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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2179** Session of  
2008

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INTRODUCED BY DALEY, HESS, THOMAS, SIPTROTH, SCAVELLO, MCGEEHAN,  
GEORGE, BELFANTI, BRENNAN, CARROLL, JAMES, JOSEPHS, MAHONEY,  
MYERS, SANTONI, WALKO, BENNINGTON, HARHAI, KOTIK, WAGNER,  
J. WHITE, YEWIC, CALTAGIRONE AND KORTZ, FEBRUARY 6, 2008

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SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, JUNE 23, 2008

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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; providing for unlicensed mortgage  
5 loan activity; and making related repeals.

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

1 MORTGAGE LOAN INDUSTRY LICENSING AND CONSUMER PROTECTION

2 Subch.

3 A. Preliminary Provisions

4 B. License Requirements and Exceptions

5 C. Mortgage Loan Business Restrictions and Requirements

6 D. Administrative and Licensure Provisions

7 E. Miscellaneous Provisions

8 SUBCHAPTER A

9 PRELIMINARY PROVISIONS

10 Sec.

11 6101. Scope of chapter.

12 6102. Definitions.

13 § 6101. Scope of chapter.

14 This chapter relates to mortgage loan industry licensing and  
15 consumer protection. This chapter does not apply to a banking  
16 institution or federally chartered or State-chartered credit  
17 union, if the primary regulator of the banking institution or  
18 federally or State-chartered credit union supervises the banking  
19 institution or federally or State-chartered credit union.

20 § 6102. Definitions.

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

24 "Advance fee." Any funds requested by or to be paid to a  
25 person in advance of or during the processing of a mortgage loan  
26 application, excluding those fees paid by a consumer directly to  
27 a credit agency reporting bureau, title company or real estate  
28 appraiser.

29 "Applicant." A person who applies for a license under this  
30 chapter.

1 "Banking institution." Any of the following:

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

4 (2) A national bank.

5 (3) A federally chartered or State-chartered savings  
6 association.

7 (4) ~~An operating~~ A subsidiary of any of the entities ←  
8 listed under this definition.

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

14 "Branch." An office or other place of business, other than  
15 the principal place of business, located in this Commonwealth or  
16 any other state, where a person engages in the mortgage loan  
17 business subject to this chapter.

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

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

22 "Finder's fee" or "referral fee." Any payment of money or  
23 other consideration for the referral of a mortgage loan to a  
24 licensee, except for consideration paid for goods or facilities  
25 actually furnished or services actually performed.

26 "First mortgage loan." A loan which is secured in whole or  
27 in part by a first lien upon any interest in real property  
28 created by a security agreement, including a mortgage,  
29 indenture, deed of trust or any other similar instrument or  
30 document, which real property is used as a one-family to four-

1 family dwelling, a portion of which may be used for  
2 nonresidential purposes.

3 "First mortgage loan business." The mortgage loan business  
4 as applied to first mortgage loans.

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

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

16 "Mortgage broker." A person who engages in the mortgage loan  
17 business by directly or indirectly negotiating or placing  
18 mortgage loans for others in the primary market for  
19 consideration.

20 "Mortgage lender." A person who engages in the mortgage loan  
21 business by directly or indirectly originating and closing  
22 mortgage loans with its own funds in the primary market for  
23 consideration.

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

26 "Mortgage loan business." The business of advertising,  
27 causing to be advertised, soliciting, negotiating or arranging  
28 in the ordinary course of business or offering to make or making  
29 mortgage loans.

30 "Mortgage loan correspondent." A person who engages in the

1 mortgage loan business by directly or indirectly originating and  
2 closing mortgage loans in his or her own name utilizing funds  
3 provided by a wholesale table funder or other funding sources  
4 under the circumstances described under section 6123(6)  
5 (relating to mortgage loan business prohibitions) and  
6 simultaneously assigning the mortgage loans to the wholesale  
7 table funder.

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

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

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

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

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

30 (4) The consumer has the privilege of paying the account

1 in full at any time or, if the account is not in default, in  
2 monthly installments of fixed or determinable amounts as  
3 provided in the open-end loan agreement.

