

No. 1980-219

AN ACT

SB 1425

To define and regulate secondary mortgage loans and providing penalties.

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

Section 1. Short title.

This act shall be known and may be cited as the "Secondary Mortgage Loan Act."

Section 2. Definitions.

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

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

“Licensee.” A person who is licensed under this act or a person excepted from licensing provisions of this act in accordance with section 3 hereof.

“Open-end loan.” A secondary mortgage loan made by a licensee under this act pursuant to an agreement between the licensee and the borrower whereby:

(1) the licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) the amount of each advance, interest and permitted charges and costs are debited to the borrower'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 borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement; and

(5) the agreement expressly states that it covers open-end loans pursuant to this act.

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

“Secondary mortgage loan.” A loan in an original principal amount in excess of \$5,000 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, or any other similar instrument or document, which real property is subject to a prior mortgage and which is used as a dwelling, including a dual purpose or combination type dwelling which is also used as a business or commercial establishment and has accommodations for not more than four families, except that a loan which:

(1) is to be repaid in 90 days or less;

(2) is the result of the sale of a dwelling if title to the dwelling is in name of the seller and the seller has resided in said dwelling for at least one year and the buyer is purchasing said dwelling for his own residence and, as part of the purchase price, executes a second mortgage in favor of the seller;

(3) is not subject to the maximum legal rate of interest established by section 201 or section 301 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection

Law, by reason of any of the exemptions provided in section 301(f) of said act; or

(4) is made under any other law of the Commonwealth of Pennsylvania;

shall not be subject to the provision of this act.

“Secretary.” The Secretary of Banking of Pennsylvania including his deputies, or any other salaried employee of the Department of Banking appointed or designated by the secretary to perform the functions required for the administration or enforcement of this act.

Section 3. License requirements and exemptions.

(a) On and after the effective date of this act, no person shall engage in the business of making secondary mortgage loans in this Commonwealth except a business corporation organized under the laws of this Commonwealth or any other state, after first obtaining a license from the secretary in accordance with the provisions of this act. A State-chartered or National bank, bank and trust company, savings bank, private bank, savings association or savings and loan association, having its principal place of business in this Commonwealth shall not be required to be licensed under this act in order to make loans secured by real property under this act. Any agency or instrumentality of the United States Government or a corporation otherwise created by an act of the United States Congress which engages in the business of purchasing secondary mortgage loans shall not be required to be licensed under this act in order to purchase secondary mortgage loans from licensees under this act. This shall include but not be limited to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. For the purpose of this act, a person is deemed to be engaged in the secondary mortgage loan business in the Commonwealth if:

(1) such person advertises, causes to be advertised, solicits, negotiates, arranges, offers to make or makes more than twelve secondary mortgage loans in a calendar year in this Commonwealth, whether directly or by any person acting for his benefit; or

(2) such person in the ordinary course of business becomes the subsequent holder of more than twelve promissory notes or mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan.

(b) A real estate broker licensed pursuant to the provisions of the law of this Commonwealth or an attorney authorized to practice law in this Commonwealth shall not be required to obtain a license to arrange a secondary mortgage loan in the normal course of the business of a real estate broker or attorney.

Section 4. Application for license.

(a) An application for a secondary mortgage loan license shall be on a form provided by the secretary. Among other things, the application shall set forth the following:

(1) The full name, corporate title and personal residence address of each officer and director of the proposed licensee corporation.

(2) Any or all other business entities in which any officer or director holds an equity or creditor interest.

(3) The dollar amount of such equity or creditor holdings.

(4) Whether or not funds are or will be interchanged between the licensee and such business entities.

(5) The address or addresses where the secondary mortgage loan business is to be conducted.

(b) The applicant shall have a minimum legal capitalization of \$200,000. At the time of applying for a license under this act, and at all times thereafter, the minimum paid in legal capital shall be \$200,000.

(c) If the applicant is a foreign corporation, said corporation shall be authorized to do business in this Commonwealth in accordance with the law of this Commonwealth regulating corporations. Such corporations shall file with the application an irrevocable consent, duly acknowledged, that suits and actions may be commenced against such licensee in the courts of this Commonwealth by the service of process or any pleading upon the secretary in the usual manner provided for service of process and pleadings by the statutes and court rule of this Commonwealth. Said consent shall provide that such service shall be as valid and binding as if service had been made personally upon the licensee in this Commonwealth. In all cases where process or pleadings are served upon the secretary pursuant to the provisions of this section, such process or pleadings shall be served in duplicate, one of which shall be filed in the office of the secretary and the other shall be forwarded by the secretary, by certified or registered mail, return receipt, to the last known principal place of business of the licensee to whom such process or pleadings is directed.

