

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2179 Session of
2008

INTRODUCED BY DALEY, HESS, THOMAS, SIPTROTH, SCAVELLO, MCGEEHAN,
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J. WHITE AND YEWCIC, FEBRUARY 6, 2008

REFERRED TO COMMITTEE ON COMMERCE, FEBRUARY 6, 2008

AN ACT

1 Amending Titles 7 (Banks and Banking) and 18 (Crimes and
2 Offenses) of the Pennsylvania Consolidated Statutes,
3 regulating the mortgage loan industry in terms of practice,
4 licensure and penalties; and providing for unlicensed
5 mortgage loan activity.

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 parts to read:

10 PART I

11 PRELIMINARY PROVISIONS

12 (Reserved)

13 PART II

14 LICENSING

15 Ch.

16 61. Mortgage Loan Industry Licensing and Consumer Protection

17 CHAPTER 61

18 MORTGAGE LOAN INDUSTRY LICENSING AND CONSUMER PROTECTION

- 1 Subch.
- 2 A. Preliminary Provisions
- 3 B. License Requirements and Exceptions
- 4 C. Mortgage Loan Business Restrictions and Requirements
- 5 D. Administrative and Licensure Provisions
- 6 E. Miscellaneous Provisions

7 SUBCHAPTER A

8 PRELIMINARY PROVISIONS

9 Sec.

10 6101. Scope of chapter.

11 6102. Definitions.

12 § 6101. Scope of chapter.

13 This chapter relates to mortgage loan industry licensing and
14 consumer protection.

15 § 6102. Definitions.

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

19 "Advance fee." Any funds requested by or to be paid to a
20 person in advance of or during the processing of a mortgage loan
21 application, excluding those fees paid by a consumer directly to
22 a credit agency reporting bureau, title company or real estate
23 appraiser.

24 "Applicant." A person who applies for a license under this
25 chapter.

26 "Banking institution." Any of the following:

27 (1) A State-chartered bank, bank and trust company,
28 savings bank or private bank.

29 (2) A national bank.

30 (3) A federally chartered or State-chartered savings

1 association.

2 (4) An operating subsidiary of any of the entities
3 listed under this definition.

4 "Billing cycle." In respect to open-end mortgage loans, the
5 time interval between periodic billing dates. A billing cycle
6 shall be considered to be a monthly cycle if the closing date of
7 the cycle is the same date each month or does not vary by more
8 than four days from that date.

9 "Branch." An office or other place of business, other than
10 the principal place of business, located in this Commonwealth or
11 any other state, where a person engages in the mortgage loan
12 business subject to this chapter.

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

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

17 "Finder's fee" or "referral fee." Any payment of money or
18 other consideration for the referral of a mortgage loan to a
19 licensee, except for consideration paid for goods or facilities
20 actually furnished or services actually performed.

21 "First mortgage loan." A loan which is secured in whole or
22 in part by a first lien upon any interest in real property
23 created by a security agreement, including a mortgage,
24 indenture, deed of trust or any other similar instrument or
25 document, which real property is used as a one-family to four-
26 family dwelling, a portion of which may be used for
27 nonresidential purposes.

28 "First mortgage loan business." The mortgage loan business
29 as applied to first mortgage loans.

30 "Licensee." A person who is licensed under this chapter.

1 "Lock-in agreement." An agreement between a mortgage lender
2 and a consumer whereby the mortgage lender guarantees, until a
3 specified date, the availability of a specified rate of interest
4 or specified formula by which the rate of interest and a
5 specific number of discount points will be determined, if the
6 mortgage loan is approved and closed by the specified date. If a
7 specified date is not determinable, the mortgage lender may
8 fulfill the requirement of this definition by setting forth with
9 specificity the method by which the duration of the lock-in
10 period will be determined.

11 "Mortgage broker." A person who engages in the mortgage loan
12 business by directly or indirectly negotiating or placing
13 mortgage loans for others in the primary market for
14 consideration.

15 "Mortgage lender." A person who engages in the mortgage loan
16 business by doing any of the following:

17 (1) Directly or indirectly originating and closing
18 mortgage loans with its own funds in the primary market for
19 consideration.

20 (2) Servicing mortgage loans.

21 "Mortgage loan." A first or secondary mortgage loan, or
22 both, as the context may require.

23 "Mortgage loan business." The business of advertising,
24 causing to be advertised, soliciting, negotiating or arranging
25 in the ordinary course of business or offering to make or making
26 or servicing mortgage loans.

27 "Mortgage loan correspondent." A person who engages in the
28 mortgage loan business by directly or indirectly originating and
29 closing mortgage loans in his or her own name utilizing funds
30 provided by a wholesale table funder or other funding sources

1 under the circumstances described under section 6123(6)
2 (relating to mortgage loan business prohibitions) and
3 simultaneously assigning the mortgage loans to the wholesale
4 table funder.

5 "Mortgage originator." An individual not licensed as a
6 mortgage lender, mortgage broker or loan correspondent under
7 this chapter who solicits, accepts or offers to accept mortgage
8 loan applications, or negotiates mortgage loan terms, in other
9 than a clerical or ministerial capacity and who is personally
10 and regularly in direct contact, in writing, including
11 electronic messaging, or by voice communication, with consumers
12 with regard to the solicitations, acceptances, offers or
13 negotiations. The term does not include directors, partners or
14 ultimate equitable owners of 10% or more of a licensee.

15 "Open-end loan." A mortgage loan made by a mortgage lender
16 under this chapter pursuant to an agreement between the mortgage
17 lender and the consumer whereby all of the following apply:

18 (1) The mortgage lender may permit the consumer to
19 obtain advances of money from the licensee from time to time
20 or the mortgage lender may advance money on behalf of the
21 consumer from time to time as directed by the consumer.

22 (2) The amount of each advance, interest and permitted
23 charges and costs are debited to the consumer's account and
24 payments and other credits are credited to the same account.

25 (3) Interest is computed on the unpaid principal balance
26 or balances of the account outstanding from time to time.

27 (4) The consumer has the privilege of paying the account
28 in full at any time or, if the account is not in default, in
29 monthly installments of fixed or determinable amounts as
30 provided in the open-end loan agreement.

1 "Person." An individual, association, joint venture or
2 joint-stock company, partnership, limited partnership, limited
3 partnership association, limited liability company, business
4 corporation, nonprofit corporation or any other group of
5 individuals, however organized.

6 "Primary market." The market wherein mortgage loans are
7 originated between a lender and a consumer.

8 "Principal place of business." The primary office of a
9 person located in this Commonwealth which is staffed on a full-
10 time basis and at which the person's books, records, accounts
11 and documents are maintained.

12 "Secondary mortgage loan." A loan which is secured in whole
13 or in part by a lien upon any interest in real property created
14 by a security agreement, including a mortgage, indenture, deed
15 of trust or any other similar instrument or document, which real
16 property is subject to a prior lien and which is used as a one-
17 family to four-family dwelling, a portion of which may be used
18 for nonresidential purposes.

19 "Secondary mortgage loan business." The mortgage loan
20 business as applied to secondary mortgage loans.

21 "Service a mortgage loan." The collection or remittance of
22 payments for another or the right to collect or remit payments
23 for another of principal, interest, taxes, insurance and any
24 other payments pursuant to a mortgage loan.

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

26 (1) That portion of any assets pledged to secure
27 obligations of any person other than that of the applicant.

28 (2) Any asset, except construction loan receivables
29 secured by first mortgages from related companies, due from
30 officers or stockholders of the applicant or related

1 companies in which the applicant's officers or stockholders
2 have an interest.

3 (3) That portion of the value of any marketable
4 security, listed or unlisted, not shown at lower of cost or
5 market value, except for any shares of Federal National
6 Mortgage Association stock required to be held under a
7 servicing agreement, which are carried at cost.

