



SPONSOR: Rep. Schooley

HOUSE OF REPRESENTATIVES  
144th GENERAL ASSEMBLY

HOUSE BILL NO. 162

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO PREDATORY MORTGAGE LENDING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           WHEREAS, supporting the goal of increased home ownership and recognizing the importance of fair lending laws  
2 in achieving that goal is important to the Citizens of Delaware; and

3           WHEREAS, home ownership is vitally important to families in Delaware in establishing financial independence;  
4 and

5           WHEREAS, home ownership is the most common means for families in Delaware to build wealth and pass that  
6 wealth on to the next generation; and

7           WHEREAS, predatory mortgage lending practices are a serious threat to home ownership and, unfortunately,  
8 much too common in Delaware; and

9           WHEREAS, predatory lending is the use of abusive home mortgage lending practices, including lending that  
10 involves excessively high interest rates and fees, inappropriate penalties such as excessively high prepayment penalties,  
11 excessively high loan-to-value ratios, unnecessary credit life insurance and failure to adequately disclose the inclusion, cost  
12 or any additional fees associated with the insurance, and other unreasonable terms and lending that strips equity from the  
13 home owner;

14           WHEREAS, predatory lenders tend to target home owners who are 'equity-rich' and 'cash-poor', particularly  
15 elderly, low-income, and minority households - groups of citizens who can least afford to be stripped of their assets; and

16           WHEREAS, predatory loans are often made in such concentrated volumes in poor and minority neighborhoods,  
17 where better loans generally are not readily available, that the resulting loss of equity in, and foreclosure on, the properties  
18 devastate those already economically fragile communities; and

19           WHEREAS, predatory lenders often use high-pressure tactics to charge customers extremely high, unaffordable  
20 fees such that the borrower will inevitably default on the loan and lose the home, and the lender will profit from the equity  
21 in the property; and

22 WHEREAS, the practice of subprime lending has skyrocketed, growing nationally by approximately 1,000 percent  
23 during the past decade; and

24 WHEREAS, while subprime lending is a legitimate practice expanding access to credit for home ownership to  
25 individuals who may not otherwise qualify for mortgage loans in the conventional lending market, most predatory lending  
26 practices occur in the subprime lending market; and

27 WHEREAS, a substantial percent of subprime borrowers could otherwise qualify for a traditional mortgage, which  
28 would, in effect, save such borrowers thousands of dollars in fees and interest rates; and

29 WHEREAS, the victims of predatory lending practices are compelled to accept unreasonable loan terms and  
30 abusively high fees; and

31 WHEREAS, a dramatic increase in the incidence of predatory mortgage lending practices has created a crisis  
32 particularly for elderly, low-income, minority and rural citizens; and

33 WHEREAS, predatory lending has destroyed the dream of home ownership for many individuals while leaving  
34 behind economically-devastated communities; and

35 WHEREAS, the incidence of delinquent loan payments and foreclosure by borrowers is near record highs, with an  
36 estimated 19% of the subprime mortgages issued in 2005-2006 anticipated to be foreclosed upon; and

37 WHEREAS, the State of Delaware must act to protect its Citizens from abusive lending practices, while  
38 preserving and promoting affordable lending;

39 NOW, THEREFORE:

40 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

41 Section 1. This Act shall be called the "Delaware Predatory Mortgage Lending Prevention Act".

42 Section 2. Amend Chapter 22, Title 5 of the Delaware Code, by adding a new Subchapter V to read as follows:

43 "Subchapter V. Predatory Mortgage Lending Prevention Act

44 § 2244. Definitions.

45 As used in this Subchapter, unless the context requires a different meaning:

46 (1) "Annual percentage rate" means the annual percentage rate for a loan, calculated according to the  
47 provisions of the Federal Truth In Lending Act (15 U.S.C. §§ 1601, *et seq.*), and the regulations promulgated  
48 thereunder by the Board of Governors of the Federal Reserve System, as said Act and regulations are amended  
49 from time to time.

50 (2) "Borrower" means any individual obligated to repay a loan, including a co-borrower, co-signer or  
51 guarantor.

