AN ACT ESTABLISHING PROTECTIONS AGAINST PREDATORY LENDING IN THE HOME LENDING MARKET.

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

SECTION 1. The General Laws, as so appearing in the 2000 Official Edition are hereby amended by inserting after Chapter 167H the following new chapter

Chapter 167I

Section 1. Short title. This chapter may be cited as the Predatory Home Loan Practices Act.
Section 2. Definitions. The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:

“Accredited credit counseling program” means any counseling program or service operative in the Commonwealth that the commissioner has sanctioned as competent to counsel high cost home loan borrowers.

“Affiliate”, any company that controls, is controlled by, or is under common control with another company, as determined under the Federal Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), as amended from time to time.

“Annual percentage rate”, the annual percentage rate for a loan calculated according to the provisions of the Federal Truth In Lending Act (15 U.S.C. 1601 et seq.) and the regulations promulgated thereunder by the Federal Reserve Board.

“Bona fide loan discount points”, loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate of time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established norms and practices for secondary mortgage market transactions.
“Commissioner”, shall have the same meaning as the term is defined in Section 1 of Chapter 167.

“Division”, the division of banks established pursuant to Section 1 of Chapter 26.

“High-cost home loan”, a home loan which meets one of the following conditions:

(i) The annual percentage rate of the home at consummation will exceed by five or more percentage points the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board, as of the week immediately preceding the week in which the interest rate for the loan is established;

(ii) The home loan is a variable rate loan in which the annual percentage rate can reasonably be expected to increase beyond the threshold defined in paragraph (i);

(iii) Potential or scheduled increases in the annual percentage rate of the home loan are not directly tied to future increases in a widely-used federal or private market measurement that reflects the cost of borrowing money, such as the interest rate yield on United States Treasury securities, the federal funds rate, or the prime interest rate;

(iv) The total points and fees cannot exceed (a) three percent of the total loan amount if the total loan
amount is twenty thousand dollars or more, (b) four percent of the total loan amount is the total loan amount is twenty thousand dollars or more and the loan is a purchase money loan guaranteed by the Federal Housing Administration or the Veterans Administration, or (c) the lesser of five percent of the total loan amount or eight hundred dollars, if the total loan amount is less than twenty thousand dollars; The following discount points shall be excluded from the calculation of the total points and fees:

(a) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than one percentage point the required net yield for a ninety day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

(b) Up to and including one bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than two percentage point the required net yield for a ninety day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

“Home loan”, a loan, other than an open-end credit plan or a reverse mortgage transaction, in which: (i) the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as
established from time to time by the Federal National Mortgage Association or a comparable entity designated by the division of banks; (ii) the borrower is a natural person; (iii) the debt is incurred by the borrower primarily for personal, family or household purposes; and, (iv) the loan is secured by a mortgage or deed of trust on real estate upon which there is located or there will be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower’s principal place of residence.

“Lender”, any entity that originated five or more home loans within the past twelve-month period or acted as an intermediary between originators and borrowers on five or more home loans within the past twelve-month period.

“Obligor”, each borrower, co-borrower, cosigner, or guarantor obligated to repay a home loan.

“Points and fees”, (i) all items required to be disclosed pursuant to sections 226.4 (a) and 226.4 (b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential; (ii) all charges for items listed under sections 226.4 (c) (7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender, otherwise, the charges are not included within the meaning of the term “points and fees”; (iii) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name in a table-funded transaction, not otherwise included in paragraph (i) or (ii). Points and fees shall not include the following:
(a) Taxes, filing fees, recording and other charges and fees paid to or to be paid to a public official for determining the existence of or for perfecting, releasing or satisfying a security interest; and,

(b) Fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for flood certification; fees for pest infestation; fees for flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorney fees if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges so long as not otherwise included under paragraph (i); title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in sections 226.4 (d) (2) of Title 12 of the Code of Federal Regulations are met.

“Predatory loan”, any home loan or high-cost home loan practices that the commissioner deems to be unfair or deceptive, or that violates any provision of section 2 or section 3 of this chapter, or that causes financial harm to a borrower.

