

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:11A-35 et al

("Secondary Mortgage Loan Act"-- various amendments)

LAWS OF: 1987

CHAPTER: 230

Bill No: A2857

Sponsor(s): Kosco and others

Date Introduced: June 19, 1986

Committee: Assembly: Financial Institutions

Senate: -----

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

Date of Passage: Assembly: October 23, 1986

Senate: April 23, 1987

Date of Approval: July 31, 1987

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments, adopted 3-26-87 and 12-18-86 (with statements)

Committee statement: Assembly Yes Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clippings attached:

- "Assembly oks legislation liberalizing mortgage law," 5-22-87 Trenton Times.
"Panel oks changes in mortgage laws," 10-28-86.
"Mortgage bill divides Advocate and industry," 11-23-86 Star Ledger.
"Bill would zap second mortgages," 1-27-87 Trenton Times.

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ASSEMBLY, No. 2857**STATE OF NEW JERSEY**

INTRODUCED JUNE 19, 1986

By Assemblymen KOSCO, GENOVA, Assemblywoman Ogden, Assemblymen Doyle, Karcher, Adubato, Schuber, Kern, Brown, Rocco, Kline, Dario, Arango, Gargiulo, Zangari, DiGaetano, Assemblywoman Donovan, Assemblymen Collins, Stuhltrager, Muziani, Kavanaugh, Haytaian, Hendrickson, Zecker, Kelly, Assemblywoman Crecco, Assemblymen Loveys, Penn, Palaia, Charles, Shusted, Zimmer, Shinn, Colburn, Assemblywoman Smith, Assemblymen Catrillo, Naples, Singer, Schwartz, Felice, Bennett, Assemblywoman Cooper, Assemblymen Marsella, Deverin and Hudak

AN ACT concerning secondary mortgage loans*****[** amending and supplementing P. L. 1970, c. 205, amending P. L. 1983, c. 348 and P. L. 1983, c. 437 and repealing sections 6, 7, 11, 23 and 25 of P. L. 1970, c. 205 and sections 3 and 7 of P. L. 1983, c. 437**]*****
 and revising parts of statutory law.

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

1 1. Section 2 of P. L. 1970, c. 205 (C. 17:11A-35) is amended to
 2 read as follows:

3 2. As used in this act, the following words and terms shall have
 4 the following meanings unless the context otherwise requires:
 5 a. "Secondary mortgage loan" means a *closed-end loan or open-*
 6 *end* loan made to an individual, association, joint venture, partner-
 7 ship, limited partnership, limited partnership association, or any
 8 other group of individuals however organized, except a corpora-
 9 tion, which is secured in whole or in part by a lien upon any in-
 10 terest in real property, including but not limited to shares of stock
 11 in a cooperative corporation, created by a security agreement, in-
 12 cluding a mortgage, indenture, or any other similar instrument

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted September 29, 1986.

**—Assembly amendments adopted October 20, 1986.

***—Senate amendments adopted December 18, 1986.

****—Senate amendments adopted March 26, 1987.

13 or document, which real property is subject to one or more prior
14 mortgage liens *and on which there is erected a structure contain-*
15 *ing one, two, three, four, five or six dwelling units, a portion of*
16 *which structure may be used for nonresidential purposes, except*
17 that a loan which: (1) is to be repaid in 90 days or less; (2) is
18 taken as security for a home repair contract executed in accor-
19 dance with the provisions of [chapter 41,] P. L. 1960, c. 41 (C.
20 17:16C-62 *et seq.*); (3) [is at an interest rate which is not in
21 excess of the usury rate in existence at the time the loan is made,
22 as established in accordance with the law of this State, and on
23 which loan the borrower has not agreed to pay, directly or indi-
24 rectly, any charge, cost, expense or any fee whatsoever other than
25 said interest] (*Deleted by amendment (P. L. . . . , c. . . .)*); or
26 (4) is the result of the private sale of a dwelling if title to the
27 dwelling is in the name of the seller and the seller has resided
28 in said dwelling for at least one year, if the buyer is purchasing
29 said dwelling for his own residence and, as part of the purchase
30 price, executes a secondary mortgage in favor of the seller, shall
31 not be subject to the provisions of this act.

32 b. "Borrower" means any person applying for a secondary
33 mortgage loan, whether or not the loan is granted, and any person
34 who has actually obtained such a loan.

35 c. "Licensee" means a person who is required to be licensed by
36 section 3 of this act.

37 d. "Person" means an individual, association, joint venture,
38 partnership, limited partnership, limited partnership association,
39 corporation or any other group of individuals however organized.

40 e. "Commissioner" means the Commissioner of Banking of
41 New Jersey including [his] *the commissioner's* deputies, or any
42 other salaried employee of the Department of Banking appointed
43 or designated by the commissioner to perform the functions re-
44 quired for the administration or enforcement of this act.

45 f. "Billing cycle" means the time interval between periodic bill-
46 ing dates. A billing cycle shall be considered monthly if the closing
47 date of the cycle is the same date each month or does not vary by
48 more than four days from that date.

49 g. "Open-end loan" means a secondary mortgage loan made by
50 a licensee pursuant to a written agreement between the licensee
51 and the borrower whereby:

52 (1) The licensee may permit the borrower to obtain advances of
53 money from the licensee from time to time or the licensee may
54 advance money on behalf of the borrower from time to time as
55 directed by the borrower;

56 (2) The amount of each advance and permitted interest and
 57 charges are debited to the borrower's account and payments and
 58 other credits are credited to the same account;

59 (3) Interest is computed on the unpaid principal balance or
 60 balances of the account from time to time;

61 (4) The borrower has the privilege of paying the account in full
 62 at any time or, if the account is not in default, in monthly install-
 63 ments of fixed or determinable amounts as provided in the agree-
 64 ment; and

65 (5) The agreement expressly states that the open-end loan is
 66 made pursuant to [this 1983 amendatory and supplementary act]
 67 P. L. 1983, c. 437 (C. 17:11A-44.1 et al.).

68 *h. "Closed-end loan" means a secondary mortgage loan pur-*
 69 *suant to which the licensee advances a specified amount of money*
 70 *and the borrower agrees to repay the principal and interest in sub-*
 71 *stantially equal installments over a stated period of time ****,*
 72 *except that: (1) the amount of the final installment payment may*
 73 *be substantially greater than the pervious installments if the term*
 74 *of the loan is at least 36 months, or under 36 months if the remain-*
 75 *ing term of the first mortgage loan is under 36 months; or (2)*
 76 *the amounts of the installments may vary as a result of the change*
 77 *in the interest rate pursuant to subsection b. of section 19 of P. L.*
 78 *....., c. (C.) (now pending before the Legisla-*
 79 *ture as this bill)**** ***, except that: (1) the amount of the final*
 80 *installment payment may be substantially greater than the pre-*
 81 *vious installments if the term of the loan is at least 36 months,*
 82 *or under 36 months if the remaining term of the first mortgage*
 83 *loan is under 36 months; or (2) the amounts of the installments*
 84 *may vary as a result of the change in the interest rate pursuant*
 85 *to subsection b. of section 7 of P. L., c. (C.)*
 86 *(now pending before the Legislature as this bill)***.*

87 *****i. "Prudent loan" means a secondary mortgage loan which*
 88 *is prudent by acceptable banking standards and is in compliance*
 89 *with all of the provisions of P. L. 1970, c. 205 (C. 17:11A-34 et*
 90 *seq.) and regulations promulgated thereunder.*****

1 *2. Section 3 of P. L. 1970, c. 205 (C. 17:11A-36) is amended
 2 to read as follows:

3 3. *a.* No person shall engage in the secondary mortgage loan
 4 business in this State unless such person shall first obtain a license
 5 under this act. For the purpose of this act, a person is deemed
 6 to be engaged in the secondary mortgage loan business in this
 7 State if: (a) such person advertises, causes to be advertised,

8 solicits, negotiates, offers to make or makes a secondary mortgage
 9 loan in this State, whether directly or by any person acting for
 10 his benefit; or (b) such person becomes the subsequent holder of
 11 a promissory note or mortgage, indenture or any other similar
 12 instrument or document received in connection with a secondary
 13 mortgage loan. A real estate broker licensed pursuant to the pro-
 14 visions of the law of this State or an attorney authorized to prac-
 15 tice law in this State shall not be required to obtain a license to
 16 negotiate a secondary mortgage loan in the normal course of the
 17 business of a real estate broker or attorney.

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

1 ***[2.]*** *3.* Section 4 of P. L. 1970, c. 205 (C. 17:11A-37) is
 2 amended to read as follows:

3 4. a. An application for a secondary mortgage loan license shall
 4 be on a form provided by the commissioner. The application shall
 5 set forth the name and resident address of the applicant and, if
 6 the applicant is other than an individual or corporation, of each
 7 partner or member, and if the applicant is a corporation, of each
 8 officer, director and the registered agent. The application shall
 9 also set forth the address or addresses where the secondary mort-
 10 gage loan business is to be conducted in this State.

