

No. 2008-56

AN ACT

HB 2179

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

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

Section 1. Title 7 of the Pennsylvania Consolidated Statutes is amended by adding parts to read:

PART I
PRELIMINARY PROVISIONS
(Reserved)

PART II
LICENSING

Ch.

61. Mortgage Loan Industry Licensing and Consumer Protection

CHAPTER 61
MORTGAGE LOAN INDUSTRY LICENSING AND CONSUMER
PROTECTION

Subch.

- A. Preliminary Provisions**
- B. License Requirements and Exceptions**
- C. Mortgage Loan Business Restrictions and Requirements**
- D. Administrative and Licensure Provisions**
- E. Miscellaneous Provisions**

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

6101. Scope of chapter.

6102. Definitions.

§ 6101. Scope of chapter.

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

§ 6102. Definitions.

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

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

“Applicant.” *A person who applies for a license under this chapter.*

“Banking institution.” *Any of the following:*

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

(2) *A national bank.*

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

(4) *A subsidiary of any of the entities listed under this definition.*

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

“Branch.” *An office or other place of business, other than the principal place of business, located in this Commonwealth or any other state, where a person engages in the mortgage loan business subject to this chapter.*

“Consumer discount company.” *A licensee under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act.*

“Department.” *The Department of Banking of the Commonwealth.*

“Finder’s fee” or “referral fee.” *Any payment of money or other consideration for the referral of a mortgage loan to a licensee, except for consideration paid for goods or facilities actually furnished or services actually performed.*

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

“First mortgage loan business.” *The mortgage loan business as applied to first mortgage loans.*

“Licensee.” *A person who is licensed under this chapter.*

“Lock-in agreement.” *An agreement between a mortgage lender and a consumer whereby the mortgage lender guarantees, until a specified date, the availability of a specified rate of interest or specified formula by which the rate of interest and a specific number of discount points will be determined, if the mortgage loan is approved and closed by the specified date. If a specified date is not determinable, the mortgage lender may*

fulfill the requirement of this definition by setting forth with specificity the method by which the duration of the lock-in period will be determined.

“Mortgage broker.” A person who engages in the mortgage loan business by directly or indirectly negotiating or placing mortgage loans for others in the primary market for consideration.

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

“Mortgage loan.” A first or secondary mortgage loan, or both, as the context may require.

“Mortgage loan business.” The business of advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans.

“Mortgage loan correspondent.” A person who engages in the mortgage loan business by directly or indirectly originating and closing mortgage loans in his or her own name utilizing funds provided by a wholesale table funder or other funding sources under the circumstances described under section 6123(6) (relating to mortgage loan business prohibitions) and simultaneously assigning the mortgage loans to the wholesale table funder.

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

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

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

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

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

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

“Person.” *An individual, association, joint venture or joint-stock company, partnership, limited partnership, limited partnership association, limited liability company, business corporation, nonprofit corporation or any other group of individuals, however organized.*

“Primary market.” *The market wherein mortgage loans are originated between a lender and a consumer.*

“Principal place of business.” *The primary office of a person located in this Commonwealth, which is staffed on a full-time basis and at which the person’s books, records, accounts and documents are maintained.*

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

“Secondary mortgage loan business.” *The mortgage loan business as applied to secondary mortgage loans.*

“Tangible net worth.” *Net worth less the following assets:*

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

(2) *Any asset, except construction loan receivables secured by first mortgages from related companies, due from officers or stockholders of the applicant or related companies in which the applicant’s officers or stockholders have an interest.*

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

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

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

(6) *Goodwill.*

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

(8) *Organization costs of the applicant.*

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

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

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

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

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

SUBCHAPTER B

LICENSE REQUIREMENTS AND EXCEPTIONS

Sec.

6111. License requirements.

6112. Exceptions to license requirements.

§ 6111. License requirements.

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

(b) Licensed activity exceptions.—

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

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

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

(c) Loans for business or commercial purposes.—This chapter shall not apply to mortgage loans made for business or commercial purposes.

§ 6112. Exceptions to license requirements.

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

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

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

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

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

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

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

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

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

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

(iii) be registered with the department.

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

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

(10) A person that makes a mortgage loan to the person's employee as an employment benefit if the person does not hold itself out to the public as a mortgage lender.

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

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

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

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

SUBCHAPTER C MORTGAGE LOAN BUSINESS RESTRICTIONS AND REQUIREMENTS

Sec.

6121. General requirements.

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

6123. Mortgage loan business prohibitions.

6124. Prohibited clauses in mortgage loan documents.

6125. Mortgage lending authority.

6126. Requirements as to open-end loans.

§ 6121. General requirements.