8 (4) Any amount in excess of the lower of the cost or
9 market value of mortgages in foreclosures, construction loans
10 or foreclosed property acquired by the applicant through
11 foreclosure.

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

16 (6) Goodwill.

17 (7) The value placed on insurance renewals or property
18 management contract renewals or other similar intangibles of
19 the applicant.

20 (8) Organization costs of the applicant.

21 (9) The value of any servicing contracts held by the
22 applicant not determined in accordance with the American
23 Institute of Certified Public Accountants Statement of
24 Position 76-2, dated August 25, 1976, or subsequent revisions
25 thereto.

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

29 (11) Any leasehold improvements not being amortized over
30 the lesser of the expected life of the asset or the remaining

1 term of the lease.

2 (12) Any fees paid or collected which are not
3 recoverable through the closing or selling of loans.

4 "Wholesale table funder." A licensed mortgage lender or
5 person exempt under section 6112(1) or (7) (relating to
6 exceptions to license requirements) who, in the regular course
7 of business, provides the funding for the closing of mortgage
8 loans through mortgage loan correspondents and who by assignment
9 obtains title to the mortgage loans.

10 SUBCHAPTER B

11 LICENSE REQUIREMENTS AND EXCEPTIONS

12 Sec.

13 6111. License requirements.

14 6112. Exceptions to license requirements.

15 § 6111. License requirements.

16 (a) General rule.--Except as provided under subsections (b)
17 and (c) and section 6112 (relating to exceptions to license
18 requirements), on and after the effective date of this section,
19 no person shall engage in the mortgage loan business in this
20 Commonwealth without being licensed as a mortgage broker,
21 mortgage lender, mortgage loan correspondent or mortgage
22 originator as provided under this chapter. A mortgage originator
23 may not engage in the mortgage loan business unless the mortgage
24 originator is employed and supervised by a licensed mortgage
25 broker, mortgage lender or mortgage loan correspondent.

26 (b) Licensed activity exceptions.--

27 (1) A mortgage lender may act as a mortgage broker or
28 mortgage loan correspondent without a separate mortgage
29 broker or mortgage loan correspondent license and, if
30 licensed as an individual, may perform the services of a

1 mortgage originator without a separate mortgage originator
2 license.

3 (2) A mortgage loan correspondent may act as a mortgage
4 broker without a separate mortgage broker license and, if
5 licensed as an individual, may perform the services of a
6 mortgage originator without a separate mortgage originator
7 license.

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

13 (c) Loans for business or commercial purposes.--This chapter
14 shall not apply to mortgage loans made for business or
15 commercial purposes.

16 § 6112. Exceptions to license requirements.

17 The following persons shall not be required to be licensed
18 under this chapter in order to conduct the mortgage loan
19 business:

20 (1) A banking institution or a federally chartered or
21 State-chartered credit union, if the primary regulator of the
22 banking institution or federally chartered or State-chartered
23 credit union supervises the banking institution or federally
24 chartered or State-chartered credit union.

25 (2) An attorney authorized to practice law in this
26 Commonwealth not otherwise engaged in or holding himself or
27 herself out to the public as being engaged in the mortgage
28 loan business who acts as a mortgage broker in negotiating or
29 placing a mortgage loan in the normal course of legal
30 practice.

1 (3) A person who either originates, negotiates or
2 services less than three mortgage loans in a calendar year in
3 this Commonwealth, unless the person is otherwise deemed to
4 be engaged in the mortgage loan business by the department.

5 (4) Any agency or instrumentality of the Federal
6 Government or a corporation otherwise created by an act of
7 the United States Congress, including the Federal National
8 Mortgage Association, the Government National Mortgage
9 Association, the Veterans' Administration, the Federal Home
10 Loan Mortgage Corporation and the Federal Housing
11 Administration.

12 (5) Any agency or instrumentality of a state or local
13 government, the District of Columbia or any territory of the
14 United States, including the Pennsylvania Housing Finance
15 Agency and other government housing finance agencies.

16 (6) Consumer discount companies, except that a consumer
17 discount company that acts as a mortgage broker, mortgage
18 lender or mortgage loan correspondent other than under the
19 provisions of the act of April 8, 1937 (P.L.262, No.66),
20 known as the Consumer Discount Company Act shall be subject
21 to the provisions of Subchapter C (relating to mortgage loan
22 business restrictions and requirements) and sections
23 6131(c)(2) and (3) (relating to application for license),
24 6135 (relating to licensee requirements), 6138 (relating to
25 authority of department) and 6140(b) (relating to penalties).
26 Employees of licensees under the Consumer Discount Company
27 Act that act as mortgage originators shall be subject to the
28 licensing requirements of this chapter. Consumer discount
29 companies that employ mortgage originators shall be subject
30 to the same requirements as mortgage lenders in regard to the

1 employment and supervision of mortgage originators.

2 (7) Except for consumer discount companies, affiliates
3 of banking institutions and subsidiaries and affiliates of
4 federally chartered or State-chartered credit unions, except
5 that the subsidiaries and affiliates shall:

6 (i) be subject to the provisions of Subchapter C and
7 sections 6135(a)(2), (3), (4) and (5), (b) and (c), 6138
8 and 6140(b);

9 (ii) deliver as required to the department annually
10 copies of financial reports made to all supervisory
11 agencies; and

12 (iii) be registered with the department.

13 (8) Employees of a mortgage broker, mortgage lender or
14 mortgage loan correspondent, to the extent that the employees
15 are not otherwise required to be licensed as mortgage
16 originators.

17 (9) Employees of excepted persons enumerated under this
18 section, unless otherwise provided under this subsection.

19 (10) Any individual not otherwise engaged in or holding
20 himself out to the public as being engaged in the mortgage
21 loan business who becomes the subsequent holder of more than
22 two mortgage loans in a calendar year solely for investment
23 purposes and who does not service mortgage loans.

24 (11) Nonprofit corporations not otherwise engaged in or
25 holding themselves out to the public as being engaged in the
26 mortgage loan business making mortgage loans to promote home
27 ownership or improvements for the disadvantaged.

28 (12) A nonprofit corporation not otherwise engaged in or
29 holding itself out to the public as being engaged in the
30 mortgage loan business which meets all of the following:

1 (i) Does not make more than 12 mortgage loans in a
2 calendar year with its own funds, not including funds
3 borrowed through warehouse lines of credit or other
4 sources for the purpose of making mortgage loans.

5 (ii) Makes mortgage loans which are retained in the
6 corporation's own portfolios and not regularly sold to
7 others and are made to promote and advance the cultural
8 traditions and lifestyles of bona fide religious
9 organizations.

10 SUBCHAPTER C

11 MORTGAGE LOAN BUSINESS RESTRICTIONS AND REQUIREMENTS

12 Sec.

13 6121. General requirements.

14 6122. Powers conferred on certain licensees engaged in the
15 mortgage loan business.

16 6123. Mortgage loan business prohibitions.

17 6124. Prohibited clauses in mortgage loan documents.

18 6125. Mortgage lending authority.

19 6126. Requirements as to open-end loans.

20 § 6121. General requirements.

21 A licensee shall do all of the following:

22 (1) Comply with all provisions of the act of January 30,
23 1974 (P.L.13, No.6), referred to as the Loan Interest and
24 Protection Law (Usury Law). This paragraph shall not
25 supersede section 501 of the Depository Institutions
26 Deregulation and Monetary Control Act of 1980 (94 Stat. 161,
27 12 U.S.C. § 1735f-7a) or the Alternative Mortgage Transaction
28 Parity Act of 1982 (96 Stat. 1545, 12 U.S.C. §§ 3801-3806 et
29 seq.).

30 (2) Comply with the provisions of the act of December 3,

1 1959 (P.L.1688, No.621), known as the Housing Finance Agency
2 Law, that are applicable to the licensee.

3 (3) Comply with all applicable Federal law, including
4 the Real Estate Settlement Procedures Act (88 Stat. 1724, 12
5 U.S.C. §§ 2601 et seq.), the Truth in Lending Act (82 Stat.
6 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit
7 Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691 et seq.).