“Total loan amount”, shall have the same meaning as the term is used in section 226.32 of Title 12 of the Code of Federal Regulations and as calculated in accordance with the Federal Reserve Board’s Official Staff Commentary thereto.

The following acts and practices shall be prohibited:

(a) No prepayment fees or penalties shall be contracted by the borrower with respect to any home loan.

(b) No payment schedule with regular periodic payments such that the result is an increase in the principle amount, a practice known as negative amortization.

(c) No lender may make a home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, will be able to make the scheduled payments to repay the home loan based upon a consideration of the obligor’s current and expected income, current obligations, employment status, and other financial resources other than the borrower’s equity in the dwelling which secures repayment of the loan.

(d) No lender may compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to determining the value of real estate that is to be covered by a home loan or is being offered as security according to an application for a
residential home loan

(e) No lender may finance, directly or indirectly, any credit life, credit disability or credit unemployment insurance, or any other life or health insurance premium through a home loan. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(f) No home loan contract in which blanks are left to be filled in after the contract is signed shall be enforceable under the law.

(g) The annual percentage rate shall not exceed six percent above the United States Treasury securities. The threshold for points and fees on high-cost loans shall not exceed three percent of the total loan amount.


The following acts and practices are prohibited:

(a) No balloon payment. No high-cost home loan may contain a scheduled payment that is more
than twice as large as the average of earlier scheduled payments. This provision shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(b) No advance payment. No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(c) No increased interest rate. No high-cost home loan may contain a provision that increases the interest rate after default. This provision shall not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the home loan documents; provided, that the change in the interest rate is not triggered by the event of default or the acceleration of indebtedness.

(d) No call provision. No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to increase the indebtedness of the borrower. This provision shall 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 home loan documents unrelated to the payment schedule.

(e) No modification or deferral fees. A lender may not charge a borrower any fees or other charges 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.
(f) No mandatory arbitration clause. No high-cost home loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process.

(g) Restrictions on home improvement contracts. A lender may not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and contractor, or (ii) 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 of any funds.

Section 4. Prohibition against the origination of high cost home loans without credit counseling.

A high cost home lender may not originate a high cost home loan without first requiring the prospective high cost home loan borrower to complete an accredited credit counseling program. Said standard accreditation shall be established by the Commissioner. Any high cost loan originated by a lender in violation of this section shall not be enforceable.

Section 5.

Each high cost home loan lender shall annually, on or before the fifteenth day of April, file a report with the commissioner containing such information as said commissioner may require concerning the business and operations during the preceding calendar year at each licensed place of business conducted by a licensee in the commonwealth,” the following sentence, “Each licensee must include, as part of this annual report, such
Section 6. Reporting Of Information With Relevance To The High Cost Home Loan Mortgage Market

In accord with this act each high cost home lender must include, as part of said lender’s annual report to the commissioner, information about each high cost home loan originated by said lender as follows:

i. the annual percentage rate of each high cost home loan;

ii. the term, in years, of each high cost home loan;

iii. the total amount of money owed by the high cost home loan borrower of each high cost home loan;

iv. any points or fees associated with each high cost home loan;

v. any other costs, including but not limited to closing or origination costs of each high cost home loan;

vi. the country, state, municipality, or district where the high cost home loan borrower of each high cost home loan resides;

vii. the racial or ethnic status of each high cost home loan borrower, provided, however, that said borrower agrees to the release of such information;

viii. the approximate annual income of each high cost home loan borrower;

ix. the age of each high cost home loan borrower of a high cost home loan;

x. the education level of each high cost home loan borrower of a high cost home loan;

xi. the primary language of each high cost home loan borrower of a high cost home loan; and

xii. the commissioner, in order to achieve the purposes of this Act, may also require high cost home lenders to submit additional information as the commissioner sees fit.

The commissioner shall have the authority to define the terms and information that is required to be reported in this section.

The commissioner shall, using the information accumulated under this section, establish a database to monitor the high cost home loan industry in the commonwealth.
SECTION 7. Penalty For Failing To Report Required Information.

In accord with G.L.c. 255E § 8, any lender that neglects to submit, as part of said lender’s annual report, any information as required by this section or who fails to amend the same within fifteen days of notice from said commissioner shall, unless such neglect or failure is due to justifiable cause and not due to willful neglect, pay to the commonwealth fifty dollars for each day during which such neglect or failure continues.

