

HOUSE No. 5614

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 5, 1986.

The committee on Banks and Banking, to whom was referred so much of the recommendations of the Commissioner of Banks (House, No. 21) as relates to the licensing and examination of certain first mortgage lenders (accompanied by bill, House, No. 22), reports recommending that the accompanying bill (House, No. 5614) ought to pass.

For the committee,

THOMAS M. FINNERAN.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT RELATIVE TO THE LICENSING AND EXAMINATION OF CERTAIN FIRST MORTGAGE LENDERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after
2 Chapter 255D the following chapter:—

3 **CHAPTER 255E.**
4 **LICENSING OF CERTAIN FIRST MORTGAGE LENDERS.**

5 Section 1. In this chapter, unless the context otherwise
6 requires, the following words shall have the following meanings:—

7 “Commissioner” — the commissioner of banks.

8 “First mortgage lender” — any person engaged in the business
9 of making loans secured by first mortgages on residential real
10 property located in the Commonwealth.

11 “Residential property” — improved real property used or
12 occupied, or intended to be used or occupied, primarily for
13 residential purposes, but not including real property upon which
14 dwellings have not been constructed.

15 Section 2. No person shall engage in the business of making
16 loans secured by first mortgages on residential real property
17 located in the Commonwealth without first obtaining a license
18 from the commissioner. The provisions of this chapter shall not
19 apply to any person, partnership, association, trust or corporation
20 making fewer than five first mortgage loans on residential
21 property within any period of twelve consecutive months;
22 provided, however, that in computing the number of mortgage
23 loans there shall be counted in the loans of more than one
24 partnership, association, trust or corporation, the majority
25 interest of which are owned or controlled directly or indirectly
26 by the same person or persons, partnerships, associations, trust
27 or corporations and including in the loans of a partnership or

28 company not incorporated the loans of the several members
29 thereof. The provisions of this section shall not apply to a bank
30 as defined in section one of chapter one hundred and sixty-seven,
31 a national banking association, a federally-chartered credit union,
32 a federal savings and loan association, a federal savings bank, or
33 any subsidiary thereof, a company licensed to carry on the
34 business of making small loans under the provisions of section
35 ninety-six of chapter one hundred and forty, insurance company
36 or to any bank, trust company, savings bank, savings and loan
37 association, credit union or insurance company organized under
38 the laws of any other state; provided, however, that, except as
39 provided above, such provisions shall apply to any subsidiary, as
40 defined by the commissioner, of any such exempted entity and
41 of a bank holding company established in accordance with state
42 or federal law; and provided, further, that such provisions shall
43 not apply to any instrumentality created by the United States or
44 any state or to any non-profit, public or independent post
45 secondary educational institution within the Commonwealth
46 authorized by law to grant degrees by the Commonwealth or by
47 any agency or instrumentality thereof for first mortgage loans
48 made by such an educational institution to its faculty or staff. The
49 commissioner may adopt, amend or repeal reasonable rules and
50 regulations, which may include an adequate capitalization
51 requirement, to aid in the administration and enforcement of this
52 chapter.

53 Section 3. The application for such license shall be in writing
54 and in the form prescribed by the commissioner and shall contain
55 the name and complete address or addresses where the business
56 of the applicant is located, and if the applicant be a partnership,
57 association, corporation or other form of business organization,
58 the names and complete addresses of each member, director and
59 principal officer thereof. Such application shall also include a
60 description of the activities of the applicant, in such detail and
61 for such periods, as the commissioner may require, as well as such
62 further information as the commissioner may require. Each
63 application for a license shall be accompanied by an investigation
64 fee. Investigation and license fees shall be determined annually
65 by the commissioner of administration under the provisions of
66 section three B of chapter seven.

67 Section 4. Upon the filing of an application for a license, if the
68 commissioner finds that the financial responsibility, character,
69 reputation, integrity, and general fitness of the applicant and of
70 the members thereof if the applicant is a partnership or
71 association, and of the officers, directors and principal employees
72 if the applicant is a corporation are such as to warrant belief that
73 the business will be operated honestly, fairly, soundly and
74 efficiently in the public interest consistent with the purposes of
75 this chapter, he shall thereupon issue the applicant a license to
76 engage in mortgage lending. If the commissioner shall not so find,
77 he shall not issue a license, and he shall notify the applicant of
78 the denial. The commissioner shall approve or deny every
79 application for a license within ninety days after the filing thereof,
80 but any failure of the commissioner to act within such period shall
81 not be deemed to be an approval of any such application.