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

9 "Primary market." The market wherein mortgage loans are  
10 originated between a lender and a consumer.

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

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

22 "Secondary mortgage loan business." The mortgage loan  
23 business as applied to secondary mortgage loans.

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

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

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

1 have an interest.

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

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

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

15 (6) Goodwill.

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

19 (8) Organization costs of the applicant.

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

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

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

1           (12) Any fees paid or collected which are not  
2           recoverable through the closing or selling of loans.  
3           "Wholesale table funder." A licensed mortgage lender or  
4           person exempt under section 6112(1) or (7) (relating to  
5           exceptions to license requirements) who, in the regular course  
6           of business, provides the funding for the closing of mortgage  
7           loans through mortgage loan correspondents and who by assignment  
8           obtains title to the mortgage loans.

9   SUBCHAPTER B

10    LICENSE REQUIREMENTS AND EXCEPTIONS

11           Sec.

12           6111. License requirements.

13           6112. Exceptions to license requirements.

14           § 6111. License requirements.

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

25           (b) Licensed activity exceptions.--

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



1 license.

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

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

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

15 § 6112. Exceptions to license requirements.

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

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

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

30 (3) A person who either originates, negotiates or

1 services less than three mortgage loans in a calendar year in  
2 this Commonwealth, unless the person is otherwise deemed to  
3 be engaged in the mortgage loan business by the department.

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

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

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



1 sources for the purpose of making mortgage loans.

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

7 SUBCHAPTER C

8 MORTGAGE LOAN BUSINESS RESTRICTIONS AND REQUIREMENTS

9 Sec.

10 6121. General requirements.

11 6122. Powers conferred on certain licensees engaged in the  
12 mortgage loan business.

13 6123. Mortgage loan business prohibitions.

14 6124. Prohibited clauses in mortgage loan documents.

15 6125. Mortgage lending authority.

16 6126. Requirements as to open-end loans.

17 § 6121. General requirements.

18 A licensee shall do all of the following:

19 (1) Comply with all provisions of the act of January 30,  
20 1974 (P.L.13, No.6), referred to as the Loan Interest and  
21 Protection Law (Usury Law). This paragraph shall not  
22 supersede section 501 of the Depository Institutions  
23 Deregulation and Monetary Control Act of 1980 (94 Stat. 161,  
24 12 U.S.C. § 1735f-7a) or the Alternative Mortgage Transaction  
25 Parity Act of 1982 (96 Stat. 1545, 12 U.S.C. §§ 3801-3806 et  
26 seq.).

27 (2) Comply with the provisions of the act of December 3,  
28 1959 (P.L.1688, No.621), known as the Housing Finance Agency  
29 Law, that are applicable to the licensee.

30 (3) Comply with all applicable Federal law, including

1 the Real Estate Settlement Procedures Act (88 Stat. 1724, 12  
2 U.S.C. §§ 2601 et seq.), the Truth in Lending Act (82 Stat.  
3 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit  
4 Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691 et seq.).

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

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

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

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

28 (8) If a mortgage loan is paid in full and, in the case  
29 of an open-end loan, the mortgage lender is no longer  
30 obligated to make future advances to the consumer, the

1 mortgage lender shall do all of the following:

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

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

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

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

23 (10) Refund all fees, other than those fees paid by the  
24 licensee to a third party, paid by a consumer when a mortgage  
25 loan is not produced within the time specified by the  
26 mortgage broker, mortgage lender or mortgage loan  
27 correspondent at the rate, term and overall cost agreed to by  
28 the consumer. This paragraph shall not apply if the failure  
29 to produce a mortgage loan is due solely to the consumer's  
30 negligence, his or her refusal to accept and close on a loan

1 commitment or his or her refusal or inability to provide  
2 information necessary for processing, including employment  
3 verifications and verifications of deposits. The licensee  
4 shall disclose to the consumer, in writing, at the time of a  
5 loan application which fees paid or to be paid are  
6 nonrefundable.

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

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

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

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

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

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

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

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

24 (i) Maintain supervision and control of and  
25 responsibility for the acts and omissions of all mortgage  
26 originators employed by the licensee.

