

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:10-2 et al

("Consumer Loan Act"--small loan companies--increase amount they may lend)

LAWS OF: 1989

CHAPTER: 38

Bill No: A557

Sponsor(s): Genova

Date Introduced: Pre-filed

Committee: Assembly: Financial Institutions

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments denoted by asterisks.

Date of Passage: Assembly: June 20, 1988 Re-enacted 2-27-89

Senate: December 19, 1988 Re-enacted 3-2-89

Date of Approval: March 9, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

[SECOND REPRINT]

ASSEMBLY, No. 557

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman GENOVA

1 AN ACT concerning small loan companies and amending
R.S.17:10-1, R.S.17:10-2, R.S.17:10-3, R.S.17:10-5,
3 R.S.17:10-7, R.S.17:10-11, R.S.17:10-13, R.S.17:10-14,
R.S.17:10-15, R.S.17:10-16, R.S.17:10-17, R.S.17:10-19,
5 R.S.17:10-20 and P.L.1979, c. 493.

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

9 1. R.S.17:10-1 is amended to read as follows:

7:10-1. Short title. This chapter shall be known and may be
11 cited as the ["small loan law".] "Consumer Loan Act."
(cf: R.S.17:10-1)

13 2. R.S.17:10-2 is amended to read as follows:

17:10-2. Loan Business to be Licensed; Scope of Chapter. No
15 person, copartnership, association or corporation shall engage in
the business of making loans of money, credit, goods or things in
17 action in the amount of or the value of ~~[\$5,000.00]~~ \$15,000.00 or
less and charge, contract for, or receive a greater rate of
19 interest, discount, or consideration therefor than the lender
would be permitted by law to charge if he were not a licensee
21 hereunder, except as authorized by this chapter and without
first obtaining a license from the commissioner.

23 Any person, copartnership, association or corporation directly
or indirectly engaging in the business of soliciting or taking
25 applications for such loans of ~~[\$5,000.00]~~ \$15,000.00 or less, or
in the business of negotiating or arranging or aiding the
27 borrower or lender in procuring or making such loans of
~~[\$5,000.00]~~ \$15,000.00 or less, or in the business of buying,
29 discounting or indorsing notes or of furnishing, or procuring
guarantee or security for compensation in amounts of ~~[\$5,000.00]~~

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:

¹ Assembly AFI committee amendments adopted May 23, 1988.

² Assembly amendments adopted in accordance with Governor's
recommendations February 6, 1989.

1 \$15,000.00 or less shall be deemed to be engaging in the business
of making loans subject to the provisions of this chapter.

3 (cf: P.L.1979, c.493, s.1)

3. R.S.17:10-3 is amended to read as follows:

5 17:10-3. Application for the license shall be in writing, under
oath or affirmation, and in the form prescribed by the
7 commissioner. It shall state the name and address both of the
residence and place of business of the applicant, and if the
9 applicant is a copartnership or association, of every member
thereof, and if a corporation, of each officer and director
11 thereof. It shall also state the county and municipality with
street and number if any, where the business is to be conducted
13 and any other information the commissioner requires. The
applicant, at the time of making the application, shall pay to the
15 commissioner [the sum of \$150.00 as a], in an amount to be
prescribed by rule or regulation of the commissioner, an
17 application fee, not to exceed \$500.00 at the time of initial
application, an initial investigation fee, not to exceed \$1,000.00,
19 for investigating the application, a fee, not to exceed \$1,000.00,
for investigating additional locations of licensees, and [an
21 additional sum as shall be prescribed by rule or regulation of the
commissioner, not to exceed \$1,000.00, as] a biennial license
23 fee, not to exceed \$1,000.00. The license shall run from the
date of issuance to the end of the biennial period. When the
25 initial license is issued in the second year of the biennial
licensing period, the license fee shall be an amount equal to
27 one-half of the licensing fee for the biennial licensing period.

In addition to the biennial license fee every licensee
29 hereunder will pay to the commissioner the actual cost of each
examination of his business as provided for in R.S.17:10-11.

31 Every applicant shall, in writing, and in due form to be
prescribed by the commissioner, file with the application a duly
33 executed instrument constituting the commissioner and his
successors in office the true and lawful agent and attorney of
35 the applicant in this State, upon whom all original process in any
action or legal proceeding, caused by the operation of a small
37 loan business under this chapter, against the applicant or
licensee may be served, except the notices prescribed in
39 R.S.17:10-7 and R.S.17:10-10. The applicant shall agree therein

1 that any original process or legal proceeding, except as above
2 stated, against the applicant or licensee shall be of the same
3 force and effect as if served on the applicant or licensee
4 personally. The commissioner shall keep a record of such
5 process, showing the date and hour of service.

