

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 94**

Session of  
1997

INTRODUCED BY HOLL, JANUARY 21, 1997

REFERRED TO BANKING AND INSURANCE, JANUARY 21, 1997

AN ACT

1 Amending the act of December 22, 1989 (P.L.687, No.90), entitled  
 2 "An act providing for the regulation and licensing of  
 3 mortgage bankers and mortgage brokers; imposing additional  
 4 powers and duties on the Department of Banking and the State  
 5 Real Estate Commission; and providing penalties," further  
 6 providing for definitions, for loan correspondents and  
 7 wholesale table funders, for license applications,  
 8 requirements, exemptions, duration, fees, limitations,  
 9 suspensions or revocations and for enforcement and penalties.

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

12 Section 1. The definition of "advance fee" in section 2 of  
 13 the act of December 22, 1989 (P.L.687, No.90), known as the  
 14 Mortgage Bankers and Brokers Act, is amended and the section is  
 15 amended by adding definitions to read:

16 Section 2. Definitions.

17 The following words and phrases when used in this act shall  
 18 have the meanings given to them in this section unless the  
 19 context clearly indicates otherwise:

20 "Advance fee." Any funds requested by or to be paid [to a  
 21 mortgage broker] in advance of or during the processing of a

1 mortgage loan application, excluding those fees paid by an  
2 applicant borrower directly to a credit agency reporting bureau,  
3 title company or real estate appraiser.

4 "Branch." An office or other place of business located in  
5 this Commonwealth or any other state, other than the principal  
6 place of business, where a person engages in the first mortgage  
7 loan business which falls under the scope of this act.

8 \* \* \*

9 "First mortgage loan business." A person is deemed to be  
10 engaged in the first mortgage loan business in this Commonwealth  
11 if that person advertises, causes to be advertised, solicits,  
12 negotiates or arranges in the ordinary course of business,  
13 offers to make or makes more than two first mortgage loans in a  
14 calendar year in this Commonwealth, whether directly or by any  
15 person acting for his benefit.

16 \* \* \*

17 "Loan correspondent." A person who, in the regular course of  
18 business, directly or indirectly originates and closes loans in  
19 his own name, utilizing funds provided by a wholesale table  
20 funder and simultaneously assigns the loans to the wholesale  
21 table funder. A loan correspondent may close a mortgage loan  
22 utilizing other funding sources, but only in an emergency  
23 circumstance where wholesale table funding is not available.

24 "Lock-in agreement." An agreement between a mortgage banker  
25 or loan correspondent and borrower whereby the licensee  
26 guarantees until a specified date the availability of a  
27 specified rate of interest or specified formula by which the  
28 rate of interest and/or a specific number of discount points  
29 will be determined, provided the loan is approved and closed by  
30 the specified date. If a specified date is not determinable, the

1 licensee may fulfill the requirement of this provision by  
2 setting forth with specificity the method by which the duration  
3 of the lock-in period will be determined.

4 \* \* \*

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

9 "Secretary." The Secretary of Banking of the Commonwealth,  
10 or his designee.

11 "Service a mortgage loan." The collection or remittance of  
12 payments for another of the right to collect or remit payments  
13 for another of principal, interest, taxes, insurance and any  
14 other payments pursuant to a mortgage loan.

15 "Tangible net worth." Net worth less the following assets:

16 (1) That portion of any assets pledged to secure  
17 obligations of any person or entity other than that of the  
18 applicant.

19 (2) Any asset, except construction loans receivables  
20 secured by first mortgages from related companies, due from  
21 officers or stockholders of the applicant or related  
22 companies in which the applicant's officers or stockholders  
23 have an interest.

24 (3) That portion of the value of any marketable  
25 security, listed or unlisted, not shown at lower of cost or  
26 market, except for any shares of Federal National Mortgage  
27 Association stock required to be held under a servicing  
28 agreement, which should be carried at cost.

29 (4) Any amount in excess of the lower of the cost or  
30 market value of mortgages in foreclosures, construction loans

1 or foreclosed property acquired by the applicant through  
2 foreclosure.

3 (5) Any investment shown on the balance sheet in the  
4 applicant's joint ventures, subsidiaries, affiliates or  
5 related companies which is greater than the value of the  
6 assets at equity.

7 (6) Goodwill.