27 (ii) Maintain a list of all current and former  
28 mortgage originators employed by the licensee and the  
29 dates of the employment.

30 (iii) In the event that a licensee believes that a

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

9 § 6122. Powers conferred on certain licensees engaged in the  
10 mortgage loan business.

11 (a) Mortgage lenders.--If they are in compliance with the  
12 provisions of this chapter, all mortgage lenders engaged in the <—  
13 mortgage loan business MORTGAGE LENDERS shall have THE power and <—  
14 authority:

15 (1) To make first and secondary mortgage loans AND, <—  
16 SUBJECT TO THE LIMITATIONS OF THIS CHAPTER, TO CHARGE AND  
17 COLLECT APPLICATION FEES FOR THE 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 THE <—  
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 THE LIMITATIONS OF ←  
15 THOSE CONTAINED IN this chapter.

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

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

28 (4) Require a consumer to pay, to the licensee or any  
29 other person, a broker's fee, finder's fee, commission,  
30 premium or any other charges for obtaining, procuring or

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

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

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

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

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

1 advance fees payable to the mortgage originator's employer  
2 licensee unless the licensee is authorized to collect advance  
3 fees under this chapter.

4 § 6124. Prohibited clauses in mortgage loan documents.

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

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

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

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

17 § 6125. Mortgage lending authority.

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

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

23 (2) if the licensee is qualified, applicable Federal  
24 law, including the Alternative Mortgage Transaction Parity  
25 Act of 1982 (Public Law 97-320, 12 U.S.C. § 3801 et seq.) and  
26 section 501 of the Depository Institution Deregulation and  
27 Monetary Control Act of 1980 (94 Stat. 161, 12 U.S.C. §  
28 1735f-7a).

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

1           (1) if the licensee is qualified, make secondary  
2 mortgage loans on terms as are permissible under applicable  
3 Federal law, including the Alternative Mortgage Transaction  
4 Parity Act of 1982; or

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

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

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

1 § 6126. Requirements as to open-end loans.

2 The following shall apply:

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

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

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

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

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

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

1           (4) For all of the methods of computation in paragraph  
2           (3)(i), (ii) and (iii), the billing cycle shall be monthly,  
3           and the unpaid principal balance on any day shall be  
4           determined by adding to any balance unpaid as of the  
5           beginning of that day all advances and other permissible  
6           amounts charged to the consumer and deducting all payments  
7           and other credits made or received that day.

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

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

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



1 insurance, as the rate may be determined by the Insurance  
2 Commissioner, to the unpaid balances in the consumer's  
3 account, using any of the methods specified in paragraph  
4 (3) for the calculation of loan charges.

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

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

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

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

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

7 SUBCHAPTER D

8 ADMINISTRATIVE AND LICENSURE PROVISIONS

9 Sec.

10 6131. Application for license.

11 6132. License fees.

12 6133. Issuance of license.

13 6134. License duration.

14 6135. Licensee requirements.

15 6136. Licensee limitations.

16 6137. Surrender of license.

17 6138. Authority of department.

18 6139. Suspension, revocation or refusal.

19 6140. Penalties.

20 § 6131. Application for license.

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

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

27 (i) The name of the applicant.

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

1           (iii) The full name, official title and business  
2           address of each director and principal officer of the  
3           mortgage loan business.

4           (iv) Any other information that may be required by  
5           the department.

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

8           (i) The name of the applicant.

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

12           (iii) Any other information that may be required by  
13           the department.

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

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

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

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

28           (i) Federal National Mortgage Association.

29           (ii) Federal Home Loan Mortgage Corporation.

30           (iii) Federal Housing Administration.

1           (2) Been approved for and will continue to maintain as a  
2 licensee a line of credit, repurchase agreement or equivalent  
3 mortgage-funding capability of not less than \$1,000,000.