52 (3) "Flipping" means knowingly refinancing an existing home loan when any of the following occurs:

53 a. More than 50 percent of the prior debt refinanced bears a lower interest rate than the new  
54 loan;

55 b. It will take more than five years of reduced interest rate payments for the borrower to recoup  
56 the transaction's pre-paid finance charges and closing costs; or

57 c. Refinancing a special mortgage originated, subsidized or guaranteed by or through a state,  
58 tribal or local government, or non-profit organization, which either bears a below-market interest rate, or  
59 has non-standard payment terms beneficial to the borrower, such as payments that vary with income or  
60 are limited to a percentage of income, or where no payments are required under specified conditions, and  
61 where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special  
62 mortgage.

63 (4) "High-cost home loan" means a home loan where:

64 a. The total points and fees on the loan exceed five percent of the total loan amount; or

65 b. The annual percentage rate of interest of the home loan equals or exceeds six percentage  
66 points over the yield on U.S. Treasury securities that have comparable periods of maturity to the loan  
67 maturity, as of the 15th day of the month immediately preceding the month in which the application for  
68 credit is received by the lender.

69 (5) "Home loan" means a loan, other than a reverse mortgage transaction, where the principal amount of  
70 the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to  
71 time by the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, and the loan is  
72 secured by a mortgage or deed of trust on real estate upon which there is located or is to be located a structure or  
73 structures, designed principally for occupancy of from one to four families, which is or will be occupied by a  
74 borrower as the borrower's principal dwelling. Home loan does not include an open-end line of credit as defined  
75 in Part 226 of Title 12 of the Code of Federal Regulations.

76 (6) "Lender" means any entity that originated, or acted as a mortgage broker for, more than five home  
77 loans within the previous 12 months.

78 (7) "Points and fees" means:

79 a. All items required to be disclosed as finance charges pursuant to §§ 226.4(a) and 226.4(b) of  
80 Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from  
81 time to time, except interest.

82 b. All compensation and fees paid to mortgage brokers in connection with the loan transaction,  
83 including yield-spread premiums.

84 c. All items listed in § 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the  
85 person originating the covered loan receives direct compensation in connection with the charge.

86 (8) "Total loan amount" shall have the same meaning as such term is used in § 226.32 of Title  
87 12 of the Code of Federal Regulations.

88 § 2245. Information, reporting, and examination.

89 (a) A lender shall keep and use books, accounts, and records that will enable the Commissioner to  
90 determine if the lender is complying with the provisions of this Act and maintain any other records as required by  
91 the Commissioner.

92 (b) A lender shall collect and maintain information annually for a report that shall disclose in detail and  
93 under appropriate headings:

94 (1) the total number of subprime mortgage loans made during the preceding calendar year;

95 (2) the total number of subprime mortgage loans outstanding as of December 31 of the  
96 preceding calendar year;

97 (3) the minimum, maximum, and average dollar amount of subprime mortgage loans made  
98 during the preceding calendar year;

99 (4) the average annual percentage rate and the average term of subprime mortgage loans made  
100 during the preceding calendar year;

101 (5) the total number of subprime mortgage loans paid in full, the total number of subprime  
102 mortgage loans that went into default, and the total number of subprime mortgage loans written off during  
103 the preceding calendar year; and

104 (6) the total number of lawsuits filed by the lender or its agent against consumers to collect on  
105 subprime mortgage loans from consumers during the preceding calendar year. The report shall be verified  
106 by the oath or affirmation of the owner, manager, or president of the lender. The report must be filed with  
107 the Commissioner no later than March 31 of the year following the year for which the report discloses the  
108 information specified in this subsection (b). The Commissioner may impose upon the lender a fine of \$25  
109 per day for each day beyond the filing deadline that the report is not filed.

110 (c) No later than July 31 of the second year following the effective date of this Act, the Commissioner  
111 shall publish an annual report that contains a compilation of aggregate data concerning the subprime mortgage

112 lending industry in the State of Delaware and shall make the report available to the Governor, the General  
113 Assembly, and the general public.

114 (d) The Commissioner shall have the authority to conduct examinations of the books, records, and loan  
115 documents at any time. The Commissioner's authority to supervise and examine a lender as set forth in this  
116 Subchapter shall be in addition to any other or further supervisory or examination authority of the Commissioner  
117 established in any other section of Chapter 22, Title 5. This section shall control if there is a conflict between this  
118 section and any other section of Chapter 22.