8 (7) The value placed on insurance renewals or property  
9 management contract renewals or other similar intangibles of  
10 the applicant.

11 (8) Organization costs of the applicant.

12 (9) The value of any servicing contracts held by the  
13 applicant not determined in accordance with American  
14 Institute of Certified Public Accountants Statement of  
15 Position 76-2, dated August 25, 1976, or subsequent revision  
16 thereto.

17 (10) Any real estate held for investment where  
18 development will not start within two years from the date of  
19 its initial acquisition.

20 (11) Any leasehold improvements not being amortized over  
21 the lesser of the expected life of the asset or the remaining  
22 term of the lease.

23 (12) Any commitment fees paid or collected which are not  
24 recoverable through the closing or selling of loans.

25 "Wholesale table funder." A licensed mortgage banker or an  
26 entity exempt pursuant to section 3(b)(1), (10) or (12) who, in  
27 the regular course of business, provides the funding for the  
28 closing of mortgage loans through loan correspondents and who by  
29 assignment obtains title to such mortgage loans.

30 Section 2. Sections 3, 4, 5, 6, 7, 8(a), 9(a), 10(a), 11(d),

1 13(a), 14(a) and (b) and 18 of the act are amended to read:

2 Section 3. License requirements and exemptions.

3 (a) License required.--On and after the effective date of  
4 this act, no person shall act as a mortgage banker, loan  
5 correspondent or mortgage broker in this Commonwealth without a  
6 license as provided for in this act, provided, however, that any  
7 person licensed as a mortgage banker may also act as a loan  
8 correspondent or mortgage broker and any person licensed as a  
9 loan correspondent may also act as a mortgage broker without a  
10 separate license. A person licensed as a mortgage broker may  
11 only perform the services of a mortgage broker as defined in  
12 section 2.

13 (b) Exceptions.--The following persons shall not be required  
14 to be licensed under this act in order to conduct the activities  
15 of a mortgage banker or mortgage broker but shall be subject to  
16 those provisions of this act as specifically provided in this  
17 section:

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

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

27 (3) A person licensed pursuant to the provisions of the  
28 act of February 19, 1980 (P.L.15, No.9), known as the Real  
29 Estate Licensing and Registration Act, who is principally  
30 engaged in a third-party real estate brokerage business, but

1 only to the extent that he provides information, verbal or  
2 written, to or negotiates or places a mortgage loan for a  
3 buyer of real estate and is not compensated by the buyer or  
4 any other person for providing such information or  
5 negotiating or placing such mortgage loan. If he is  
6 compensated for providing such information or negotiating or  
7 placing such mortgage loan, he shall be subject to the  
8 provisions of sections 8, 10, 11 and 14(b), excluding section  
9 8(a)(1).

10 (4) A seller of a dwelling, if he has resided in the  
11 dwelling at least one year and as part of the purchase price  
12 receives a first mortgage executed by the purchaser.

13 (5) A person who either originates or negotiates less  
14 than [12] three mortgage loans in a calendar year in this  
15 Commonwealth, unless he is otherwise deemed to be engaged in  
16 the first mortgage loan business.

17 (6) Builders, when obtaining mortgages for their own  
18 construction or for the sale of their own construction.

19 (7) Any agency or instrumentality of the Federal  
20 Government or a corporation otherwise created by an act of  
21 the United States Congress, including, but not limited to,  
22 the Federal National Mortgage Association, the Government  
23 National Mortgage Association, the Veterans' Administration,  
24 the Federal Home Loan Mortgage Corporation and the Federal  
25 Housing Administration.

26 (8) The Pennsylvania Housing Finance Agency.

27 (9) A licensee under the act of April 8, 1937 (P.L.262,  
28 No.66), known as the Consumer Discount Company Act, except  
29 that any such licensee who makes a mortgage loan other than  
30 under the provisions of that act shall be subject to the

1 provisions of sections 4(b)(2) and (3), 8, 10 and 14(b) of  
2 this act, excluding section 8(a)(1).

3 (10) Except for licensees described in paragraph (9),  
4 subsidiaries and affiliates of the following institutions:  
5 [Pennsylvania] State-chartered banks, bank and trust  
6 companies, savings banks, private banks, savings and loan  
7 associations and credit unions or national banks, federally  
8 chartered savings and loan associations, federally chartered  
9 savings banks and federally chartered credit unions, except  
10 that such subsidiaries and affiliates of institutions  
11 enumerated in this paragraph shall:

12 (i) be subject to the provisions of sections 8,  
13 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]

14 (ii) deliver as required to the department annually  
15 copies of financial reports made to all supervisory  
16 agencies[.]; and

17 (iii) be registered with the department.

