

**CHAPTER 64****(HB 287)**

AN ACT relating to mortgage loans.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 294.010 is amended to read as follows:

Unless the context otherwise requires:

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "Department" means the Department of Financial Institutions;
- (3) "Commissioner" means the commissioner of financial institutions;
- (4) "Mortgage loan" means any loan secured by a mortgage on residential real property or any loan secured by collateral which has a mortgage lien interest in residential real property;
- (5) "Residential real property" means any single family residence or multiple dwelling structure containing four (4) or less single dwelling units for four (4) or less family units, living independently of each other, or any single family condominium unit;
- (6) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries is evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other group however organized;
- (7) "Mortgage loan company" means any person who directly or indirectly:
  - (a) Holds himself out as being able to make or purchase loans secured by mortgages on residential real property;
  - (b) Holds himself out as being able to service loans secured by mortgages on residential real property; and
  - (c) Holds himself out as being able to buy or sell notes secured by mortgages on residential real property;
- (8) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly:
  - (a) Holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan which will be secured by a mortgage on residential real property; or
  - (b) Holds himself out as being able to serve as an agent for any person who has money to loan, which loan is or will be secured by a mortgage on residential real property.

***"Mortgage loan broker" does not mean a person who performs functions of a loan processor, nor does it mean a person who performs only clerical functions such as delivering a loan application to a mortgage loan broker or mortgage loan company or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage loan broker, or mortgage loan company;***

- (9) ***"Loan officer" or "originator" means an individual who discusses or negotiates the rates, terms, and conditions of a loan with a borrower or prospective borrower. The term***

*does not mean a person who performs functions of a loan processor, nor does it mean an individual who performs only clerical functions such as delivering a loan application to a mortgage loan broker or mortgage loan company or gathering information related to a mortgage loan application on behalf of the prospective borrower, mortgage loan broker, or mortgage loan company;*

- (10) *"Loan processor" means an individual who works under the instruction of a loan officer or mortgage loan broker and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files; and*
- (11) *"Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through the Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom.*

Section 2. KRS 294.020 is amended to read as follows:

- (1) The following shall be exempt from this chapter:
- (a) Any person duly licensed, chartered, or otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, service corporation subsidiary of savings and loan associations, consumer loan or finance company, industrial loan company, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or *any* wholly owned subsidiary *or affiliate, or any mortgage loan broker, loan officer, originator, or loan processor employed by any such person, or by a subsidiary or affiliate* of any institution listed in this paragraph if the institution maintains a place of business in Kentucky;
  - (b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney-at-law;
  - (c) Any person doing any act under order of any court;
  - (d) The United States of America, the Commonwealth of Kentucky, or any other state, and any Kentucky city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the foregoing;
  - (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA); *and*
  - ~~(f) With the approval of the commissioner, an independent contractor that solicits mortgage loans for only one (1) licensed mortgage loan company or licensed mortgage loan broker may be exempted from obtaining a license under this chapter if:~~
    - ~~1. The licensed mortgage loan company or licensed mortgage loan broker notifies the department that it will assume legal responsibility for the actions of the~~

~~independent contractor in complying with the provisions of KRS Chapter 294;  
and~~

~~2. The licensed mortgage loan company or licensed mortgage loan broker provides the department with proof that its bond will cover the independent contractor;  
and~~

~~(g) Any mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A.~~

- (2) The following shall be exempt from all the provisions of this chapter except that they shall be subject to the examination or investigation provisions of KRS 294.170(4), (5), and (6), 294.180, and 294.190 if it appears on grounds satisfactory to the commissioner, on written complaint, that an examination or investigation is necessary; ~~and~~ and they shall be subject to the prohibited acts provisions of KRS 294.220; **and any mortgage loan broker, loan officer, or originator who is an employee of a mortgage loan company or mortgage loan broker regulated by the Department of Housing and Urban Development shall be subject to Sections 6 and 7 of this Act:**
- (a) Mortgage loan companies or mortgage loan brokers regulated by the Department of Housing and Urban Development;
  - (b) Any natural person making a mortgage loan with his or her own funds for the person's own investment without intent to resell the mortgage loan;
  - (c) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;
  - (d) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate; and
  - (e) Any person making less than five (5) mortgage loans per year, **who shall notify the Department of Financial Institutions of each loan made, in such written form and manner as required by the department.**
- (3) Any person relying upon an exemption under subsection (2)(a), (c), or (d) of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he shall not disallow an exemption that is validly claimed.
- (4) Any person listed in subsection (1)(a), (b), (c), (d), or (e) of this section shall not be required to file with the commissioner a claim of exemption.
- (5) (a) Any natural person making a loan under subsection (2)(b) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:

#### DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky Department of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky Department of Financial Institutions.)

- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.
- (c) This subsection shall not apply to a natural person under subsection (2)(b) of this section making less than five (5) mortgage loans per year.

Section 3. KRS 294.030 is amended to read as follows:

- (1)
  - (a) It is unlawful for any person to transact business in this state, either directly or indirectly, as a mortgage loan company or mortgage loan broker if he is not licensed under this chapter ***and registered in accordance with Section 6 of this Act***, unless that person is exempt under KRS 294.020 and, if required by KRS 294.020(3) to file a claim of exemption, has filed a claim of exemption and the filed claim of exemption has been allowed by the commissioner.
  - (b) It is unlawful for any natural person to make a loan under KRS 294.020(2)(b) without making the disclosure required by KRS 294.020(5).
  - (c) ***It is unlawful for any loan officer, unless otherwise exempted, to originate mortgage loans in Kentucky if the loan officer is not registered in accordance with Section 6 of this Act.***
- (2) Neither the fact that a license has been issued nor the fact that any person, business, or company is effectively registered, constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant by the commissioner or the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any prospective customer or client any representation inconsistent with this subsection.
- (3) Any person who willfully transacts business in this state in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.

Section 4. KRS 294.032 is amended to read as follows:

- (1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the commissioner.
- (2) The application shall:
  - (a) Be sworn to;
  - (b) State the name of the applicant and each of the applicant's affiliates engaged in business as a mortgage loan company or a mortgage loan broker;
  - (c) State the name under which the applicant will conduct business in Kentucky;
  - (d) State the location of the applicant's principal office and branch offices in Kentucky;
  - (e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee, and director, specifying the capacity and title of each;

- (f) Indicate the general plan and character of the business;
  - (g) Contain a corporate surety bond or other instrument as prescribed by KRS 294.060;
  - (h) If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant;
  - (i) Require payment of the appropriate registration fees; and
  - (j) Require such other information as the commissioner determines necessary.
- (3) No mortgage loan company license may be granted unless the applicant has and maintains, so long as the license is in effect, a minimum, documented funding source of five hundred thousand dollars (\$500,000). If a mortgage loan company has a net worth in excess of five hundred thousand dollars (\$500,000), an additional funding source is not required.
- (4) ~~A~~ ~~if a licensee is a person other than a natural person, the~~ license issued to ***a mortgage loan company or a mortgage loan broker*** ~~it~~ shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, ***natural person***, or trust, to engage in the mortgage loan business licensed pursuant to this chapter, ***subject to the applicable registration requirements of Sections 6 and 7 of this Act.***
- (5) If a licensee desires to establish a branch office in Kentucky not already approved, the licensee shall file a registration statement with the commissioner that includes the address and telephone number of the branch office, the name of the prospective manager, the anticipated opening date, and any other information prescribed by the commissioner.
- (6) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the department, of not less than thirty (30) ***classroom*** hours' duration. Mortgage loan brokers who have held a license for at least one (1) year shall be exempt from this requirement. This section shall not become effective until the department has approved at least one (1) educational training course. This section shall not apply to renewals of existing licenses.
- (7) (a) ***On and after the effective date of this Act, the application for a mortgage loan broker license shall state the address of the physical location where the business is to be located in compliance with Section 15 of this Act and whether such location is a residence. Photographs of the exterior, interior, and exterior sign of each location shall accompany the application. If the physical location is not a residence and is leased, the lease shall be for a term of at least one (1) year and a copy of the lease and the names of all employees conducting business under the lease shall accompany the application. If the physical location is a residence, proof that the location is a residence, in a form as required by the commissioner, shall accompany the application. Proof of residence shall confirm that the mortgage loan broker owns or leases the residence and lives in the residence as the mortgage loan broker's main residence. Proof of physical location shall include proof that local zoning requirements are satisfied.***
- (b) ***The information required by paragraph (a) of this subsection shall be required for renewals of existing licenses which will expire on June 30, 2004, and for all renewals of licenses thereafter.***

