
- 30 authorization to examine records maintained outside this

1	Commonwealth. The costs of the examination, including travel
2	costs, shall be borne by the licensee. The department may
3	deny or revoke the authority to maintain records outside this
4	Commonwealth for good cause in the interest of protection for
5	Commonwealth consumers, including for the licensee's failure
6	to provide books, accounts, records or documents to the
7	department upon request.
8	(3) Annually, before December 1, file a report with the
9	department setting forth the information the department
10	requires concerning the short-term loan business conducted by
11	the licensee during the preceding calendar year. The report
12	must be in writing and subject to penalty of perjury on a
13	form provided by the department. Licensees failing to file
14	the required report by December 1 shall be subject to a
15	penalty of \$500 for each day after December 1 until the
16	report is filed. The report shall include:
17	(i) The total number of short-term loans made during
18	the preceding calendar year.
19	(ii) The minimum, maximum and average dollar amount
20	of short-term loans made during the preceding calendar
21	year.
22	(iii) The average annual percentage rate and the
23	average term of short-term loans made during the
24	preceding calendar year.
25	(iv) The total number of returned checks, the total
26	of checks recovered and the total of checks charged off
27	during the preceding calendar year.
28	(v) The total number of short-term loans paid in
29	full, the total number of loans which went into default
30	and the total number of loans charged off during the

preceding calendar year.
(vi) The total number of consumer complaints.
(vii) Frequency of repeat use by consumers of
postdated or delayed deposit checks.
(viii) Verification that the licensee has not used
the criminal process or caused the criminal process to be
used in the collection of any short-term loan during the
preceding calendar year.
(ix) Information on the number of consumers referred
to financial literacy counseling within the preceding
<pre>calendar year.</pre>
(x) Any other information or data the department may
require.
(4) Be subject to examination by the department. The
department may examine a licensee if the department deems the
examination to be necessary or desirable. The cost of the
examination shall be borne by the licensee. During an
examination, the department shall have free access, during
regular business hours, to the licensee's place or places of
business in this Commonwealth and to all instruments,
documents, accounts, books and records which pertain to a
licensee's short-term loan business, whether maintained in or
outside this Commonwealth.
(5) Include in all advertisements language indicating
that the licensee is licensed by the department.
(b) Accounting records The licensee's accounting records
shall be constructed and maintained in compliance with generally
accepted accounting principles or as provided by department
regulation. Instruments, documents, accounts, books and records
shall be kept separate and apart from the records of any other

- 1 business conducted by the licensee and shall be preserved and
- 2 kept available for investigation or examination by the
- 3 <u>department for a period determined by the department.</u>
- 4 (c) Copies.--If copies of instruments, documents, accounts,
- 5 books or records are maintained under subsection (a)(2), they
- 6 may be photostatic, microfilm or electronic copies or copies
- 7 provided in some other manner approved by the department.
- 8 § 5137. Licensee limitations.
- 9 <u>A licensee may not do any of the following:</u>
- 10 (1) Transact any business under this chapter under any
- other name or names except those designated in its license. A
- 12 <u>licensee that changes its name or place or places of business</u>
- shall immediately notify the department. Upon notification,
- 14 <u>the department shall issue a certificate to the licensee, if</u>
- 15 appropriate, which shall specify the licensee's new name or
- 16 address.
- 17 (2) Conduct a business other than the short-term loan
- 18 business licensed by the department under this chapter
- 19 without at least 30 days' prior written notification to and
- 20 approval by the department.
- 21 § 5138. Surrender of license.
- 22 (a) Authorization. -- Upon satisfying the department that all
- 23 <u>creditors of a licensee have been paid or that other</u>
- 24 arrangements satisfactory to the creditors and the department
- 25 have been made, a licensee may voluntarily surrender its license
- 26 to the department by delivering its license to the department
- 27 <u>with written notice that the license is being voluntarily</u>
- 28 suspended.
- 29 (b) Effect.--Surrender under this section shall not affect
- 30 the licensee's civil or criminal liability for acts committed.

- 1 § 5139. Authority of department.
- 2 (a) General authority. -- The department has the following
- 3 powers and duties:
- 4 (1) Examine any instrument, document, account, book,
- 5 <u>record or file of a licensee or any person having a</u>
- 6 connection to the licensee or make an investigation necessary
- 7 <u>to administer this chapter. The costs of the examination</u>
- 8 <u>shall be borne by the licensee or the entity subject to the</u>
- 9 examination.
- 10 (2) Conduct an administrative hearing on any matter
- 11 pertaining to this chapter, issue subpoenas to compel the
- 12 <u>attendance of witnesses and the production of instruments</u>,
- documents, accounts, books and records at the hearing.
- 14 Subpoenaed material may be retained by the department until
- the completion of all proceedings in connection with the
- 16 <u>materials. A department official may administer oaths and</u>
- 17 affirmations to an individual whose testimony is required. If
- 18 a person fails to comply with a subpoena issued by the
- department or to testify on a matter concerning which the
- 20 person may be lawfully interrogated, on application by the
- 21 department, the Commonwealth Court may issue an order
- 22 requiring the attendance of the person, the production of
- instruments, documents, accounts, books or records or the
- 24 giving of testimony.
- 25 (3) Request and receive information or records,
- 26 <u>including reports of criminal history record information from</u>
- 27 <u>any Federal, state, local or foreign government entity</u>
- regarding an applicant for a license, a licensee or a person
- 29 related to the business of the applicant or licensee, at a
- 30 cost to be paid by the applicant or licensee.