18 (11) Employees of a licensee or excepted persons acting  
19 for their employers.

20 (12) An insurance company, association or exchange  
21 authorized to transact business in this Commonwealth under  
22 the act of May 17, 1921 (P.L.682, No.284), known as The  
23 Insurance Company Law of 1921, and any subsidiaries and  
24 affiliates thereof, except that such subsidiaries and  
25 affiliates shall:

26 (i) be subject to the provisions of sections 8,  
27 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]

28 (ii) deliver as required to the department annually  
29 copies of financial reports made to all supervisory  
30 agencies[.]; and

1           (iii) be registered with the department.

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

6           (14) Nonprofit corporations making mortgage loans to  
7           promote home ownership or improvements for the disadvantaged,  
8           given that the corporation does not hold itself out to the  
9           public as a first mortgage lender.

10          (c) Loans for business or commercial purposes.--This act  
11 shall not apply to mortgage loans made for business or  
12 commercial purposes.

13 Section 4. Application for license.

14          (a) Contents.--An application for a license to act as a  
15 mortgage banker, loan correspondent or mortgage broker shall be  
16 on such forms as may be prescribed and provided by the  
17 department. Each application shall include the address or  
18 addresses where business is to be conducted, the full name,  
19 official title and business address of each director and  
20 principal officer of the business and any other information that  
21 may be required by the department. An applicant shall  
22 demonstrate to the department that policies and procedures have  
23 been developed to receive and process customer inquiries and  
24 grievances promptly and fairly.

25          (b) Mortgage banker's license.--The department shall issue a  
26 mortgage banker's license applied for pursuant to this act if  
27 the applicant establishes that he has met the following  
28 conditions:

29           (1) That he is approved by or meets the current criteria  
30 for approval of at least one of the following:

1 (i) Federal National Mortgage Association.

2 (ii) Federal Home Loan Mortgage Corporation.

3 (iii) Federal Housing Administration.

4 (2) That he maintains or is approved for, and will  
5 continue to maintain as a licensee, a line of credit or  
6 equivalent mortgage-funding capability of not less than  
7 \$1,000,000.

8 (3) That he has a minimum tangible net worth of \$250,000  
9 at the time of application and will, at all times thereafter,  
10 maintain such minimum net worth, provided, however, that  
11 those applicants who were in business prior to [January 1,  
12 1987] June 20, 1990, may be licensed with a minimum tangible  
13 net worth of \$100,000 if, in the opinion of the department,  
14 the applicant has established that it has an otherwise  
15 adequate financial structure and operating history.

16 (4) That he will maintain fidelity bond coverage in  
17 accordance with the guidelines established by the Federal  
18 National Mortgage Association or the Federal Home Loan  
19 Mortgage Corporation.

20 (b.1) Loan correspondent's license.--

21 (1) The department shall issue a loan correspondent's  
22 license applied for pursuant to this act if the applicant  
23 establishes that he has met the following conditions:

24 (i) That he is eligible to and will obtain and  
25 maintain a bond in the amount of \$100,000, in a form  
26 prescribed by the department, prior to the issuance of  
27 the license from a surety company authorized to do  
28 business in this Commonwealth. The bond shall run to the  
29 Commonwealth of Pennsylvania and shall be for the use of  
30 the Commonwealth and any person or persons who obtain a

1 judgment against the loan correspondent for failure to  
2 carry out the terms of any provision for which advance  
3 fees are paid. No bond shall comply with the requirements  
4 of this section unless it contains a provision that it  
5 shall not be canceled for any cause unless notice of  
6 intention to cancel is given to the department at least  
7 30 days before the day upon which cancellation shall take  
8 effect.

9 (ii) That he has a minimum tangible net worth of  
10 \$100,000 at the time of application and will, at all  
11 times thereafter, maintain such minimum net worth.