- (c) *At least ten (10) days prior to the effective date of an address change of the mortgage loan broker's physical location, the mortgage loan broker shall notify the commissioner in writing of the address change and shall include the information required by paragraph (a) of this subsection.*

Section 5. KRS 294.034 is amended to read as follows:

- (1) An applicant for a license under this chapter shall provide the commissioner with separate checks payable to the Kentucky State Treasurer for:
  - (a) An investigation fee of three hundred dollars (\$300) for the principal office and one hundred fifty dollars (\$150) for each branch office; and
  - (b) A license fee of four hundred fifty dollars (\$450) for the principal office and two hundred fifty dollars (\$250) for each branch in Kentucky if the applicant applies for a license on or between July 1 and December 31 or of one hundred fifty dollars (\$150) for the principal office and one hundred dollars (\$100) for each branch if the applicant applies for a license on or between January 1 and June 30.
- (2) A license under this chapter shall expire June 30 next after the date of issuance if it is not renewed.
- (3) A license may be renewed by paying the annual fee for renewing a license which is three hundred fifty dollars (\$350) for the main office and two hundred fifty dollars (\$250) for each branch office in Kentucky, and submitting an annual report of activity as prescribed by the commissioner, and any other information required by the commissioner. *The commissioner shall not approve the renewal of a mortgage loan broker's license if the commissioner has not received the information on physical location as required in subsection (7) of Section 4 of this Act.*
- (4) The information and payment shall be received by the commissioner on or before June 20 prior to the June 30 expiration date. The commissioner may reinstate the license if the licensee pays the filing fee and a reinstatement fee of *two hundred fifty dollars (\$250)*~~one hundred dollars (\$100)~~.
- (5) The department shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

SECTION 6. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning July 1, 2004, and annually thereafter, no mortgage loan broker and no loan officer shall originate mortgage loans in Kentucky unless such mortgage loan broker or loan officer is registered with the department and has been issued a certificate of registration by the department. The department shall maintain a registry of all mortgage loan brokers and loan officers originating mortgage loans in Kentucky. The department shall issue a certificate of registration to all registered mortgage loan brokers and loan officers.*
- (2) *The registration shall:*
  - (a) *Be on a form prescribed by the commissioner;*
  - (b) *Be accompanied by a registration fee in the amount of fifty dollars (\$50) which shall be used solely by the department to establish and maintain the registry system*

*required by this section and any excess funds shall be retained by the department and shall not lapse to the general fund;*

- (c) In the case of initial registrations of loan officers, be accompanied by satisfactory evidence that the applicant has successfully completed twelve (12) classroom hours of education courses related directly to the mortgage loan process or brokerage business, as approved by the commissioner. This paragraph shall not apply to renewals of existing certificates of registration; and*
  - (d) Beginning July 1, 2005, in the case of renewals of certificate of registrations by registered mortgage loan brokers and registered loan officers, be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of Section 7 of this Act and by a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the department to establish and maintain the registry system required by this section and any excess funds shall be retained by the department and shall not lapse to the general fund.*
- (3) All mortgage loan brokers and loan officers subject to the registration requirements of this section shall also be subject to KRS 294.090(1), (3), (6), (7), (8), (10), (11), and (12), 294.220(1) and (2), and 294.990.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) Beginning July 1, 2004, all registered mortgage loan brokers and registered loan officers shall complete at least twelve (12) hours of continuing professional education, a minimum of six (6) of which must be classroom hours, by June 30, 2005, and annually thereafter.*
- (2) Up to twelve (12) hours of continuing professional education may be carried forward from one (1) continuing education year to the next continuing education year. The continuing education year shall begin on July 1 and end on June 30 of the following year.*
- (3) Fifty (50) minutes of classroom contact shall equal one (1) hour of continuing professional education. Each continuing professional education course, other than classroom hours, shall equal the number of hours approved and designated by the Department of Financial Institutions for that course. Course sponsors shall maintain records of attendees for two (2) years after completion of the course.*
- (4) Every registered mortgage loan broker and every registered loan officer subject to this section shall furnish to the commissioner written certification as to each continuing professional education course satisfactorily completed. The certification shall be signed by the teacher or sponsoring organization of the course showing the number of hours of the course and the number of hours attended. The certification shall be on a form prescribed by the commissioner.*
- (5) Only courses approved by the department shall qualify to satisfy the continuing professional education requirement of this section.*
- (6) An individual teaching any approved continuing professional education course shall qualify for the same number of hours of continuing professional education as would be granted to a mortgage loan broker or loan officer taking and satisfactorily completing the course.*