11 b. The application shall demonstrate that the applicant has
 12 liquid assets *of at least \$100,000.00* available for the purpose of
 13 making secondary mortgage loans and a net worth of at least
 14 **[\$50,000.00]** *\$100,000.00**, *except that, in the case of the application*
 14A *of an officer, partner, member or other principal of a corporation,*
 14B *partnership, association or other entity, that individual shall not*
 14C *be required to demonstrate that the individual has liquid assets*
 14D *and a net worth of at least \$100,000.00.*

14E *In the case of an entity other than a corporation, the commis-*
 14F *sioner may promulgate regulations as he deems necessary to insure*
 14G *that the liquid asset and net worth requirements of this subsection*
 14H *are maintained by at least one individual licensee of that entity*
 14I *upon dissolution or other disposition affecting liquid assets or net*
 14J *worth*.*

15 c. The application shall contain such other information as the
 16 commissioner shall require in order to carry out the purposes of
 17 this act.

18 d. If the applicant intends to conduct business under a [trade]
19 name *other than its legal name*, [a certified copy of] the [appli-
20 cant's trade name certificate as] *applicant shall furnish the certifi-*
21 *cates* required by the law of this State [shall accompany] *with the*
22 application.

23 e. If the applicant is a foreign corporation, said corporation
24 shall be authorized to do business in this State in accordance with
25 the law of this State regulating corporations.

26-27 f. Applicants for a secondary mortgage loan license shall file
28 with the application an irrevocable consent, duly acknowledged,
29 that suits and actions may be commenced against such licensee in
30 the courts of this State by the service of process or any pleading
31 upon the commissioner, in the usual manner provided for service
32 of process and pleadings by the statutes and [Court Rules of this
33 State] *Rules Governing the Courts of the State of New Jersey.*
34 Said consent shall provide that such service shall be as valid
35 and binding as if service had been made personally upon the
36 licensee in this State. In all cases where process or pleadings
37 are served upon the commissioner pursuant to the provisions of
38 this section, such process or pleadings shall be served in dupli-
39 cate, one of which shall be filed in the office of the commissioner
40 and the other shall be forwarded by the commissioner, by certified
41 or registered mail, return receipt, to the last known principal place
42 of business of the licensee to whom such process or pleadings is
43 directed.

1 *4. (New section) a. *An applicant shall qualify by examination*
2 *approved by the commissioner, which examination may be written*
3 *or oral or both, and shall include a general knowledge of the laws*
4 *of this State concerning secondary mortgage loans, real property,*
5 *conveyances, mortgages, and agreements of sale. The commissioner*
6 *may designate an independent testing service to prepare and ad-*
7 *minister the examinations.*

8 b. *The examination requirement of this section may be waived*
9 *by the commissioner for a person applying for a secondary mort-*
10 *gage lender's license who can demonstrate to the satisfaction of*
11 *the commissioner that he has, for a period of at least two years*
12 *prior to the filing of the application, been principally engaged in*
13 *the business of secondary mortgage lending in this State and who*
14 *submits a written request to the commissioner for his approval.*
15 *The commissioner may waive the examination requirement for a*
16 *secondary mortgage lender's license for a person who has, prior*
17 *to the filing of the application, been in business for less than two*

18 *years and who can demonstrate to the commissioner that he is*
 19 *otherwise qualified for a license without the need for an examina-*
 20 *tion.**

1 ***[3.] *5.*** (New section) ***a.*** The commissioner may refuse to
 2 issue and may revoke, suspend or refuse to renew a license or im-
 3 pose a penalty pursuant to the "Secondary Mortgage Loan Act,"
 4 P. L. 1970, c. 205 (C. 17:11A-34 et seq.) if he finds, after notice and
 5 an opportunity for a hearing in accordance with the "Administra-
 6 tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), that
 7 any person, applicant for, or holder of a license has:

8 ***[a.]* *(1)*** Violated any of the provisions of the "Secondary
 9 Mortgage Loan Act," P. L. 1970, c. 205 (C. 17:11A-34 et seq.) or
 10 any order, rule or regulation made or issued pursuant to that act;

11 ***[b.]* *(2)*** Withheld information or made a material misstate-
 12 ment in the application for the license;

13 ***[c.]* *(3)*** Been convicted of an offense involving breach of
 14 trust, moral turpitude or fraudulent or dishonest dealing, or had
 15 a final judgment entered against him in a civil action upon grounds
 16 of fraud, misrepresentation or deceit;

17 ***[d.]* *(4)*** Become insolvent or bankrupt, or has filed a petition
 18 in an insolvency or bankruptcy proceeding;

19 ***[e.]* *(5)*** Demonstrated unworthiness, incompetence, bad
 20 faith or dishonesty in the transacting of business as a secondary
 21 mortgage lender; or

22 ***[f.]* *(6)*** Engaged in any other conduct which ***[would be]***
 23 ***is*** deemed by the commissioner to be ***[the]*** ***sufficient*** cause
 24 for denial of a license.

25 **b. The license of a corporation, partnership, association or*
 26 *other entity may be suspended or revoked if an officer, director,*
 27 *partner, member of other principal of the licensee has committed*
 28 *any act which would be cause for suspending or revoking a license*
 29 *to him as an individual. If the license issued to a partner, or to*
 30 *a member of an association or a director or an officer of a corpora-*
 31 *tion, is revoked or suspended, the license issued to the partnership,*
 32 *association or corporation shall be revoked by the commissioner,*
 33 *unless within a period to be fixed by the commissioner, in the case*
 34 *of a partnership, the connection therewith of the partner whose*
 35 *license has been revoked shall be severed and his interest in the*
 36 *partnership and his share in its activities brought to an end, or*
 37 *in the case of an association or corporation, the offending member,*
 38 *director or officer shall be discharged and shall have no further*
 39 *participation in its activity. An officer or director of the corporation*
 40 *who has had his license revoked or suspended shall fully divest*

41 *himself of all stock, bonds or other holdings in the corporation.**

1 ***[4.]*** *6.* (New section) A licensee shall maintain a principal
2 place of business in the State for the transaction of business. A
3 license shall specify the address of the place of business of the
4 licensee and shall be conspicuously displayed therein. If a licensee
5 maintains more than one place of business, one shall be designated
6 as the principal place of business. If, upon application, a licensee
7 demonstrates that an additional office is in a suitable location
8 and certifies that the office is covered by the bond required, the
9 commissioner shall issue a branch office license, specifying the
10 address of the branch office, which license shall be conspicuously
11 displayed therein. In case the address of the principal place of
12 business or of any branch office is changed, the commissioner shall
13 endorse the change of address by issuing a certificate of endorse-
14 ment.

1 ***[5.]*** *7.* (New section) A licensee, prior to doing business,
2 shall obtain a bond in an amount and on a form prescribed by the
3 commissioner by regulation, which amount shall be not less than
4 \$25,000.00. The bond shall be obtained from a surety company
5 authorized by law to do business in this State. The bond shall run
6 to the State for *its benefit and for* the benefit of any person
7 injured by the wrongful act, *omission* default, fraud or mis-
8 representation of the licensee. No bond shall comply with the re-
9 quirements of this section unless the bond contains a provision
10 that it shall not be cancelled for any cause unless notice of intention
11 to cancel is filed in the Department of Banking at least 30 days
12 before the day upon which cancellation shall take effect.

1 ***[6.]*** *8.* Section 9 of P. L. 1970, c. 205 (C. 17:11A-42) is
2 amended to read as follows:

3 9. A license issued by the commissioner shall:

4 a. Expire on December 31 of **[each]** *the second year within a*
5 *biennial license period.* No refund in the amount of the license fee
6 shall be made if the license is issued for less than 12 months or if
7 the license is voluntarily surrendered to or suspended or revoked
8 by the commissioner prior to its expiration date, *or the licensee's*
9 *business as a secondary mortgage lender is terminated.*

10 b. Be invalid, in the event the licensee is a corporation, if the
11 licensee's corporate charter is voided in accordance with the pro-
12 visions of any law of this or any other state *or if the licensee has*
13 *failed to pay any taxes imposed by this State which have been due*
14 *and unpaid for a period in excess of 12 months if the commissioner*
15 *has notified the licensee of the pending invalidity and granted the*
16 *licensee a reasonable opportunity to correct that failure.*

1 *****[*7.]*** *9.* (New section) a. Notwithstanding the provisions
 2 of R. S. 31:1-1 or any other law to the contrary, a licensee shall have
 3 authority to make closed-end and open-end loans, and may charge,
 4 contract for and receive thereon interest at an annual percentage
 5 rate agreed to by the licensee and the borrower.

