

17:11A-36

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(Secondary mortgages--permit licenses to use name of parent company in ads)

LAWS OF: 1989

CHAPTER: 312

Bill No: S3602

Sponsor(s): Lesniak

Date Introduced: June 15, 1989

Committee: Assembly: -----

Senate: Labor, Industry & Professions

Amended during passage: Yes      Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 4, 1990

Senate: November 20, 1989

Date of Approval: January 12, 1990

Following statements are attached if available:

Sponsor statement: Yes      (Below)

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

(over)

**Sponsor's statement:**

This bill permits secondary mortgage licenses which are subsidiaries of a bank, savings bank or bank holding company to use the name of the parent in advertising.

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[FIRST REPRINT]  
SENATE, No. 3602

STATE OF NEW JERSEY

INTRODUCED JUNE 15, 1989

By Senator LESNIAK

1 AN ACT <sup>1</sup>[permitting certain] concerning<sup>1</sup> secondary mortgage  
licensees <sup>1</sup>[to use the name of a bank, savings bank or bank  
3 holding company]<sup>1</sup> and amending P.L. 1970, c. 205.

5 BE IT ENACTED *by the Senate and General Assembly of the  
State of New Jersey:*

7 <sup>1</sup>1. Section 3 of P.L.1970, c.205 (C.17:11A-36) is amended to  
read as follows:

9 3. a. No person shall engage in the secondary mortgage loan  
business in this State unless such person shall first obtain a  
11 license under this act. For the purpose of this act, a person is  
deemed to be engaged in the secondary mortgage loan business in  
13 this State if: (a) such person advertises, causes to be advertised,  
solicits, negotiates, offers to make or makes a secondary  
15 mortgage loan in this State, whether directly or by any person  
acting for his benefit; or (b) such person becomes the subsequent  
17 holder of a promissory note or mortgage, indenture or any other  
similar instrument or document received in connection with a  
19 secondary mortgage loan. A real estate broker licensed pursuant  
to the provisions of the law of this State or an attorney  
21 authorized to practice law in this State shall not be required to  
obtain a license to negotiate a secondary mortgage loan in the  
23 normal course of the business of a real estate broker or attorney.

b. No corporation, partnership, association or other entity,  
25 other than an individual, shall obtain a license unless at least one  
officer, partner, member or other principal is licensed under the  
27 "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et  
seq.).

29 c. Any person who makes two or fewer secondary mortgage  
loans in this State during any calendar year which are at an  
31 interest rate which is not in excess of the usury rate in existence  
at the time the loan is made, as established in accordance with  
33 the law of this State, and on which the borrower has not agreed

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Senate SLI committee amendments adopted June 19, 1989.

1 to pay, directly or indirectly, any charge, cost, expense or any  
2 fee whatsoever, other than said interest, shall not be required to  
3 obtain a license under the provisions of P.L.1970, c.205  
4 (C.17:11A-34 et seq.).<sup>1</sup>

5 (cf: P.L.1987, c.230, s.2)

6 <sup>1</sup>[1.] 2.<sup>1</sup> Section 13 of P.L.1970, c.205 (C.17:11A-46) is  
7 amended to read as follows:

8 13. A secondary mortgage loan licensee shall not:

9 a. Transact any business subject to the provisions of this act  
10 under any other name or at any other location except that  
11 designated in his license. For the purpose of this section, the  
12 transaction of business includes, but is not limited to, the signing  
13 of any instrument, document or any other form by the borrower,  
14 except that a borrower's application for a secondary mortgage  
15 loan need not be signed in the office of the licensee. A licensee  
16 who changes his name or place of business shall immediately  
17 notify the commissioner who shall issue a certificate to the  
18 licensee, which shall specify the licensee's new name or address.

19 b. Photocopy or otherwise reproduce his license.

20 c. Request that a borrower incorporate in connection with a  
21 secondary mortgage loan or aid or abet such a scheme.

22 d. Make a secondary mortgage loan which has been referred by  
23 a retail seller, who, in connection with such referral, has required  
24 the borrower to purchase personal property or services or has  
25 indicated that such purchase is necessary as a condition  
26 precedent for such loan.

27 e. Charge an application fee or make any other charge or  
28 accept an advance deposit prior to the time a secondary  
29 mortgage loan is closed.

30 f. Require or accept from a borrower any collateral or  
31 security for a secondary mortgage loan other than a mortgage,  
32 indenture or any other similar instrument or document which  
33 creates a lien upon any real property or an interest in real  
34 property including, but not limited to, shares of stock in a  
35 cooperative corporation.

36 g. Contract for, charge, receive or collect directly or  
37 indirectly, any of the following in connection with a secondary  
38 mortgage loan: a broker's or finder's fee; commission; discount;  
39 expense; fine; penalty; points; premium, or any other thing of

1 value other than the charges authorized by this act; except the  
2 expenses incurred on actual sale of the real property in  
3 foreclosure proceedings or upon the entry of judgment, which are  
4 otherwise authorized by law; provided, however, a licensee may  
5 require a borrower to pay a reasonable legal fee at the time of  
6 the execution of the secondary mortgage loan, provided any such  
7 legal fee shall represent a charge actually incurred in connection  
8 with said secondary mortgage loan and shall not be paid to a  
9 person except an attorney authorized to practice law in this  
10 State; provided, further, that such legal fee shall be evidenced by  
11 a statement from such attorney issued to the licensee.