6 Every applicant shall also prove in form satisfactory to the
7 commissioner, that [said] the applicant has a net worth of at
8 least [\$25,000.00] \$100,000.00, and has available for the purpose
9 of making loans under this chapter, at the location specified in
10 the application, liquid assets of at least [\$25,000.00]
11 \$100,000.00, except that an applicant who holds a license
12 pursuant to this chapter on the effective date of this 1987
13 amendatory act, shall not be required to prove and maintain at
14 all times a net worth of at least \$100,000.00 and have available
15 liquid assets of at least \$100,000.00 for the purpose of making
16 loans under this chapter at the location specified in the
17 application until five years after the effective date of this 1987
18 amendatory act.

19 (cf: P.L.1981, c.321, s.7)

20 4. R.S.17:10-5 is amended to read as follows:

21 17:10-5. (a) Investigation of application: Upon the filing of
22 such application and the payment of such fees, the commissioner
23 shall investigate the facts concerning the application and the
24 requirements provided for in subsection (b) of this section.
25 Within 20 days after the filing of such application, he shall mail
26 a notice of the receipt of the application to each licensee having
27 a place of business in the county where the applicant proposes to
28 do business. Every applicant shall within 10 days from the filing
29 of the application cause to be published a notice of the
30 application in a newspaper, designated by the commissioner,
31 which has general circulation in the county in which the
32 applicant proposes to do business and in the form prescribed by
33 the commissioner. If objections to the issuance of the license
34 are filed with the commissioner within 10 days after notice of
35 the application has been mailed by the commissioner, he [shall]
36 may designate a time and place for a hearing, which time shall
37 not be less than [7] 30 days nor more than [60] 90 days after the
38 10 days' limitation for filing objections has expired.

39 (b) Issuance of license. If the commissioner, upon the filing of

1 the application and payment of the fees, [and after the hearing
in the event objections are filed,] finds [(a)] that the financial
3 responsibility, experience, character and general fitness of the
applicant and members thereof if the applicant is a
5 copartnership or association, and of the officers and directors
thereof if the applicant is a corporation, are such as to
7 command the confidence of the community and to warrant
belief that the business will be operated honestly, fairly and
9 efficiently within the purposes of this chapter[, (b) that allowing
the applicant to engage in business will promote the convenience
11 and advantage of the community in which the business of the
applicant is to be conducted] and [(c)] that the applicant has a
13 net worth of at least [\$25,000.00] \$100,000.00 and has available
for the purpose of making loans under this chapter at the
15 specified location liquid assets of at least [\$25,000.00]
\$100,000.00, except that an applicant who holds a license
17 pursuant to this chapter on the effective date of this 1988
amendatory act shall not be required to have a net worth of at
19 least \$100,000.00 and have available liquid assets of at least
\$100,000.00 for the purpose of making loans under this chapter
21 at the location specified in the application until five years after
the effective date of this 1988 amendatory act, then he shall
23 thereupon issue and deliver a license to the applicant to make
loans in accordance with this chapter at the location specified in
25 the application. The license shall remain in full force and effect
until it is surrendered by the licensee or revoked or suspended as
27 hereinafter provided.

If the commissioner shall not so find he shall not issue the
29 license and he shall notify the applicant of the denial and return
to the applicant the appointment for service of process and the
31 sum paid by the applicant as a license fee, retaining the
¹[\$150.00]¹ investigation ¹[fee] and application fees¹ to cover
33 the costs of investigating ¹and processing¹ the application. The
commissioner shall approve or deny every application for license
35 hereunder within [120] 180 days from the hearing, if any, but if
there shall be no hearing then within [60] 90 days after the 10
37 days' limitation for filing objections has expired.

(cf: P.L.1967, c.94,s.3)

39 5. R.S.17:10-7 is amended to read as follows:

1 17:10-7. Every licensee shall have at all times a net worth of
at least [~~\$25,000.00~~] \$100,000.00 and shall maintain at all times
3 assets of at least [~~\$25,000.00~~] \$100,000.00 either in liquid form
available for or actually used in the making of loans under this
5 chapter at the location specified in the license, except that a
licensee who holds a license pursuant to this chapter on the
7 effective date of this 1988 amendatory act shall not be required
to have at all times a net worth of at least \$100,000.00 and
9 maintain at all times assets of at least \$100,000.00 either in
liquid form available for or actually used in the making of loans
11 under this chapter at the location specified in the license until
five years after the effective date of this 1988 amendatory act.
13 (cf: P.L.1967, c.94, s.5)