6 b. The note evidencing a closed-end loan may provide for a
 7 variation in the rate of interest **[**applicable to the loan in conjunc-
 8 tion with the increase or decrease in any one of several interest
 9 rate indicia approved by the commissioner by rule or regulation,
 10 but only if the index to be used for that purpose is identified on
 11 the face of that note**]** **in which adjustments to the interest rate*
 11A *shall correspond directly to the movement of an interest rate index*
 11B *which is readily available to and verifiable by the borrower and*
 11C *is beyond the control of the lender. *****[**No increase during the entire
 11D *term of the loan shall result in an interest rate of more than 6%*
 11E *over the rate applicable to the loan initially, nor shall the rate be*
 11F *raised more than 3% per annum during any 12-month period.***]****

12 If the note provides for a variation in the rate of interest, that fact
 12A shall be clearly described in plain language, in at least eight-point
 12B bold face type on the face of the note. **If the note provides for a*
 12C *final payment which is substantially greater than the previous*
 12D *installments, that fact, together with a statement that the lender*
 12E *is under no obligation to refinance the loan, unless the lender un-*
 12F *conditionally obligates itself to do so, shall be clearly disclosed*
 13 *in plain language, in at least eight-point bold face type on the face*
 13A *of the note. No rate increase or decrease shall take effect during*
 13B *the first 12 months of the term of the loan. Thereafter, no rate*
 13C *increase or decrease shall take effect unless at least 30 days prior*
 13D *to the effective date of that increase or decrease, a written notice*
 13E *has been mailed or delivered to the borrower that clearly and con-*
 13F *spicuously describes the increase or decrease, and unless at least*
 14 *six months have elapsed without any increase in the rate.**

15 c. If an agreement governing an open-end loan so provides:

16 (1) A licensee may at any time or from time to time change
 17 the terms of the agreement, including the terms governing the
 18 periodic interest rate, the calculation of interest or the method of
 19 computing the required amount of periodic installment pay-
 19A ments*; *except that the periodic interest rate shall not be changed*
 19B *more than once in each billing cycle nor shall the minimum install-*
 19C *ment payment be less than 1/240 of the outstanding principal*
 19D *balance due plus accrued interest at the end of the billing cycle*.*

20 (2) A licensee may apply any changes pursuant to paragraph

21 (1) above to all then outstanding unpaid indebtedness in the bor-
 22 rower's account including any indebtedness which shall have
 23 arisen from advances obtained prior to the effective date of the
 24 change of the periodic interest rates or required minimum periodic
 24A installment. ***No change in the interest rate shall be effective un-*
 24B *less 30 days prior to the effective date of any subsequent increase*
 24C *a written notice has been mailed or delivered to the borrower that*
 24D *clearly and conspicuously describes the change and the indebted-*
 24E *ness to which it applies and states that the incurrence by the bor-*
 24F *rower of any further indebtedness under the plan to which the*
 24G *agreement relates on or after the effective date of the interest rate*
 25 *increase specified in the notice shall constitute acceptance of the*
 25A *interest rate increase and the borrower either agrees in writing to*
 25B *the increase or incurs such further indebtedness on or after the*
 25C *effective date of the increase stated in the notice.***

26 (3) The licensee shall notify each affected borrower of any
 27 change in the manner set forth in the agreement governing the
 28 plan and in compliance with the requirements of the Truth-in-
 29 Lending Act, Pub. L. 90-321 (15 U. S. C. § 1601 et seq.) **except*
 30 *that if the change has the effect of increasing the interest or other*
 31 *charges to be paid by the borrower, the licensee shall mail or*
 32 *deliver to the borrower, at least 30 days before the effective date*
 33 *of the change, a clear and conspicuous written notice which shall*
 34 *describe the change and the existing terms of the agreement affected*
 35 *by the change and shall also set forth the effective date of the*
 36 *amendment and an explanation, if necessary, of the change.**

37 If the agreement provides for a variation in the rate of interest,
 38 that fact shall be clearly described in plain language, in at least
 39 eight-point bold face type on the face of the agreement.

40 d. **No interest shall be paid, deducted, or received in advance**,*
 41 *except for interest for less than 30 days that will permit regular*
 42 *amortizing monthly payment to be made when the payment date is*
 43 *other than the first day of the month**.** Interest shall not be com-
 44 pounded and shall be computed only on unpaid principal balances
 45 **[, except that interest due but unpaid may be considered part of*
 46 *the unpaid principal balance]*.* For the purpose of computing in-
 47 terest all installment payments shall be applied no later than the
 48 next business day, after the date of receipt at the designated office
 49 of the licensee, and interest shall be charged for the actual number
 50 of days elapsed at a daily rate of $\frac{1}{365}$ th of the yearly rate.***

1 *****[*8.]*** **10.** Section 4 of P. L. 1983, c. 437 (C. 17:11A-44.2)
 2 **is amended to read as follows:**

3 4. a. [The interest charges on an open-end loan shall be deemed
 4 not to exceed the maximum interest permitted by subsection b. of
 5 section 11 of P. L. 1970, c. 205 (C. 17:11A-44) if that interest is
 6 computed in each billing cycle by any of the following methods]
 7 *For open-end loans, interest may be computed in each billing cycle*
 8 *by any of the following methods, in accordance with the agreement*
 9 *between licensee and borrower:*

10 (1) By converting the per annum rate to a daily rate and multi-
 11 plying the daily rate by the applicable portion of the daily unpaid
 12 principal balance of the account, in which case the daily rate is
 13 determined by dividing the per annum rate by 365; or

14 (2) By multiplying one-twelfth of each per annum rate by the
 15 applicable portion of the average daily unpaid principal balance
 16 of the account in the billing cycle, in which case the average daily
 17 unpaid principal balance is the sum of the amount unpaid each
 18 day during the billing cycle divided by the number of days in the
 19 billing cycle; or

20 (3) By converting the per annum rate applicable to the loan to
 21 a daily rate and multiplying the daily rate by the applicable por-
 22 tion of the average daily unpaid principal balance of the account
 23 in the billing cycle, in which case each daily rate is determined by
 24 dividing the per annum rate by 365, and the average daily unpaid
 25 principal balance is the sum of the amount unpaid each day during
 26 the billing cycle divided by the number of days in the billing cycle.

27 b. For all of the above methods of computation, the billing cycle
 28 shall be monthly and the unpaid principal balance on any day shall
 29 be determined by adding to any balance unpaid as of the beginning
 30 of that day all advances and other permissible amounts charged
 31 to the borrower and deducting all payments and other credits
 32 made or received that day.]***

1 ***[9.] *11.* Section 5 of P. L. 1983, c. 437 (C. 17:11A-44.3)
 2 is amended to read as follows:

3 5. The borrower may at any time pay all or any part of the
 4 unpaid balance in his account; or, if the account is not in default,
 5 the borrower may pay the unpaid principal balance in monthly
 6 installments[, subject to minimum payment requirements set forth
 7 in this section]*, *subject to minimum payment requirements set*
 8 *forth in paragaph (1) of subsection c. of section 9 of P. L. . . . ,*
 9 *c. . . . (C.) (now pending before the Legislature as this*
 10 *bill)*.*

11 **【Minimum monthly payments shall be an amount provided for**
 12 **in the open-end loan agreement. No minimum payment shall exceed**
 13 **the amount required to pay the balance in full, including unpaid**
 14 **interest and charges to date.】*****

1 ***【10.】* ***【*12.】*** ***9.***** Section 12 of P. L. 1970, c. 205
 2 (C. 17:11A-45) is amended to read as follows:

3 12. A secondary mortgage loan ***【license】* *licensee*** shall:

4 a. ***【Maintain at least one licensed place of business in this**
 5 **State.】* *(Deleted by amendment, P. L., c.)***

6 b. ***【Conspicuously display his license at each licensed place of**
 6A **business.】* *(Deleted by amendment, P. L., c.)***

7 c. **【Keep on file with the commissioner a corporate surety bond**
 8 **in the principal sum of \$5,000.00. Said bond shall be in the form**
 9 **required by the commissioner and shall be issued by a surety com-**
 10 **pany authorized to transact business in this State. The bond shall**
 11 **run to the State and shall be conditioned that the license will**
 12 **comply with the provisions of this act. The aggregate liability**
 13 **of the surety on the bond shall in no event exceed the amount of**
 14 **said bond.】 (Deleted by amendment, P. L., c.)**

15 d. Maintain a net worth of \$100,000.00 at all times; except that
 16 licensees licensed prior to **【the effective date of this amendatory**
 17 **and supplementary act】** *March 31, 1981* shall maintain a net worth
 18 of \$50,000.00, *until five years from the effective date of this 1986*
 19 *amendatory and supplementary act, at which time the* ***【appli-**
 20 **cant】* *licensee* shall be required to prove and maintain at all**
 21 *times a net worth of at least \$100,000.00.*

22 e. Maintain at his place of business in this State an original
 23 **【or】**, true **xerographic* or electronic* copy of the following instru-
 24 ments, documents, accounts, books and records:

25 (1) Promissory note *or loan agreement* evidencing each bor-
 26 rower's secondary mortgage loan indebtedness.

27 (2) Mortgage, indenture or any other similar instrument or
 28 document which creates a lien on the real property which is taken
 29 as security for a secondary mortgage loan.

30 (3) **【Credit life and accident and health insurance policy or a**
 31 **certificate】** *Any insurance policies or certificates* of insurance
 32 where such insurance is obtained in accordance with section **【16**
 33 **of this act】** *2 of P. L. 1983, c. 348 (C. 17:11A-49.1).*

34 (4) Closing statement for each secondary mortgage loan.

35 (5) Appraisal, *survey, title examination, title insurance policy,*
 36 *abstract of title, credit report* or search, where utilized.

37 (6) Individual ledger card or any other form of record which

38 show all installment payments made by the borrower and all
39 other charges or credits to the borrower's account.