8 (4) Give to the consumer a copy of the promissory note
9 evidencing the mortgage loan and any mortgage loan agreement,
10 mortgage instrument or other document evidencing a mortgage
11 loan signed by the consumer.

12 (5) Give to the consumer written evidence of credit
13 life, credit and accident and health, credit unemployment and
14 property insurance, if any, provided by the licensee to the
15 consumer.

16 (6) If a payment is made in cash on account of a
17 mortgage loan, give to the consumer at the time the payment
18 is actually received a written receipt which shall show the
19 account number or other identification mark or symbol, date,
20 amount paid and, upon request of the consumer, the unpaid
21 balance of the account prior to and after the cash payment.

22 (7) Upon written request from the consumer, give or
23 forward to the consumer within ten days from the date of
24 receipt of the request a written statement of the consumer's
25 account which shall show the dates and amounts of all
26 installment payments credited to the consumer's account, the
27 dates, amounts and an explanation of all other charges or
28 credits to the account and the unpaid balance of the account.
29 A licensee shall not be required to furnish more than two
30 statements in any 12-month period.

1 (8) If a mortgage loan is paid in full or, in the case
2 of an open-end loan, the mortgage lender is no longer
3 obligated to make future advances to the consumer, the
4 mortgage lender shall do all of the following:

5 (i) Cancel any insurance provided by the licensee in
6 connection with the mortgage loan and refund to the
7 consumer, in accordance with regulations promulgated by
8 the Insurance Department, any unearned portion of the
9 premium for the insurance.

10 (ii) Stamp or write on the face of the mortgage loan
11 agreement or promissory note evidencing the mortgage loan
12 "Paid in Full" or "Canceled," the date paid and, within
13 60 days, return the mortgage loan agreement or promissory
14 note to the consumer.

15 (iii) Release any lien on real property and cancel
16 the same of record and, at the time the mortgage loan
17 agreement or promissory note evidencing the mortgage loan
18 is returned, deliver to the consumer good and sufficient
19 assignments, releases or any other certificate,
20 instrument or document as may be necessary to evidence
21 the release.

22 (9) Provide for periodic accounting of any escrow
23 accounts held by the mortgage lender to the consumer not less
24 than annually, showing the amounts received from the consumer
25 and the amounts disbursed from the accounts.

26 (10) Refund all fees, other than those fees paid by the
27 licensee to a third party, paid by a consumer when a mortgage
28 loan is not produced within the time specified by the
29 mortgage broker, mortgage lender or mortgage loan
30 correspondent at the rate, term and overall cost agreed to by

1 the consumer. This paragraph shall not apply if the failure
2 to produce a mortgage loan is due solely to the consumer's
3 negligence, his or her refusal to accept and close on a loan
4 commitment or his or her refusal or inability to provide
5 information necessary for processing, including employment
6 verifications and verifications of deposits. The licensee
7 shall disclose to the consumer, in writing, at the time of a
8 loan application which fees paid or to be paid are
9 nonrefundable.

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

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

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

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

15 (iv) The fee locked in, if any.

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

17 (12) Upon written request from the consumer or a person
18 authorized by the consumer, provide, within ten days from the
19 date of receipt of the request, a written statement regarding
20 the unpaid balance of a consumer's mortgage loan or account.
21 The statement shall contain the total amount required to pay
22 off a mortgage loan and a specific expiration date for the
23 payoff information. A licensee shall not be required to
24 furnish more than two statements in any 12-month period.

25 (13) In the case of a mortgage broker, mortgage lender or
26 mortgage loan correspondent, do all of the following:

27 (i) Maintain supervision and control of and
28 responsibility for the acts and omissions of all mortgage
29 originators employed by the licensee.

30 (ii) Maintain a list of all current and former

1 mortgage originators employed by the licensee and the
2 dates of the employment.

3 (iii) In the event that a licensee believes that a
4 mortgage originator employed by the licensee has engaged
5 in any activity that is illegal or in violation of this
6 chapter or any regulation or statement of policy
7 promulgated under this chapter, the licensee shall
8 provide the department with written notification of the
9 belief and the licensee's proposed corrective measures
10 within 30 days. A licensee shall not be liable to a
11 mortgage originator in connection with the notification.

12 § 6122. Powers conferred on certain licensees engaged in the
13 mortgage loan business.

14 (a) Mortgage lenders.--If they are in compliance with the
15 provisions of this chapter, all mortgage lenders engaged in the
16 mortgage loan business shall have power and authority:

17 (1) To make first and secondary mortgage loans.

18 (2) To collect fees or premiums for title examination,
19 abstract of title, title insurance, credit reports, surveys,
20 appraisals, notaries, postage, including messenger and
21 express carrier, tax service or other costs or fees actually
22 related to the processing of a mortgage loan application or
23 making of a mortgage loan, when the fees are actually paid or
24 incurred by the licensee and to collect fees or charges
25 prescribed by law which actually are or will be paid to
26 public officials for determining the existence of or for
27 perfecting or releasing or satisfying any security related to
28 the mortgage loan and include these in the principal of the
29 mortgage loan.

30 (3) To provide access to credit life, credit disability,

1 credit accident and health and credit unemployment insurance.
2 A consumer shall not be compelled to purchase credit life,
3 credit disability, credit accident and health or credit
4 unemployment insurance as a condition of the making of a
5 mortgage loan, and all contracts utilized shall reflect a
6 clear disclosure that the purchase of credit life, credit
7 disability, credit accident and health or credit unemployment
8 insurance is not a prerequisite to obtaining a mortgage loan.
9 If, however, the consumer elects to obtain credit life,
10 credit disability, credit accident and health or credit
11 unemployment insurance through the licensee, the consumer
12 shall consent thereto in writing. If consumers desire joint-
13 life or joint accident and health insurance, all consumers
14 shall consent thereto in writing. The insurance shall be
15 obtained from an insurance company authorized by the laws of
16 this Commonwealth to conduct business in this Commonwealth.
17 Any benefit or return to the licensee from the sale or
18 provision of the insurance shall not be included in the
19 computation of the maximum charge authorized for mortgage
20 loans under this chapter and shall not be deemed a violation
21 of this chapter when the insurance is written pursuant to the
22 laws of this Commonwealth governing insurance.

23 (4) To require property insurance on security against
24 reasonable risks of loss, damage and destruction and to
25 provide access to the insurance to the consumer. The amount
26 and term of the insurance shall be reasonable in relation to
27 the amount and term of the mortgage loan contract and the
28 value of the security. This requirement shall be satisfied if
29 the consumer demonstrates at the time the mortgage loan is
30 made that the consumer has valid and collectible insurance

1 covering the property to be insured and has furnished the
2 licensee with a loss payable endorsement sufficient for the
3 protection of the licensee. If the consumer elects to obtain
4 property insurance through the licensee, the consumer shall
5 consent thereto in writing, and the insurance shall be
6 obtained from an insurance company authorized by the laws of
7 this Commonwealth to conduct business in this Commonwealth.
8 Any benefit or return to the licensee from the sale or
9 provision of property insurance shall not be included in the
10 computation of the maximum charge authorized for mortgage
11 loans under this chapter and shall not be deemed a violation
12 of this chapter when the insurance is written pursuant to the
13 laws of this Commonwealth governing insurance. The premium
14 for any property insurance may be included in the principal
15 amount of the mortgage loan requested by the consumer.
16 However, the premium shall be disclosed as a separate item on
17 the face of the principal contract document and the
18 licensee's individual consumer ledger records.

19 (5) To collect a fee for a subsequent dishonored check
20 or instrument taken in payment, not to exceed the service
21 charge permitted to be imposed under 18 Pa.C.S. § 4105
22 (relating to bad checks).