6. R.S.17:10-11 is amended to read as follows:

15 17:10-11. Investigation by commissioner; annual
examination. For the purpose of discovering violations of this
17 chapter or securing information lawfully required by him
hereunder, the commissioner may, at any time, either personally
19 or by a person or persons duly designated by him, investigate the
loans and business and examine the books, accounts, records, and
21 files used therein, of every licensee and of every person,
copartnership, association, and corporation who or which shall
23 be engaged in the business described in [section] R.S.17:10-2 [of
this title], whether such person, copartnership, association or
25 corporation acts or claims to act as principal or agent, or under
or without the authority of this chapter. For that purpose the
27 commissioner and his duly designated representatives shall have
free access to the offices and places of business, books,
29 accounts, papers, records, files, safes, and vaults of all such
persons, copartnerships, associations, and corporations. The
31 commissioner and all persons duly designated by him may
require the attendance of and examine under oath or affirmation
33 any person whose testimony he may require relative to such
loans or such business.

35 The commissioner shall make [such] an examination of the
affairs, business, office, and records of each licensee [at least
37 once each year] as often as he deems necessary. The actual cost
of every examination shall be paid to the commissioner by the
39 licensee so examined.

(cf: R.S.17:10-11)

1 7. R.S.17:10-13 is amended to read as follows:

3 17:10-13. Restrictions Upon Licensee; Contract Provisions
for Payments in Installments. No licensee shall advertise, print,
5 display, publish, distribute, telecast or broadcast, or permit to
be advertised, printed, displayed, published, distributed, telecast
7 or broadcast, any statement or representation which refers to
the supervision by the State of the business licensed hereunder.
9 No licensee or any other person shall knowingly in any such
manner make or permit to be made any statement or
11 representation with regard to the rates, terms, or conditions for
making loans in the sum of [~~\$5,000.00~~] \$15,000.00 or less, which
is false, misleading, or deceptive.

13 No licensee shall make any loan upon security of any
assignment of or order for the payment of any salary, wages,
15 commissions or other compensation for services earned, or to be
earned, nor shall any such assignment or order be taken by a
17 licensee at any time in connection with any loan, or for the
enforcement of repayment thereof, and any such assignment or
19 order hereafter so taken or given to secure any loan made by
any licensee under this chapter shall be void and of no effect.

21 No licensee shall take a lien upon real estate as security for
any loan under the provisions of this chapter, except such lien as
23 is created by law upon the recording of a judgement.

25 No licensee shall conduct the business of making loans under
the provisions of this chapter within any office, room, or place
of business in which any other business is solicited or engaged in,
27 or in association or conjunction therewith, except as may be
authorized in writing by the commissioner.

29 No licensee shall transact such business or make any loan
provided for by this chapter under any other name or at any
31 other place of business than that named in the license.

33 No licensee which is a corporation shall publicly sell or offer
for sale within this State any of its capital stock without the
written approval of the commissioner first obtained.

35 Every loan contract, other than an open-end loan contract,
shall provide for repayment of principal and interest combined
37 in installments which shall be payable at approximately equal
periodic intervals of time and which shall be so arranged that no
39 installment is substantially greater in amount than any

1 preceding installment, except that the repayment schedule may
2 reduce or omit such installments when necessary because of the
3 seasonal nature of the borrower's income.

(cf: P.L.1979, c.493, s.2)

5 8. R.S.17:10-14 is amended to read as follows:

6 17:10-14. Notwithstanding the provisions of R.S.31:1-1 or any
7 other law to the contrary, every licensee hereunder may loan
8 any sum of money not exceeding [~~\$5,000.00~~] \$15,000.00
9 repayable in installments, and may charge, contract for and
10 receive thereon interest at an annual percentage rate or rates
11 agreed to by the licensee and the borrower.

12 ¹[A loan contract other than an open-end loan contract may
13 provide for an increase, or may provide for a decrease, or both,
14 in the rate of interest applicable to the loan] A closed-end loan
15 contract may provide for a variation in the rate of interest in
16 which adjustments to the interest rate shall correspond directly
17 to the movement of an interest rate index which is readily
18 available to and verifiable by the borrower and is beyond the
19 control of the lender¹. No increase during the entire loan term
20 shall result in an interest rate of more than 6% per annum over
21 the rate applicable initially, nor shall the rate be raised more
22 than 3% per annum during any 12-month period. The lender
23 shall not be obligated to decrease the interest rate more than
24 6% over the term of the loan, nor more than 3% per annum
25 during any 12-month period. If a rate increase is applied to the
26 loan, the lender shall also be obligated to adopt and implement
27 uniform standards for decreasing the rate. If the contract
28 provides for the possibility of an increase or decrease, or both in
29 the rate, that fact shall be clearly described in plain language,
30 in at least 8-point bold face type on the face of the contract.
31 No rate increase shall take effect during the first three years of
32 the term of the loan, or thereafter, (a) unless at least 90 days
33 prior to the effective date of the first such increase, or 30 days
34 prior to the effective date of any subsequent increase, a written
35 notice has been mailed or delivered to the borrower that clearly
36 and conspicuously describes such increase, and (b) unless at least
37 365 days have elapsed without any increase in the rate. No
38 increase during the entire loan shall result in an interest rate of
39 more than 6% per annum over the rate applicable initially, nor