12 (iii) Notwithstanding subparagraph (ii), an  
13 applicant who was in the business as a mortgage banker,  
14 mortgage broker or otherwise authorized to engage in the  
15 first mortgage loan business by the department prior to  
16 the effective date of this section who files an  
17 application within 90 days after the effective date of  
18 this section may be licensed for one year with a minimum  
19 tangible net worth of \$50,000. Thereafter, for a period  
20 of one year, the applicant may continue to be licensed  
21 with a minimum tangible net worth of \$75,000. Following  
22 that period, the applicant may continue to be licensed  
23 with a minimum tangible net worth of \$100,000.

24 (c) Mortgage broker's license.--

25 (1) The department shall issue a mortgage broker's  
26 license applied for pursuant to this act if the applicant  
27 establishes that [he has met the following conditions:

28 (1) That] he is eligible to and will obtain and maintain  
29 a bond in the amount of \$100,000, in a form prescribed by the  
30 regulations of the department, prior to the issuance of the

1 license, from a surety company authorized to do business in this  
2 Commonwealth[, which bond shall run to the Commonwealth for the  
3 benefit of any person injured by the wrongful act, default or  
4 misrepresentation of the mortgage broker]. The bond shall run to  
5 the Commonwealth of Pennsylvania and shall be for the use of the  
6 Commonwealth and any person or persons against the mortgage  
7 broker for failure to carry out the terms of any provision for  
8 which advance fees are paid. If such person or persons shall be  
9 so aggrieved, he may, upon recovering judgment against such  
10 licensee, issue execution under such judgment and maintain an  
11 action upon the bond of the licensee in any court having  
12 jurisdiction for the amount claimed plus costs, provided the  
13 department assents thereto. No bond shall comply with the  
14 requirements of this section unless it contains a provision that  
15 it shall not be canceled for any cause unless notice of  
16 intention to cancel is given to the department at least 30 days  
17 before the day upon which cancellation shall take effect.

18       [(2) In lieu of the bond required by paragraph (1), the  
19 applicant may deposit, with the department or with the State  
20 Treasurer, bonds, notes, debentures or other obligations of  
21 the United States or any agency or instrumentality thereof if  
22 guaranteed by the United States, or such bonds, notes,  
23 debentures or other obligations of the Commonwealth or of a  
24 political subdivision thereof having a market value of at  
25 least \$100,000; and it shall be the obligation of the  
26 licensee to see to it that the securities on deposit shall  
27 have a market value of at least \$100,000 at all times. The  
28 depositor shall be entitled to receive all interest and  
29 dividends thereon, and shall have the right, with the  
30 approval of the department, to substitute other securities

1 for those deposited. Should the securities on deposit at any  
2 time have a market value of less than \$100,000, the  
3 department may revoke the license as hereinafter provided.  
4 All securities deposited shall be held under the same  
5 conditions and subject to the same right of execution as the  
6 bond provided for in paragraph (1).

7 (3)] (2) Mortgage brokers who can demonstrate to the  
8 satisfaction of the department that they do not accept  
9 advance fees shall be exempt from the bond requirement of  
10 this subsection.

11 (d) Foreign corporation.--If the applicant is a foreign  
12 corporation, that corporation shall be authorized to do business  
13 in this Commonwealth in accordance with the law of this  
14 Commonwealth regulating corporations and shall maintain at least  
15 one office in this Commonwealth which is the office that shall  
16 be licensed as the principal place of business for the purposes  
17 of this act. A foreign corporation which will act only in the  
18 capacity of a wholesale table funder shall be exempt from the  
19 requirement that it maintain at least one office in this  
20 Commonwealth. The corporation shall file with the application an  
21 irrevocable consent, duly acknowledged, that suits and actions  
22 may be commenced against that licensee in the courts of this  
23 Commonwealth by the service of process of any pleading upon the  
24 department in the usual manner provided for service of process  
25 and pleadings by the statutes and court rules of this  
26 Commonwealth. The consent shall provide that this service shall  
27 be as valid and binding as if service had been made personally  
28 upon the licensee in this Commonwealth. In all cases where  
29 process or pleadings are served upon the department pursuant to  
30 the provisions of this section, such process or pleadings shall

1 be served in triplicate; one copy shall be filed in the Office  
2 of the Secretary of Banking and the others shall be forwarded by  
3 the department, by certified or registered mail, return receipt  
4 requested, to the last known principal place of business in the  
5 Commonwealth and to the corporation's principal place of  
6 business.