40 (7) Individual file in which the borrower's application for a loan
41 and any correspondence, including collection letters, memoran-
42 dums, notes or any other written information pertaining to the
43 borrower's account, shall be kept.

44 (8) [General ledger, cash receipts and disbursements register,
45 checkbook, canceled checks and such other accounts] *Accounts*,
46 books [or] *and* records as shall be required by the commissioner
47 in order to ascertain whether the licensee has been conducting
48 his secondary mortgage loan business in full compliance with the
49 provisions of this act.

50 All of the aforementioned instruments, documents, accounts,
51 books and records [shall be kept separate and apart from the rec-
52 ords of any other business conducted by the licensee and] shall be
53 preserved and kept available for investigation or examination by
54 the commissioner for at least two years after a secondary mort-
55 gage loan has been paid in full. The provisions of this section shall
56 not apply to any instrument, document, account, book or record
57 which is assigned, sold or transferred to another secondary mort-
58 gage loan licensee nor shall the two-year requirement apply to an
59 instrument or document which must be returned to the borrower
60 at the time a secondary mortgage loan is paid in full.

61 f. Annually, before February 1, file a report with the commis-
62 sioner which shall set forth such information as the commissioner
63 shall require concerning the business conducted as a licensee dur-
64 ing the preceding calendar year. The report shall be in writing,
65 under oath and on a form provided by the commissioner.

66 g. Be subject to an examination by the commissioner, [at least
67 once a year] *not more than once in any 18 month period, unless*
68 *the commissioner has reason to believe that the licensee is not*
69 *complying with the provisions of P. L. 1970, c. 205 (C. 17:11A-34*
70 *et seq.) or any rule or regulation promulgated thereunder*, at which
71 time the commissioner shall have free access, during regular busi-
72 ness hours, to the licensee's place or places of business in this State
73 and to all instruments, documents, accounts, books and records
74 which pertain to the licensee's secondary mortgage loan business.
75 The cost of any such examination shall be borne by the licensee.

76 h. In the event a borrower's application for a secondary mort-
77 gage loan is denied, notify the borrower, in writing, of said denial
78 and, provided further, the name of any such borrower or a list of

79 any such borrowers shall not be referred by the licensee, in any
80 manner whatsoever, to any other lender, retail seller of personal
81 property or services or to any other person, whether in this or any
82 other state.

83 i. If a secondary mortgage loan is not consummated, return all
84 documents executed by or belonging to the borrower.

85 j. Give to the borrower, without charge, a copy of every instru-
86 ment, document or other writing the borrower signs.

87 k. Give to the borrower, without charge, written evidence of
88 **credit life and accident and health insurance, if** any**,** *insurance*
89 *obtained* in accordance with **regulations promulgated by the**
90 **commissioner pursuant to chapter 169, P. L. 1958** *section 16 of*
91 *P. L. 1970, c. 205 (17:11A-49).*

92 l. Give to the borrower, without charge, at the time a **secondary**
93 **mortgage** *closed-end* loan is made, *and at the time of the first*
94 *advance on an open-end loan*, a closing statement which itemizes
95 the individual amounts disbursed to or on behalf of the borrower,
96 including, but not limited to, the premium for **credit life and**
97 **accident and health** insurance, if any, the total amount of the
98 funds so disbursed, the amount of the interest charge, total amount
99 of the loan, the amount, number and due date of the installment
100 payments and the interest charge expressed as an annual per-
101 centage rate, *as applicable.*

101A m. When a payment is made in cash **on** an account of a **sec-**
102 **ondary mortgage** ***closed-end*** **secondary mortgage** loan,
103 give to the borrower, without charge, at the time such payment is
104 actually received, a written receipt which shall show the name and
105 address of the licensee, the name and address of the borrower,
106 account number or other identification mark or symbol, date and
107 amount paid.

108 n. **Upon** *With respect to closed-end loans, upon* written re-
109 quest from the borrower, give or forward to the borrower, with-
110 out charge, within five days from the date of receipt of such re-
111 quest, a written statement of the borrower's account which shall
112 show the dates and amounts of all installment payments credited
113 to the borrower's account, the dates, amounts and an explanation
114 of all other charges or credits to the account and the unpaid bal-
115 ance thereof. A licensee shall not be required to furnish more than
116 two such statements in any 12-month period.

117 o. When a **secondary mortgage** *closed-end* loan is paid in full,
118 *or when an open-end loan is paid in full ****and the borrower has*
119 *notified the licensee in writing to discontinue his account with the*

120 licensee**** ***[and the borrower has notified the licensee in
 121 writing to discontinue his account with the licensee and surrendered
 121A to the licensee any credit card, checks, or other device used to
 121B obtain credit]****:

122 (1) Refund **or credit** to the borrower, in accordance with regu-
 123 lations promulgated by the [commissioner pursuant to chapter 169,
 124 P. L. 1958] *Commissioner of Insurance*, any unearned portion of
 125 the premium for **[credit life and accident and health]** **any**
 126 insurance, if a premium for such insurance was disbursed on behalf
 127 of the borrower at the time the secondary mortgage loan was
 128 originally made.

129 (2) Stamp or write on the face of the promissory note *or loan*
 130 *agreement* evidencing the borrower's secondary mortgage loan in-
 131 debtedness "Paid in Full" or "Cancelled," the date paid and the
 132 name and address of the licensee and, within [15] 45 days, return
 133 the promissory note *or loan agreement* to the borrower.

133A (3) Release[, at the expense of the licensee,]*, *at the ex-*
 134 *pense of the licensee,** any lien on real property and cancel
 135 the same of record and, at the time the promissory note *or*
 136 *loan agreement* evidencing the borrower's secondary mortgage
 137 loan indebtedness is returned, deliver to the borrower such
 138 good and sufficient assignments, releases or any other cer-
 139 tificate, instrument or document as may be necessary to vest the
 140 borrower with complete evidence of title, insofar as the applicable
 141 secondary mortgage loan is concerned, to the real property, *except*
 142 *that the licensee may require the borrower to pay any charge im-*
 143 *posed upon the licensee by a county recording officer to effect the*
 144 *cancellation or release.*

145 ****[p. *Have the power to issue credit cards, checks or other de-*
 146 *vices used to obtain credit in connection with an open-end loan.*]****

1 * [11.]* ***[*13.*]*** ***10.*** Section 13 of P. L. 1970, c. 205
 2 (C. 17:11A-46) is amended to read as follows:

3 13. A secondary mortgage loan licensee shall not:

4 a. Transact any business subject to the provisions of this act
 5 under any other name or at any other location except that desig-
 6 nated in his license. For the purpose of this section, the trans-
 7 action of business includes, but is not limited to, the signing of any
 8 instrument, document or any other form by the borrower, except
 9 that a borrower's application for a secondary mortgage loan need
 10 not be signed in the office of the licensee. A licensee who changes
 11 his name or place of business shall immediately notify the commis-

12 sioner who shall issue a certificate to the licensee, which shall
13 specify the licensee's new name or address.

14 b. Photocopy or otherwise reproduce his license.

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

17 d. Make a secondary mortgage loan which has been referred by
18 a retail seller, who, in connection with such referral, has required
19 the borrower to purchase personal property or services or has
20 indicated that such purchase is necessary as a condition precedent
21 for such loan.

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

25 f. Require or accept from a borrower any collateral or security
26 for a secondary mortgage loan other than a mortgage, indenture
27 or any other similar instrument or document which creates a lien
28 upon any real property or an interest in real property including,
29 but not limited to, shares of stock in a cooperative corporation.

30 g. Contract for, charge, receive or collect directly or indirectly,
31 any of the following in connection with a secondary mortgage
32 loan: a [charge for appraisal service; search;] ****[***charge for
33 appraisal service; search;***]**** broker's or finder's fee; com-
34 mission; discount; [expense; examination fee;] *expense,*
35 ****[***examination fee; interest;***]**** fine; [interest;]
36 penalty; points; premium, or any other thing of value other than
37 the charges authorized by this act; except the expenses incurred on
38 actual sale of the real property in foreclosure proceedings or upon
39 the entry of judgment, which are otherwise authorized by law;
40 provided, however, a licensee may require a borrower to pay a
41 reasonable legal fee at the time of the execution of the secondary
42 mortgage loan, provided any such legal fee shall represent a
43 charge actually incurred in connection with said secondary mort-
44 gage loan and shall not be paid to a person except an attorney
45 authorized to practice law in this State; provided, further, that
45A such legal fee shall be evidenced by a statement from such attorney
45B issued to the licensee.

46 h. Assign, sell or transfer a secondary mortgage loan to a person
47 other than a banking institution as defined in section 1 of P. L.
48 1948, c. 67 (C. 17:9A-1), association, as defined in section 5 of
49 P. L. 1963, c. 144 (C. 17:12B-5), or another secondary mortgage
50 loan licensee, *the Federal National Mortgage Association created*

51 pursuant to section 302 of the National Housing Act, 48 Stat. 1246
 52 (17 U. S. C. § 1717), the Federal Home Loan Mortgage Corpora-
 53 tion created pursuant to section 303 of the "Federal Home Loan
 54 Mortgage Corporation Act," Pub. L. 91-351 (17 U. S. C. § 1452), or
 55 other persons or entities as from time to time approved by the
 56 commissioner to facilitate and assure the steady flow of secondary
 57 mortgage funds into the State. **Notwithstanding any other pro-
 57A visions of this act, such persons or entities need not be licensed
 57B under the act to purchase or accept such an assignment or transfer
 57C of a secondary mortgage loan.**

58 i. Solicit business through any other person by paying, directly
 59 or indirectly, for such business referred to the licensee by any
 60 such person** ***[, except as described in subsection j.]*** ***,
 60A except as described in subsection j.of this section**** **.