23 (b) Mortgage brokers and loan correspondents.--Provided they
24 are in compliance with the provisions of this chapter, all
25 mortgage brokers and mortgage loan correspondents shall have
26 power and authority:

27 (1) To collect title examination, credit report and
28 appraisal fees actually related to the making of a mortgage
29 loan when the fees are actually paid or incurred by the
30 licensee and to include the fees in the principal of the

1 mortgage loan which is being negotiated or arranged.

2 (2) To charge a broker's fee if the fee is disclosed to
3 the consumer for whom the loan is being negotiated or
4 arranged.

5 (3) To accept from a licensee a fee or premium for
6 brokering or cobrokering a mortgage loan, provided that the
7 payment and acceptance of the fee or premium is in compliance
8 with Federal law, including the Real Estate Settlement
9 Procedures Act of 1974 (Public Law 93-533, 88 Stat. 1724).

10 § 6123. Mortgage loan business prohibitions.

11 A licensee engaging in the mortgage loan business shall not:

12 (1) Charge, contract for, collect or receive charges,
13 fees, premiums, commissions or other considerations in excess
14 of those authorized by the provisions of this chapter.

15 (2) Disburse the proceeds of a mortgage loan in any form
16 other than cash, electronic funds transfer, certified check
17 or cashier's check where the proceeds are disbursed by the
18 licensee to a closing agent. This paragraph shall not be
19 construed as requiring a lender to utilize a closing agent
20 and shall not apply to disbursements by check directly from
21 the licensee's account payable to the consumer, consumer
22 designees or other parties due funds from the closing.

23 (3) Advertise, cause to be advertised or otherwise
24 solicit whether orally, in writing, by telecast, by broadcast
25 or in any other manner any statement or representation which
26 is false, misleading or deceptive.

27 (4) Require a consumer to pay, to the licensee or any
28 other person, a broker's fee, finder's fee, commission,
29 premium or any other charges for obtaining, procuring or
30 placing of a mortgage loan, except as provided under this

1 chapter. This restriction shall not prohibit a mortgage
2 lender from paying a fee to a mortgage broker in connection
3 with the placement or procurement of a mortgage loan, nor
4 prohibit a consumer from requesting or directing a mortgage
5 lender licensee to pay a fee from the proceeds of a mortgage
6 loan or include it in the amount to be financed.

7 (5) Make any mortgage loan on the condition, agreement
8 or understanding that the consumer contract with any specific
9 person or organization for insurance services as agent,
10 broker or underwriter.

11 (6) In the case of a mortgage loan correspondent,
12 service mortgage loans or close mortgage loans utilizing
13 funding other than a wholesale table funder, except in an
14 emergency circumstance where wholesale table funding is not
15 available.

16 (7) In the case of a mortgage broker or mortgage
17 originator, commit to close or close mortgage loans in its
18 own name, service mortgage loans, enter into lock-in
19 agreements or collect lock-in fees, provided, however, that a
20 mortgage broker or mortgage originator can provide a lender's
21 lock-in agreement to a consumer on behalf of that lender and
22 collect lock-in fees payable to that lender on the lender's
23 behalf.

24 (8) In the case of a mortgage originator, accept any
25 fees from consumers in the mortgage originator's own name. A
26 mortgage originator may accept fees payable to the mortgage
27 originator's employer licensee and fees payable to third-
28 party entities on behalf of the mortgage originator's
29 employer licensee. A mortgage originator may not accept
30 advance fees payable to the mortgage originator's employer

1 licensee unless the licensee is authorized to collect advance
2 fees under this chapter.

3 § 6124. Prohibited clauses in mortgage loan documents.

4 No writing of any kind executed in connection with a mortgage
5 loan shall contain:

6 (1) An agreement whereby the consumer waives any rights
7 accruing to the consumer under the provisions of this
8 chapter.

9 (2) An irrevocable wage assignment of, or order for the
10 payment of, any salary, wages, commissions or any other
11 compensation for services, or any part thereof, earned or to
12 be earned.

13 (3) An agreement to pay any amount other than the unpaid
14 balance of the mortgage loan agreement or promissory note or
15 any other charge authorized by this chapter.

16 § 6125. Mortgage lending authority.

17 (a) First mortgage loans.--Mortgage lenders engaged in the
18 first mortgage loan business may make first mortgage loans
19 pursuant to:

20 (1) the act of January 30, 1974 (P.L.13, No.6), referred
21 to as the Loan Interest and Protection Law; or

22 (2) if the licensee is qualified, applicable Federal
23 law, including the Alternative Mortgage Transaction Parity
24 Act of 1982 (Public Law 97-320, 12 U.S.C. § 3801 et seq.) and
25 the Depository Institution Deregulation and Monetary Control
26 Act of 1980 (94 Stat. 161, Public Law 96-221).

27 (b) Secondary mortgage loans.--Mortgage lenders engaged in
28 the secondary mortgage loan business may:

29 (1) if the licensee is qualified, make secondary
30 mortgage loans on terms as are permissible under applicable

1 Federal law, including the Alternative Mortgage Transaction
2 Parity Act of 1982; or

3 (2) (i) make secondary mortgage loans repayable in
4 installments and charge, contract for and receive thereon
5 interest at a rate not exceeding 1.85% per month. No
6 interest shall be paid, deducted or received in advance,
7 except that interest from the date of disbursement of
8 funds to the consumer to the first day of the following
9 month and shall be permitted in the event the first
10 installment payment is more than 30 days after the date
11 of disbursement. Interest shall not be compounded and
12 shall be computed only on unpaid principal balances.
13 However, the inclusion of earned interest in a new note
14 shall not be considered compounding. For the purpose of
15 computing interest, a month shall be any period of 30
16 consecutive days;

17 (ii) charge and collect an application fee not
18 exceeding 3% of the original principal amount of the
19 mortgage loan. The fee shall be fully earned at the time
20 the mortgage loan is made and may be added to the
21 principal amount of the mortgage loan. No application fee
22 may be collected on subsequent advances made pursuant to
23 an open-end loan if the full fee of 3% of the credit
24 limit was collected at the time the open-end loan was
25 made; or

26 (iii) charge and collect a delinquency charge of \$20
27 or 10% of each payment, whichever is greater, for a
28 payment which is more than 15 days late.

29 § 6126. Requirements as to open-end loans.

30 The following shall apply:

1 (1) A mortgage lender may make open-end loans and may
2 contract for and receive thereon interest and charges as set
3 forth under this chapter.

4 (2) A mortgage lender shall not compound interest by
5 adding any unpaid interest authorized by this section to the
6 unpaid principal balance of the consumer's account, provided
7 however, that the unpaid principal balance may include the
8 additional charges authorized by this subchapter.

9 (3) Interest authorized by this section shall be deemed
10 not to exceed the maximum interest permitted by this
11 subchapter if the interest is computed in each billing cycle
12 by any of the following methods:

13 (i) by converting the monthly rate to a daily rate
14 and multiplying the daily rate by the applicable portion
15 of the daily unpaid principal balance of the account, in
16 which case the daily rate shall be 1/30 of the monthly
17 rate;

18 (ii) by multiplying the monthly rate by the
19 applicable portion of the average monthly unpaid
20 principal balance of the account in the billing cycle, in
21 which case the average daily unpaid principal balance is
22 the sum of the amount unpaid each day during the cycle
23 divided by the number of days in the cycle; or

24 (iii) by converting the monthly rate to a daily rate
25 and multiplying the daily rate by the average daily
26 unpaid principal balance of the account in the billing
27 cycle, in which case the daily rate shall be 1/30 of the
28 monthly rate.

29 (4) For all of the methods of computation in paragraph
30 (3)(i), (ii) and (iii), the billing cycle shall be monthly,

1 and the unpaid principal balance on any day shall be
2 determined by adding to any balance unpaid as of the
3 beginning of that day all advances and other permissible
4 amounts charged to the consumer and deducting all payments
5 and other credits made or received that day.