119 § 2246. Advertising.

120 (a) Advertising for loans transacted under this Act may not be false, misleading, or deceptive. Subprime  
121 mortgage loan advertising, if it states a rate or amount of charge for a loan, must state the rate as an annual  
122 percentage rate. No lender may advertise in any manner so as to indicate or imply that its rates or charges for loans  
123 are in any way recommended, approved, set, or established by the State government or by this Act.

124 (b) If any advertisement to which this section applies states the amount of any installment payment, the  
125 dollar amount of any finance charge, or the number of installments or the period of repayment, then the  
126 advertisement shall state all of the following items:

127 (1) The dollar amount of the loan.

128 (2) The number, dollar amount, and due dates or period of payments scheduled to repay the  
129 indebtedness if the credit is extended.

130 (3) The finance charge expressed as an annual percentage rate.

131 § 2247. Licensure and Licensure requirement

132 (a) Except as provided in subsection (b) on and after the effective date of this Act, a person or entity  
133 acting as a subprime mortgage lender must be licensed by the Commissioner as provided herein.

134 (b) A person or entity acting as a subprime mortgage lender who is licensed on the effective date of this  
135 Act under the applicable laws of the State of Delaware and in compliance with all other licensure requirements  
136 under Chapter 22, Title 5 need not comply with subsection (a) until the Commissioner takes action on the person's  
137 or entity's application for a subprime mortgage loan license. The application must be submitted to the  
138 Commissioner within 9 months after the effective date of this Act. If the application is not submitted within 9  
139 months after the effective date of this Act, the person or entity acting as a subprime mortgage lender is subject to  
140 subsection (a).

141 (c) A person or entity acting as a subprime mortgage lender shall be subject to the licensure requirements  
142 set forth in this Subchapter as well as any additional licensure requirements under any other section of Chapter 22,  
143 Title 5. This section shall control if there is a conflict between this section and any other section of Chapter 22.

144 § 2248. Licensure.

145 (a) A license to make a subprime mortgage loan shall state the address, including city and state, at which  
146 the business is to be conducted and shall state fully the name of the lender. The license shall be conspicuously  
147 posted in the place of business of the lender and shall not be transferable or assignable.

148 (b) An application for a license shall be in writing and in a form prescribed by the Commissioner. The  
149 Commissioner may not issue a subprime mortgage loan license unless and until the following findings are made:

150 (1) that the financial responsibility, experience, character, and general fitness of the applicant  
151 are such as to command the confidence of the public and to warrant the belief that the business will be  
152 operated lawfully and fairly and within the provisions and purposes of this Act; and

153 (2) that the applicant has submitted such other information as the Commissioner may deem  
154 necessary.

155 (c) A license shall be issued for no longer than one year, and no renewal of a license may be provided if a  
156 lender has substantially violated this Act and has not cured the violation to the satisfaction of the Commissioner.

157 (d) A lender shall appoint, in writing, the Secretary of the State of Delaware as attorney-in-fact upon  
158 whom all lawful process against the lender may be served with the same legal force and validity as if served on the  
159 lender. A copy of the written appointment, duly certified, shall be filed in the office of the Secretary, and a copy  
160 thereof certified by the Secretary shall be sufficient evidence to subject a lender to jurisdiction in a court of law in  
161 the State of Delaware. This appointment shall remain in effect while any liability remains outstanding in this State  
162 against the lender. When summons is served upon the Secretary as attorney-in-fact for a lender, the Secretary shall  
163 immediately notify the lender by registered mail, enclosing the summons and specifying the hour and day of  
164 service.

165 (e) A lender must pay an annual fee of \$1,000. In addition to the license fee, the reasonable expense of  
166 any examination or hearing by the Commissioner under any provisions of this Act shall be borne by the lender. If a  
167 lender fails to renew its license by December 31, its license shall automatically expire; however, the  
168 Commissioner, in his or her discretion, may reinstate an expired license upon:

169 (1) payment of the annual fee within 30 days of the date of expiration; and

170 (2) proof of good cause for failure to renew.