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

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

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

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

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

30       (e) Mortgage broker license.--

1           (1) The department shall issue a mortgage broker license  
2 applied for under this chapter if the applicant obtains and  
3 will maintain a bond in the amount of \$100,000, in a form  
4 acceptable to the department, prior to the issuance of the  
5 license, from a surety company authorized to do business in  
6 this Commonwealth. The bond shall be a penal bond conditioned  
7 on compliance with this chapter and subject to forfeiture by  
8 the department and shall run to the Commonwealth for its use.  
9 The bond shall also be for the use of any person against the  
10 mortgage broker for failure to carry out the terms of any  
11 provision for which advance fees are paid. If the person is  
12 aggrieved, the person may, with the written consent of the  
13 department, recover advance fees and costs from the bond by  
14 filing a claim with the surety company or maintaining an  
15 action on the bond. In the alternative, an aggrieved person  
16 may recover advance fees and costs by filing a formal  
17 complaint against the mortgage broker with the department  
18 which shall adjudicate the matter. The adjudication shall be  
19 binding upon the surety company and enforceable by the  
20 department in Commonwealth Court and by an aggrieved person  
21 in any court. Any aggrieved person seeking to recover advance  
22 fees and costs from a bond that has already been forfeited by  
23 the department or which the department is in the process of  
24 forfeiting may recover payment on the bond if, after filing a  
25 petition with the department, the department consents to the  
26 aggrieved person's requested payment or portion thereof. The  
27 department may pay the aggrieved person from the bond  
28 proceeds it recovers. Nothing in this section shall be  
29 construed as limiting the ability of any court or magisterial  
30 district judge to award to any aggrieved person other

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

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

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

25 (g) Education.--

26 (1) In order to obtain a license under this chapter, an  
27 applicant shall submit to the department with its application  
28 evidence that the applicant ~~or an officer of the applicant,~~ <—

29 IN THE CASE OF A MORTGAGE ORIGINATOR APPLICANT, OR A  
30 DIRECTOR, PARTNER OR ULTIMATE EQUITABLE OWNER OF AT LEAST 10%

1 OF A LICENSEE, IN THE CASE OF ANY OTHER LICENSE APPLICANT,  
2 has successfully completed a minimum of 12 hours of  
3 instruction and a testing program regarding the first and  
4 secondary mortgage loan businesses and the provisions of this  
5 chapter, the act of January 30, 1974 (P.L.13, No.6), referred  
6 to as the Loan Interest and Protection Law and relevant  
7 Federal law including the Real Estate Settlement Procedures  
8 Act of 1974 (Public Law 93-533, 88 Stat. 1724), Truth in  
9 Lending provisions of Title I of the Consumer Credit  
10 Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.)  
11 and the Equal Credit Opportunity Act (Public Law 93-495, 15  
12 U.S.C. § 1691 et seq.).

13 (2) In order to maintain a license:

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

21 (ii) A mortgage originator licensee shall  
22 demonstrate to the satisfaction of the department that  
23 the licensee has attended a minimum of six hours of  
24 continuing education each year.

25 (3) The department shall delineate the requirements for  
26 prequalification education and testing and continuing  
27 education by regulation. The department may review and  
28 approve education programs and providers to satisfy the  
29 education requirements. Providers of prequalification  
30 education and testing and continuing education programs may

1 include the licensee or a subsidiary or affiliate of the  
2 licensee. The department may charge providers of education  
3 programs a fee, to be determined by the department, for  
4 department review of education programs and providers.

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

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

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

28 (2) Out-of-State applicants shall file with the license  
29 application an irrevocable consent, duly acknowledged, that  
30 suits and actions may be commenced against that person in the



1 courts of this Commonwealth by the service of process of any  
2 pleading upon the department in the usual manner provided for  
3 service of process and pleadings by the laws and court rules  
4 of this Commonwealth. The consent shall provide that this  
5 service shall be as valid and binding as if service had been  
6 made personally upon the person in this Commonwealth. In all  
7 cases where process or pleadings are served upon the  
8 department under the provisions of this section, the process  
9 or pleadings shall be served in triplicate, one copy shall be  
10 filed in the department's offices and the others shall be  
11 forwarded by the department, by certified or registered mail,  
12 return receipt requested, to the last known principal place  
13 of business of the person.

14 § 6132. License fees.

15 (a) Initial application fees.--An applicant shall pay to the  
16 department at the time an application is filed an initial  
17 nonrefundable application fee as set forth under this  
18 subsection.