1 shall the rate be raised more than 3% per annum during any
2 12-month period. Where the loan contract so provides for an
3 increase or decrease in the rate of interest, the provision of
4 R.S.17:10-13 requiring that no installment be substantially
5 greater in amount than any preceding installment shall not apply.

6 ¹[An open-end loan contract may provide that the interest
7 rate or other term may be [increased or may be decreased, or
8 both, from time to time; provided, however, that] changed.
9 Except for contracts in which the rate varies according to a
10 standard not in the lender's control, no [increase in interest]
11 change shall be effective unless; (a) at least [90] 15 days prior
12 to the effective date of the [first such increase, or 30 days prior
13 to the effective date of any subsequent increase] change, a
14 written notice has been mailed or delivered to the borrower that
15 clearly and conspicuously describes such change and the
16 indebtedness to which it applies [and states that the incurrence
17 by the borrower or another person authorized by him of any
18 further indebtedness under the law to which the agreement
19 relates on or after the effective date of the increase specified
20 in the notice shall constitute acceptance of the increase and (b)
21 either the borrower agrees in writing to the increase or the
22 borrower or another person authorized by him incurs such
23 further indebtedness on or after the effective date of the
24 increase stated in such notice], which indebtedness may include
25 outstanding balances. The provisions of this paragraph
26 permitting an increase in a rate of interest shall not apply in the
27 case of an agreement which expressly prohibits changing of
28 interest rates which are more restrictive than the requirements
29 of this paragraph. If the contract provides for the possibility of
30 an increase or decrease, or both, in the rate, that fact shall be
31 clearly described in plain language, in at least 8-point bold face
32 type on the face of the written notice] An open-end loan
33 agreement may provide that the lender may at any time, or
34 from time to time, change the terms of the agreement,
35 including the terms governing the periodic interest rate,
36 calculation of interest or the method of computing the required
37 amount of periodic installment payments, provided however,
38 that:

39 a. the periodic interest rate shall not be changed more than

1 once in each billing cycle;

3 b. any change in the periodic interest rate shall correspond to
5 the movement of a market interest rate index specified in the
7 agreement which is readily verifiable by the borrower and
9 beyond the control of the lender;

11 c. a change in ²any term of the agreement including² the
13 periodic interest rate may be permitted to apply to any
15 then-outstanding unpaid indebtedness in the borrower's account
17 including any indebtedness which shall have arisen from
19 advances obtained prior to the effective date of the change,
21 provided, that fact is clearly and conspicuously disclosed in the
23 agreement;

25 d. if the agreement provides for the possibility of change in
27 ²any term of the agreement including² the rate, that fact shall
29 be clearly described in plain language, in at least 8-point bold
31 face type on the face of the written notice; and

33 e. no change ²in any term of the agreement or² of the index
35 specified in the agreement shall be effective unless: (1) at least
37 30 days prior to the effective date of the change, a written
39 notice has been mailed or delivered to the borrower that clearly
and conspicuously describes the change and the indebtedness to
which it applies and states that the incurrence by the borrower
or another person authorized by him of any further indebtedness
under the law to which the agreement relates on or after the
effective date of the change specified in the notice shall
constitute acceptance of the change; and (2) either the borrower
agrees in writing to the change or the borrower or another
person authorized by him incurs such further indebtedness on or
after the effective date of the change stated in such notice,
which indebtedness may include outstanding balances.

31 The lender shall notify each affected borrower of any change
33 in the manner set forth in the closed-end and open-end
35 agreement governing the plan and in compliance with the
37 requirements of the federal Truth in Lending Act (15 U.S.C.
39 §1601 et seq.) and regulations promulgated thereunder, as in
effect from time to time, if applicable¹.

37 The interest and periodic payments for loans at these rates
39 shall be computed from standard tables based on the actuarial or
annuity method which conforms to the so-called "United States

1 Rule of Partial Payments," which provides that interest shall be
2 calculated whenever a payment is made and the payment shall
3 be first applied to the payment of interest and if it exceeds the
4 interest due, the balance is to be applied to diminish principal.
5 If the payment is insufficient to pay the entire amount of
6 interest the balance of interest due shall not be added to
7 principal, so as to produce interest thereon.