- (7) *For good cause shown, the commissioner may grant an extension during which the continuing education requirement of this section may be completed, but the extension may not exceed one (1) year. What constitutes good cause for the extension of time rests within the discretion of the commissioner.*
- (8) *The certificate of registration of any mortgage loan broker and any loan officer failing to comply with the continuing professional education requirements of this section and who has not been granted an extension of time to comply in accordance with subsection (7) of this section shall terminate and shall be promptly surrendered to the commissioner without demand. The mortgage loan broker or loan officer shall not originate any mortgage loans while not registered. The commissioner may reinstate the certificate of registration if the mortgage loan broker or loan officer submits proof of compliance with the professional education requirements and pays a reinstatement fee in the amount of two hundred fifty dollars (\$250).*

SECTION 8. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may, after notice and an opportunity to be heard, deny, suspend, or revoke the registration or license of a mortgage loan company, mortgage loan broker, or a loan officer, if the commissioner finds that the mortgage loan company, mortgage loan broker, or loan officer:*
  - (a) *Does not meet or has failed to comply with the provisions of Section 6 or 7 of this Act;*
  - (b) *Has been found guilty of fraud in connection with any transaction governed by this chapter, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the registrant. The commissioner may not institute a proceeding under this subsection more than one (1) year from the date of the order or injunction relied on, and he may not enter an order under this subsection on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute grounds for an order under this section;*
  - (c) *Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of acting as a mortgage loan broker or loan officer, or has engaged in a course of business which has worked or tended to work a fraud upon any person or would so operate;*
  - (d) *Has been convicted of or pled guilty to any felony crime;*
  - (e) *Has failed to comply with the requirements of this chapter and the administrative regulations of the commissioner promulgated thereunder;*
  - (f) *Has knowingly or recklessly hired a person who has had a license or registration denied, revoked, or suspended under this section; or*
  - (g) *Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the mortgage loan broker or loan officer possesses, and which if submitted by the mortgage loan broker or the loan officer*



*would have rendered the mortgage loan broker or loan officer ineligible to be registered or licensed under this chapter.*

- (2) *Persons whose registration or license has been denied, suspended, or revoked under this section are prohibited from participating in any business activity of a registrant or licensee under this chapter and from engaging in any business activity on the premises where a licensee or registrant under this chapter is conducting its business.*
- (3) *Whenever the commissioner revokes or suspends a license or registration issued pursuant to this chapter, the commissioner shall execute a written order to that effect. The commissioner shall serve the written order upon the licensee or registrant, which order shall be sent by registered mail, return receipt requested, postage prepaid, to the principal business address of such licensee or registrant, as set forth in the records of the commissioner, and shall be deemed to have been received three (3) business days following mailing thereof.*
- (4) *Any person who continues to participate in any business activity covered by this chapter after such person's registration or license has been revoked, suspended, or denied shall be subject to the penalties of KRS 294.990 and shall be considered to be in violation of KRS 367.170.*
- (5) *The provisions of this section shall be in addition to any other penalties or remedies available, including the penalties of KRS 294.990.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

*A mortgage loan broker may act as agent for the person or persons, if an individual or individuals, attempting to obtain a mortgage loan. The mortgage loan broker shall clearly and conspicuously disclose to the person or persons attempting to obtain a mortgage loan whether the mortgage loan broker is acting as an agent for that person or persons, in a separate writing, and provide such disclosure to the person or persons attempting to obtain the mortgage loan before any personal financial information may be obtained by the mortgage loan broker. If a mortgage loan broker is obtaining personal information from the person or persons obtaining the mortgage loan over the telephone, the mortgage loan broker shall give the disclosure verbally at that time and mail the written disclosure within two (2) business days.*

Section 10. KRS 287.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;
- (2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law, including savings and loan associations;
- (3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;
- (4) "Home state" means:
  - (a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and
  - (b) With respect to a national bank, the state in which the main office of the bank is located;