19 (1) For mortgage lenders and mortgage loan  
20 correspondents, \$1,500 for the principal place of business in  
21 this Commonwealth and an additional fee of \$1,500 for each  
22 branch office.

23 (2) For mortgage brokers, \$1,000 for the principal place  
24 of business in this Commonwealth and an additional fee of  
25 \$250 for each branch office.

26 ~~(3) Subject to the limitations under subsection (c), for~~ <—  
27 ~~mortgage originators, \$100.~~

28 (3) FOR MORTGAGE ORIGINATORS, \$200. <—

29 (b) Renewal fees.--Prior to each annual renewal of a  
30 license, a licensee shall pay to the department a nonrefundable

1 license renewal fee as set forth under this subsection.

2 (1) For mortgage lenders and mortgage loan  
3 correspondents, \$750 for the principal place of business in  
4 this Commonwealth and an additional fee of \$750 for each  
5 branch office.

6 (2) For mortgage brokers, \$500 for the principal place  
7 of business in this Commonwealth and an additional fee of  
8 \$250 for each branch office.

9 (3) Subject to the limitations under subsection (c), for <—  
10 FOR mortgage originators, \$100. <—

11 (c) Fee limitation. For a licensee that employs 50 or more <—  
12 mortgage originators, the initial application fee and license  
13 renewal fee shall be \$50 per mortgage originator, to a maximum  
14 of \$10,000 total per year.

15 (d) (C) No abatement of fee.--No abatement of a licensee fee <—  
16 shall be made if the license is issued for a period of less than  
17 one year.

18 § 6133. Issuance of license.

19 (a) Time limit.--Within 60 days after a completed  
20 application is received, the department shall either issue a  
21 license, or for any reason which the department may refuse to  
22 issue a license under this section or for which the department  
23 may suspend, revoke or refuse to renew a license under section  
24 6139 (relating to suspension, revocation or refusal), refuse to  
25 issue a license. The 60-day time limit specified in this  
26 subsection may be extended by the department for an additional  
27 30 days if the department determines that the extension is  
28 necessary. The department shall provide written notification to  
29 any applicant whose application review has been extended and  
30 include the final date by which a decision shall be rendered

1 regarding the application.

2 (a.1) Investigations.--Upon receipt of an application for a  
3 license, the department may conduct an investigation of the  
4 applicant or a director, officer, partner, employee, agent or  
5 ultimate equitable owner of 10% or more of the applicant as it  
6 deems necessary.

7 (b) Appeal of denial.--If the department refuses to issue a  
8 license, it shall notify the applicant in writing of the denial,  
9 the reason for the denial and the applicant's right to appeal  
10 the denial to the Secretary of Banking. An appeal from the  
11 department's refusal to approve an application for a license  
12 must be filed by the applicant within 30 days of notice of  
13 refusal.

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

16 (1) The name and address of the licensee and the address  
17 or addresses covered by the license, the address so specified  
18 to be that of the licensee's principal place of business  
19 within this Commonwealth, or for a licensee acting only in  
20 the capacity of a wholesale table funder, either in or  
21 outside of this Commonwealth.

22 (2) The licensee's reference number.

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

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

26 (1) The department may deny a license if it finds that  
27 the applicant or a director, officer, partner, employee,  
28 agent or ultimate equitable owner of 10% or more of the  
29 applicant has been convicted of a crime of moral turpitude or  
30 felony in any jurisdiction or of a crime which, if committed

1 in this Commonwealth, would constitute a crime of moral  
2 turpitude or felony. For the purposes of this subsection, a  
3 person shall be deemed to have been convicted of a crime if  
4 the person:

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

7 (ii) is found guilty by the decision or judgment of  
8 a court or Federal magistrate or by the verdict of a  
9 jury, irrespective of the pronouncement of sentence or  
10 the suspension thereof, unless the plea of guilty or nolo  
11 contendere or the decision, judgment or verdict is set  
12 aside, vacated, reversed or otherwise abrogated by lawful  
13 judicial process.