171 (f) Not more than one place of business shall be maintained under the same license, but the  
172 Commissioner may issue more than one license to the same lender upon compliance with all the provisions of this  
173 Act governing issuance of a single license. The location may not be within one mile of a horse race track or a  
174 facility at which gambling is conducted subject to the laws of this State, or within one mile of any State of  
175 Delaware or United States military base or naval installation.

176 (g) No lender shall conduct the business of making loans under this Act within any office, suite, room, or  
177 place of business in which any other business is solicited or engaged in unless the other business is licensed by the  
178 Commissioner or, in the opinion of the Commissioner, the other business would not be contrary to the best  
179 interests of consumers and is authorized by the Commissioner in writing.

180 (h) The Commissioner shall maintain a list of lenders that shall be available to interested consumers and  
181 the public. The Commissioner shall maintain a toll-free number whereby consumers may obtain information about  
182 lenders. The Commissioner shall also establish a complaint process under which an aggrieved consumer may file a  
183 complaint against a lender or non-lender who violates any provision of this Act.

184 (i) The licensure requirements set forth in this Subchapter shall be in addition to any other licensure  
185 requirements under any other section of Chapter 22, Title 5. This section shall control if there is a conflict  
186 between this section and any other section of Chapter 22.

187 § 2249. Closing of business; surrender of license.

188 At least 10 days before a lender ceases operations, closes the business, or files for bankruptcy, the lender  
189 shall:

190 (1) Notify the Commissioner of its intended action in writing.

191 (2) With the exception of filing for bankruptcy, surrender its license to the Commissioner for  
192 cancellation. The surrender of the license shall not affect the lender's civil or criminal liability for acts  
193 committed before or after the surrender or entitle the lender to a return of any part of the annual license  
194 fee.

195 (3) Notify the Commissioner of the location where the books, accounts, contracts, and records  
196 will be maintained. The accounts, books, records, and contracts shall be maintained and serviced by the  
197 lender, by another lender under this Act, or by the Commissioner.

198 (4) The requirements set forth in this section shall be in addition to any other relevant  
199 requirements under any other section of Chapter 22, Title 5. This section shall control if there is a  
200 conflict between this section and any other section of Chapter 22.

201 § 2250. Prohibited Practices for All Home Loans.

202 (a) Deceptive and unfair business practices. No lender shall:

203 (1) Recommend or encourage non-payment of an existing loan or other debt prior to, and in  
204 connection with, the closing or planned closing of a home loan that refinances all or any portion of such  
205 existing loan or debt.

206 (2) Coerce, intimidate or directly or indirectly compensate an appraiser for the purpose of  
207 influencing his or her independent judgment concerning the value of real estate that is to be covered by a  
208 home loan or is being offered as security according to an application for a home loan.

209 (3) Leave blanks in any loan documents to be filled in after they are signed by the borrower.

210 (b) Financing credit insurance. No lender shall require or allow the advance collection of a premium, on  
211 a single premium basis, for any credit life, credit disability, credit unemployment, or credit property insurance, or  
212 the advance collection of a fee for any debt cancellation or suspension agreement or contract, in connection with  
213 any home loan, whether such premium or fee is paid directly by the consumer or is financed by the consumer  
214 through such loan. For purposes of this section, credit insurance does not include a contract issued by a  
215 government agency or private mortgage insurance company to insure the lender against loss caused by a  
216 mortgagor's default.

217 § 2251. Prohibited Practices for High-Cost Home Loans.

218 (a) Balloon payments. No high-cost home loan may contain a scheduled payment that is more than twice  
219 as large as the average of earlier scheduled payments during the first seven years of the loan. This provision does  
220 not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower, or a bridge  
221 loan with a maturity of less than 12 months that requires only payments of interest until the entire unpaid balance  
222 is due.

223 (b) Pre-payment penalties. No high-cost home loan shall contain a pre-payment penalty of more than 3  
224 percent of the original principal amount of the note in the first year, 2 percent in the second year, 1 percent in the  
225 third year, or any pre-payment penalty beyond the third year.