- (5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;
- (6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;
- (7) "Commissioner" means the commissioner of financial institutions;
- (8) "Department" means the Department of Financial Institutions;
- (9) "Population" means the population as indicated by the latest regular United States census;
- (10) "Trust company" includes every corporation authorized by this chapter to do a trust business;
- (11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;
- (12) "Capital stock" shall mean, at any particular time, the sum of:
  - (a) The par value of all shares of the corporation having a par value that have been issued;
  - (b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and
  - (c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law;~~and~~
- (13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value or both;
- (14) *"Municipality" means a county, city, or urban-county government; and*
- (15) *"Political subdivision" means a municipality, school district, or other municipal authority.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 287 IS CREATED TO READ AS FOLLOWS:

- (1) *All political subdivisions of the Commonwealth shall be prohibited from enacting and from enforcing ordinances, resolutions, and regulations pertaining to the financial or lending activities of persons or entities which:*
  - (a) *Are subject to the jurisdiction of the department or the provisions of this chapter;*
  - (b) *Are 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 Farm Credit Administration, the Federal Deposit Insurance Corporation, or the United States Department of Housing and Urban Development; or*
  - (c) *Originate, purchase, sell, assign, securitize, assist, facilitate, or service property interests or obligations created by financial transactions or loans made, executed, or*

*originated by persons or entities referred to in paragraph (a) or (b) of this subsection.*

- (2) *The requirements of this section shall apply to all ordinances, resolutions, or regulations pertaining to lending activities, including any ordinances, resolutions, or regulations which limit or disqualify persons or entities from doing business with a political subdivision based upon financial or lending activities or the imposition of additional reporting requirements or other obligations on such persons or entities seeking to do business with a political subdivision.*
- (3) *Any provision of this chapter preempted by federal law with respect to a national bank or federal savings association shall not apply to the same extent to an operating subsidiary of a national bank or federal savings association.*
- (4) *The provisions of this chapter shall be interpreted and applied to the fullest extent practicable in a manner consistent with applicable federal laws and regulations and with applicable policies and orders of federal regulatory agencies and shall not be deemed to constitute an attempt to override federal law.*
- (5) *Nothing in this section shall be interpreted as preventing the enforcement of ordinances, regulations, or resolutions of political subdivisions of the Commonwealth pertaining to civil rights.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 360 IS CREATED TO READ AS FOLLOWS:

(1) *The following definitions apply for the purposes of this section:*

- (a) *"High-cost home loan" means a loan other than an open-end credit plan or a reverse mortgage transaction in which:*
  1. *The principal amount of the loan is greater than fifteen thousand dollars (\$15,000) and does not exceed two hundred thousand dollars (\$200,000);*
  2. *The borrower is a natural person;*
  3. *The debt is incurred by the borrower primarily for personal, family, or household purposes;*
  4. *The loan is secured by a mortgage on residential real property or secured by collateral which has a mortgage lien interest in residential real property, which is or will be occupied by the borrower as the borrower's principal dwelling; and*
  5. *Without regard to whether the loan transaction is or may be a "residential mortgage transaction" as defined in 12 CFR 226.2(a)(24), as amended from time to time, the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. Law 103-325, 15 U.S.C. § 1602(aa), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 CFR 226.32, as the same may be amended from time to time.*
- (b) *"Lender" means any person who funds or negotiates the terms of a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan. However, any person who purchases or*

*is otherwise assigned a high-cost home loan shall be subject to an action for violation of this section only if the violation for which the action or proceeding is brought is apparent on the face of the disclosure or the underlying promissory note.*

- (2) *A high-cost home loan shall be subject to the following limitations:*
- (a) *A high-cost home loan may not contain a provision which permits the lender to charge or collect prepayment fees or penalties more than thirty-six (36) months after the loan closing or which exceed three percent (3%) of the amount prepaid during the first twelve (12) months, two percent (2%) of the amount prepaid during the second twelve (12) months, or one percent (1%) of the amount prepaid during the third twelve (12) months.*
  - (b) *A high-cost home loan may not contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.*
  - (c) *A high-cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.*
  - (d) *A high-cost home loan may not contain a payment schedule with regular periodic payments that cause the principal balance to increase.*
  - (e) *A high-cost home loan may not contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.*
  - (f) *A high-cost home loan may not include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.*
  - (g) *A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless the fees are less than one-half (1/2) of any fees that would be charged for a refinance or unless the borrower is in default and it is in the borrower's best interest.*
  - (h) *A lender may not make a high-cost home loan unless the borrower has been provided the following notice or a substantially similar notice, in writing, not later than the time that notice provided by 12 CFR 226.31(c), as amended from time to time, is required:*