Section 5. Annual license fee.

An applicant shall pay to the secretary at the time an application is filed an initial license fee of \$500 for the principal place of business and an additional initial license fee of \$50 for each branch office in this Commonwealth. On or before July 1 of each year and thereafter, a licensee shall pay a license renewal fee of \$200 for the principal place of business and an additional license renewal fee of \$25 for each branch office in this Commonwealth. No abatement of any license fee shall be made if the license is issued for a period of less than one year. The secretary shall be entitled to recover any cost of investigation in excess of license or renewal fees from the licensee, or from any person who is not licensed under this act but presumed to be engaged in business contemplated by this act.

Section 6. Issuance of license.

(a) Within 60 days after an application is received, the secretary shall either issue a license or, for any reason for which he may suspend, revoke or refuse to renew a license as provided for by section 19, refuse to issue a license.

(b) If the secretary refuses to issue a license, he shall notify the applicant, in writing, of his denial, the reason therefor and of the applicant's right to appeal from such action to the Commonwealth Court of Pennsylvania. An appeal from the secretary's refusal to approve an application for a license may be filed within 30 days of notice thereof.

(c) Each license issued by the secretary shall specify:

(1) The name and address of the licensee, the address so specified to be that of the licensee's principal place of business.

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

(3) Such other information as the secretary shall require in order to carry out the purposes of this act.

Section 7. License duration.

A license issued by the secretary shall:

(1) Be renewed on June 30 of each year upon payment of the annual renewal fee, and after a determination by the secretary that the licensee is conducting his business in accordance with the provisions of this act. No refund of any portion of the license fee shall be made if the license is voluntarily surrendered to the secretary or suspended or revoked by the secretary prior to its expiration date.

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

Section 8. Transfer of license.

A license shall not be assignable by operation of law or otherwise without the written consent of the secretary.

Section 9. Powers conferred on licensees.

All secondary mortgage loan licensees shall have power and authority:

(1) To make a secondary mortgage loan repayable in installments, and charge, contract for and receive thereon interest at a percentage rate not exceeding 1.45% per month. No interest shall be paid, deducted or received in advance, except that interest from the date of disbursement of funds to the borrower 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.

(2) To collect fees or premiums for title examination, abstract of title, title insurance, credit reports, surveys, appraisals or other costs or fees actually related to the granting of a secondary mortgage

loan, when such 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 loan and include these in the principal of the secondary mortgage loan.

(3) To collect reasonable attorney's fees, of an attorney licensed to practice in this Commonwealth, upon the execution of the secondary mortgage loan provided that such fees represent actual fees charged the licensee in connection with said mortgage loan and said fees are evidenced by a statement for services rendered addressed to the licensee and include these in the principal of the secondary mortgage loan.

(4) To collect reasonable attorney's fees, of an attorney licensed to practice in the Commonwealth, in the collection of a delinquent second mortgage loan and any court costs and fees actually incurred in the collection of such loan account.

(5) To provide credit life and credit accident and health insurance. A borrower shall not be compelled to purchase credit life or accident and health insurance as a condition of the granting of a secondary mortgage loan and all contracts utilized shall reflect a clear disclosure that the purchase of credit life or credit health insurance is not a prerequisite to obtaining a loan; if, however, the borrower elects to obtain credit life or accident and health insurance, or both, he shall consent thereto in writing. If borrowers desire joint life insurance, all such borrowers must consent thereto in writing. Such insurance shall be obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of such insurance shall not be included in the computation of the maximum charge authorized under this section and shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance.