7 (e) Education.--To maintain a mortgage banker's, a loan  
8 correspondent's or a mortgage broker's license, the applicant or  
9 licensee shall demonstrate to the satisfaction of the secretary  
10 that at least one person from each licensed office has fulfilled  
11 a minimum of six to the maximum of ten hours of such continuing  
12 education requirements each year as the secretary shall  
13 establish by regulation within three years of the effective date  
14 of this act.

15 Section 5. Annual license fee.

16 (a) General rule.--An applicant shall pay to the department  
17 at the time an application is filed an initial license fee of  
18 \$500 for the principal place of business and an additional  
19 license fee of \$50 for each branch office in this Commonwealth.  
20 On or before July 1 of each year and thereafter, a licensee  
21 shall pay a license renewal fee of \$200 for the principal place  
22 of business and an additional license renewal fee of \$25 for  
23 each branch office [in this Commonwealth]. An applicant for a  
24 license to operate as a loan correspondent shall pay the  
25 department the same fee for the initial license for principal  
26 place of business, each branch office and annual license renewal  
27 as provided for mortgage bankers licensed under section 603-A of  
28 the act of April 9, 1929 (P.L.177, No.175), known as The  
29 Administrative Code of 1929.

30 (b) Recovery of costs.--No abatement of any license fee

1 shall be made if the license is issued for a period of less than  
2 one year. The department shall be entitled to recover any cost  
3 of investigation in excess of license or renewal fees from the  
4 licensee or from any person who is not licensed under this act  
5 but who is presumed to be engaged in business contemplated by  
6 this act.

7 Section 6. Issuance of license.

8 (a) Time limit.--Within 60 days after [an] a complete  
9 application is received, the department shall either issue a  
10 license or, for any reason for which the department may suspend,  
11 revoke or refuse to renew a license as provided for by section  
12 13, refuse to issue a license. Upon receipt of an application  
13 for license, the department shall conduct such investigation as  
14 it deems necessary to determine that the applicant and its  
15 officers, directors and principals are of good character and  
16 ethical reputation.

17 (b) Appeal of denial.--If the department refuses to issue a  
18 license, it shall notify the applicant, in writing, of the  
19 denial and the reason therefor and of the applicant's right to  
20 appeal from such action to the Commonwealth Court. An appeal  
21 from the department's refusal to approve an application for a  
22 license shall be filed by the applicant within 30 days of notice  
23 thereof.

24 (c) Contents of license.--Each license issued by the  
25 department shall specify:

26 (1) The name and address of the licensee, the address so  
27 specified to be that of the licensee's principal place of  
28 business within this Commonwealth or, for a licensee acting  
29 only in the capacity of a wholesale table funder, either in  
30 or outside of this Commonwealth.

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

5           (3) Such other information as the department shall  
6 require to carry out the purposes of this act.

7       (d) Denial of license due to conviction.--The department may  
8 deny a license if it finds that the applicant or any person who  
9 is a director, officer, partner, agent, employee or ultimate  
10 equitable owner of 10% or more of the applicant has been  
11 convicted of a misdemeanor or felony in any jurisdiction or of a  
12 crime which, if convicted in this Commonwealth, would constitute  
13 a misdemeanor or felony under the laws of this Commonwealth. For  
14 the purposes of this act, a person shall be deemed to have been  
15 convicted of a crime if the person shall have pleaded guilty or  
16 nolo contendere to a charge thereof before a court or Federal  
17 magistrate or shall have been found guilty thereof by the  
18 decision or judgment of a court or Federal magistrate or by the  
19 verdict of a jury, irrespective of the pronouncement of sentence  
20 or the suspension thereof, unless the pleas of guilty or nolo  
21 contendere or the decision, judgment or verdict shall have been  
22 set aside, vacated, reversed or otherwise abrogated by lawful  
23 judicial process.

24       (e) Denial of license for other reason.--The department may  
25 deny a license or otherwise restrict a license if it finds that,  
26 within two years prior to or from the date of the application,  
27 the applicant or any person who is a director, officer, partner,  
28 agent, employee or ultimate equitable owner of 10% or more of  
29 the applicant:

30           (1) has had a license application or license issued by

1 the department denied, suspended or revoked;

2 (2) is the subject of an order of the department  
3 denying, suspending or revoking a license as a mortgage  
4 banker, loan correspondent or mortgage broker; or

5 (3) has violated or failed to comply with any provision  
6 of this act or any rule or order of the department.