Section 8. Attempted Evasion of Coverage and Unintentional Violations.

(a) The provisions of section 3 shall apply to any person who to avoid its application by (i) structuring a loan transaction as an open-end credit plan for the purpose and evading the provisions of said section when the loan would have been deemed a high-cost home loan if the loan had been structured as a closed-end loan; (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of section 3; or, (iii) any other subterfuge for the purpose of evading the provisions of section 3.

(b) Corrections and unintentional violations. A lender making a high-cost home loan who, when acting in good faith, fails to comply with the provisions of section 3, will not be deemed to have violated said section if the lender establishes that either:

(1) Within 30 days of the loan closing and prior to the institution of any action under said
section 3, the lender notifies the borrower of the compliance failure and makes appropriate restitution and whatever adjustments are necessary are made to the loan, at the choice of the borrower, to either: (i) make the high-cost home loan satisfy the requirements of said section 3 or (ii) 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 section 3; or,

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance procedures reasonably adapted to avoid such errors, and within sixty days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice 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, at the choice of the borrower, to either (i) make the high-cost home loan satisfy the requirements of section 3 or (ii) 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 section 3. Examples of a bona fide error may include clerical errors, errors in calculation, computer malfunction and programming, and printing errors. An error in legal judgment with respect to a person’s obligation under this section shall not be considered a bona fide error.

Section 9. Penalties.

Lenders found in violation of this chapter are subject to forfeiture of all principal and interest on all loans
made in violation of this chapter. In addition, any lender found to be in violation of this chapter shall be subject to the provisions of section 2D of chapter 167.

Section 10. Community reinvestment examination ratings procedure

(a) Notwithstanding the provisions of any other general law or special law to the contrary, the Commissioner shall by one full step lower the companies rating as determined pursuant to Section 14 of chapter 167 of the General Laws, as appearing in the Official Edition.

Section 11. Relationship to the assessment of meeting community lending needs.

The commissioner shall include, when conducting the assessment pursuant to section 14 of chapter 167, in the factors used to complete said assessment an evaluation of a lender’s activity in the high-cost home loan market and what impact said activity had on the commissioner’s assessment.

Section 12. Investments.
A lender shall not make investments that are backed by home loans or high cost home loans that violate section 2 or section 3 of this chapter.

Section 13. Reporting requirements for lenders that do not report information under the federal Home Mortgage Disclosure Act (HMDA).

(a) Lenders that are exempt from the reporting requirements of 12 U.S.C. 2803 solely because the home purchase loans, including refinancings, that the lender originated in the preceding calendar year totaled less than ten percent of its loan origination volume measured in dollars, thereby qualifying for an exemption under Paragraph I.D. of Appendix A (Form and Instructions for Completion of HMDA Loan/Application) to 12 CFR Part 203, shall be required to report to the division of banks the same information that other lenders are required to report under 12 U.S.C. 2803(b) to the appropriate federal agency.

(b) Lenders shall submit the information required under paragraph (a) of this section in the format established by the United States Department of Housing and Urban Development pursuant to 12 U.S.C. 2803(h)(5).

Section 14. Reporting of Interest Rates.
In calculating the interest rate for variable rate loans to fulfill the requirements of this section, a lender shall use the average interest rate on the variable rate loan for the twelve months of the reporting period established under 12 U.S.C. 2803(d), which is the calendar year.

Section 15. Divestiture.

(a) Notwithstanding the provisions of any other general law or special law to the contrary, the Commonwealth of Massachusetts shall not make any new deposits or investment of funds in stocks, securities, or other obligations to/in company that derives more than five percent of its revenues from predatory loans.

(b) No public pension fund shall remain invested in the stocks, securities, or other obligations of any company that derives more than ten percent of its revenues from predatory loans.

Section 16. Commissioner authority to promulgate regulations.

To assist in the carrying out the provisions of this chapter, the commissioner is hereby authorized and directed to promulgate regulations.
SECTION 2. Effective Date.

This act shall take effect ninety days after enactment. The reporting requirements under Section 7 and Section 8 shall take effect the first calendar year following enactment.