61 j. Solicit business, directly or indirectly, for any other licensee,
 62 lender, retail seller of personal property or services or for any
 63 other person, whether in this or any other state** ***[, unless (1)
 64 such solicitation results in no additional cost or expense to the
 64A borrower and (2) the application and all advertising in connection
 64B therewith clearly discloses the identity of the person or entity which
 64C will be making the loan. Where those conditions are met, a licensee
 64D may collect a fee or commission from the lender as consideration
 64E for such solicitation]*** ***, except that a licensee may solicit on
 64F behalf of another licensee or lender expressly authorized to make
 64G secondary mortgage loans in this State if (1) such solicitation
 64H results in no additional cost or expense to the borrower; and (2)
 64I the application and all advertising in connection therewith clearly
 64J discloses the identity of the person or entity which will be making
 64K the loan. If those conditions are met, a licensee may collect a fee
 64L or a commission from the lender as consideration for the sollicita-
 64M tion****.**

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

67 (1) That he is licensed by, or that his business is under the
 68 supervision of, the State of New Jersey or the Department of
 69 Banking, except that a licensee may advertise that he is "licensed
 70 pursuant to the Secondary Mortgage Loan Act"; provided, how-
 71 ever, that for the purpose of raising capital, no such advertisement
 72 shall be permitted if it is to be used in connection with a public
 73 solicitation for such funds.

74 (2) Any name, address or telephone number other than the

75 licensee's own name, address and telephone number in this State.

76 (3) The word "bank" or any term inferring that the licensee
77 is or is associated with a bank.

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

80 (5) Any statement or representation which is false, misleading
81 or deceptive and, provided further, a written or other visual ad-
82 vertisement shall include the licensee's name, address and tele-
83 phone number in this State and the phrase "Secondary Mortgage
84 Loans" in 10-point bold type or larger.

85 *****(6) Any statement or representation that the licensee will*
86 *provide "immediate approval" of a loan application or "im-*
87 *mediate closing" of a loan or will afford unqualified access to*
88 *credit.*

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

1 ****[12.]* *14.** (New section) Licensees shall have authority to
2 collect fees for title examination, abstract of title, title insurance,
3 credit reports, appraisals, **and** recording, **[and releasing]** fees
4 when those fees are actually paid by the licensee to a third party
5 for those services or purposes, and to include those fees in the
6 amount of the loan principal. **[Licensees shall also have the*
7 *authority to charge and collect check collection charges not*
8 *in excess of \$10.00, plus any amount charged to the licensee*
9 *by another financial institution, for each check, negotiable order*
10 *of withdrawal, share draft, or other negotiable instrument of the*
11 *borrower returned or dishonored for any reason, and to include*
12 *any such unpaid charges in the amount of the loan principal.]**
13 ***Licensees shall also have the authority to charge and collect a*
14 *late charge in such amount as may be provided in the note or the*
15 *loan agreement, but no late charge shall exceed 5% of the amount*
16 *of payment in default. Not more than one late charge shall be*
17 *assessed on any one payment in arrears.**]*****

1 **[13.]* ***[15.]***** *11.**** Section 16 of P. L. 1970, c. 205
2 (C. 17:11A-49) is amended to read as follows:

3 16. a. A borrower shall not be compelled to purchase credit life
4 or accident and health insurance in connection with a secondary
5 mortgage loan. If, however, the borrower elects to obtain such
6 insurance, the borrower or borrowers shall, in a separate instru-
7 ment, consent thereto, in writing, and, provided further:

8 **[a.]** (1) The insurance shall be obtained in accordance with the
9 provisions of N. J. S. 17B:29-4, and the regulations promulgated

10 by the **[commissioner]** *Commissioner of Insurance* pursuant
11 thereto.

12 **[b.]** (2) The premium for any such insurance shall be deducted
13 from the amount of the secondary mortgage loan requested by the
14 borrower *in the case of a closed-end loan or charged monthly in*
15 *the case of an open-end loan.*

16 *b. Notwithstanding any provisions of P. L. 1970, c. 205 (C.*
17 ****[17:11A-44]*** **17:11A-34*** et seq.) to the contrary, a*
18 *licensee may require a borrower to demonstrate that the real prop-*
19 *erty securing the loan is insured against damage or loss due to*
20 *fire and other perils, including those of extended coverage, ***[in*
21 *an amount and term not to exceed the amount and term of the open-*
21A *end or closed-end loan]*** **for a term not to exceed the term*
21B *of the loan and in an amount not to exceed the amount of the loan*
21C *together with an amount needed to satisfy all prior liens on that*
21D *property***.*

22 *c. Nothing in this act or in any other law of this State shall*
23 *prohibit a licensee or any employee, affiliate, subsidiary, or asso-*
24 *ciate of said licensee, from collecting the premium or identifiable*
25 *charge for insurance permitted by this act and from receiving or*
26 *retaining any dividend, or any other gain or advantage resulting*
27 *from such insurance; subject, however, to the authority of the*
28 *commissioner to promulgate such rules and regulations with re-*
29 *gard to such dividend, gain or advantage as he may deem neces-*
30 *sary***[**, including the authority to reduce the rate of interest to
31 be charged by a particular licensee to borrowers in consideration
32 of the benefit to said licensee from such dividend, gain or ad-
33 vantage**]**.

1 ***[14.]*** *****[*16.*]*** **12.***** Section 2 of P. L. 1983, c. 348
2 (C. 17:11A-49.1) is amended to read as follows:

3 2. A licensee under P. L. 1970, c. 205 (C. 17:11A-34 et seq.)
4 may make available insurance covering direct or indirect damage
5 or loss, by fire or other perils, including those of extended cov-
6 erage, to the property of the borrower *all or part of* which is the
7 security for the loan, ****[**which insurance shall be for an amount
8 and term not to exceed the amount and term of the loan.**]****** **which**
8A *insurance shall be for a term not to exceed the term of the loan and*
8B *in an amount not to exceed the amount of the loan together with*
8C *an amount needed to satisfy all prior liens on such property.***

9 The licensee shall provide the borrower with the following writ-
10 ten statement, to be printed in at least 10-point bold type:

NOTICE TO THE BORROWER

11
12 YOU **[ARE NOT]** *MAY BE* REQUIRED TO PURCHASE
13 PROPERTY INSURANCE AS A CONDITION OF RECEIVING
14 THE LOAN.

15 IF **[YOU DESIRE]** PROPERTY INSURANCE *IS RE-*
16 *QUIRED*, YOU MAY SECURE INSURANCE FROM A COM-
17 PANY OR AGENT OF YOUR OWN CHOOSING.

1 ***[15.]** * *****[17.]** *** **13.** *** Section 18 of P. L. 1970, c. 205
2 (C. 17:11A-51) is amended to read as follows:

3 18. An instrument evidencing a secondary mortgage loan shall:

4 a. Be in the form of a promissory note *for a closed-end loan and*
5 *in the form of a loan agreement for an open-end loan* which shall
6 be identifiable by the use of the words "Secondary Mortgage
7 Loan" printed prominently, in 14-point bold type or larger, cen-
8 tered and at the top of the promissory note *or loan agreement*
9 **[and, directly underneath, in 8-point bold type or larger, the**
10 statement, "This promissory note is subject to the provisions of
11 the Secondary Mortgage Act] **and, directly underneath, in eight-*
11A *point bold type or larger, the statement, "This promissory note is*
11B *subject to the provisions of the "Secondary Mortgage Loan*
11C *Act"*. ["]*

12 b. Provide for the payment, in full, of the total amount of the
13 secondary mortgage loan in substantially equal payment periods,
14 measured in terms of weeks or months, and, *except as otherwise*
15 *permitted, substantially equal* installment payment amounts, ex-
16 cept that the initial payment period may be deferred for 60 days,
17 and, provided further, when appropriate for the purpose of facil-
18 itating payment in accordance with the borrower's intermittent
19 income, a promissory note *or loan agreement* may provide an
20 installment schedule which reduces or omits payments over any
21 period or periods of time during which period or periods the bor-
22 rower's income is reduced or suspended, and the final installment
23 may be \$1.00 more or less than the amount of all other regular
24 installment payments.

25 c. Contain the following notice printed prominently, **[in red,]**
26 in the identical form indicated below, in 10-point bold type or
27 larger, directly above the space provided for the signature of
28 the borrower.

"NOTICE TO BORROWER

29
30 Read this promissory note *or loan agreement* before you sign.

31 Do not sign this promissory note *or loan agreement* if it con-
32 tains blank spaces.

33 This promissory note *or loan agreement* is secured by a sec-
34 ondary mortgage on your real property.”

35 d. Be completed in full before it is signed by the borrower. In
36 the event that it is unnecessary to fill in a blank space provided
37 for in any instrument, the figure-0-, a dash, line or the word
38 “none” shall be inserted in such blank space.