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- 2 incurred while conducting an investigation of the person for
- 3 purposes of issuance or renewal of a license or for any
- 4 <u>violation of this chapter.</u>
- 5 (5) Promulgate regulations and statements of policy and
- 6 <u>issue orders as necessary for the proper conduct of the</u>
- 7 <u>short-term loan business by short-term lenders, the issuance</u>
- 8 <u>and renewal of licenses and the enforcement of this chapter.</u>
- 9 (6) Prohibit or permanently remove an individual
- 10 <u>responsible for a violation of this chapter from working in</u>
- 11 <u>the individual's present capacity or in any other capacity</u>
- 12 <u>related to activities regulated by the department.</u>
- 13 <u>(7) Order a person to make restitution for actual</u>
- 14 <u>damages to consumers caused by any violation of this chapter.</u>
- 15 <u>(8) Impose conditions as the department deems</u>
- 16 <u>appropriate</u>.
- 17 (b) Hearings.--A person aggrieved by a decision of the
- 18 department may appeal the decision of the department to the
- 19 Secretary of Banking. The appeal shall be conducted under 2
- 20 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
- 21 Commonwealth agencies).
- 22 (c) Injunctions. -- The department may maintain an action for
- 23 an injunction or other process against a person to restrain the
- 24 person from engaging in an activity violating this chapter.
- 25 (d) Final orders.--A decision of the secretary shall be a
- 26 final order of the department and shall be enforceable in a
- 27 <u>court of competent jurisdiction. The department shall publish</u>
- 28 the final adjudication issued under this section, subject to
- 29 redaction or modification to preserve confidentiality.
- 30 (e) Appeals. -- A person aggrieved by a decision of the

- 1 <u>Secretary of Banking may appeal the decision under 2 Pa.C.S. Ch.</u>
- 2 7 Subch. A (relating to judicial review of Commonwealth agency
- 3 action).
- 4 § 5140. Suspension, revocation or refusal.
- 5 (a) Departmental action. -- The department may suspend, revoke
- 6 or refuse to renew a license issued under this chapter if any
- 7 <u>licensee or director, officer, partner or owner of a licensee</u>
- 8 <u>has done any of the following:</u>
- 9 <u>(1) Made a material misstatement in any application,</u>
- 10 report or submission required by this chapter or any
- 11 regulation, statement of policy or order under this chapter.
- 12 (2) Violated this chapter or a regulation or order under
- this chapter.
- 14 (3) Engaged in dishonest, fraudulent or illegal
- practices or conduct in a business or unfair or unethical
- practices or conduct in connection with the short-term loan
- 17 business.
- 18 (4) Been convicted of or pled quilty or nolo contendere
- 19 to a crime of moral turpitude or a felony.
- 20 (5) Permanently or temporarily been enjoined by a court
- 21 <u>of competent jurisdiction from engaging in conduct involving</u>
- 22 an aspect of the short-term loan business.
- 23 (6) Become the subject of an order of the department
- denying, suspending or revoking a license applied for or
- issued under this chapter.
- 26 (7) Become the subject of a United States Postal Service
- 27 fraud order.
- 28 (8) Become the subject of an order of the department
- denying, suspending or revoking a license under a statute
- 30 other than this chapter.

1	(9) Demonstrated negligence or incompetence in
2	performing an act for which the licensee is required to hold
3	a license under this chapter.
4	(b) Reinstatement The department may reinstate a license
5	which was previously revoked or denied renewal if all of the
6	<pre>following exist:</pre>
7	(1) The condition which warranted the original action
8	has been corrected to the department's satisfaction.
9	(2) The department has reason to believe that the
10	condition is not likely to occur again.
11	(3) The licensee satisfies all other requirements of
12	this chapter.
13	§ 5141. Penalties.
14	(a) Licensees
15	(1) A licensee and any director, officer, owner, partner
16	or agent of a licensee that violates this chapter or commits
17	an action which would subject the licensee to sanction under
18	section 5140 (relating to suspension, revocation or refusal)
19	may be fined by the department up to \$2,000 for each offense.
20	(2) It shall be an affirmative defense for a licensee
21	that, prior to an alleged violation of section 5115 (relating
22	to prohibitions), the licensee complied with all of the
23	<pre>following:</pre>
24	(i) Required a consumer to verify in writing that
25	the consumer does not have any outstanding loans with the
26	licensee or any other short-term lender.
27	(ii) Accessed the database described in section
28	5115(e) to determine whether the consumer has any
29	outstanding loans.
30	(b) Nonlicensees A person subject to this chapter and not