(6) To require credit property insurance on security against reasonable risks of loss, damage and destruction. The amount and term of such insurance shall be reasonable in relation to the amount and term of the loan contract and the value of the security. A licensee shall not require property insurance if to the licensee's knowledge, the borrower at the time the loan is made has valid and collectible insurance covering the property to be insured and has furnished a loss payable endorsement sufficient for the protection of the licensee. Such insurance shall be obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of credit insurance shall not be included in the computation of the maximum charge authorized under this

section and shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance. The premium for any credit insurance may be included in the principal amount of the secondary mortgage loan requested by the borrower. However, such premiums shall be disclosed as a separate item on the face of the principal contract document and the licensee's individual borrower ledger records. No licensee shall grant any secondary mortgage loan on the condition, agreement or understanding that the borrower contract with any specific person or organization for insurance services as agent, broker or underwriter.

Section 10. Licensee requirements: records; reports; examinations; receipts; information to be furnished borrower.

(a) A secondary mortgage loan licensee shall:

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

(2) Maintain at its principal place of business or at a branch location within the State of Pennsylvania an original or true copy of the following instruments, documents, accounts, books and records:

(i) Promissory note, contractual agreement, document or instrument evidencing each borrower's secondary mortgage loan indebtedness.

(ii) Mortgage, indenture or any other similar instrument or document which creates a lien on the real property which is taken as security for a secondary mortgage loan.

(iii) Credit life and accident and health and property insurance policy or a certificate of insurance where such insurance is obtained in accordance with this act.

(iv) Appraisal or search, where utilized.

(v) Individual ledger card or any other form of record which shows all installment payments made by the borrower and all other charges or credits to the borrower's account.

(vi) Individual file in which the borrower's application for a loan and any correspondence, including collection letters, memorandums, notes or any other written information pertaining to the borrower's account, shall be kept.

(vii) A general ledger containing all asset, liability and capital accounts, or a trial balance of the same accounts, which shall be maintained on a 60-day currented basis. In addition thereto, a disbursements register, checkbook and related records as required by the secretary shall be maintained on a current workday basis.

(viii) A loan closing statement indicating the date, amount and recipient of all loan proceeds, signed by the borrowers to evidence approval of distribution of loan proceeds and to acknowledge receipt of a copy of the loan closing statement.

(3) Annually, before May 1, file a report with the secretary which shall set forth such information as the secretary shall require

concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing, under oath and on a form provided by the secretary.

(4) Be subject to an examination by the secretary at least once per calendar year, at which time the secretary 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 the licensee's secondary mortgage loan business. However, the secretary may examine the licensee at any time if he has reasonable cause to believe the licensee is violating this act. The cost of any such examination shall be borne by the licensee.

(5) Give to the borrower a copy of the promissory note evidencing the loan and any second mortgage instrument or other document evidencing the loan signed by the borrower.

(6) Give to the borrower written evidence of credit life and accident and health and property insurance, if any.

(7) When a payment is made in cash on account of a secondary mortgage loan, give to the borrower at the time such 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 borrower the unpaid balance of the account prior to and after the cash payment.

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

(b) The licensee's accounting records must be constructed and maintained in compliance with generally accepted accounting principles and all of the aforementioned instruments, documents, accounts, books and records shall be kept separate and apart from the records of any other business conducted by the licensee and shall be preserved and kept available for investigation or examination by the secretary for at least two years after a secondary mortgage loan has been paid in full. The provisions of this section shall not apply to any instrument, document, account, book or record which is assigned, sold or transferred to another secondary mortgage loan licensee nor shall the two-year requirement apply to an instrument or document which must be returned to the borrower at the time a secondary mortgage loan is paid in full.

Section 11. Licensee limitations.

A secondary mortgage loan licensee shall not:

(1) Transact any business subject to the provisions of this act under any other name except that designated in its license. A licensee who changes its name or place of business shall immediately notify the secretary who shall issue a certificate to the licensee, which shall specify the licensee's new name or address.

(2) Charge, contract for, collect or receive charges, fees, premiums, commissions or other considerations in excess of those authorized by the provisions of this act.

(3) Assign, sell or transfer a secondary mortgage loan to any person except a licensee or a person excepted from the licensing provisions of this act in accordance with section 3 hereof without written permission of the secretary.

(4) Advertise, cause to be advertised or otherwise solicit whether orally, in writing, by telecast, by broadcast or in any other manner:

(i) That it is licensed by, or that its business is under the supervision of, the Commonwealth of Pennsylvania or the Department of Banking except that a licensee may advertise that it is "licensed pursuant to the Secondary Mortgage Loan Act," provided, however, that for the purpose of raising capital, no such advertisement shall be permitted if it is to be used in connection with a public solicitation for such funds except as otherwise required by the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," or regulations promulgated under said acts, to be disclosed in any prospectus.