6 (5) The consumer may at any time pay all or any part of
7 the unpaid balance in the consumer's account without
8 prepayment penalty or, if the account is not in default, the
9 consumer may pay the unpaid principal balance in monthly
10 installments. Minimum monthly payment requirements shall be
11 determined by the licensee and set forth in the agreement
12 evidencing the open-end loan.

13 (6) A mortgage lender may contract for and receive the
14 fees, costs and expenses permitted by this subchapter on
15 other first or secondary mortgage loans, subject to all the
16 conditions and restrictions set forth in this subchapter,
17 with the following variations:

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

1 account, using any of the methods specified in paragraph
2 (3) for the calculation of loan charges.

3 (ii) No credit life or disability insurance written
4 in connection with an open-end loan shall be canceled by
5 the licensee because of delinquency of the consumer in
6 the making of the required minimum payments on the loan
7 unless one or more of the payments is past due for a
8 period of 90 days or more, and the licensee shall advance
9 to the insurer the amounts required to keep the insurance
10 in force during the period, which amounts may be debited
11 to the consumer's account.

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

17 (7) Notwithstanding any other provisions in this chapter
18 to the contrary, a mortgage lender may retain any security
19 interest in real or personal property until the open-end loan
20 is terminated, provided that, if there is no outstanding
21 balance in the account and there is no commitment by the
22 licensee to make advances, the mortgage lender shall, within
23 ten days following written demand by the consumer, deliver to
24 the consumer a release of the mortgage, indenture, deed of
25 trust or any other similar instrument or document on any real
26 property taken as security for the open-end loan. The
27 mortgage lender shall include on all billing statements
28 provided in connection with an open-end loan a statement that
29 the licensee retains a security interest in the consumer's
30 real property whenever the security interest has not been

1 released.

2 (8) A mortgage lender may charge, contract for, receive
3 or collect on any open-end loan account an annual fee not to
4 exceed \$50 per year.

5 SUBCHAPTER D

6 ADMINISTRATIVE AND LICENSURE PROVISIONS

7 Sec.

8 6131. Application for license.

9 6132. License fees.

10 6133. Issuance of license.

11 6134. License duration.

12 6135. Licensee requirements.

13 6136. Licensee limitations.

14 6137. Surrender of license.

15 6138. Authority of department.

16 6139. Suspension, revocation or refusal.

17 6140. Penalties.

18 § 6131. Application for license.

19 (a) Contents.--An application for a license under this
20 chapter shall be on a form prescribed and provided by the
21 department.

22 (1) In the case of a mortgage broker, mortgage lender or
23 mortgage loan correspondent, the application shall include
24 the following:

25 (i) The name of the applicant.

26 (ii) The address of the principal place of business
27 of the applicant and the address or addresses where the
28 applicant's mortgage loan business is to be conducted.

29 (iii) The full name, official title and business
30 address of each director and principal officer of the

1 mortgage loan business.

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

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

6 (i) The name of the applicant.

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

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

12 (3) An applicant shall demonstrate to the department
13 that policies and procedures have been developed to receive
14 and process consumer inquiries and grievances promptly and
15 fairly.

16 (b) Duty to update.--All applicants and licensees shall be
17 required to provide the department with written notice of the
18 change in any information contained in an application for a
19 license or for any renewal of a license within ten days of an
20 applicant or licensee becoming aware of the change.

21 (c) Mortgage lender license.--The department shall issue a
22 mortgage lender license applied for under this chapter if the
23 applicant has:

24 (1) Been approved by or meets the current criteria for
25 approval of at least one of the following:

26 (i) Federal National Mortgage Association.

27 (ii) Federal Home Loan Mortgage Corporation.

28 (iii) Federal Housing Administration.

29 (2) Been approved for and will continue to maintain as a
30 licensee a line of credit, repurchase agreement or equivalent

1 mortgage-funding capability of not less than \$1,000,000.

2 (3) Established a minimum tangible net worth of \$250,000
3 at the time of application and will, at all times thereafter,
4 maintain the minimum tangible net worth.

5 (4) Been approved for and will continue to maintain as a
6 licensee fidelity bond coverage in accordance with the
7 guidelines established by the Federal National Mortgage
8 Association or the Federal Home Loan Mortgage Corporation.

9 (d) Mortgage loan correspondent license.--The department
10 shall issue a loan correspondent's license applied for under
11 this chapter if the applicant:

12 (1) Obtains and will maintain a bond in the amount of
13 \$100,000, in a form acceptable to the department, prior to
14 the issuance of the license, from a surety company authorized
15 to do business in this Commonwealth. The bond shall run to
16 the Commonwealth and shall be for the use of the Commonwealth
17 and any person or persons who obtain a judgment against the
18 mortgage loan correspondent for failure to carry out the
19 terms of any provision for which advance fees are paid. No
20 bond shall comply with the requirements of this section
21 unless it contains a provision that it shall not be canceled
22 for any cause unless notice of intention to cancel is given
23 to the department at least 30 days before the day upon which
24 cancellation shall take effect.

25 (2) Establishes a minimum tangible net worth of \$100,000
26 at the time of application and will, at all times thereafter,
27 maintain the minimum tangible net worth.

28 (e) Mortgage broker license.--

29 (1) The department shall issue a mortgage broker license
30 applied for under this chapter if the applicant obtains and

1 will maintain a bond in the amount of \$100,000, in a form
2 acceptable to the department, prior to the issuance of the
3 license, from a surety company authorized to do business in
4 this Commonwealth. The bond shall be a penal bond conditioned
5 on compliance with this chapter and subject to forfeiture by
6 the department and shall run to the Commonwealth for its use.
7 The bond shall also be for the use of any person against the
8 mortgage broker for failure to carry out the terms of any
9 provision for which advance fees are paid. If the person is
10 aggrieved, the person may, with the written consent of the
11 department, recover advance fees and costs from the bond by
12 filing a claim with the surety company or maintaining an
13 action on the bond. In the alternative, an aggrieved person
14 may recover advance fees and costs by filing a formal
15 complaint against the mortgage broker with the department
16 which shall adjudicate the matter. The adjudication shall be
17 binding upon the surety company and enforceable by the
18 department in Commonwealth Court and by an aggrieved person
19 in any court. Any aggrieved person seeking to recover advance
20 fees and costs from a bond that has already been forfeited by
21 the department or which the department is in the process of
22 forfeiting may recover payment on the bond if, after filing a
23 petition with the department, the department consents to the
24 aggrieved person's requested payment or portion thereof. The
25 department may pay the aggrieved person from the bond
26 proceeds it recovers. Nothing in this section shall be
27 construed as limiting the ability of any court or magisterial
28 district judge to award to any aggrieved person other
29 damages, court costs and attorney fees as permitted by law,
30 but those claims that are not advance fees or related costs

1 may not be recovered from the bond. The department, in its
2 discretion, may consent to or order pro rata or other
3 recovery on the bond for any aggrieved person if claims
4 against the bond may or do exceed its full monetary amount.
5 No bond shall comply with the requirements of this section
6 unless it contains a provision that it shall not be canceled
7 for any cause unless notice of intention to cancel is given
8 to the department at least 30 days before the day upon which
9 cancellation shall take effect. Cancellation of the bond
10 shall not invalidate the bond regarding the period of time it
11 was in effect.

12 (2) Mortgage brokers who can demonstrate to the
13 satisfaction of the department that they do not and will not
14 accept advance fees shall be exempt from the bond requirement
15 of this subsection.

16 (f) Mortgage originator license.--A mortgage originator
17 shall be an employee of a single mortgage broker, mortgage
18 lender or mortgage loan correspondent licensed under this
19 chapter, which licensee shall directly supervise, control and
20 maintain responsibility for the acts and omissions of the
21 mortgage originator. A mortgage originator shall be assigned to
22 and work out of a licensed location of the employer licensee.