7 Section 7. License duration.

8 A license issued by the department shall:

9 (1) Be renewed on July 1 of each year upon payment of  
10 the annual renewal fee and after a determination that the  
11 licensee is conducting business in accordance with the  
12 provisions of this act is made by the department. No refund  
13 of any portion of the license fee shall be made if the  
14 license is voluntarily surrendered to the department or  
15 suspended or revoked by the department prior to its  
16 expiration date.

17 (2) Be invalid if the mortgage banker's corporate  
18 charter is voided in accordance with the provisions of any  
19 law of this Commonwealth or any other state.

20 (3) Not be assignable or transferable by operation of  
21 law or otherwise without the written consent of the  
22 department.

23 Section 8. Licensee requirements.

24 (a) Requirements on licensee.--A licensee shall:

25 (1) Conspicuously display its license at each licensed  
26 place of business.

27 (2) Maintain, at its principal place of business within  
28 this Commonwealth, or at such place within or outside this  
29 Commonwealth if agreed to by the Secretary of Banking or the  
30 commission, either the original or a copy of such books,

1 accounts, records and documents, or electronic or other  
2 similar access thereto, of the business conducted under the  
3 license as may be prescribed by the department or commission  
4 to enable them to determine whether the business of the  
5 licensee is being conducted in accordance with the provisions  
6 of this act and the orders, rules and regulations issued  
7 under this act. The department, at its determination, shall  
8 have free access to and examine records maintained outside of  
9 this Commonwealth. The costs of the examination, including  
10 travel costs, shall be borne by the licensee. The secretary  
11 may deny or revoke the authority to maintain records outside  
12 of this Commonwealth for good cause in the interest of  
13 consumer protection for Commonwealth borrowers.

14 (3) Annually, before May 1, file a report with the  
15 department or commission which shall set forth such  
16 information as the department or commission shall require  
17 concerning the business conducted as a licensee during the  
18 preceding calendar year. The report shall be in writing,  
19 under oath, and on a form provided by the department.

20 (4) Be subject to examination by the department or  
21 commission at the discretion of the department or commission  
22 at which time the department or commission shall have free  
23 access, during regular business hours, to the licensee's  
24 place or places of business in this Commonwealth and to all  
25 instruments, documents, accounts, books and records which  
26 pertain to a licensee's mortgage loan business, whether  
27 maintained in or outside of this Commonwealth. The department  
28 or commission may examine a licensee at any time if the  
29 department or commission deems such examination to be  
30 necessary or desirable. The cost of any such examination

1 shall be borne by the licensee.

2 (5) Comply with all provisions of the act of January 30,  
3 1974 (P.L.13, No.6), referred to as the Loan Interest and  
4 Protection Law, provided, however, that this shall not be  
5 deemed an override of section 501 of the Depository  
6 Institutions Deregulation and Monetary Control Act of 1980  
7 (94 Stat. 161, 12 U.S.C. § 1735f-7 note).

8 (6) Comply with the provisions of the act of December  
9 23, 1983 (P.L.385, No.91), entitled "An act amending the act  
10 of December 3, 1959 (P.L.1688, No.621), entitled, as amended,  
11 'An act to promote the health, safety and welfare of the  
12 people of the Commonwealth by broadening the market for  
13 housing for persons and families of low and moderate income  
14 and alleviating shortages thereof, and by assisting in the  
15 provision of housing for elderly persons through the creation  
16 of the Pennsylvania Housing Finance Agency as a public  
17 corporation and government instrumentality; providing for the  
18 organization, membership and administration of the agency,  
19 prescribing its general powers and duties and the manner in  
20 which its funds are kept and audited, empowering the agency  
21 to make housing loans to qualified mortgagors upon the  
22 security of insured and uninsured mortgages, defining  
23 qualified mortgagors and providing for priorities among  
24 tenants in certain instances, prescribing interest rates and  
25 other terms of housing loans, permitting the agency to  
26 acquire real or personal property, permitting the agency to  
27 make agreements with financial institutions and Federal  
28 agencies, providing for the purchase by persons of low and  
29 moderate income of housing units, and approving the sale of  
30 housing units, permitting the agency to sell housing loans,

1 providing for the promulgation of regulations and forms by  
2 the agency, prescribing penalties for furnishing false  
3 information, empowering the agency to borrow money upon its  
4 own credit by the issuance and sale of bonds and notes and by  
5 giving security therefor, permitting the refunding,  
6 redemption and purchase of such obligations by the agency,  
7 prescribing remedies of holders of such bonds and notes,  
8 exempting bonds and notes of the agency, the income  
9 therefrom, and the income and revenues of the agency from  
10 taxation, except transfer, death and gift taxes; making such  
11 bonds and notes legal investments for certain purposes; and  
12 indicating how the act shall become effective,' providing for  
13 homeowner's emergency assistance."