A licensee shall do all of the following:

(1) Comply with all provisions of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law (Usury Law). This paragraph shall not supersede section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (94 Stat. 161, 12 U.S.C. § 1735f-7a) or the Alternative Mortgage

Transaction Parity Act of 1982 (96 Stat. 1545, 12 U.S.C. §§ 3801-3806 et seq.).

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

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

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

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

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

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

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

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

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

(iii) Release any lien on real property and cancel the same of record and, at the time the mortgage loan agreement or promissory

note evidencing the mortgage loan is returned, deliver to the consumer good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to evidence the release.

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

(10) Refund all fees, other than those fees paid by the licensee to a third party, paid by a consumer when a mortgage loan is not produced within the time specified by the mortgage broker, mortgage lender or mortgage loan correspondent at the rate, term and overall cost agreed to by the consumer. This paragraph shall not apply if the failure to produce a mortgage loan is due solely to the consumer's negligence, his or her refusal to accept and close on a loan commitment or his or her refusal or inability to provide information necessary for processing, including employment verifications and verifications of deposits. The licensee shall disclose to the consumer, in writing, at the time of a loan application which fees paid or to be paid are nonrefundable.

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

- (i) The expiration date of the lock-in, if any.*
- (ii) The interest rate locked in, if any.*
- (iii) The discount points locked in, if any.*
- (iv) The fee locked in, if any.*
- (v) The lock-in fee, if any.*

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

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

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

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

(iii) In the event that a licensee believes that a mortgage originator employed by the licensee has engaged in any activity that is illegal or in violation of this chapter or any regulation or statement of policy promulgated under this chapter, the licensee shall provide the department with written notification of the belief and the

licensee's proposed corrective measures within 30 days. A licensee shall not be liable to a mortgage originator in connection with the notification.

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

(a) Mortgage lenders.—If they are in compliance with the provisions of this chapter, mortgage lenders shall have the power and authority:

(1) To make first and secondary mortgage loans and, subject to the limitations of this chapter, to charge and collect application fees for the loans.

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

(3) To provide access to credit life, credit disability, credit accident and health and credit unemployment insurance. A consumer shall not be compelled to purchase credit life, credit disability, credit accident and health or credit unemployment insurance as a condition of the making of a mortgage loan, and all contracts utilized shall reflect a clear disclosure that the purchase of credit life, credit disability, credit accident and health or credit unemployment insurance is not a prerequisite to obtaining a mortgage loan. If, however, the consumer elects to obtain credit life, credit disability, credit accident and health or credit unemployment insurance through the licensee, the consumer shall consent thereto in writing. If consumers desire joint-life or joint accident and health insurance, all consumers shall consent thereto in writing. The insurance shall be obtained from an insurance company authorized by the laws of this Commonwealth to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of the insurance shall not be included in the computation of the maximum charge authorized for mortgage loans under this chapter and shall not be deemed a violation of this chapter when the insurance is written pursuant to the laws of this Commonwealth governing insurance.

(4) To require property insurance on security against reasonable risks of loss, damage and destruction and to provide access to the insurance to the consumer. The amount and term of the insurance shall be reasonable in relation to the amount and term of the mortgage loan contract and the value of the security. This requirement shall be

satisfied if the consumer demonstrates at the time the mortgage loan is made that the consumer has valid and collectible insurance covering the property to be insured and has furnished the licensee with a loss payable endorsement sufficient for the protection of the licensee. If the consumer elects to obtain property insurance through the licensee, the consumer shall consent thereto in writing, and the insurance shall be obtained from an insurance company authorized by the laws of this Commonwealth to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of property insurance shall not be included in the computation of the maximum charge authorized for mortgage loans under this chapter and shall not be deemed a violation of this chapter when the insurance is written pursuant to the laws of this Commonwealth governing insurance. The premium for any property insurance may be included in the principal amount of the mortgage loan requested by the consumer. However, the premium shall be disclosed as a separate item on the face of the principal contract document and the licensee's individual consumer ledger records.

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

(b) Mortgage brokers and loan correspondents.—Provided they are in compliance with the provisions of this chapter, mortgage brokers and mortgage loan correspondents shall have the power and authority:

(1) To collect title examination, credit report and appraisal fees actually related to the making of a mortgage loan when the fees are actually paid or incurred by the licensee and to include the fees in the principal of the mortgage loan which is being negotiated or arranged.

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

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

§ 6123. Mortgage loan business prohibitions.

A licensee engaging in the mortgage loan business shall not:

(1) Charge, contract for, collect or receive charges, fees, premiums, commissions or other considerations in excess of the limitations of those contained in this chapter.