23 (g) Education.--

24 (1) In order to obtain a license under this chapter, an
25 applicant shall submit to the department with its application
26 evidence that the applicant or an officer of the applicant
27 has successfully completed a minimum of 12 hours of
28 instruction and a testing program regarding the first and
29 secondary mortgage loan businesses and the provisions of this
30 chapter, the act of January 30, 1974 (P.L.13, No.6), referred

1 to as the Loan Interest and Protection Law and relevant
2 Federal law including the Real Estate Settlement Procedures
3 Act of 1974 (Public Law 93-533, 88 Stat. 1724), Truth in
4 Lending provisions of Title I of the Consumer Credit
5 Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.)
6 and the Equal Credit Opportunity Act (Public Law 93-495, 15
7 U.S.C. § 1691 et seq.).

8 (2) In order to maintain a license:

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

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

20 (3) The department shall delineate the requirements for
21 prequalification education and testing and continuing
22 education by regulation. The department may review and
23 approve education programs and providers to satisfy the
24 education requirements. Providers of prequalification
25 education and testing and continuing education programs may
26 include the licensee or a subsidiary or affiliate of the
27 licensee. The department may charge providers of education
28 programs a fee, to be determined by the department, for
29 department review of education programs and providers.

30 (h) License renewals.--Licenses shall be issued for terms of

1 12 months and may be renewed by the department each year on a
2 schedule set by the department upon application by the licensee
3 and the payment of any and all applicable renewal fees. The
4 licensee shall demonstrate to the department that it is
5 conducting the mortgage loan business in accordance with the
6 requirements of this chapter and that the directors, officers,
7 partners, employees, agents and ultimate equitable owners of 10%
8 or more of the licensee continue to meet all of the initial
9 requirements for licensure required by this chapter unless
10 otherwise determined by the department.

11 (i) Out-of-State applicants.--

12 (1) If an applicant is not a resident of this
13 Commonwealth, as a condition to receiving a license under
14 this chapter, the applicant shall be authorized to do
15 business in this Commonwealth in accordance with the laws of
16 this Commonwealth regulating corporations and other entities
17 conducting business in this Commonwealth and shall maintain
18 at least one office in this Commonwealth which is the office
19 that shall be licensed as the principal place of business for
20 the purposes of this chapter. Wholesale table funders shall
21 be exempt from the requirement to maintain at least one
22 office in this Commonwealth.

23 (2) Out-of-State applicants shall file with the license
24 application an irrevocable consent, duly acknowledged, that
25 suits and actions may be commenced against that person in the
26 courts of this Commonwealth by the service of process of any
27 pleading upon the department in the usual manner provided for
28 service of process and pleadings by the laws and court rules
29 of this Commonwealth. The consent shall provide that this
30 service shall be as valid and binding as if service had been

1 made personally upon the person in this Commonwealth. In all
2 cases where process or pleadings are served upon the
3 department under the provisions of this section, the process
4 or pleadings shall be served in triplicate, one copy shall be
5 filed in the department's offices and the others shall be
6 forwarded by the department, by certified or registered mail,
7 return receipt requested, to the last known principal place
8 of business of the person.

9 § 6132. License fees.

10 (a) Initial application fees.--An applicant shall pay to the
11 department at the time an application is filed an initial
12 nonrefundable application fee as set forth under this
13 subsection.

14 (1) For mortgage lenders and mortgage loan
15 correspondents, \$1,500 for the principal place of business in
16 this Commonwealth and an additional fee of \$1,500 for each
17 branch office.

18 (2) For mortgage brokers, \$1,000 for the principal place
19 of business in this Commonwealth and an additional fee of
20 \$250 for each branch office.

21 (3) Subject to the limitations under subsection (c), for
22 mortgage originators, \$100.

23 (b) Renewal fees.--Prior to each annual renewal of a
24 license, a licensee shall pay to the department a nonrefundable
25 license renewal fee as set forth under this subsection.

26 (1) For mortgage lenders and mortgage loan
27 correspondents, \$750 for the principal place of business in
28 this Commonwealth and an additional fee of \$750 for each
29 branch office.

30 (2) For mortgage brokers, \$500 for the principal place

1 of business in this Commonwealth and an additional fee of
2 \$250 for each branch office.

3 (3) Subject to the limitations under subsection (c), for
4 mortgage originators, \$100.

5 (c) Fee limitation.--For a licensee that employs 50 or more
6 mortgage originators, the initial application fee and license
7 renewal fee shall be \$50 per mortgage originator, to a maximum
8 of \$10,000 total per year.

9 (d) No abatement of fee.--No abatement of a licensee fee
10 shall be made if the license is issued for a period of less than
11 one year.

12 § 6133. Issuance of license.

13 (a) Time limit.--Within 60 days after a completed
14 application is received, the department shall either issue a
15 license, or for any reason which the department may refuse to
16 issue a license under this section or for which the department
17 may suspend, revoke or refuse to renew a license under section
18 6139 (relating to suspension, revocation or refusal), refuse to
19 issue a license. The 60-day time limit specified in this
20 subsection may be extended by the department for an additional
21 30 days if the department determines that the extension is
22 necessary. The department shall provide written notification to
23 any applicant whose application review has been extended and
24 include the final date by which a decision shall be rendered
25 regarding the application.

26 (a.1) Investigations.--Upon receipt of an application for a
27 license, the department may conduct an investigation of the
28 applicant or a director, officer, partner, employee, agent or
29 ultimate equitable owner of 10% or more of the applicant as it
30 deems necessary.

1 (b) Appeal of denial.--If the department refuses to issue a
2 license, it shall notify the applicant in writing of the denial,
3 the reason for the denial and the applicant's right to appeal
4 the denial to the Secretary of Banking. An appeal from the
5 department's refusal to approve an application for a license
6 must be filed by the applicant within 30 days of notice of
7 refusal.

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

10 (1) The name and address of the licensee and the address
11 or addresses covered by the license, the address so specified
12 to be that of the licensee's principal place of business
13 within this Commonwealth, or for a licensee acting only in
14 the capacity of a wholesale table funder, either in or
15 outside of this Commonwealth.

16 (2) The licensee's reference number.

17 (3) Any other information the department shall require
18 to carry out the purposes of this chapter.

19 (d) Denial of license due to conviction.--

20 (1) The department may deny a license if it finds that
21 the applicant or a director, officer, partner, employee,
22 agent or ultimate equitable owner of 10% or more of the
23 applicant has been convicted of a crime of moral turpitude or
24 felony in any jurisdiction or of a crime which, if committed
25 in this Commonwealth, would constitute a crime of moral
26 turpitude or felony. For the purposes of this subsection, a
27 person shall be deemed to have been convicted of a crime if
28 the person:

29 (i) pleads guilty or nolo contendere to a criminal
30 charge before a court or Federal magistrate; or

1 (ii) is found guilty by the decision or judgment of
2 a court or Federal magistrate or by the verdict of a
3 jury, irrespective of the pronouncement of sentence or
4 the suspension thereof, unless the plea of guilty or nolo
5 contendere or the decision, judgment or verdict is set
6 aside, vacated, reversed or otherwise abrogated by lawful
7 judicial 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 act
10 of May 15, 1933 (P.L.565, No.111), known as the Department of
11 Banking Code. The department shall notify a licensee if a
12 covered individual within the meaning of section 405 of the
13 Department of Banking Code that is or will be employed or
14 contracted by the licensee has a criminal background that
15 renders the employee unfit for employment in the mortgage
16 loan business.

17 (e) Denial of license for other reason.--The department may
18 deny a license or otherwise restrict a license if it finds that
19 the applicant or a director, officer, partner, employee, agent
20 or ultimate equitable owner of 10% or more of the applicant:

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

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

24 (3) has violated or failed to comply with any provision
25 of this chapter or any regulation, statement of policy or
26 order of the department;

27 (4) does not possess the financial responsibility,
28 character, reputation, integrity and general fitness to
29 command the confidence of the public and to warrant the
30 belief that the mortgage loan business will be operated

1 lawfully, honestly, fairly and within the legislative intent
2 of this chapter and in accordance with the general laws of
3 this Commonwealth; or

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

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

16 § 6134. License duration.