14 (2) A license under this chapter shall be deemed to be a  
15 covered license within the meaning of section 405 of the act  
16 of May 15, 1933 (P.L.565, No.111), known as the Department of  
17 Banking Code. The department shall notify a licensee if a  
18 covered individual within the meaning of section 405 of the  
19 Department of Banking Code that is or will be employed or  
20 contracted by the licensee has a criminal background that  
21 renders the employee unfit for employment in the mortgage  
22 loan business.

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

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

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

30 (3) has violated or failed to comply with any provision

1 of this chapter or any regulation, statement of policy or  
2 order of the department;

3 (4) does not possess the financial responsibility,  
4 character, reputation, integrity and general fitness to  
5 command the confidence of the public and to warrant the  
6 belief that the mortgage loan business will be operated  
7 lawfully, honestly, fairly and within the legislative intent  
8 of this chapter and in accordance with the general laws of  
9 this Commonwealth; or

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

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

22 § 6134. License duration.

23 A license issued by the department shall be subject to all of  
24 the following limitations:

25 (1) Be renewed on the licensee's renewal date each year  
26 upon completion of the requirements of section 6131(h)  
27 (relating to application for license). No refund of any  
28 portion of the license fee shall be made if the license is  
29 voluntarily surrendered to the department or suspended or  
30 revoked by the department prior to its expiration date.

1           (2) Be invalid if the licensee's authority to conduct  
2 business is voided under any law of this Commonwealth or any  
3 other state, unless the licensee demonstrates to the  
4 satisfaction of the department that the applicable court or  
5 governmental entity was clearly erroneous in voiding the  
6 licensee's authority to conduct business.

7           (3) Not be assignable or transferable by operation of  
8 law or otherwise.

9 § 6135. Licensee requirements.

10 (a) Requirements of licensee.--

11           (1) A licensee who is a mortgage broker, mortgage lender  
12 or mortgage loan correspondent shall conspicuously display,  
13 at each licensed place of business, its license and copies of  
14 the licenses of all mortgage originators assigned to that  
15 location. A licensee who is a mortgage originator shall keep  
16 the license in the immediate possession of the licensee  
17 whenever the licensee is engaged in the mortgage loan  
18 business.

19           (2) Each licensee shall maintain at its principal place  
20 of business within this Commonwealth, or at such place within  
21 or outside this Commonwealth if agreed to by the department,  
22 the original or a copy of any books, accounts, records and  
23 documents, or electronic or similar access thereto, of the  
24 business conducted under the license as prescribed by the  
25 department to enable the department to determine whether the  
26 business of the licensee is being conducted in accordance  
27 with the provisions of this chapter and the regulations,  
28 statements of policy or orders issued under this chapter. The  
29 department shall have free access to and authorization to  
30 examine records maintained within or outside this

1 Commonwealth by the licensee. The costs of the examination,  
2 including travel costs, shall be borne by the licensee. The  
3 department may deny or revoke the authority to maintain  
4 records within or outside this Commonwealth for good cause in  
5 the interest of protection for Commonwealth consumers,  
6 including for the licensee's failure to provide books,  
7 accounts, records or documents to the department upon  
8 request.

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

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

30 (5) Each licensee shall include in all advertisements

1 language indicating that the licensee is licensed by the  
2 department. In the case of a mortgage originator, all  
3 advertising shall include the name of the mortgage  
4 originator's employer.

5 (b) Accounting records.--The licensee's accounting records  
6 must be constructed and maintained in compliance with generally  
7 accepted accounting principles or as provided by department  
8 regulation. All instruments, documents, accounts, books and  
9 records relating to the mortgage loan business shall be kept  
10 separate and apart from the records of any other business  
11 conducted by the licensee. Records of first and secondary  
12 mortgage loans shall be easily distinguishable and easily  
13 separated. All records shall be preserved and kept available for  
14 investigation or examination by the department for a period  
15 determined by the department.

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

20 § 6136. Licensee limitations.

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

30 (b) Other businesses.--A licensee cannot conduct a business



1 other than the mortgage loan business licensed by the department  
2 under this chapter without at least 30 days' prior written  
3 notification to the department.

4 § 6137. Surrender of license.