82 Section 5. Each license shall state the address at which business
83 is to be conducted and shall state fully the name of the licensee.
84 If a licensee intends to carry on such business at any place other
85 than the address on the license, he shall so notify the
86 commissioner, in writing, at least thirty days prior thereto. Such
87 notice shall contain the address of any such place and such other
88 information as the commissioner may require; provided, however,
89 that any such business shall at all times be conducted in the name
90 of the licensee as it appears on the license. A copy of such license
91 shall be prominently posted in each place of business of the
92 licensee. Such copies for places of business at addresses other than
93 that appearing on the license may be obtained at a reasonable cost,
94 as determined by the commissioner. Such license shall not be
95 transferable or assignable. Such license shall expire annually on
96 April first. Any change of location or closing of the place of
97 business of the licensee at the address stated on the license shall
98 require prior approval of the commissioner. Any request for such
99 relocation shall be in writing setting forth the reason or reasons
100 therefor and shall be accompanied by a relocation investigation
101 fee to be determined annually by the commissioner of
102 administration under the provisions of section three B of chapter
103 seven. Any change of location or closing of a place of business
104 of the licensee, other than the address stated on the license, shall
105 require prior notice thereof to the commissioner. Such notice shall

106 be in writing setting forth the reason or reasons therefor and shall
107 be filed with the commissioner at least thirty days prior to any
108 such relocation or closing.

109 If there shall be any change among the officers, partners or
110 directors of any licensee, the licensee shall forthwith notify the
111 commissioner of the name, address and occupation of each new
112 officer, partner or director, and provide such other information
113 as the commissioner may require.

114 Section 6. The commissioner may suspend or revoke any
115 license issued pursuant to this chapter if he finds that either:

116 (a) The licensee has violated any provision of this chapter or
117 any rule or regulation adopted hereunder, or any other law
118 applicable to the conduct of its business.

119 (b) Any fact or condition exists which, if it had existed at the
120 time of the original application for such license, would have
121 warranted the commissioner in refusing originally to issue such
122 license.

123 The commissioner may, on good cause shown, suspend any
124 license for a period not exceeding thirty days, pending
125 investigation.

126 Except as provided in the preceding paragraph, no license shall
127 be revoked or suspended except after notice and a hearing thereon.

128 Any licensee may surrender any license by delivering to the
129 commissioner written notice that it thereby surrenders such
130 license, but such surrender shall not affect such licensee's civil or
131 criminal liability for acts committed before such surrender.

132 No revocation, suspension or surrender of any license shall
133 impair or affect the obligation of any pre-existing lawful contract
134 between the licensee and any person.

135 Section 7. For the purpose of discovering violations of this
136 chapter, any rule or regulation promulgated hereunder or securing
137 information lawfully required by him hereunder, the commis-
138 sioner may at any time, and as often as he may determine, either
139 personally or by a person designated by him, investigate the
140 business and examine the books, accounts, records, and files used
141 therein of every licensee hereunder. The total charge for such an
142 examination, which shall be paid by the licensee within thirty days
143 after the conclusion of such examination, shall be determined
144 annually by the commissioner of administration under the

145 provisions of section three B of chapter seven for each person
146 participating in such examination. For that purpose the
147 commissioner and his duly designated representative shall have
148 free access to the offices and place of business, books, accounts,
149 papers, records, files, safes and vaults of all such licensees. The
150 commissioner and any person designated by him may require the
151 attendance of and examine under oath all persons whose
152 testimony he may require relative to such business.

153 Section 8. The licensee shall keep and use within the
154 Commonwealth such books, accounts and records as will enable
155 the commissioner to determine such license is complying with the
156 provisions of this chapter and with the rules and regulations
157 lawfully made pursuant thereto by the commissioner. Every
158 licensee shall preserve such books, accounts, and records, for at
159 least three years. Preservation by photographic reproduction
160 thereof or records in photographic form shall constitute
161 compliance with the requirements of this section.

162 Each licensee shall annually, on or before a date to be
163 determined by the commissioner, file a report with the
164 commissioner giving such information as the commissioner may
165 require concerning its business and operations during the
166 preceding calendar year.

167 Section 9. The commissioner or any aggrieved party may
168 enforce the provisions of this chapter, or restrain any violations
169 thereof, by filing a civil action in any court of competent
170 jurisdiction.