8 No interest shall be paid, deducted, or received in advance.
9 Interest shall not be compounded and shall be computed only on
10 unpaid principal balances. For the purpose of computing
11 interest, all installment payments shall be applied ¹[not later
12 than the next day, other than a public holiday, after] on¹ the
13 date of receipt, and interest shall be charged for the actual
14 number of days elapsed at the daily rate of 1/365 of the yearly
15 rate.

16 No licensee shall induce or permit any person nor any husband
17 and wife, jointly or severally, to become obligated, directly or
18 contingently or both, under more than one contract of loan at
19 the same time for the purpose of obtaining a higher rate of
20 interest than would otherwise be permitted by this section. This
21 prohibition shall not apply to any loan made pursuant to any
22 other law of this State.

23 In addition to the interest herein provided for no further or
24 other charge, or amount whatsoever for any examination,
25 service, brokerage, commission, expense, fee, or bonus or other
26 thing or otherwise shall be directly or indirectly charged,
27 contracted for, or received, except (1) amounts for insurance
28 obtained or provided by the licensee in accordance with the
29 provisions of this chapter; and (2) on actual sale of the security
30 in foreclosure proceedings or upon the entry of judgment. If any
31 interest, consideration or charges in excess of those permitted
32 by this chapter are charged, contracted for or received, except
33 as the result of a good faith error, the contract of loan shall be
34 void and the licensee shall have no right to collect or receive
35 any principal, interest, or charges whatsoever, and the borrower
36 shall be entitled to recover from the lender any such sums paid
37 or returned to the lender by the borrower on account of or in
38 connection with the loan.

39 (cf: P.L.1981, c.103, s.7)

1 9. R.S.17:10-15 is amended to read as follows:

3 17:10-15. Every licensee shall: a. Deliver to the borrower at
5 the time a loan is made a statement in the English language
7 showing in clear and distinct terms the amount and date of the
9 loan and of its maturity, the nature of the security, if any, for
11 the loan, the name and address of the borrower and of the
13 licensee, the payment schedule, the amount of interest charges,
15 and the annual percentage rate of interest;

17 b. [Give to the borrower a plain and complete receipt for all
19 payments made on account of the loan at the time payments are
21 made, specifying the amount applied to interest and the amount,
23 if any, applied to principal, and stating the unpaid balance, if
25 any, of the loan;] ¹[(Deleted by amendment, P.L.1988, c.)
27 (now pending before the Legislature as this bill).]Give to any
29 borrower who makes a payment in cash a plain and complete
31 receipt for all payments made on account of the loan at the
33 time payments are made, specifying the amount applied to
35 interest and the amount, if any, applied to principal, and stating
37 the unpaid balance, if any, of the loan;¹

c. Permit payment to be made in advance in any amount on
any contract of loan at any time, but the licensee may apply the
payment first to all interest in full at the agreed rate up to the
date of payment;

d. Upon repayment of the loan in full, mark indelibly every
obligation and security signed by the borrower with the word
"paid" or "canceled," and release, or give the borrower evidence
to release any mortgage, or security interest which no longer
secures an obligation to the licensee, restore any pledge, cancel
and return any note, and cancel and return any assignment given
to the licensee by the borrower.

No licensee shall take any confession of judgment or any
power of attorney. No licensee shall take any note, promise to
pay, or security that does not accurately disclose the amount of
the loan, the date of the loan, the payment schedule, the amount
of interest charges, and the annual percentage rate of interest,
nor any instrument in which blanks are left to be filled in after
the loan is made.

(cf: P.L.1967, c.94, s.11)

39 10. R.S.17:10-16 is amended to read as follows:

1 17:10-16. Amount of Charges Limited. No licensee shall
2 directly or indirectly charge, contract for, or receive any
3 interest, discount, or consideration greater than he would be
4 permitted by law to charge if he were not a licensee hereunder
5 upon the loan, use, or forbearance of money, goods, or things in
6 action, or upon the loan, use, or sale of credit, of the amount or
7 value of more than [\$5,000.00] \$15,000.00. The foregoing
8 prohibition shall also apply to any licensee who permits any
9 person, as borrower or as indorser, guarantor, or surety for any
10 borrower, or otherwise, to owe directly or contingently or both
11 under one or more loan contracts to the licensee at any time the
12 sum of more than [\$5,000.00] \$15,000.00 for principal.