226 (c) Negative amortization. No high-cost home loan may include payment terms under which the  
227 outstanding principal balance will increase at any time over the course of the loan because the regular periodic  
228 payments do not cover the full amount of interest due. This provision does not apply to a payment schedule that is  
229 adjusted to the seasonal or irregular income of the borrower.



230 (d) Increased interest rate. No high-cost home loan may contain a provision that increases the interest  
231 rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent  
232 with the provisions of the loan documents, provided the change in the interest rate is not triggered by a default or  
233 the acceleration of indebtedness.

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

237 (f) Call provisions. No high-cost home loan may contain a provision that permits the lender, in its sole  
238 discretion, to accelerate indebtedness. This provision does not prohibit acceleration of the loan in good faith due to  
239 the borrower's failure to abide by the material terms of the loan.

240 (g) Home improvement contracts. A lender may not pay a contractor under a home improvement  
241 contract from the proceeds of a high-cost home loan unless the instrument is payable to the borrower or jointly to  
242 the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in  
243 accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor  
244 prior to disbursement.

245 (h) Flipping. A lender may not offer a high-cost home loan while engaged in the practice of flipping.

246 (i) Modification or deferral fees. A lender may not charge a borrower any fees or other charges to  
247 modify, renew, extend or amend a high-cost home loan, or to defer any payment due under the terms of a high-cost  
248 home loan, except when the borrower is in default of the loan.

249 (j) Home ownership counseling. A lender may not originate a high-cost home loan without first  
250 receiving certification from a counselor approved by the U.S. Department of Housing and Urban Development, a  
251 State housing financing agency, or the regulatory agency that has jurisdiction over the lender, that the borrower  
252 has received counseling on the advisability of the loan transaction.

253 § 2252. Lending practices concerning members of the military.

254 (a) A lender may not garnish the wages or salaries of a consumer who is a member of the military.

255 (b) In addition to any rights and obligations provided under the federal Servicemembers Civil Relief Act, a lender shall  
256 suspend and defer collection activity against a consumer who is a member of the military and who has been  
257 deployed to a combat or combat support posting for the duration of the deployment.

258 (c) A lender may not knowingly contact the military chain of command of a consumer who is a member of the military in  
259 an effort to collect on a subprime mortgage loan.

260 (d) Lenders must honor the terms of any repayment plan that they have entered into with any consumer, including a  
261 repayment agreement negotiated through military counselors or third-party credit counselors.

262 § 2253. Rulemaking; industry review.

263 (a) The Commissioner may make and enforce such reasonable rules, regulations, directions, orders,  
264 decisions, and findings as the execution and enforcement of the provisions of this Act require, and as are not  
265 inconsistent therewith. The Commissioner may develop rules to determine if any person or entity seeks to evade  
266 the applicability of this Act by any device, subterfuge, or pretense. All rules, regulations, and directions of a  
267 general character shall be printed and copies thereof mailed to all lenders.

268 (b) After the effective date of this Act, the Commissioner shall, over a 3-year period, conduct a study of  
269 the subprime mortgage loan industry to determine the impact and effectiveness of this Act. The Commissioner  
270 shall report its findings to the General Assembly within 3 months of the third anniversary of the effective date of  
271 this Act. The study shall determine the effect of this Act on the protection of consumers in this State and on the  
272 fair and reasonable regulation of the subprime mortgage loan industry. The study shall include, but shall not be  
273 limited to, analysis of the ability of the industry to use private reporting tools that:

274 (1) ensure substantial compliance with this Act, including real time reporting of outstanding  
275 subprime mortgage loans; and

276 (2) provide data to the Commissioner in an appropriate form and with appropriate content to  
277 allow the Commissioner to adequately monitor the industry.

278 (c) The report of the Commissioner shall, if necessary, identify and recommend specific amendments to  
279 this Act to further protect consumers and to guarantee fair and reasonable regulation of the subprime mortgage  
280 loan industry.

281 § 2254. Enforcement and remedies.

282 (a) The remedies provided in this Act are cumulative and apply to persons or entities subject to this Act.

283 (b) The commission of an act prohibited under §§ 2250, 2251 or 2252 constitutes a material violation of  
284 this Act.