17 A license issued by the department shall be subject to all of
18 the following limitations:

19 (1) Be renewed on the licensee's renewal date each year
20 upon completion of the requirements of section 6131(h)
21 (relating to application for license). No refund of any
22 portion of the license fee shall be made if the license is
23 voluntarily surrendered to the department or suspended or
24 revoked by the department prior to its expiration date.

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

1 (3) Not be assignable or transferable by operation of
2 law or otherwise.

3 § 6135. Licensee requirements.

4 (a) Requirements of licensee.--

5 (1) A licensee who is a mortgage broker, mortgage lender
6 or mortgage loan correspondent shall conspicuously display,
7 at each licensed place of business, its license and copies of
8 the licenses of all mortgage originators assigned to that
9 location. A licensee who is a mortgage originator shall keep
10 the license in the immediate possession of the licensee
11 whenever the licensee is engaged in the mortgage loan
12 business.

13 (2) Each licensee shall maintain at its principal place
14 of business within this Commonwealth, or at such place within
15 or outside this Commonwealth if agreed to by the department,
16 the original or a copy of any books, accounts, records and
17 documents, or electronic or similar access thereto, of the
18 business conducted under the license as prescribed by the
19 department to enable the department to determine whether the
20 business of the licensee is being conducted in accordance
21 with the provisions of this chapter and the regulations,
22 statements of policy or orders issued under this chapter. The
23 department shall have free access to and authorization to
24 examine records maintained within or outside this
25 Commonwealth by the licensee. The costs of the examination,
26 including travel costs, shall be borne by the licensee. The
27 department may deny or revoke the authority to maintain
28 records within or outside this Commonwealth for good cause in
29 the interest of protection for Commonwealth consumers,
30 including for the licensee's failure to provide books,

1 accounts, records or documents to the department upon
2 request.

3 (3) A mortgage broker, mortgage lender or mortgage loan
4 correspondent, on a date determined by the department, shall
5 file annually a report with the department setting forth such
6 information as the department shall require concerning the
7 first or secondary mortgage loan business conducted by the
8 licensee during the preceding calendar year. The report shall
9 be in writing and under oath on a form provided by the
10 department. Licensees who fail to file the required report at
11 the date required by the department shall be subject to a
12 penalty of \$100 for each day after the due date until the
13 report is filed.

14 (4) Each licensee shall be subject to examination by the
15 department at its discretion, at which time the department
16 shall have free access, during regular business hours, to the
17 licensee's place or places of business in this Commonwealth
18 and to all instruments, documents, accounts, books and
19 records which pertain to a licensee's first or secondary
20 mortgage loan business, whether maintained in or outside this
21 Commonwealth. The department may examine a licensee at any
22 time if the department deems the examination to be necessary
23 or desirable. The cost of any such examination shall be borne
24 by the licensee.

25 (5) Each licensee shall include in all advertisements
26 language indicating that the licensee is licensed by the
27 department. In the case of a mortgage originator, all
28 advertising shall include the name of the mortgage
29 originator's employer.

30 (b) Accounting records.--The licensee's accounting records

1 must be constructed and maintained in compliance with generally
2 accepted accounting principles or as provided by department
3 regulation. All instruments, documents, accounts, books and
4 records relating to the mortgage loan business shall be kept
5 separate and apart from the records of any other business
6 conducted by the licensee. Records of first and secondary
7 mortgage loans shall be easily distinguishable and easily
8 separated. All records shall be preserved and kept available for
9 investigation or examination by the department for a period
10 determined by the department.

11 (c) Copies.--If copies of instruments, documents, accounts,
12 books or records are maintained under subsection (a)(2), they
13 may be photostatic, microfilm or electronic copies or copies
14 provided in some other manner approved by the department.

15 § 6136. Licensee limitations.

16 (a) Name and changes to name.--A licensee cannot transact
17 any business under this chapter under any other name or names
18 except those names designated in its license. A mortgage
19 originator may not use any other name other than the mortgage
20 originator's personal legal name. A licensee that changes its
21 name or place or places of business shall notify the department
22 within ten days of the change and the department shall issue a
23 certificate to the licensee, if appropriate, which shall specify
24 the licensee's new name or address.

25 (b) Other businesses.--A licensee cannot conduct a business
26 other than the mortgage loan business licensed by the department
27 under this chapter without at least 30 days' prior written
28 notification to the department.

29 § 6137. Surrender of license.

30 Upon satisfying the department that all creditors of a

1 licensee have been paid or that other arrangements satisfactory
2 to the creditors and the department have been made, a licensee
3 may voluntarily surrender its license to the department by
4 delivering its license to the department with written notice
5 that the license is being voluntarily surrendered, but an action
6 by a licensee shall not affect the licensee's civil or criminal
7 liability for acts committed.

8 § 6138. Authority of department.

9 (a) General authority.--The department shall have the
10 authority to:

11 (1) Examine any instrument, document, account, book,
12 record or file of a licensee or any person having a
13 connection to the licensee or make other investigation as may
14 be necessary to administer the provisions of this chapter.
15 Pursuant to this authority, the department may remove any
16 instrument, document, account, book, record or file of a
17 licensee to a location outside of the licensee's office
18 location. The costs of the examination shall be borne by the
19 licensee or the entity subject to the examination.

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

1 be lawfully interrogated, on application by the department,
2 the Commonwealth Court may issue an order requiring the
3 attendance of the person, the production of instruments,
4 documents, accounts, books and records and the giving of
5 testimony.

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

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

17 (5) Prohibit or permanently remove an individual
18 responsible for a violation of this chapter from working in
19 the person's present capacity or in any other capacity
20 related to activities regulated by the department.

21 (6) Order a person to make restitution for actual
22 damages to consumers caused by any violation of this chapter.

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

26 (8) Impose such other conditions as the department deems
27 appropriate.

28 (b) Hearings.--A person aggrieved by a decision of the
29 department may appeal the decision of the department to the
30 Secretary of Banking. The appeal shall be conducted under 2

1 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
2 Commonwealth agencies).

3 (c) Injunctions.--The department may maintain an action for
4 an injunction or other process against a person to restrain and
5 prevent the person from engaging in an activity violating this
6 chapter.

7 (d) Final orders.--A decision of the Secretary of Banking
8 shall be a final order of the department and shall be
9 enforceable in a court of competent jurisdiction. The department
10 may publish final adjudications issued under this section,
11 subject to redaction or modification to preserve
12 confidentiality.

13 (e) Appeals.--A person aggrieved by a decision of the
14 Secretary of Banking may appeal the decision under 2 Pa.C.S. Ch.
15 7 Subch A. (relating to judicial review of Commonwealth agency
16 action).

17 (f) Orders affecting mortgage originators.--An order issued
18 against a licensee is applicable to the mortgage originators
19 employed by the licensee.

20 § 6139. Suspension, revocation or refusal.

21 (a) Departmental action.--The department may suspend, revoke
22 or refuse to renew a license issued under this chapter if any
23 fact or condition exists or is discovered which, if it had
24 existed or had been discovered at the time of filing of the
25 application for the license, would have warranted the department
26 in refusing to issue the license or if a licensee or director,
27 officer, partner, employee or owner of a licensee has:

28 (1) Made a material misstatement in an application or
29 any report or submission required by this chapter or any
30 department regulation, statement of policy or order.

1 (2) Failed to comply with or violated any provision of
2 this chapter or any regulation or order promulgated or issued
3 by the department under this chapter.

4 (3) Engaged in dishonest, fraudulent or illegal
5 practices or conduct in a business or unfair or unethical
6 practices or conduct in connection with the mortgage loan
7 business.