12 h. Assign, sell or transfer a secondary mortgage loan to a  
13 person other than a banking institution as defined in section 1 of  
14 P.L.1948, c.67 (C.17:9A-1), association, as defined in section 5 of  
15 P.L.1963, c.144 (C.17:12B-5), or another secondary mortgage loan  
16 licensee, the Federal National Mortgage Association created  
17 pursuant to section 302 of the National Housing Act, 48 Stat.  
18 1246 ([17 U.S.C. §1717] 12 U.S.C. §1717), the Federal Home Loan  
19 Mortgage Corporation created pursuant to section 303 of the  
20 "Federal Home Loan Mortgage Corporation Act," Pub.L. 91-351  
21 ([17 U.S.C. §1452] 12 U.S.C. §1452), or other persons or entities  
22 as from time to time approved by the commissioner to facilitate  
23 and assure the steady flow of secondary mortgage funds into the  
24 State. Notwithstanding any other provisions of this act, such  
25 persons or entities need not be licensed under the act to purchase  
26 or accept such an assignment or transfer of a secondary mortgage  
27 loan.

28 i. Solicit business through any other person by paying, directly  
29 or indirectly, for such business referred to the licensee by any  
30 such person, except as described in subsection j. of this section.

31 j. Solicit business, directly or indirectly, for any other  
32 licensee, lender, retail seller of personal property or services or  
33 for any other person, whether in this or any other state, except  
34 that a licensee may solicit on behalf of another licensee or lender  
35 expressly authorized to make secondary mortgage loans in this  
36 State if (1) such solicitation results in no additional cost or  
37 expense to the borrower; and (2) the application and all  
38 advertising in connection therewith clearly disclose the identity  
39 of the person or entity which will be making the loan. If those

1 conditions are met, a licensee may collect a fee or a commission  
from the lender as consideration for the solicitation.

3 k. Advertise, cause to be advertised or otherwise solicit  
whether orally, in writing, by telecast, by broadcast or in any  
5 other manner:

(1) That he is licensed by, or that his business is under the  
7 supervision of, the State of New Jersey or the Department of  
Banking, except that a licensee may advertise that he is "licensed  
9 pursuant to the 'Secondary Mortgage Loan Act'"; provided,  
however, that for the purpose of raising capital, no such  
11 advertisement shall be permitted if it is to be used in connection  
with a public solicitation for such funds.

13 (2) Any name, address or telephone number other than the  
licensee's own name, address and telephone number in this State,  
15 except as permitted in paragraph (3) of this subsection.

(3) The word "bank" or any term inferring that the licensee is  
17 or is associated with a bank provided, however, that nothing in  
this paragraph shall be deemed to prohibit a licensee which is  
19 owned by or affiliated with a banking institution, as defined  
pursuant to section 1 of P.L.1948, c.67 (C.17:9A-1), or a holding  
21 company which owns or controls a banking institution from using  
the name of the banking institution or the holding company in its  
23 advertising.

(4) The amount of the interest to be charged, unless such  
25 charge is also expressed as an annual percentage rate.

(5) Any statement or representation which is false, misleading  
27 or deceptive and, provided further, a written or other visual  
advertisement shall include the licensee's name, address and  
29 telephone number in this State and the phrase "Secondary  
Mortgage Loans" in 10-point bold type or larger.

(6) Any statement or representation that the licensee will  
31 provide "immediate approval" of a loan application or  
33 "immediate closing" of a loan or will afford unqualified access to  
credit.

35 l. Make or offer to make any secondary mortgage loan which  
would not be a prudent loan.

37 (cf: P.L.1987, c.230, s.10)

<sup>1</sup>[2.] 3.<sup>1</sup> This act shall take effect immediately.

1                    **BANKING AND FINANCIAL INSTITUTIONS**  
                         **Commerce and Industry**

3  
5                    **Permits certain secondary mortgage licensees to use name of a  
bank or bank holding company in their advertising and provides an  
exemption from licensure for certain secondary mortgage lenders.**

1   **"immediate closing" of a loan or will afford unqualified access to**  
2   **credit.**

3       **1. Make or offer to make any secondary mortgage loan which**  
4       **would not be a prudent loan.**

5   **(cf: P.L.1987, c.230, s.10)**

6       **2. This act shall take effect immediately.**

7

9

**STATEMENT**

11       **This bill permits secondary mortgage licensees which are**  
12       **subsidiaries of a bank, savings bank or bank holding company to**  
13       **use the name of the parent in their advertising.**

15

**BANKING AND FINANCIAL INSTITUTIONS**

17

**Commerce and Industry**

19       **Permits the use of the name of a bank or bank holding company in**  
20       **the advertising of a secondary mortgage licensee affiliated with**  
21       **the bank or company.**

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SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3602

with committee amendments

STATE OF NEW JERSEY

DATED: June 19, 1989

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate, No. 3602.

Currently, the "Secondary Mortgage Loan Act," P.L. 1970, c. 205 (C. 17:11A-34 et seq.), prohibits a secondary mortgage loan licensee from using in its advertisements or solicitations the word "bank" or any term inferring that the licensee is, or is associated with, a bank. This bill permits a secondary mortgage loan licensee which is owned by, or affiliated with, a bank, savings bank or bank holding company to use the name of the bank, savings bank or bank holding company in its advertising.

The committee amended the bill to provide that a person who makes less than three secondary mortgage loans in the State during any calendar year is not required to be licensed pursuant to the "Secondary Mortgage Loan Act" if the interest rate on those loans is not in excess of the State's usury law and the borrower is not required to pay any other costs or charges other than the interest on the loan.