5 Upon satisfying the department that all creditors of a  
6 licensee have been paid or that other arrangements satisfactory  
7 to the creditors and the department have been made, a licensee  
8 may voluntarily surrender its license to the department by  
9 delivering its license to the department with written notice  
10 that the license is being voluntarily surrendered, but an action  
11 by a licensee shall not affect the licensee's civil or criminal  
12 liability for acts committed.

13 § 6138. Authority of department.

14 (a) General authority.--The department shall have the  
15 authority to:

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

25 (2) Conduct administrative hearings on any matter  
26 pertaining to this chapter, issue subpoenas to compel the  
27 attendance of witnesses and the production of instruments,  
28 documents, accounts, books and records at any hearing. The  
29 instruments, documents, accounts, books and records may be  
30 retained by the department until the completion of all

1 proceedings in connection with which the materials were  
2 produced. A department official may administer oaths and  
3 affirmations to a person whose testimony is required. In the  
4 event a person fails to comply with a subpoena issued by the  
5 department or to testify on a matter concerning which he may  
6 be lawfully interrogated, on application by the department,  
7 the Commonwealth Court may issue an order requiring the  
8 attendance of the person, the production of instruments,  
9 documents, accounts, books and records and the giving of  
10 testimony.

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

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

22 (5) Prohibit or permanently remove a person or licensee  
23 responsible for a violation of this chapter from working in  
24 the present capacity or in any other capacity of the person  
25 or licensee related to activities regulated by the  
26 department.

27 (6) Order a person or licensee to make restitution for  
28 actual damages to consumers caused by any violation of this  
29 chapter.

30 (7) Issue cease and desist orders that are effective

1 immediately, subject to a hearing as specified in subsection  
2 (b) within 14 days of the issuance of the order.

3 (8) Impose such other conditions as the department deems  
4 appropriate.

5 (b) Hearings.--A person aggrieved by a decision of the  
6 department may appeal the decision of the department to the  
7 Secretary of Banking. The appeal shall be conducted under 2  
8 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
9 Commonwealth agencies).

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

14 (d) Final orders.--A decision of the Secretary of Banking  
15 shall be a final order of the department and shall be  
16 enforceable in a court of competent jurisdiction. The department  
17 may publish final adjudications issued under this section,  
18 subject to redaction or modification to preserve  
19 confidentiality.

20 (e) Appeals.--A person aggrieved by a decision of the  
21 Secretary of Banking may appeal the decision under 2 Pa.C.S. Ch.  
22 7 Subch A. (relating to judicial review of Commonwealth agency  
23 action).

24 (f) Orders affecting mortgage originators.--An order issued  
25 against a licensee is applicable to the mortgage originators  
26 employed by the licensee.

27 § 6139. Suspension, revocation or refusal.

28 (a) Departmental action.--The department may suspend, revoke  
29 or refuse to renew a license issued under this chapter if any  
30 fact or condition exists or is discovered which, if it had

1 existed or had been discovered at the time of filing of the  
2 application for the license, would have warranted the department  
3 in refusing to issue the license or if a licensee or director,  
4 officer, partner, employee or owner of a licensee has:

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

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

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

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

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

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

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

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

1 regulation, statement of policy or order may require.

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

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

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

11 (12) Become insolvent, meaning that the liabilities of  
12 the applicant or licensee exceed the assets of the applicant  
13 or licensee or that the applicant or licensee cannot meet the  
14 obligations of the applicant or licensee as they mature or is  
15 in such financial condition that the applicant or licensee  
16 cannot continue in business with safety to the customers of  
17 the applicant or licensee.

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

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

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

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

30 (1) The condition which warranted the original action

1 has been corrected to the department's satisfaction.

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

4 (3) The licensee satisfies all other requirements of  
5 this chapter.

6 § 6140. Penalties.

7 (a) Persons operating without licenses.-A person subject to  
8 the provisions of this chapter and not licensed by the  
9 department who violates any provision of this chapter or who  
10 commits any action which would subject a license to suspension,  
11 revocation or nonrenewal under section 6139 (relating to  
12 suspension, revocation or refusal) may be fined by the  
13 department up to \$10,000 for each offense.

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

20 SUBCHAPTER E

21 MISCELLANEOUS PROVISIONS

22 Sec.

23 6151. Applicability.