8 (4) Been convicted of or pleaded guilty or nolo
9 contendere to a crime of moral turpitude or felony.

10 (5) Permanently or temporarily been enjoined by a court
11 of competent jurisdiction from engaging in or continuing
12 conduct or a practice involving an aspect of the mortgage
13 loan business.

14 (6) Become the subject of an order of the department
15 denying, suspending or revoking a license applied for or
16 issued under this chapter.

17 (7) Become the subject of a United States Postal Service
18 fraud order.

19 (8) Failed to comply with the requirements of this
20 chapter to make and keep records prescribed by regulation,
21 statement of policy or order of the department, to produce
22 records required by the department or to file financial
23 reports or other information that the department by
24 regulation, statement of policy or order may require.

25 (9) Become the subject of an order of the department
26 denying, suspending or revoking a license under the
27 provisions of any other law administered by the department.

28 (10) Demonstrated negligence or incompetence in
29 performing an act for which the licensee is required to hold
30 a license under this chapter.

1 (11) Accepted an advance fee without having obtained the
2 bond required by section 6131(d)(1) or (e)(1) (relating to
3 application for license).

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

11 (13) Failed to complete the qualifying or continuing
12 education as required by section 6131(g).

13 (14) In the case of a mortgage broker, mortgage lender
14 or mortgage loan correspondent, conducted the mortgage loan
15 business through an unlicensed mortgage originator.

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

20 (b) Reinstatement.--The department may reinstate a license
21 which was previously revoked or denied renewal if all of the
22 following exist:

23 (1) The condition which warranted the original action
24 has been corrected to the department's satisfaction.

25 (2) The department has reason to believe that the
26 condition is not likely to occur again.

27 (3) The licensee satisfies all other requirements of
28 this chapter.

29 § 6140. Penalties.

30 (a) Persons operating without licenses.--A person subject to

1 the provisions of this chapter and not licensed by the
2 department who violates any provision of this chapter or who
3 commits any action which would subject a license to suspension,
4 revocation or nonrenewal under section 6139 (relating to
5 suspension, revocation or refusal) may be fined by the
6 department up to \$10,000 for each offense.

7 (b) Violation by licensee.--A person licensed under this
8 chapter or director, officer, owner, partner, employee or agent
9 of a licensee who violates a provision of this chapter or who
10 commits any action which would subject the licensee to
11 suspension, revocation or nonrenewal under section 6139 may be
12 fined by the department up to \$10,000 for each offense.

13 SUBCHAPTER E

14 MISCELLANEOUS PROVISIONS

15 Sec.

16 6151. Applicability.

17 6152. Relationship to other laws.

18 6153. Preservation of existing contracts.

19 § 6151. Applicability.

20 The provisions of this chapter shall apply to:

21 (1) Any mortgage loan which is:

22 (i) negotiated, offered or otherwise transacted
23 within this Commonwealth, in whole or in part, whether by
24 the ultimate lender or any other person;

25 (ii) made or executed within this Commonwealth; or

26 (iii) notwithstanding the place of execution,
27 secured by real property located in this Commonwealth.

28 (2) Any person who engages in the mortgage loan business
29 in this Commonwealth.

30 Section 6152. Relationship to other laws.

1 (a) General rule.--

2 (1) A political subdivision may not enact or enforce any
3 ordinance, resolution or regulation pertaining to the
4 financial or lending activities of a person that:

5 (i) is subject to the jurisdiction of the
6 department, including activities subject to this chapter;

7 (ii) is subject to the jurisdiction or regulatory
8 supervision of the Board of Governors of the Federal
9 Reserve System, the Office of the Comptroller of the
10 Currency, the Office of Thrift Supervision, the National
11 Credit Union Administration, the Federal Deposit
12 Insurance Corporation, the Federal Trade Commission or
13 the United States Department of Housing and Urban
14 Development; or

15 (iii) originates, purchases, sells, assigns,
16 securitizes or services any property interest or
17 obligation created by a financial transaction or loan
18 made, executed or originated by a person referred to in
19 subparagraph (i) or (ii) or assists or facilitates such a
20 transaction or loan.

21 (2) This subsection applies to any ordinance, resolution
22 or regulation pertaining to financial or lending activity,
23 including any ordinance, resolution or regulation:

24 (i) disqualifying a person from doing business with
25 a political subdivision based upon financial or lending
26 activity; or

27 (ii) imposing reporting requirements or any other
28 obligations upon a person regarding financial or lending
29 activity.

30 (b) Corporate powers.--Nothing in this chapter shall be

1 deemed to:

2 (1) limit the corporate powers of incorporated
3 institutions or their subsidiaries subject to the act of
4 November 30, 1965 (P.L.847, No.356), known as the Banking
5 Code of 1965; or

6 (2) impose conditions, limitations or restrictions upon
7 the exercise of corporate powers contrary to the provisions
8 of section 201 of the Banking Code of 1965.

9 (c) Preemption.--A provision of this chapter preempted by
10 Federal law with respect to a national bank or Federal savings
11 association shall not apply to the same extent to an operating
12 subsidiary of a national bank or Federal savings association
13 which satisfies the requirements for operating subsidiaries
14 established in 12 CFR § 5.34 (relating to operating
15 subsidiaries) or 559.3 (relating to what are the characteristics
16 of, and what requirements apply to, subordinate organizations of
17 Federal savings associations).

18 (d) Interpretation.--The provisions of this chapter shall be
19 interpreted and applied to the fullest extent practical in a
20 manner consistent with applicable Federal laws and regulations,
21 policies and orders of Federal regulatory agencies and shall not
22 be deemed to constitute an attempt to override Federal law.

23 § 6153. Preservation of existing contracts.

24 Nothing contained in this chapter shall be construed to
25 impair or affect first or secondary mortgage loans executed
26 prior to the effective date of this chapter.

27 Section 2. Title 18 is amended by adding a section to read:

28 § 7331. Unlicensed mortgage loan business.

29 A person that operates without a license in violation of 7
30 Pa.C.S. § 6111 (relating to license requirements) commits a

1 felony of the third degree.

2 Section 3. Repeals.

3 (a) Intent.--The General Assembly declares that the repeals
4 under paragraph (2) are necessary to effectuate the provisions
5 of 7 Pa.C.S. Ch. 61.

6 (b) Provision.--The following acts and parts of acts are
7 repealed:

8 (1) Chapter 3 of the act of December 22, 1989 (P.L.687,
9 No.90), known as the Mortgage Bankers and Brokers and
10 Consumer Equity Protection Act.

11 (2) The act of December 12, 1980 (P.L.1179, No.219),
12 known as the Secondary Mortgage Loan Act.

13 Section 4. Transition shall be as follows:

14 (1) A license issued under an act repealed by section 3
15 of this act shall remain in full force and effect as a
16 transitional license, and loans may continue to be made under
17 the transitional license.

18 (2) The following are the requirements for a
19 transitional license:

20 (i) The person holding the license under the
21 repealed act must submit an application for a license
22 under 7 Pa.C.S. Ch. 61 within 60 days of the effective
23 date of this section. An application shall be valid under
24 this paragraph if the names, birth dates and addresses of
25 all individual mortgage solicitors required to be
26 licensed under 7 Pa.C.S. Ch. 61 and employed by the
27 license holder have also been listed with the department
28 as individuals currently employed as mortgage originators
29 who will be applying for individual licenses under 7
30 Pa.C.S. Ch. 61.

1 (ii) Upon filing an application for a license under
2 7 Pa.C.S. Ch. 61, an applicant must proceed expeditiously
3 in accordance with the directions of the department.

4 (3) The department shall set forth for a reasonable time
5 period for transition under this section as a notice in the
6 Pennsylvania Bulletin. The time period shall be at least 90
7 days but not more than 180 days and shall include the
8 training and submission of applications by all mortgage loan
9 solicitors employed by the licensee.

10 Section 5. This act shall take effect in 60 days.