285 (c) Subject to any relevant section of Delaware's Administrative Code or any other relevant law, the  
286 Commissioner may hold hearings, make findings of fact, conclusions of law, issue cease and desist orders, have  
287 the power to issue fines of up to \$10,000 per violation, refer the matter to the appropriate law enforcement agency  
288 for prosecution under this Act, and suspend or revoke a license granted under this Act. All proceedings shall be  
289 open to the public.

290 (d) The Commissioner may issue a cease and desist order to any lender or other person doing business  
291 without the required license, when in the opinion of the Commissioner the lender or other person is violating or is  
292 about to violate any provision of this Act or any rule or requirement imposed in writing by the Commissioner as a  
293 condition of granting any authorization permitted by this Act. The cease and desist order permitted by this  
294 subsection (e) may be issued prior to a hearing.

295 (e) The Commissioner shall serve notice of his or her action, including, but not limited to, a statement of  
296 the reasons for the action, either personally or by certified mail, return receipt requested. Service by certified mail  
297 shall be deemed completed when the notice is deposited in the U.S. Mail.

298 (f) Within 10 days of service of the cease and desist order, the lender or other person may request a  
299 hearing in writing. The Commissioner shall schedule a hearing within 30 days after the request for a hearing unless  
300 otherwise agreed to by the parties.

301 (g) If it is determined that the Commissioner had the authority to issue the cease and desist order, the  
302 Commissioner may issue such orders as may be reasonably necessary to correct, eliminate, or remedy the conduct.

303 (h) The powers vested in the Commissioner by this subsection (e) are additional to any and all other  
304 powers and remedies vested in the Commissioner by law, and nothing in this subsection (e) shall be construed as  
305 requiring that the Commissioner shall employ the power conferred in this subsection instead of or as a condition  
306 precedent to the exercise of any other power or remedy vested in the Commissioner.

307 (i) The Commissioner may, after 10 days notice by registered mail to the lender at the address set forth in  
308 the license stating the contemplated action and in general the grounds therefore, fine the lender an amount not  
309 exceeding \$10,000 per violation, or revoke or suspend any license issued hereunder if he or she finds that:

310 (1) the lender has failed to comply with any provision of this Act or any order, decision, finding,  
311 rule, regulation, or direction of the Commissioner lawfully made pursuant to the authority of this Act; or

312 (2) any fact or condition exists which, if it had existed at the time of the original application for  
313 the license, clearly would have warranted the Commissioner in refusing to issue the license.

314 (j) The Commissioner may fine, suspend, or revoke only the particular license with respect to which  
315 grounds for the fine, revocation, or suspension occur or exist, but if the Commissioner finds that grounds for  
316 revocation are of general application to all offices or to more than one office of the lender, the Commissioner shall  
317 fine, suspend, or revoke every license to which the grounds apply.

318 (k) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any  
319 pre-existing lawful contract between the lender and any obligor.

320 (l) The Commissioner may issue a new license to a lender whose license has been revoked when facts or  
321 conditions which clearly would have warranted the Commissioner in refusing originally to issue the license no  
322 longer exist.

323 (m) In every case in which a license is suspended or revoked or an application for a license or renewal of  
324 a license is denied, the Commissioner shall serve the lender with notice of his or her action, including a statement  
325 of the reasons for his or her actions, either personally, or by certified mail, return receipt requested. Service by  
326 certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

327 (n) An order assessing a fine, an order revoking or suspending a license, or an order denying renewal of a  
328 license shall take effect upon service of the order unless the lender requests a hearing, in writing, within 10 days  
329 after the date of service. In the event a hearing is requested, the order shall be stayed until a final administrative  
330 order is entered.

331 (o) If the lender requests a hearing, the Commissioner shall schedule a hearing within 30 days after the  
332 request for a hearing unless otherwise agreed to by the parties.

333 (p) The hearing shall be held at the time and place designated by the Commissioner. The Commissioner  
334 and any administrative law judge designated the Commissioner have the power to administer oaths and  
335 affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books,  
336 papers, correspondence, and other records or information that he or she considers relevant or material to the  
337 inquiry.

338 (q) The costs of administrative hearings conducted pursuant to this Subchapter shall be paid by the lender.