24 6152. Relationship to other laws.

25 6153. Preservation of existing contracts.

26 § 6151. Applicability.

27 The provisions of this chapter shall apply to:

28 (1) Any mortgage loan which is:

29 (i) negotiated, offered or otherwise transacted

30 within this Commonwealth, in whole or in part, whether by

1 the ultimate lender or any other person;

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

3 (iii) notwithstanding the place of execution,

4 secured by real property located in this Commonwealth.

5 (2) Any person who engages in the mortgage loan business  
6 in this Commonwealth.

7 Section 6152. Relationship to other laws.

8 The following apply:

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

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

14 (ii) is subject to the jurisdiction or regulatory  
15 supervision of the Board of Governors of the Federal  
16 Reserve System, the Office of the Comptroller of the  
17 Currency, the Office of Thrift Supervision, the National  
18 Credit Union Administration, the Federal Deposit  
19 Insurance Corporation, the Federal Trade Commission or  
20 the United States Department of Housing and Urban  
21 Development; or

22 (iii) originates, purchases, sells, assigns,  
23 securitizes or services any property interest or  
24 obligation created by a financial transaction or loan  
25 made, executed or originated by a person referred to in  
26 subparagraph (i) or (ii) or assists or facilitates such a  
27 transaction or loan.

28 (2) This subsection applies to any ordinance, resolution  
29 or regulation pertaining to financial or lending activity,  
30 including any ordinance, resolution or regulation:

1           (i) disqualifying a person from doing business with  
2           a political subdivision based upon financial or lending  
3           activity; or  
4           (ii) imposing reporting requirements or any other  
5           obligations upon a person regarding financial or lending  
6           activity.

7   § 6153. Preservation of existing contracts.

8           Nothing contained in this chapter shall be construed to  
9           impair or affect first or secondary mortgage loans executed  
10          prior to the effective date of this chapter.

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

12   § 7331. Unlicensed mortgage loan business.

13          A person that operates without a license in violation of 7  
14   Pa.C.S. § 6111 (relating to license requirements) commits a  
15   felony of the third degree.

16          Section 3. Repeals.

17          (a) Intent.--The General Assembly declares that the repeals  
18   under subsection (b) are necessary to effectuate the provisions  
19   of 7 Pa.C.S. Ch. 61.

20          (b) Provision.--The following acts and parts of acts are  
21   repealed:

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

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

27   ~~Section 4. Transition shall be as follows:~~

28            ~~(1) A license issued under an act repealed by section 3~~  
29   ~~of this act shall remain in full force and effect as a~~  
30   ~~transitional license, and loans may continue to be made under~~

<—



1 ~~the transitional license.~~

2 ~~(2) The following are the requirements for a~~  
3 ~~transitional license:~~

4 ~~(i) The person holding the license under the~~  
5 ~~repealed act must submit an application for a license~~  
6 ~~under 7 Pa.C.S. Ch. 61 within 60 days of the effective~~  
7 ~~date of this section. An application shall be valid under~~  
8 ~~this paragraph if the names, birth dates and addresses of~~  
9 ~~all individual mortgage solicitors required to be~~  
10 ~~licensed under 7 Pa.C.S. Ch. 61 and employed by the~~  
11 ~~license holder have also been listed with the department~~  
12 ~~as individuals currently employed as mortgage originators~~  
13 ~~who will be applying for individual licenses under 7~~  
14 ~~Pa.C.S. Ch. 61.~~

15 ~~(ii) Upon filing an application for a license under~~  
16 ~~7 Pa.C.S. Ch. 61, an applicant must proceed expeditiously~~  
17 ~~in accordance with the directions of the department.~~

18 ~~(3) The department shall set forth for a reasonable time~~  
19 ~~period for transition under this section as a notice in the~~  
20 ~~Pennsylvania Bulletin. The time period shall be at least 90~~  
21 ~~days but not more than 180 days and shall include the~~  
22 ~~training and submission of applications by all mortgage loan~~  
23 ~~solicitors employed by the licensee.~~

24 ~~Section 5. This act shall take effect in 60 days.~~

25 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 120 DAYS.

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