14 (7) Provide for periodic accounting of any escrow  
15 accounts held by the licensee to the borrowers not less than  
16 annually, showing the amounts received from the borrower and  
17 the amounts disbursed.

18 (8) Refund all fees, other than those fees paid by the  
19 licensee to a third party, paid by an applicant borrower when  
20 a mortgage loan is not produced within the time specified by  
21 the mortgage banker, loan correspondent or mortgage broker at  
22 the rate, term and overall cost agreed to by the borrower,  
23 provided, however, that this provision shall not apply when  
24 the failure to produce a loan is due solely to the borrower's  
25 negligence, his refusal to accept and close on a loan  
26 commitment or his refusal or inability to provide information  
27 necessary for processing, including, but not limited to,  
28 employment verifications and verifications of deposits. The  
29 licensee shall disclose to the borrower, in writing, at the  
30 time of a loan application which fees paid or to be paid are

1 nonrefundable.

2 (9) Ensure that all lock-in agreements shall be in  
3 writing and shall contain at least the following provisions:

4 (i) The expiration date of the lock-in, if any.

5 (ii) The interest rate locked in, if any.

6 (iii) The discount points locked in, if any.

7 (iv) The commitment fee locked in, if any.

8 (v) The lock-in fee, if any.

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

11 \* \* \*

12 Section 9. Licensee limitations.

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

14 (1) Transact any business subject to the provisions of  
15 this act under any other name except those designated in its  
16 license. A licensee that changes its name or place or places  
17 of business shall immediately notify the department, which  
18 shall issue a certificate, if appropriate, to the licensee  
19 which shall specify the licensee's new name or address.

20 (2) Conduct any business other than any business  
21 regulated by the department in any place of business licensed  
22 pursuant to this act without at least 90 days' prior written  
23 notification to the department.

24 (3) Disburse the proceeds of a mortgage loan in any form  
25 other than cash, electronic fund transfer, certified check or  
26 cashier's check[.] for purchase money mortgage loans and  
27 portions of nonpurchase money mortgage loans designated to  
28 pay one or more existing liens held by another.

29 (4) In the case of a loan correspondent, service  
30 mortgage loans.

1           (5) In the case of a mortgage broker, commit to close or  
2           close, mortgage loans in its own name, service mortgage  
3           loans, enter into lock-in agreements or collect lock-in fees,  
4           provided, however, that a mortgage broker can provide a  
5           lender's lock-in agreement to a borrower on behalf of that  
6           lender and collect lock-in fees on the lender's behalf  
7           payable to that lender.

8           \* \* \*

9           Section 10. Authority of department or commission.

10          (a) Department regulations.--Except as provided in  
11          subsection (b), the department shall have the authority to issue  
12          rules and regulations and orders as may be necessary for the  
13          proper conduct of the business of a mortgage banker, loan  
14          correspondent or a mortgage broker and for the enforcement of  
15          this act[. Initial rules and regulations shall be issued by the  
16          department within 180 days after the effective date of this  
17          subsection.], including, but not limited to, cease and desist  
18          orders, notices of fines and such other orders as the department  
19          in its discretion may issue.

20          \* \* \*

21          Section 11. Fees.

22          \* \* \*

23          (d) Licensing option.--A real estate broker or salesperson  
24          who is also a bona fide mortgage broker, mortgage banker or loan  
25          correspondent who holds himself out publicly as such shall have  
26          the option of being licensed and regulated by the department, in  
27          which case he shall not be subject to the fee limitations  
28          provided for in this section or the rules and regulations  
29          promulgated by the commission hereunder.