(ii) Any statement or representation which is false, misleading or deceptive.

(5) Conduct any business other than any business regulated by the secretary in any place of business licensed pursuant to this act without the prior written approval of the secretary.

Section 12. Prepayment.

(a) A licensee shall permit a borrower to pay partially or wholly any contract or any installment on a contract, without penalty, prior to the due date.

(b) When a secondary mortgage loan is paid in full the licensee shall:

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

(2) Stamp or write on the face of the loan agreement or promissory note evidencing the borrower's secondary mortgage loan indebtedness "Paid in Full" or "Cancelled", the date paid and, within 30 days, return the loan agreement or promissory note to the borrower.

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

evidencing the borrower's secondary mortgage loan indebtedness is returned, deliver to the borrower such good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property.

Section 13. Loan agreement or promissory note.

Any loan agreement or promissory note evidencing a secondary mortgage loan shall be identified by the use of the words "Secondary Mortgage Loan" printed at the top of the loan agreement or promissory note and the statement "This agreement is subject to the provisions of the Secondary Mortgage Loan Act." Any loan agreement or promissory note evidencing a secondary mortgage loan shall provide for the payment of the total amount of the loan in substantially equal payment periods, and installment payment amounts, except that the first installment payment may be due up to one month and 29 days from the date of the loan. When appropriate for the purpose of facilitating payment in accordance with the borrower's intermittent income, a loan agreement or promissory note may provide an installment schedule which reduces or omits payments over any period or periods of time during which period or periods the borrower's income is reduced or suspended, except that no installment shall be more than one and one-half times as much as regular installment payments.

Section 14. Prohibited clauses.

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

- (1) An agreement whereby the borrower waives any rights accruing to him under the provisions of this act.
- (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 loan agreement or promissory note or any other charge authorized by this act.

Section 15. Open-end loans.

(a) A licensee may make open-end loans and may contract for and receive thereon interest and charges set forth in section 9.

(b) A licensee shall not compound interest by adding any unpaid interest authorized by this section to the unpaid principal balance of the borrower's account: Provided, however, That the unpaid principal balance may include the additional charges authorized by section 9.

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

- (1) by converting the monthly rate to a daily rate and multiplying such 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;

(2) 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

(3) by converting the monthly rate to a daily rate and multiplying such 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.

(d) For all of the above methods of computation, 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 borrower and deducting all payments and other credits made or received that day.

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

(f) A licensee may contract for and receive the fees, costs and expenses permitted by this act on other secondary mortgage loans, subject to all the conditions and restrictions set forth, with the following variations:

(1) 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 borrower'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 such insurance, as such rate may be determined by the Insurance Commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection (c) for the calculation of loan charges.

(2) No credit life or disability insurance written in connection with a secondary mortgage open-end loan shall be cancelled by the licensee because of delinquency of the borrower in the making of the required minimum payments on the loan unless one or more of such 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 such period, which amounts may be debited to the borrower's account.

(3) 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.

(g) Notwithstanding any other provisions in this act to the contrary, a licensee may retain any security interest in real or personal property until the open-end account 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 licensee shall within ten days following written demand by the borrower deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust on any real property taken as security for a loan and a release of any security interest in personal property. The licensee shall include on all billing statements provided in connection with an open-end credit loan a statement that the licensee retains a security interest in the borrower's real property whenever such security interest has not been released.

(h) Paragraphs (7) and (8) of subsection (a) of section 10, sections 12 and 13 shall not apply to open-end loans.

Section 16. Authority of Secretary of Banking.

The secretary shall have authority to:

(1) Issue rules and regulations governing the capitalization, public funding and the records to be maintained by licensees, and such general rules and regulations and orders as may be necessary for insuring the safety and soundness of the business, the proper conduct of the business and for the enforcement of this act.

(2) Examine any instrument, document, account, book, record or file for a licensee or any other person, or make such other investigations as he shall deem necessary to administer the provisions of this act.

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

Section 17. Involuntary liquidation.

The procedure for taking possession of the business and property of a licensee shall be in accordance with the provisions of the act of May 15, 1933 (P.L.565, No.111), known as the "Department of Banking Code," as applicable.