13 (cf: P.L.1979, c.493, s.7)

14 11. R.S.17:10-17 is amended to read as follows:

15 17:10-17. Payment in Consideration of Assignment. The
16 payment of [\$5,000.00] \$15,000.00 or less in money, credit,
17 goods or things in action, as consideration for any sale,
18 assignment or order for the payment of wages, salary,
19 commissions or other compensation for services, whether earned
20 or to be earned, shall, for the purposes of this chapter, be
21 deemed a loan secured by the assignment. The transaction shall
22 be governed by and subject to the provisions of this chapter and
23 any such sale, assignment or order hereafter made shall, for the
24 purposes of this chapter, be void and of no effect.

25 (cf: P.L.1979, c.493, s.8)

26 12. R.S.17:10-19 is amended to read as follows:

27 17:10-19. Payment in Certain Cases Deemed a Loan. The
28 payment of [\$5,000.00] \$15,000.00 or less in money, credit,
29 goods or things in action as consideration for any sale of
30 personal property which is made on condition that the property
31 be sold back at a greater price shall, for the purposes of this
32 chapter, be deemed to be a loan secured by the property and the
33 amount by which the repurchase price exceeds the original
34 payment actually paid shall be deemed interest or charges upon
35 the loan from the date the original payment is made until the
36 date the repurchase price is paid. The transaction shall be
37 governed by and be subject to the provisions of this chapter.

38 (cf: P.L.1979, c.493, s.9)

39 13. R.S.17:10-20 is amended to read as follows:

1 17:10-20. Prohibited Acts. No person, copartnership,
2 association, or corporation, except as authorized by this
3 chapter, shall directly or indirectly charge, contract for, or
4 receive any interest, discount or consideration greater than the
5 lender would be permitted by law to charge if he were not a
6 licensee hereunder upon the loan, use, or forbearance of money,
7 goods, or things in action, or upon the loan, use, or sale of credit
8 of the amount or value of [~~\$5,000.00~~] \$15,000.00 or less.

9 The foregoing prohibition shall apply to any person,
10 copartnership, association, or corporation who or which, by any
11 device, subterfuge, or pretense, shall charge, contract for, or
12 receive greater interest, consideration, or charges than is
13 authorized by this chapter for the loan, use, or forbearance of
14 money, goods, or things in action or for the loan, use, or sale of
15 credit.

16 No loans of the amount or value of [~~\$5,000.00~~] \$15,000.00 or
17 less for which a greater rate of interest, consideration, or
18 charge than is permitted by this chapter has been charged,
19 contracted for, or received, whenever made, shall be enforced in
20 this State and any person, copartnership, association or
21 corporation in anywise participating therein in this State shall
22 be subject to the provisions of this chapter. The foregoing shall
23 not apply to loans legally made in any State which then has in
24 effect a regulatory small loan law similar in principle to this
25 chapter, but an action to enforce any loan made in any such
26 State to a person then residing in this State may be maintained
27 in this State only if the amount of interest, discount,
28 consideration or other charge for such loan, demanded to be paid
29 in such action, does not exceed that permitted to a licensee by
30 this chapter for a loan of the same amount repayable in the
31 same manner.

(cf: P.L.1979, c.493, s.10)

32 14. This act shall take effect ¹[immediately] on the 120th day
33 after enactment¹.

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BANKING AND FINANCIAL INSTITUTIONS

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Corporations

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39 Increases amount small loan companies may loan to \$15,000.

1 contracted for, or received, whenever made, shall be enforced in
this State and any person, copartnership, association or
3 corporation in anywise participating therein in this State shall
be subject to the provisions of this chapter. The foregoing shall
5 not apply to loans legally made in any State which then has in
effect a regulatory small loan law similar in principle to this
7 chapter, but an action to enforce any loan made in any such
State to a person then residing in this State may be maintained
9 in this State only if the amount of interest, discount,
consideration or other charge for such loan, demanded to be paid
11 in such action, does not exceed that permitted to a licensee by
this chapter for a loan of the same amount repayable in the
13 same manner.

14. This act shall take effect immediately.

15

A557 (1989)

17

STATEMENT

19 This bill modernizes the "small loan law" by updating its short
title to the "Consumer Loan Act" and increasing the maximum
21 amount that a small loan company may loan from \$5,000.00 to
\$15,000.00. This change is to service individuals who do not own
23 real property but who would qualify for the upper limits of the
proposed increased ceiling and would also qualify for reduced
25 rates because of better job stability and higher income.

This bill increases the net worth and liquid assets
27 requirements for an applicant from \$25,000.00 to \$100,000.00.
It also removes the requirement that the Commissioner of
29 Banking must find that the issuance of a license will promote
the "convenience and advantage" of the community where the
31 small loan business is to be conducted. This "convenience and
advantage" requirement is an anachronism which has restricted
33 the licensing of small loan companies in the guise of protecting
the consumer from the results of excessive competition. With
35 the increased capital and liquid asset requirements and the
current experience, character and general fitness standards for
37 licensees, consumer borrowers will have more than adequate
protection.