30          \* \* \*

1 Section 13. Suspension, revocation or refusal.

2 (a) Departmental action.--The department may suspend, revoke  
3 or refuse to renew any license issued pursuant to this act after  
4 giving 30 days' written notice forwarded to the licensee's  
5 principal place of business, by registered or certified mail,  
6 return receipt requested, stating the contemplated action and  
7 the reason therefor, if the department shall find, after the  
8 licensee has had an opportunity to be heard, that the licensee  
9 has:

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

11 (2) Failed to comply with or violated any provision of  
12 this act or any rule, regulation or order promulgated by the  
13 department pursuant to this act.

14 (3) If licensed under section 4(c)(3), accepted an  
15 advance fee.

16 (4) Become insolvent, either in the sense that the  
17 liabilities of the applicant or licensee exceed the assets of  
18 the applicant or licensee or that the applicant or licensee  
19 cannot meet the obligations of the applicant or licensee as  
20 they mature, or is in such financial condition that the  
21 applicant or licensee cannot continue in business with safety  
22 to the customers of the applicant or licensee.

23 (5) Engaged in dishonest, fraudulent or illegal  
24 practices or conduct in any business or unfair or unethical  
25 practices or conduct in connection with the mortgage  
26 business.

27 (6) Been convicted of a misdemeanor or of a felony.

28 (7) Filed an application for a license which, as of the  
29 date the license was issued or as of the date of an order  
30 denying, suspending or revoking a license, was incomplete in

1 any material respect or contained any statement that was, in  
2 light of the circumstances under which it was made, false or  
3 misleading with respect to any material fact.

4 (8) Permanently or temporarily been enjoined by a court  
5 of competent jurisdiction from engaging in or continuing any  
6 conduct or practice involving any aspect of the mortgage  
7 business.

8 (9) Become the subject of an order of the department  
9 denying, suspending or revoking a license as a mortgage  
10 banker, mortgage broker or loan correspondent.

11 (10) Become the subject of a United States Postal  
12 Service fraud order that is currently effective and was  
13 issued within the last five years.

14 (11) Failed to comply with the requirements of this act  
15 to make and keep records prescribed by rule or order of the  
16 department, to produce such records required by the  
17 department or to file any financial reports or other  
18 information the department by rule or order may require.

19 (12) Become the subject of an order of the department  
20 denying, suspending or revoking a license under the  
21 provisions of any other law administered by the department.

22 (13) Failed to comply with a cease and desist order  
23 entered after notice and opportunity for hearing and issued  
24 by the department within the last five years.

25 (14) Demonstrated negligence or incompetence in  
26 performing any act for which the licensee is required to hold  
27 a license under this act.

28 The hearing and notice provisions of this section shall not  
29 apply if the licensee's corporate charter is voided in  
30 accordance with the provisions of any law of this or any other

1 state, in which event the department may suspend or revoke the  
2 license.

3 \* \* \*

4 Section 14. Penalties.

5 (a) Nonlicensees.--Any person who is not licensed by the  
6 department or is not exempted from the licensing requirements in  
7 accordance with the provisions of this act and who engages in  
8 the business of a mortgage banker, loan correspondent or  
9 mortgage broker commits a felony of the third degree.

10 (b) Nonlicensees subject to the provisions of this act.--Any  
11 person who is subject to the provisions of this act, even though  
12 not licensed hereunder, or any person who is not licensed by the  
13 department or is not exempt from the licensing requirements, who  
14 violates any of the provisions to which it is subject shall be  
15 subject to a fine levied by the department or commission of up  
16 to \$2,000 for each offense. Any such nonlicensed person who  
17 commits three or more offenses may, at the discretion of the  
18 department or commission, be prohibited from engaging in the  
19 business of a mortgage broker or mortgage banker unless licensed  
20 under this act.

21 \* \* \*

22 Section 18. Scope of act.

23 The provisions of this act shall apply to [any]:

24 (1) Any mortgage loan which is:

25 [(1)] (i) negotiated, offered or otherwise  
26 transacted within this Commonwealth, in whole or in part,  
27 whether by the ultimate lender or any other person;

28 [(2)] (ii) made or executed within this  
29 Commonwealth; or

30 [(3)] (iii) notwithstanding the place of execution,

1           secured by real property located in this Commonwealth.

2           (2) Any person who engages in the first mortgage loan  
3           business in this Commonwealth.

4           Section 3. This act shall take effect in 60 days.