Section 18. Surrender of license.

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

Section 19. Suspension; revocation or refusal.

(a) The secretary may suspend, revoke or refuse to renew any license issued pursuant to this act after giving 30 days written notice forwarded to the licensee's principal place of business, by registered or certified mail, return receipt, stating the contemplated action and the reason therefor, if he shall find, after the licensee has had an opportunity to be heard, that the licensee has:

(1) Made any material misstatement in his application.

(2) Failed to comply with or violated any provision of this act or any rule, regulation or order promulgated by the secretary pursuant thereto.

The hearing and notice provisions of this section shall not apply if the licensee's corporate charter is voided in accordance with the provisions of any law of this or any other state, in which event the secretary may suspend or revoke the license forthwith.

(b) The secretary may subsequently reinstate a license which has been suspended or revoked or renew a license which he had previously refused to renew if the condition which warranted the original action has been corrected, and he has reason to believe that such condition is not likely to occur again and that the licensee is worthy of such reinstatements.

Section 20. Scope of act.

The provisions of this act shall apply to any secondary mortgage loan (except loans secured by real property made pursuant to a license issued under any other law of this Commonwealth) which is:

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

(2) made or executed within this Commonwealth; or

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

Section 21. Foreclosure, default, confession of judgment.

With regard to foreclosure, default, right to cure a default and confession of judgment, nothing contained in this act shall be deemed to supersede section 403, 404 or 407 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, which shall apply to all loans made pursuant to this act.

Section 22. Penalties.

(a) Any person who is not licensed by the secretary or exempted from the licensing requirements in accordance with the provisions of this act and who shall engage in the business of negotiating or making secondary mortgage loans and charge, collect, contract for or receive interest, fees, premiums, charges or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned or advanced, or on the unpaid principal balances when the contract is payable by stated installments, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than \$500 or more than \$5,000, and/or undergo imprisonment not less than six months nor more than three years, in the discretion of the court. This subsection shall not apply to real property secured loans made by a licensee under the act of April 8, 1937 (P.L.262, No.66), known as the "Consumer Discount Company Act."

(b) Except as the result of unintentional error, a corporation licensed under the provisions of this act or any director, officer, employee or agent who shall violate any provision of this act or shall direct or consent to such violations, shall be subject to a fine of \$2,000 for the first offense, and for each subsequent offense a like fine and/or suspension of license. A licensee shall have no liability for unintentional error if within 15 days after discovering an error the licensee notifies the person concerned of the error and makes adjustments in the account as necessary to assure that the person will not be required to pay any interest, fees, premiums, charges or other considerations which aggregate in excess of the charges permitted under this act.

(c) If a contract is made in good faith in conformity with an interpretation of this act by the appellate courts of the Commonwealth or in compliance with a rule or regulation officially promulgated by the secretary no provision of this section imposing any penalty shall apply, notwithstanding that after such contract is made, such interpretation, rule or regulation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(d) The lien granted or provided in connection with a secondary mortgage loan shall not be deemed to constitute a sale of the property with regard to any prior existing lien, for the purpose of permitting foreclosure of or execution on such prior lien.

Section 23. Preservation of existing powers.

Nothing in this act shall be construed as restricting the powers otherwise conferred by law upon financial institutions, such as State and national banks, State and Federal savings and loan associations, savings banks and insurance companies, to engage in the secondary mortgage business as defined in section 2, and no such financial institution, in exercising any power otherwise so conferred upon it, shall

be subject to any provision of this act. A State-chartered or national bank, bank and trust company, savings bank or savings and loan association located in this State shall have all the powers of a licensee under this act but shall not be subject to the license requirement or any other provision of this act relating to the requirements imposed on licensees.

Section 24. Exclusions from act.

No provisions of this act shall apply to Federally-chartered or State-chartered credit unions.

Section 25. Interpretation of act.

The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included. Section headings shall not be taken to govern or limit the scope of sections of this act. The singular shall include the plural, and the masculine shall include the feminine or neuter.

Section 26. Preservation of existing contracts.

Nothing contained in this act shall be construed to impair or affect an obligation of a borrower for a secondary mortgage loan executed prior to the effective date of this act.

Section 27. Effective date.

This act shall take effect in 90 days.

APPROVED—The 12th day of December, A. D. 1980.

DICK THORNBURGH