BANKING AND FINANCIAL INSTITUTIONS
Corporations

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Increases amount small loan companies may loan to \$15,000.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 557

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 23, 1988

The Assembly Financial Institutions Committee favorably reports Assembly, No. 557, as amended.

This bill would amend the "small loan law" (R.S. 17:10-1 et seq.) and change the name of that law to the "Consumer Loan Act."

Other changes in the existing law would include: (1) increasing the maximum amount that could be loaned from \$5,000.00 to \$15,000.00; (2) having the Commissioner of Banking set by regulation the fees charged by the Department of Banking for licensing or renewal of a license, with maximum fees set by statute; (3) leaving to the discretion of the commissioner whether to hold a hearing when an objection to the issuance of a license is filed, rather than requiring a hearing in such circumstances; (4) deleting the requirement that the commissioner consider whether "allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted," as one of the criteria for licensing; (5) requiring applicants to have a net worth and available liquid assets each of \$100,000.00, rather than the current requirement of \$25,000.00 (current licensees are given five years to meet this requirement); and (6) leaving to the commissioner's discretion the frequency with which an investigation of the affairs, business, office, and records of each licensee would be undertaken rather than the current requirement of an investigation at least once a year.

Other amendments provide: that if a closed-end loan agreement provides for an increase or decrease in the rate of interest, the adjustments to the rate of interest would correspond directly to the movement of an interest rate index which is readily available to and

verifiable by the borrower and which is beyond the control of the lender; that an open-end loan agreement may provide that the lender may at any time, or from time to time, change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided that: (1) the periodic interest rate is not to be changed more than once in a billing cycle; (2) the change in the interest rate is to correspond directly to the movement of a market interest rate index which is to be specified in the agreement and is readily available and verifiable by the borrower and beyond the control of the lender; (3) any change in the interest rate may be applied to any outstanding indebtedness in the borrower's account as long as this fact is clearly and conspicuously disclosed in the agreement; (4) the existence of a variable interest rate is to be clearly described in plain language in at least 8-point bold face type on the face of the written notice; and (5) no change would take place in the index specified in the agreement unless the lender notifies the borrower in writing at least 30 days in advance of the effective date of the change, clearly and conspicuously describes the change and any indebtedness to which it applies, states in the notice that no change in the index will take place unless the borrower explicitly or implicitly agrees to the change and the borrower actually agrees, explicitly or implicitly, to the change.

Under the bill, as amended, a lender is required: to notify each affected borrower of any change in the manner set forth in the closed-end and open-end agreement governing the plan and in compliance with the requirements of the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and the regulations promulgated pursuant to that act; and to provide borrowers who make payments in cash with a plain and complete receipt at the time payments are made. Finally, the bill becomes effective 120 days following enactment.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

the initial application fee, initial investigation fee, and biennial license fee by regulation, with the maximum fees set by statute. It leaves to the discretion of the commissioner whether to hold a hearing when an objection to the issuance of a small loan license is filed, rather than requiring a hearing in such circumstances as provided under current law. It also eliminates the current requirement that the commissioner must find that the issuance of a license will promote the "convenience and advantage" of the community where the small loan business is to be conducted. Finally, it leaves to the commissioner's discretion the frequency with which an investigation of the affairs, business, office and records of each licensee is to be undertaken, rather than the current requirement of an investigation at least once a year.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 557

STATE OF NEW JERSEY

DATED: DECEMBER 8, 1988

The Senate Labor, Industry and Professions Committee reports favorably Assembly, No. 557 (1R).

This bill amends the law which provides for the regulation and licensure of small loan companies. The purpose of the bill is to update the "small loan law" which under the bill becomes the "Consumer Loan Act."

The amount that a small loan company may loan to a borrower is increased from \$5,000 to \$15,000. The net worth and liquid asset requirements are increased by requiring applicants to have a net worth of at least \$100,000 and available liquid assets of at least \$100,000 for the purpose of making loans, rather than the current requirements of a net worth of \$25,000 and liquid assets of \$25,000. Current licensees are given five years to meet the new net worth and liquid asset requirements of the bill.

The bill modifies the requirements for open-end and closed-end loans which are made by small loan companies with variable interest rates. Under current law, small loan companies may make variable rate interest closed-end loans. In addition to the restrictions in the current law on these loans, such as prohibiting an interest rate increase in the first three years of the loan, prohibiting an increase in the interest rate of more than 6% per annum during the entire loan term and of more than 3% per annum during any 12-month period, and requiring notice before an increase may take effect, the bill adds the requirement that, if a closed-end loan agreement provides for a variable rate of interest, the rate must be tied to an interest rate index that is readily verifiable by the borrower and beyond the control of the lender.