1 ***[16.]*** *****[*18.*]***** *****14.***** Section 19 of P. L. 1970, c. 205
2 (C. 17:11A-52) is amended to read as follows:

3 19. No writing of any kind executed in connection with a sec-
4 ondary mortgage loan shall contain:

5 a. An agreement whereby the borrower waives any rights
6 accruing to him under the provisions of this act or any other
7 law of this State.

8 b. A power of attorney to confess judgment or any other power
9 of attorney.

10 c. An assignment of or order for the payment of any salary,
11 wages, commissions or any other compensation for services, or any
12 part thereof, earned or to be earned.

13 d. An agreement to pay any amount other than the unpaid
14 balance of the promissory note *or loan agreement* or any other
15 charge authorized by this act.

16 e. A provision relieving the licensee from liability for any claim,
17 or from any legal remedy, which the borrower may have against
18 said licensee under the terms of the promissory note *or loan agree-*
19 *ment.*

20 f. A provision whereby the borrower waives any right of action
21 against the licensee, a subsequent holder or any person acting on
22 the licensee’s or holder’s behalf for any illegal act committed in
23 the collection of payments under the promissory note *or loan*
24 *agreement.*

25 g. An acceleration clause under which the unpaid balance of the
26 promissory note *or loan agreement* not yet matured or any part
27 thereof may be declared due and payable because the licensee or
28 subsequent holder deems himself to be insecure.

1 ***[17.]*** *****[*19.*]***** *****15.***** Section 20 of P. L. 1970, c. 205
2 (C. 17:11A-53) is amended to read as follows:

3 20. A promissory note *or loan agreement* may provide for the
4 payment of attorney fees in the event it becomes necessary to
5 refer the promissory note *or loan agreement* to an attorney for
6 collection; provided, however, that any such provision shall be
7 void and unenforceable unless:

8 a. The promissory note *or loan agreement* is referred to an
9 attorney authorized to practice law in this State.

10 b. The attorney to whom the promissory note *or loan agreement*
11 is referred is not a partner, officer, director or employee, whether
12 salaried or commissioned, of the licensee.

13 c. Suit is actually filed by the attorney to whom the promissory
14 note *or loan agreement* is referred and subsequently decided in
15 favor of the licensee, in which event such attorney fees shall not
16 exceed 15% of the first \$500.00, 10% of the next \$500.00 and 5%
17 of any excess amount due and owing under the promissory note
18 *or loan agreement* and, provided further that at least 15 days
19 prior to the commencement of the suit, the licensee or his attorney
20 shall send to the borrower, by certified or registered mail, return
21 receipt, at his last known address, a statement of his intention
22 to sue, which statement shall also specify the amount of prin-
23 cipal, interest and any other charge due and owing to the licensee.

24 d. In any proceeding to satisfy a judgment by the sale of the
25 real property securing a secondary mortgage loan, a credit for the
26 fair market value of such property shall be afforded to the
27 borrower.

1 ***[18.]*** *****[*20.*]***** ***16.*** Section 24 of P. L. 1970, c. 205
2 (C. 17:11A-57) is amended to read as follows:

3 24. The provisions of this act shall apply to any secondary
4 mortgage loan:

5 a. Advertised, caused to be advertised, solicited, negotiated,
6 offered, or otherwise transacted within this State, in whole or in
7 part, whether by the ultimate lender or any other person**[.]**; *or*

8 b. Made or executed within this State**[.]**; *or*

9 c. Notwithstanding the place of execution, which is secured by
10 real property located in this State.

1 ***[19.]*** *****[*21.*]***** ***17.*** Section 26 of P. L. 1970, c. 205
2 (C. 17:11A-59) is amended to read as follows:

3 26. a. Any person who engages in the secondary mortgage loan
4 business in this State without having first obtained a license as
5 required by section 3 of this act shall be liable for a penalty of not
6 more than **[\$1,000.00]** \$3,000.00 for each offense. For the purpose
7 of this subsection, each loan made without a license shall constitute
8 a separate offense.

9 b. Any person, including any licensee or any partner, officer,
10 director or employee, whether salaried or commissioned, of such
11 licensee, or any other person representing a licensee, whether di-
12 rectly or indirectly, who ***[knowingly and willfully]*** violates any

13 provision of this act or any rule or regulation promulgated in con-
 14 nection therewith, shall be liable for a penalty, in addition to all
 15 other penalties or forfeitures imposed by this or any other law, of
 16 not more than ~~[\$1,000.00]~~ \$3,000.00 for each offense. Any person
 17 who shall aid or abet such a violation shall be equally liable for such
 18 a penalty as may be imposed upon a principal violator. For the
 19 purpose of this subsection, a violation of any section of this act or
 20 any rule or regulation promulgated by the commissioner pursuant
 21 thereto shall constitute a separate offense. The commissioner, in
 22 his discretion, is hereby authorized and empowered to compromise
 23 and settle any claim for a penalty under this subsection for an
 24 amount that appears appropriate and equitable under all of the
 25 circumstances. *****The liability arising under this subsection for*
 25A *making or offering to make a secondary mortgage loan which is*
 25B *not a prudent loan in violation of subsection l. of section 13 of P. L.*
 25C *1970, c. 205 (C. 17:11A-46) shall not attach until the commis-*
 25D *sioner has ordered the licensee, in writing, to cease the violation*
 25E *and the licensee has failed to comply with the order.*****

26 c. The penalties provided for in this section, if not voluntarily
 27 paid to the commissioner, shall be collected in a civil action brought
 28 in the name of the commissioner pursuant to the provisions of ~~the~~
 29 Penalty Enforcement Law, L. 1948, c. 253, 1 et seq., Revised Stat-
 30 utes] *“the penalty enforcement law,” N. J. S. 2A:58-1 et seq.*

1 ****~~[*20.]~~ *22.* (New section) ~~[Except for a good faith error,~~
 2 ~~if]~~ *If* a licensee charges or collects interest, costs or other
 3 charges in excess of those permitted by the ~~“[Second]~~ *Secon-
 4 dary* Mortgage Loan Act,” P. L. 1970, c. 205 (C. 17:11A-34 et seq.),
 5 the licensee may collect only the principal amount of the loan, and
 6 may not collect interest, costs or other charges with respect to the
 7 loan. In addition, a licensee who knowingly and willfully violates
 8 any provision of that act also shall forfeit to the borrower three
 9 times any amount of such interest, costs or other charges collected
 10 in excess of that authorized by law.

1 ~~[21.]~~ *23.* (New section) ~~[a.]~~ A licensee shall have no lia-
 2 bility for unintentional error if within ~~[30 days]~~ *90 days*
 3 after discovering an error the licensee notifies the borrower con-
 4 cerned of the error and makes adjustments in the account as
 5 necessary to assure that the borrower will not be required to pay
 6 any interest, costs, or other charges which aggregate in excess of
 7 the charges permitted under the “Secondary Mortgage Loan Act,”
 8 P. L. 1970, c. 205 (C. 17:11A-34 et seq.).]****

9 ~~[b.]~~ If a contract is made in good faith in conformity with an
 10 interpretation of the “Secondary Mortgage Loan Act,” P. L. 1970,

11 c. 205 (C. 17:11A-34 et seq.) by the Appellate Division of Superior
12 Court or in compliance with a rule or regulation officially promul-
13 gated by the commissioner, no provision of that act imposing any
14 penalty shall apply, notwithstanding that after that contract is
15 made, that interpretation, rule or regulation is amended, rescinded,
16 or determined by judicial or other authority to be invalid for any
17 reason.]*

1 ***[*22. Section 5 of P. L. 1963, c. 144 (C. 17:12B-5) is amended
2 to read as follows:

3 5. Definitions. The following words and phrases as used in this
4 act, unless a different meaning is plainly required by the context,
5 shall have the following meaning:

6 (1) "State association" shall mean any savings and loan associa-
7 tion, building and loan association, or any corporation, however
8 named, now or hereafter operating pursuant to the provisions of
9 this act.

10 (2) "Federal association" shall mean a savings and loan associa-
11 tion organized pursuant to an Act of Congress approved June 30,
12 1933, entitled "Home Owners' Loan Act of 1933" or any subsequent
13 Act of Congress.

14 (3) "Association" shall mean both a State association and a
15 federal association having its principal office in this State.

16 (4) "Insured association" shall mean an association whose sav-
17 ings members' accounts or savings deposits are insured by the
18 Federal Savings and Loan Insurance Corporation.

19 (5) "Board" shall mean the board of directors of any association.

20 (6) "Commissioner" shall mean the Commissioner of Banking
21 of the State of New Jersey, or such other official as may hereafter
22 be charged by State law with the supervision of State associations.

23 (7) "Member" shall mean a person who holds an account or a
24 savings deposit in a mutual association as a savings member or
25 as a borrowing member.

26 (8) "Savings member" shall mean a member who holds an
27 account or a savings deposit representing savings in an associa-
28 tion.

29 (9) "Borrowing member" shall mean a member to whom money
30 of the association is loaned or one who is the owner of property
31 upon which the association holds a mortgage.