**NOTICE TO BORROWER**

**IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.**

**MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND**

**FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES.**

**YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. YOU SHOULD CONTACT THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A LIST OF CREDIT COUNSELORS AVAILABLE IN YOUR AREA.**

**YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION.**

**REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.**

**ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.**

- (i) *A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one (1) or more of the borrowers, when considered individually or collectively, will be able to make the scheduled payments to repay the loan based upon a consideration of their current and expected income, current obligations, current employment status, and other financial resources, other than the borrower's equity in the dwelling which secures repayment of the loan. A borrower shall be presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is consummated, the borrower's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the borrower's total monthly debts, including amounts owed under the loan, exceed fifty percent (50%) of the borrower's monthly gross income.*
- (j) *If the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder, the lender may not directly or indirectly finance:*
  - 1. *Any prepayment fees or penalties payable by the borrower; or*
  - 2. *Points and fees, excluding those provided for in 12 CFR 226.4(c)(7), which in the aggregate are in excess of four percent (4%) of the total amount financed.*

- (k) *A lender or mortgage loan broker may not, within one (1) year of the consummation of a high-cost home loan, charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan on which points were charged. A lender may not, at any time, charge a borrower points and fees in addition to those allowed by 12 CFR 226.4(c)(7) if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan, on which points were charged, held by the same lender as noteholder. However, points and fees in accordance with this section may be charged on any proceeds of a high-cost home loan which are in excess of the amount refinanced on the existing high-cost home loan.*
- (l) *A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.*
- (m) *A lender shall not refinance, replace, or consolidate a zero interest rate or low interest rate loan made by a governmental or nonprofit lender with a high-cost home loan. For purposes of this paragraph, a low interest rate loan is defined as a loan that carries a current interest rate that is two (2) percentage points or more below the current yield on United States Treasury securities with a comparable maturity.*
- (n) *A lender shall not finance single premium credit life, credit accident, credit health, credit disability, or credit loss of income insurance in connection with a high-cost home loan.*
- (o) *A lender shall not make a high-cost home loan unless the lender has made available to the borrower a videotape, or other similar audio-video media format such as DVD or CD, approved by the Department of Financial Institutions, which explains the borrower's rights and responsibilities with regard to this section or high-cost home loans. A lender shall have available for viewing at least one (1) copy of the video in the principal office and each branch office of the lender.*
- (p) *A lender shall not make a high-cost home loan subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act shall be presumed not to violate this subsection.*
- (q) *A lender shall not charge a late payment fee on a high-cost home loan except in accordance with the following:*
1. *The late payment fee may not be in excess of five percent (5%) of the amount of the payment past due or ten dollars (\$10), whichever is greater;*
  2. *The late payment fee may only be assessed for a payment past due fifteen (15) days or more; and*
  3. *The late payment fee may only be charged once with respect to a single late payment.*

- (r) *A lender may not charge a borrower a fee in excess of ten dollars (\$10) or actual costs, whichever is greater, per request for a written payoff calculation on a high-cost home loan for the first two (2) requests by a borrower in a calendar year.*
  - (s) *A lender shall not initiate a foreclosure or other judicial process to terminate a borrower's interest in residential real property subject to a high-cost home loan without first providing the borrower, at least thirty (30) days prior to the initiation of any process, written notice of default and of the borrower's right to cure. The notice shall include a statement of the amount needed to be paid by the borrower in order to cure the default and the date by which the payment is due to cure the default. If the amount needed to be paid will change during the thirty (30) day notice period, the notice shall provide information sufficient to enable a calculation of the daily change.*
  - (t) *A lender shall not recommend or encourage default on an existing loan or other debt in connection with the closing of a high-cost home loan that refinances all or a portion of the existing loan or debt.*
- (3) *Except as provided in paragraph (e) of subsection (2) of this section, the making of a high-cost home loan which violates any provisions of subsection (2) of this section is usurious, subject to the penalties of this chapter, and unlawful as an unfair and deceptive act or practice in or affecting commerce in violation of the provisions of KRS 367.170. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by:*
- (a) *The structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or*
  - (b) *Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section; or*
  - (c) *Any other such subterfuge.*