(2) Disburse the proceeds of a mortgage loan in any form other than cash, electronic funds transfer, certified check or cashier's check where the proceeds are disbursed by the licensee to a closing agent. This paragraph shall not be construed as requiring a lender to utilize a closing agent and shall not apply to disbursements by check directly

from the licensee's account payable to the consumer, consumer designees or other parties due funds from the closing.

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

(4) Require a consumer to pay, to the licensee or any other person, a broker's fee, finder's fee, commission, premium or any other charges for obtaining, procuring or placing of a mortgage loan, except as provided under this chapter. This restriction shall not prohibit a mortgage lender from paying a fee to a mortgage broker in connection with the placement or procurement of a mortgage loan nor prohibit a consumer from requesting or directing a mortgage lender licensee to pay a fee from the proceeds of a mortgage loan or include it in the amount to be financed.

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

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

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

(8) In the case of a mortgage originator, accept any fees from consumers in the mortgage originator's own name. A mortgage originator may accept fees payable to the mortgage originator's employer licensee and fees payable to third-party entities on behalf of the mortgage originator's employer licensee. A mortgage originator may not accept advance fees payable to the mortgage originator's employer licensee unless the licensee is authorized to collect advance fees under this chapter.

§ 6124. Prohibited clauses in mortgage loan documents.

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

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

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

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

§ 6125. Mortgage lending authority.

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

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

(2) if the licensee is qualified, applicable Federal law, including the Alternative Mortgage Transaction Parity Act of 1982 (96 Stat. 1545, 12 U.S.C. § 3801 et seq.) and section 501 of the Depository Institution Deregulation and Monetary Control Act of 1980 (94 Stat. 161, 12 U.S.C. § 1735f-7a).

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

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

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

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

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

§ 6126. Requirements as to open-end loans.

The following shall apply:

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

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

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

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

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

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

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

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

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

(i) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the consumer's death in the case of credit life insurance or all minimum payments which

become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for insurance, as the rate may be determined by the Insurance Commissioner, to the unpaid balances in the consumer's account, using any of the methods specified in paragraph (3) for the calculation of loan charges.

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

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

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

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

SUBCHAPTER D ADMINISTRATIVE AND LICENSURE PROVISIONS

Sec.

6131. Application for license.

6132. License fees.

6133. Issuance of license.

6134. License duration.

6135. Licensee requirements.

6136. Licensee limitations.

6137. *Surrender of license.*

6138. *Authority of department.*

6139. *Suspension, revocation or refusal.*

6140. *Penalties.*

§ 6131. *Application for license.*

(a) *Contents.*—An application for a license under this chapter shall be on a form prescribed and provided by the department.

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

(i) *The name of the applicant.*

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

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

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

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

(i) *The name of the applicant.*

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

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

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

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

(c) *Mortgage lender license.*—The department shall issue a mortgage lender license applied for under this chapter if the applicant has:

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

(i) *Federal National Mortgage Association.*

(ii) *Federal Home Loan Mortgage Corporation.*

(iii) *Federal Housing Administration.*

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

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

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

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

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

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

(e) Mortgage broker license.—

(1) The department shall issue a mortgage broker license applied for under this chapter if the applicant obtains and will maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall be a penal bond conditioned on compliance with this chapter and subject to forfeiture by the department and shall run to the Commonwealth for its use. The bond shall also be for the use of any person against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. If the person is aggrieved, the person may, with the written consent of the department, recover advance fees and costs from the bond by filing a claim with the surety company or maintaining an action on the bond. In the alternative, an aggrieved person may recover advance fees and costs by filing a formal complaint against the mortgage broker with the department which shall adjudicate the matter. The adjudication shall be binding upon the surety company and enforceable by the department in Commonwealth Court and by an aggrieved person in any court. Any aggrieved person seeking to recover advance fees and costs from a bond that has already been forfeited by the department or which the department is in the process of forfeiting may recover payment on the bond if, after filing a petition with the department, the department consents to the aggrieved person's requested payment or portion thereof. The department may pay the

aggrieved person from the bond proceeds it recovers. Nothing in this section shall be construed as limiting the ability of any court or magisterial district judge to award to any aggrieved person other damages, court costs and attorney fees as permitted by law, but those claims that are not advance fees or related costs may not be recovered from the bond. The department, in its discretion, may consent to or order pro rata or other recovery on the bond for any aggrieved person if claims against the bond may or do exceed its full monetary amount. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

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

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

(g) *Education.*—

(1) In order to obtain a license under this chapter, an applicant shall submit to the department with its application evidence that the applicant, in the case of a mortgage originator applicant, or a director, partner or ultimate equitable owner of at least 10% of a licensee, in the case of any other license applicant, has successfully completed a minimum of 12 hours of instruction and a testing program regarding the first and secondary mortgage loan businesses and the provisions of this chapter, the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law (Usury Law) and relevant Federal law including the Real Estate Settlement Procedures Act of 1974 (88 Stat. 1724, 12 U.S.C. § 2601 et seq.), Truth in Lending provisions of Title I of the Consumer Credit Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and the Equal Credit Opportunity Act (Public Law 93-495, 15 U.S.C. § 1691 et seq.).