32 (10) "Account" shall mean the record of the financial transac-
33 tions of a member or depositor as shown on the books of the
34 association.

35 (11) "Direct reduction loan" shall mean a loan the principal of
36 which is repayable in periodical installments.

37 (12) "Sinking fund loan" shall mean a loan, the principal of
38 which is contracted to be repaid with the participation value of
39 an installment account pledged as collateral security for the pay-
40 ment of the loan.

41 (13) "Straight mortgage loan" shall mean a loan, the principal
42 of which is repayable upon a fixed day and upon which no interim
43 amortization is required.

44 (14) "Account loan" shall mean a loan secured by the pledge of
45 an account and the shares, if any, issued in connection therewith.

46 (15) "Capital" of a mutual State association shall mean the
47 aggregate participation value of all savings members' accounts.
48 It shall not be limited and shall be accumulated only by payments
49 by savings members, plus dividends credited to their accounts.

50 (16) "Participation value" of an account shall mean the amount
51 paid by a savings member on such account, plus dividends or
52 interest credited thereto, less payments of withdrawals and re-
53 tirements therefrom and any other amounts lawfully deductible
54 therefrom.

55 (17) "Withdrawal value" of an account shall mean the partici-
56 pation value of such an account, at the time application for with-
57 drawal of the account is filed, less such part, if any, of the dividends
58 or interest then credited to such account as the association is
59 authorized to retain upon withdrawal.

60 (18) "Gross income" shall have the meaning ascribed to it in
61 section 6 of this act.

62 (19) "Net income" shall have the meaning ascribed to it in sec-
63 tion 7 of this act.

64 (20) "Federal Savings and Loan Insurance Corporation" shall
65 mean the corporation so named, organized pursuant to an Act of
66 Congress, or any federal corporation, instrumentality or agency
67 which succeeds to the powers and functions of the Federal Savings
68 and Loan Insurance Corporation or undertakes to discharge the
69 purposes for which said corporation was created.

70 (21) "Federal Home Loan Bank Board" shall mean the board
71 so named, organized pursuant to an Act of Congress, or any
72 federal corporation, instrumentality or agency which succeeds to
73 the powers and functions of the Federal Home Loan Bank Board,
74 or which is formed to carry out the purposes for which such board
75 was created.

76 (22) "Change in the bylaws" includes new bylaws and revisions,
77 amendments, supplements and repealers of existing bylaws.

78 (23) "Principal office," "branch office" and "auxiliary office" shall
79 have the meanings ascribed to them in section 8 of this act.

80 (24) "Agency" shall have the meaning ascribed to it in section
81 9 of this act.

82 (25) "Per capita assets" shall have the meaning ascribed to it
83 in section 10 of this act.

84 (26) "Population." Where in this act the population of a munici-
85 pality, a county, or the State is mentioned, the population figure
86 shall be the last current population estimate as furnished to the
87 commissioner by any official agency of the State or federal gov-
88 ernment.

89 (27) "Municipality." The word municipality shall include cities,
90 towns, townships, villages and boroughs.

91 (28) "First lien" shall have the meaning ascribed to it in sec-
92 tion 11 of this act.

93 (29) "Foreign association" shall mean any association or cor-
94 poration conducting the business of a savings and loan association,
95 however designated, not incorporated under the provisions of this
96 act, except a federal association.

97 (30) "Department" shall mean the Department of Banking of
98 New Jersey.

99 (31) "Mutual association" shall mean any State association
100 organized pursuant to the provisions of this act without capital
101 stock.

102 (32) "Capital stock association" shall have the meaning ascribed
103 to it in section 15 of P. L. 1974, c. 137 (C. 17:12B-244).

104 (33) "Capital stock" shall have the meaning ascribed to it in
105 section 15 of P. L. 1974, c. 137 (C. 17:12B-244).

106 (34) "Stockholder" shall have the meaning ascribed to it in sec-
107 tion 15 of P. L. 1974, c. 137 (C. 17:12B-244).

108 (35) "Secondary mortgage loan" means a *closed-end or open-end*
109 *loan, as defined in section 2 of P. L. 1970, c. 205 (C. 17:11A-35),*
110 made to an individual, association, joint venture, partnership,
111 limited partnership association, or any other group of individuals
112 however organized, except a corporation, which is secured in whole
113 or in part by a lien upon any interest in real property created by
114 a security agreement, including a mortgage, indenture, or any other
115 similar instrument or document, which real property is subject to
116 one or more prior mortgage liens and which is used as a dwelling,
117 including a dual purpose or combination type dwelling which is also
118 used as a business or commercial establishment, and has accom-
119 modations for not more than six families, except that a loan which:
120 (a) is to be repaid in 90 days or less; (b) is taken as security for
121 a home repair contract executed in accordance with the provisions
122 of P. L. 1960, c. 41 (C. 17:16C-62 et seq.); or (c) is the result of
123 the private sale of a dwelling if title to the dwelling is in the name

124 of the seller and the seller has resided in said dwelling for at least
125 one year if the buyer is purchasing said dwelling for his own resi-
126 dence and, as part of the purchase price, executes a secondary
127 mortgage in favor of the seller, shall not be included within the
128 definition of "secondary mortgage loan."

1 23. Section 155 of P. L. 1963, c. 144 (C. 17:12B-155) is amended
2 to read as follows:

3 155. Other loans. Other loans may be made as follows:

4 A. Account loans. Loans secured by a pledge of member's
5 savings account. No such loan shall exceed the withdrawal value
6 of the pledged account. Interest on such loans shall be charged
7 at a rate in excess of the maximum permitted under the provisions
8 of R. S. 31:1-1 unless a higher rate is required by any applicable
9 federal regulation that establishes minimum rates that must be
10 charged on loans secured by savings accounts; in which event, the
11 interest charged shall not be greater than that specified by such
12 federal regulation.

13 B. Purchase of loans. An association may purchase any mort-
14 gage loan, property repair, alteration, improvement or rehabilita-
15 tion loan, or any other loan which an association is authorized to
16 make.

17 C. Loans secured by a mortgage upon a lease of the fee of real
18 property. Any association may invest in any obligation secured
19 by a mortgage on a lease of the fee of real property. The term
20 of the leasehold interest securing such loan shall be not less than
21 50 years from the date such loan is granted; otherwise, such loans
22 shall be made pursuant to sections 146 through 154, 167 and 168 of
23 this act.

24 D. Camp meeting leaseholds. An association may invest in any
25 obligation secured by a first mortgage, as defined in section 11 of
26 this act, on any leasehold estate of real estate, in this State, of
27 any camp meeting association, to the extent authorized by, and
28 subject to, the limitations and restrictions contained in R. S. 17:2-1.

29 E. Loans otherwise authorized. An association may make any
30 other loan which it may be authorized to make by any law of this
31 State.

32 F. Loans on apartments or units established under the "Hori-
33 zontal Property Act" or the "Condominium Act." An association
34 may invest in any obligation secured by a mortgage on an apart-
35 ment which is part of a horizontal property regime established
36 under the "Horizontal Property Act" or upon a unit which is part
37 of a condominium established under the "Condominium Act." All
38 such loans shall be made pursuant to section 146 through 154, 167
39 and 168 of this act.

40 G. Educational loans. In addition to the authority otherwise
41 granted by law for an association to make loans guaranteed or
42 insured in whole or in part by the United States of America or
43 the State of New Jersey, or any instrumentality or agency of
44 either of them, or for which a commitment to so guarantee or
45 insure has been made, an association may make any loans so guar-
46 teed or insured or for which a commitment to so guarantee or
47 insure has been made where such loans are made for the purposes
48 of financing the expenses of higher education. Such loans may be
49 made in accordance with the terms and conditions permitted by the
50 guaranteeing or insuring authority, notwithstanding any other
51 provisions of law limiting interest or other charges or prescribing
52 other terms and conditions.

53 H. Loans on building lots. An association may invest in any
54 obligation secured by a mortgage which is a first lien on a building
55 lot, where it is represented by the borrower at the time the loan
56 is made that he intends to build or have built a dwelling on the
57 building lot for his own use and occupancy. The amount of such
58 loan shall not exceed 80% of the value of the real estate as found
59 by appraisal at the time the loan is granted and shall be a direct
60 reduction loan as defined in section 5 of this act, which shall re-
61 quire periodic payments sufficient to pay the principal and interest
62 on the loan in full over a period of 10 years or less.

63 I. Secondary mortgage loans. An association may make or invest
64 in any secondary mortgage loan as defined in section 5 of P. L. 1963,
65 c. 144 (C. 17:12B-5) and may exercise all of the powers of a
66 secondary mortgage loan licensee pursuant to the "Secondary Mort-
67 gage Loan Act," P. L. 1970, c. 205 (C. 17:11A-34 et seq.). Secondary
68 mortgage loans shall be repayable in installments under the same
69 terms and conditions as provided for secondary mortgage loan
70 licensees under the "Secondary Mortgage Loan Act," P. L. 1970,
71 c. 205 (C. 17:11A-34 et seq.) only with respect to maximum annual
72 percentage rate of interest. The Commissioner of Banking shall
73 have the power, in relation to a "secondary mortgage loan," to
74 adopt, amend, alter or rescind regulations, the requirements of
75 which, in his judgment, are necessary for the implementation of
76 this subsection.