*The Attorney General, the commissioner of the Department of Financial Institutions, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this chapter or KRS Chapter 367, but not both.*

- (4) *A lender of a high-cost home loan who, when acting in good faith, fails to comply with subsection (2) of this section, will not be deemed to have violated this section if the lender establishes that either:*
- (a) *Within thirty (30) days of the loan closing the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made, at the choice of the borrower, to the loan to either:*
    - 1. *Make the high-cost home loan satisfy the requirements of subsection (2) of this section; or*
    - 2. *Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or*

- (b) *The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within sixty (60) days after the discovery of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, make the high-cost home loan satisfy the requirements of subsection (2) of this section or change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors.*
- (c) *For purposes of this subsection, "appropriate restitution" means the reimbursement by the lender of any points, fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as he or she would have been had the loan, as adjusted in accordance with paragraphs (a) and (b) of this subsection, been originally made.*
- (5) *For purposes of this section, any extension of credit shall be deemed to have been made in the Commonwealth of Kentucky, and therefore subject to the provisions of this section, if the lender offers or agrees in Kentucky to lend to a borrower, who is a resident of Kentucky, on real property located within the Commonwealth of Kentucky, or if such borrower accepts or makes the offer in Kentucky to borrow, regardless of the situs of the contract as specified therein. Any oral or written solicitation or communication to lend originating outside of Kentucky, but forwarded to and received in Kentucky by a borrower who is a resident of Kentucky, shall be deemed to be an offer or agreement to lend in Kentucky and, therefore, subject to this section. Any oral or written solicitation or communication to borrow originating within Kentucky, from a borrower who is a resident of Kentucky, but forwarded to and received by a lender outside of Kentucky, shall be deemed to be an acceptance or offer to borrow in Kentucky. Any oral or written offer, acceptance, solicitation, or communication to lend or borrow, made in Kentucky to, or received in Kentucky from, a borrower who is not a resident of Kentucky, shall be subject to the provisions of this section, applicable federal law, law of the situs of the contract, or law of the residence of the borrower, as the parties may elect. The provisions of this section shall be severable and if any phrase, clause, sentence, or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.*

Section 13. KRS 367.410 is amended to read as follows:

As used in KRS 367.410 to 367.450, unless the context otherwise requires:

"Home solicitation sale" means a sale of goods or services, *including consumer loans*, in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to prior negotiations between the parties, *by telephone initiated by the buyer or* at a business establishment at a fixed location where goods or services, *including loans*, are offered or exhibited for sale.

Section 14. KRS 367.420 is amended to read as follows:

- (1) *Except for home solicitation sales on loans in which a security interest is taken in the principal dwelling of the buyer as provided in subsection (6) of this section, and except as provided in subsection (5) for other goods and services, including all other consumer loans*, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel



a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this part.

- (2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.
- (3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.
- (4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.
- (5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and
  - (a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and
  - (b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.
- (6) *For home solicitation sales on loans in which a security interest is taken in the principal dwelling of the buyer, the buyer shall have the right to rescind or cancel the transaction until midnight of the third business day following the later of the consummation of the loan transaction or the delivery of the material disclosures required under the Truth in Lending Act, 15 U.S.C. 1601 et seq.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 294 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section, "physical location" means an actual office where the business of mortgage lending or the business of taking or soliciting mortgage loan applications is conducted. The office shall have a street address. A post office box or similar designation shall not meet the requirements of this section. The office shall be accessible to the general public as a place of business and shall hold itself open on a regular basis during posted hours, unless the office is in the residence of the mortgage loan broker and proof of residence has been submitted as required by subsection (7) of Section 4 of this Act.*
- (2)
  - (a) *Each mortgage loan broker licensed under this chapter shall maintain a physical location in this state.*
  - (b) *Any mortgage loan broker licensed under this chapter who, on the effective date of this Act, does not maintain a physical location in this state shall have ninety (90) days after the effective date of this Act in which to establish one. After the ninety (90) day period, a mortgage loan broker licensed under this chapter on the effective date of this Act shall not transact business in Kentucky if the licensed mortgage loan broker does not maintain a physical location in this state.*
- (3) *The license certificate of a mortgage loan broker shall be at all times prominently displayed at the mortgage loan broker's physical location.*

Approved March 12, 2003