Under current law, small loan companies may also make variable rate interest open-end loans under restrictions that provide that 90 days' notice must be given for an initial rate increase and 30 days'

notice for any subsequent increase; a rate increase may not take place unless the borrower agrees to the increase or incurs further indebtedness on or after the effective date of the increase; a rate increase may not apply to outstanding balances; and the existence of a variable interest rate must be disclosed in at least 8-point bold face type on the written notice. The bill modifies these provisions by providing that an open-end loan agreement may provide that the lender may at any time change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided that: the interest rate may not be changed more than once in a billing cycle; the variable interest rate in the agreement must be tied to a market interest rate index which is readily available and verifiable by the borrower and beyond the control of the lender; any change in the interest rate may be applied to any outstanding indebtedness in the borrower's account as long as this fact is clearly and conspicuously disclosed in the agreement; the existence of a variable interest rate must be clearly described in plain language in at least 8-point bold face type on the written notice; and no change in the interest rate may take place unless the lender notifies the borrower in writing at least 30 days in advance of the effective date of the change and clearly and conspicuously describes the change and any indebtedness to which it applies, and the borrower either agrees in writing to the change or incurs further indebtedness on or after the effective date of the change.

Under the bill, a small loan company is required to notify each affected borrower of any change in the manner set forth in the closed-end or open-end agreement governing the plan and in compliance with the requirements of the federal Truth in Lending Act (15 U.S.C. §1601 et seq.). Under current law a borrower must receive a written receipt for every payment made. The bill modifies this provision to provide that a small loan company must provide only those borrowers who make payments in cash with a receipt at the time payments are made. Also, current law provides that, for the purpose of computing interest, loan payments must be applied not later than the next day after receipt. The bill provides that they must be applied on the day of receipt.

The bill also makes various administrative changes in the current law. It provides that the Commissioner of Banking may set

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

contract of such a nature, the possibility of such changes (without protection, of any kind, to the borrower) exist in the bill presently before me.

Therefore, I recommend that the bill be amended to provide protection to the borrower when the lender seeks to change any term in the agreement. In the bill before me, when the lender seeks to change the index to which the interest rate is tied, the borrower must accept the change either explicitly, in writing, or implicitly, by incurring further indebtedness. Under my proposal, the lender must obtain acceptance in a similar fashion before a change in any term of the contract ultimately becomes effective. Therefore, I herewith return Assembly Bill No. 557 (First Reprint) and recommend that it be amended as follows:

- Page 9, Section 8, Line 6: After "in" insert "any term of the agreement including"
- Page 9, Section 8, Line 12: After "in" insert "any term of the agreement including"
- Page 9, Section 8, Line 16: After "change" insert "in any term of the agreement or"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

February 6, 1989

ASSEMBLY BILL NO. 557

(FIRST REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 557 (First Reprint) with my objections for reconsideration.

Assembly Bill No. 557 (First Reprint) would amend the "Small Loan Law" (N.J.S.A. 17:10-1 et seq.) and change the name of the law to the "Consumer Loan Act." The bill includes many salutary provisions such as increasing the maximum amount that may be loaned from \$5,000 to \$15,000, requiring lenders to have net worth and available liquid assets of \$100,000, rather than the current requirement of \$25,000, and providing that any increases in interest rates be tied directly to an interest rate index which is readily available to and verifiable by the borrower and which is beyond the control of the lender.

However, the bill does contain one problem. Present law permits the lender to increase the interest rate subject to various safeguards granted to the borrower. The bill, in its present form, continues to allow for interest rate increases subject to increased safeguards for the borrower; however, it permits the lender to change other terms in the contract without providing any safeguard to the borrower. While I believe the omission to be inadvertent, I cannot sign the bill in its present form.

There are other terms of a loan contract, besides the interest rate, which, if changed by a lender, could impact to the detriment of a borrower. One such change would be the minimum monthly payment. A small loan contract of this type would generally require a minimum monthly payment based upon a percentage of the outstanding balance. Under the terms of the present bill, a lender could unilaterally raise that percentage figure thereby substantially increasing the borrower's monthly liability. While the Federal Truth in Lending Act (15 USC §1601 et seq.) and the regulations promulgated thereunder would require the lender to notify the borrower of the change in terms, the borrower would be entitled to no more than that notice and would be left without any protection against the change. While I am mindful that competition and market conditions are likely to militate against changes in terms of the