339 (r) The requirements set forth in this section shall be in addition to any other relevant requirements under  
340 any other section of Chapter 22, Title 5. This section shall control if there is a conflict between this section and  
341 any other section of Chapter 22.

342 § 2255. Bonding.

343 (a) A person or entity engaged in making subprime mortgage loans under this Act shall post a bond to  
344 the Commissioner in the amount of \$50,000 for each location where loans will be made, up to a maximum bond  
345 amount of \$300,000.

346 (b) A bond posted under subsection (a) must continue in effect for the period of licensure and for 3  
347 additional years if the bond is still available. The bond must be available to pay damages and penalties to a  
348 consumer harmed by a violation of this Act.

349 (c) From time to time the Commissioner may require a lender to file a bond in an additional sum if the  
350 Commissioner determines it to be necessary. In no case shall the bond be more than the outstanding liabilities of  
351 the lender.

352 (d) The bonding requirements set forth in this section shall be in addition to any other relevant  
353 requirements under any other section of Chapter 22, Title 5. This section shall control if there is a conflict  
354 between this section and any other section of Chapter 22.

355 § 2256. Preemption of administrative rules.

356 Any administrative rule promulgated prior to the effective date of this Act by the Commissioner  
357 regarding subprime mortgage loans is preempted.

358 § 2257. Judicial review.

359 All final administrative decisions of the Commissioner under this Act are subject to judicial review  
360 pursuant to the provisions of the Delaware Administrative Code or any other relevant law and any rules adopted  
361 pursuant thereto.

362 § 2258. Other enforcement.

363 (a) Any violation of the provisions of this Subchapter shall constitute a prohibited practice and shall be  
364 subject to any and all of the enforcement provisions under Chapter 22, Title 5.

365 (b) Civil remedies; private cause of action. A private cause of action shall be available to any victim of a  
366 violation of this Subchapter. Notwithstanding any agreement between the lender and the borrower to the contrary,  
367 such private cause of action may be brought in any court of competent jurisdiction in the State of Delaware only  
368 without prior action by the Attorney General as provided for in this Subchapter. Any borrower prevailing in such  
369 action may be awarded reasonable attorney's fees.

370 (c) Administrative remedies. This Act shall be enforced by the State Bank Commissioner, who shall  
371 promulgate such rules and regulations as are necessary to implement and administer compliance with the Act.

372 § 2259. Reporting of violations.

373 The Commissioner shall report to the Attorney General all material violations of this Act of which it  
374 becomes aware.

375 § 2260. Authority of Attorney General; referral by Commissioner to Attorney General.

376 (a) If the Commissioner determines that a person is in violation, or has violated, any provision of this  
377 Subchapter, the Commissioner may refer the information to the Attorney General and may also request that the  
378 Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby

379 authorized to seek to enjoin violations of this Subchapter. The court having jurisdiction may enjoin such violations  
380 notwithstanding the existence of an adequate remedy at law.

381 (b) Upon such referral of the Commissioner, the Attorney General may also seek, and the court may order  
382 or decree, damages and such other relief allowed by law, including restitution to the extent available to a borrower  
383 under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the  
384 court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

385 (c) In any action brought by the Attorney General by virtue of the authority granted in this provision, the  
386 Attorney General shall be entitled to seek reasonable attorney's fees and costs.

387 § 2261. No waivers.

388 There shall be no waiver of any provision of this Act.

389 § 2262. Superiority of Act.

390 To the extent this Act conflicts with any other State financial regulation laws, this Act is superior and  
391 supersedes those laws for the purposes of regulating subprime mortgage loans in the State of Delaware. This  
392 Subchapter shall preempt and be exclusive of all local acts, statutes, ordinances, and regulations relating to  
393 subprime mortgage loans.”

394 Section 3. Severability.

395 The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared  
396 to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be  
397 affected thereby.

#### SYNOPSIS

This bill creates the Delaware Predatory Mortgage Lending Prevention Act which prohibits unfair lending practices in relation to residential home loans, and provides civil and administrative enforcement procedures. This bill would protect the equity and property interests of Delaware's home owners, provide needed consumer protections, and safeguard the economic vitality of our State.