(2) In order to maintain a license:

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

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

(3) The department shall delineate the requirements for prequalification education and testing and continuing education by regulation. The department may review and approve education programs and providers to satisfy the education requirements. Providers of prequalification education and testing and continuing education programs may include the licensee or a subsidiary or affiliate of the licensee. The department may charge providers of education programs a fee, to be determined by the department, for department review of education programs and providers.

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

(i) Out-of-State applicants.—

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

(2) Out-of-State applicants shall file with the license application an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that person in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the laws and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the person in this Commonwealth. In all cases where process or pleadings are served upon the department under the provisions of this section, the process or pleadings shall be served in triplicate; one copy shall be filed in the department's offices and the others shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business of the person.

§ 6132. *License fees.*

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

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

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

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

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

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

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

(3) *For mortgage originators, \$100.*

(c) *No abatement of fee.*—No abatement of a licensee fee shall be made if the license is issued for a period of less than one year.

§ 6133. *Issuance of license.*

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

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

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

(c) Contents of license.—Each license issued by the department shall specify:

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

(2) The licensee's reference number.

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

(d) Denial of license due to conviction.—

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

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

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

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

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

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

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

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

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

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

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

§ 6134. *License duration.*

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

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

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

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

§ 6135. *Licensee requirements.*

(a) *Requirements of licensee.*—

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

(2) Each licensee shall maintain at its principal place of business within this Commonwealth, or at such place within or outside this Commonwealth if agreed to by the department, the original or a copy of any books, accounts, records and documents, or electronic or similar access thereto, of the business conducted under the license as

prescribed by the department to enable the department to determine whether the business of the licensee is being conducted in accordance with the provisions of this chapter and the regulations, statements of policy or orders issued under this chapter. The department shall have free access to and authorization to examine records maintained within or outside this Commonwealth by the licensee. The costs of the examination, including travel costs, shall be borne by the licensee. The department may deny or revoke the authority to maintain records within or outside this Commonwealth for good cause in the interest of protection for Commonwealth consumers, including for the licensee's failure to provide books, accounts, records or documents to the department upon request.

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

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

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

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

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

§ 6136. *Licensee limitations.*

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

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

§ 6137. *Surrender of license.*

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

§ 6138. *Authority of department.*

(a) *General authority.*—The department shall have the authority to:

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

(2) *Conduct administrative hearings on any matter pertaining to this chapter, issue subpoenas to compel the attendance of witnesses and the production of instruments, documents, accounts, books and records at any hearing. The instruments, documents, accounts, books and records may be retained by the department until the completion of all proceedings in connection with which the materials were produced. A department official may administer oaths and affirmations to a person whose testimony is required. In the event a person fails to comply with a subpoena issued by the department or to testify on a matter concerning which he may be lawfully interrogated, on application by the department, the Commonwealth Court may issue an order requiring the*

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

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

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

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

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

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

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

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

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

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

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

(f) Orders affecting mortgage originators.—An order issued against a licensee is applicable to the mortgage originators employed by the licensee. § 6139. Suspension, revocation or refusal.

(a) Departmental action.—The department may suspend, revoke or refuse to renew a license issued under this chapter if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for the license, would have warranted the

department in refusing to issue the license or if a licensee or director, officer, partner, employee or owner of a licensee has:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 6140. Penalties.

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

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

SUBCHAPTER E
MISCELLANEOUS PROVISIONS

Sec.

6151. Applicability.

6152. Relationship to other laws.

6153. Preservation of existing contracts.

§ 6151. Applicability.

The provisions of this chapter shall apply to:

(1) Any mortgage loan which is:

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

(ii) made or executed within this Commonwealth; or

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

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

§ 6152. Relationship to other laws.

The following apply:

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

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

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

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

(2) This section applies to any ordinance, resolution or regulation pertaining to financial or lending activity, including any ordinance, resolution or regulation:

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

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

§ 6153. Preservation of existing contracts.

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

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

§ 7331. Unlicensed mortgage loan business.

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

Section 3. Repeals.

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

(b) Provision.—The following acts and parts of acts are repealed:

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

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

Section 4. This act shall take effect in 120 days.

APPROVED—The 8th day of July, A.D. 2008.

EDWARD G. RENDELL