- 1 licensed by the department that violates this chapter or commits
- 2 an action which would subject a licensee to sanction under
- 3 section 5140 may be fined by the department up to \$2,000 for
- 4 each offense.
- 5 SUBCHAPTER D
- 6 <u>MISCELLANEOUS PROVISIONS</u>
- 7 Sec.
- 8 <u>5151</u>. Applicability.
- 9 5152. Preemption.
- 10 5153. Report to General Assembly.
- 11 § 5151. Applicability.
- 12 This chapter shall apply to a loan which:
- 13 (1) is made or executed within this Commonwealth; or
- 14 (2) is negotiated, offered or otherwise transacted
- within this Commonwealth or with any resident of this
- 16 Commonwealth, in whole or in part, whether by the ultimate
- 17 lender or any other person.
- 18 § 5152. Preemption.
- 19 (a) General rule.--Except as set forth in subsection (b),
- 20 all of the following apply:
- 21 (1) This chapter preempts ordinances, resolutions and
- 22 regulations imposing reporting requirements, financial or
- 23 <u>lending activities or other obligations upon persons subject</u>
- to this chapter.
- 25 (2) Political subdivisions are prohibited from enacting
- 26 and enforcing ordinances, resolutions and regulations
- 27 <u>expressly pertaining to the facilities of persons subject to</u>
- this chapter.
- 29 (b) Exceptions. -- A political subdivision may, under zoning
- 30 ordinance, require a short-term lender to:

- 1 (1) locate within approved residential, industrial,
- 2 <u>commercial or other zones; and</u>
- 3 (2) obtain a zoning permit, pay a zoning fee and undergo
- 4 <u>an inspection related to zoning.</u>
- 5 § 5153. Report to General Assembly.
- 6 Three years from the effective date of this chapter and for
- 7 three triennial periods after that date, the department shall
- 8 report to the Secretary of the Senate and the Chief Clerk of the
- 9 House of Representatives on the status of the short-term loan
- 10 industry. The report shall include:
- 11 (1) The number of short-term lenders with active
- 12 <u>licenses issued by the department.</u>
- 13 (2) A summary of the number of loans issued, the average
- 14 loan amount and any other information as determined by the
- department.
- 16 (3) A compilation of aggregate data concerning the
- 17 short-term lending industry in this Commonwealth as reported
- to the department under section 5136(a)(3) (relating to
- 19 licensee requirements).
- 20 (4) Information on consumer complaints. This paragraph
- 21 <u>includes alleged or confirmed reports of unfair or deceptive</u>
- 22 trade practices and false, misleading or deceptive
- 23 advertising.
- 24 (5) The effectiveness of the database in providing real-
- 25 <u>time reporting of loan transactions, verification of</u>
- consumers' borrowing and repayment history, enrollment in
- 27 <u>extended payment plans and use of financial literacy</u>
- programs.
- 29 <u>(6) Information on the effectiveness of a financial</u>
- 30 literacy counseling and education program.

- 1 (7) Other information the department deems necessary and
- 2 <u>appropriate</u>.
- 3 Section 2. Section 4107(a) of Title 18 is amended by adding
- 4 a paragraph to read:
- 5 § 4107. Deceptive or fraudulent business practices.
- 6 (a) Offense defined. -- A person commits an offense if, in the
- 7 course of business, the person:
- 8 * * *
- 9 (9.1) violates 7 Pa.C.S. § 5124 (relating to unfair or
- 10 deceptive practices);
- 11 * * *
- 12 Section 3. Title 18 is amended by adding a section to read:
- 13 § 7332. Unlicensed short-term lending.
- 14 A person that operates without a license in violation of 7
- 15 Pa.C.S. § 5111 (relating to license requirements) commits a
- 16 <u>felony of the third degree.</u>
- 17 Section 4. This act shall take effect as follows:
- 18 (1) The following provisions of 7 Pa.C.S. shall take
- 19 effect upon the effective date of the regulations promulgated
- by the Department of Banking under 7 Pa.C.S. § 5139(a)(5):
- 21 (i) Section 5115(d)(2) and (e)(2).
- 22 (ii) Section 5125(b)(3)(iv).
- 23 (iii) Section 5126(11).
- 24 (2) This section shall take effect immediately.
- 25 (3) The remainder of this act shall take effect in 60
- 26 days.