77 J. Mobile homes. An association may invest in mobile or manu-
78 factured home chattel paper by making or by buying loans or
79 installment sales contracts on mobile or manufactured homes.

80 K. Consumer loans.

81 (1) An association may invest in or make installment loans
82 upon the same terms and conditions prescribed for banks in accor-

83 dance with Article 12 of the "Banking Act of 1948," P. L. 1948,
84 c. 67 (C. 17:9A-1 et seq.), subject to the limitation established in
85 subsection M. of this section.

86 (2) In addition, subject to the limitation established in subsec-
87 tion M. of this section, an association may invest in or make secured
88 or unsecured loans for personal, family, or household purposes to
89 the extent and under the conditions permitted by the rules and
90 regulations adopted by the commissioner from time to time. The
91 rate of interest on such loans shall not be in excess of the rate of
92 of interest provided for in section 160 of P. L. 1963, c. 144 (C.
93 17:12B-160) or in excess of any rate of interest for such loans
94 as may be otherwise authorized by law. The commissioner shall
95 promulgate such rules and regulations in substantial conformity
96 with similar rules and regulations of the Federal Home Loan Bank
97 Board.

98 L. Advance loans. An association may make advance loans upon
99 the same terms and conditions prescribed for banks in accordance
100 with Article 12A of the "Banking Act of 1948," P. L. 1948, c. 67
101 (C. 17:9A-1 et seq.).

102 M. Limitations on loans and investments. Loans or investments
103 in the following subsections shall not exceed, in the aggregate for
104 each subsection, 20% of the assets of the association, provided that
105 the commissioner may, by regulation, establish an amount in excess
106 of 20% for each subsection if such excess amount is in conformity
107 with federal law or rule or regulation of the Federal Home Loan
108 Bank Board:

109 (1) Loans secured by a first lien on real estate which are solely
110 for business or commercial purposes, as authorized by this act;

111 (2) Secured or unsecured loans for personal, family, or house-
112 hold purposes, and commercial paper and corporate debt securi-
113 ties; provided, however, that no percentage of assets limitation
114 shall apply to the issuance of credit cards or the extension of
115 credit therewith, the investment in property improvement loans
116 as defined in section 158 of P. L. 1963, c. 144 (C. 17:12B-158),
117 or the investment in advance loans as defined in subsection L.
118 of this section.*

1 ***[22.]*** *26.* Sections 6, 7, 11, 23 and 25 of P. L. 1970, c. 205
2 (C. 17:11A-39, 17:11A-40, 17:11A-44, 17:11A-56 and 17:11A-58)
3 and sections 3 and 7 of P. L. 1983, c. 437 (C. 17:11A-44.1 and
4 17:11A-44.5) are repealed.***

1 ******[**18.** (New section) Notwithstanding any provision of the
2 "Secondary Mortgage Loan Act," P. L. 1970, c. 205 (C. 17:11A-34

3 *et seq.) or any other law to the contrary, licensees which are li-*
 4 *censed pursuant to the "Secondary Mortgage Loan Act," and which*
 5 *have a net worth of \$2,000,000.00 or more may make secondary mort-*
 6 *gage loans under the "Secondary Mortgage Loan Act," and may*
 7 *also make secondary mortgage loans under the same terms and*
 8 *conditions permitted any lender in this State under the provisions*
 9 *of any other law.*

1 *19. Sections 6, 7 and 23 of P. L. 1970, c. 205 (C. 17:11A-39,*
 2 *17:11A-40 and 17:11A-56) are repealed.***】*****

1 *****18. Section 5 of P. L. 1970, c. 205 (C. 17:11A-38) is amended*
 2 *to read as follows:*

3 *5. a. An applicant shall pay to the commissioner at the time the*
 4 *application is filed, and biennially thereafter upon renewal, a*
 5 *license fee for his principal place of business and for each branch*
 6 *office in this State. The commissioner shall charge for a license*
 7 *such fee as he shall prescribe by rule or regulation. Each fee shall*
 8 *not exceed \$1,000.00. The license shall run from the date of issu-*
 9 *ance to the end of the biennial period. When the initial license is*
 10 *issued in the second year of the biennial licensing period, the*
 11 *license fee shall be an amount equal to one-half of the licensing*
 12 *fee for the biennial licensing period.*

13 *b. An individual applicant filing as an officer, partner, member*
 14 *or other principal of a corporation, partnership, association or*
 15 *other entity as set forth in subsection b. of section 3 of P. L. 1970,*
 16 *c. 205 (C. 17:11A-36) shall pay to the commissioner at the time the*
 17 *application is filed, and biennially thereafter upon renewal, a*
 18 *license fee. The commissioner shall charge for a license a fee as*
 19 *he shall prescribe by rule or regulation. Each fee shall not exceed*
 20 *\$1,200.00. The license shall run from the date of issuance to the*
 21 *end of the biennial period. When the initial license is issued in the*
 22 *second year of the biennial licensing period, the license fee shall be*
 23 *an amount equal to one-half of the licensing fee for the biennial*
 24 *licensing period. In addition, an individual applicant shall pay a*
 25 *fee of \$200.00 to the commissioner at the time the application is*
 26 *filed.*

1 *19. (New section) a. Notwithstanding the provisions of R. S.*
 2 *31:1-1 or any other law to the contrary, a licensee shall have*
 3 *authority to make closed-end loans, and may charge, contract for*
 4 *and receive thereon interest at an annual percentage rate agreed*
 5 *to by the licensee and the borrower.*

6 *b. The note evidencing a closed-end loan may provide for a*
 7 *variation in the rate of interest in which adjustments to the*

8 *interest rate shall correspond directly to the movement of an*
 9 *interest rate index which is readily available to and verifiable by*
 10 *the borrower and is beyond the control of the lender. If the note*
 11 *provides for a variation in the rate of interest, that fact shall be*
 12 *clearly described in plain language, in at least eight-point bold*
 13 *face type on the face of the note. If the note provides for a final*
 14 *payment which is substantially greater than the previous install-*
 15 *ments, that fact, together with a statement that the lender is under*
 16 *no obligation to refinance the loan, unless the lender uncondition-*
 17 *ally obligates itself to do so, shall be clearly disclosed in plain*
 18 *language, in at least eight-point bold face type on the face of the*
 19 *note. No rate increase or decrease shall take effect during the first*
 20 *12 months of the term of the loan. Thereafter, no rate increase or*
 21 *decrease shall take effect unless at least 30 days prior to the effec-*
 22 *tive date of that increase or decrease, a written notice has been*
 23 *mailed or delivered to the borrower that clearly and conspicuously*
 24 *describes the increase or decrease, and unless at least six months*
 25 *have elapsed without any increase in the rate.*

1 *20. (New section) Notwithstanding the provisions of R. S. 31:1-1*
 2 *or any other law to the contrary, and subject to all applicable pro-*
 3 *visions of this act, a licensee shall have authority to make open-end*
 4 *loans, and may charge, contract for, and receive thereon, interest*
 5 *at an annual percentage rate agreed to by the licensee and the*
 6 *borrower, upon the same terms and conditions permitted to banks,*
 7 *savings banks, and savings and loan associations pursuant to State*
 8 *and federal laws and regulations promulgated thereunder.*

1 *21. (New section) Licensees shall have authority to collect fees*
 2 *for title examination, abstract of title, survey, title insurance,*
 3 *credit reports, appraisals, and recording fees when those fees are*
 4 *actually paid by the licensee to a third party for those services or*
 5 *purposes and to include those fees in the amount of the loan*
 6 *principal. Licensees shall also have the authority to charge and*
 7 *collect check collection charges in the amount charged to the*
 8 *licensee. Licensees shall also have the authority to charge and*
 9 *collect a late charge in any amount as may be provided in the note*
 10 *or loan agreement, but no late charge shall exceed 5% of the amount*
 11 *of payment in default. Not more than one late charge shall be*
 12 *assessed on any one payment in arrears.*

1 *22. (New section) If a licensee charges or collects interest, costs*
 2 *or other charges in excess of those permitted by the "Secondary*
 3 *Mortgage Loan Act," P. L. 1970, c. 205 (C. 17:11A-34 et seq.), the*
 4 *licensee may collect only the principal amount of the loan, and may*

5 not collect interest, costs or other charges with respect to the loan.
 6 In addition, a licensee who knowingly and willfully violates any
 7 provision of that act shall also forfeit to the borrower three times
 8 any amount of the interest, costs or other charges collected in
 9 excess of that authorized by law.

1 23. (New section) A licensee shall have no liability for unin-
 2 tentional error if within 90 days after discovering an error the
 3 licensee notifies the borrower of the error and makes adjustments
 4 in the account as necessary to assure that the borrower will not be
 5 required to pay any interest, costs, or other charges which aggre-
 6 gate in excess of the charges permitted under the "Secondary
 7 Mortgage Loan Act," P. L. 1970, c. 205 (C. 17:11A-34 et seq.).

1 24. (New section) Sections 6, 7, 11, 23, and 25 of P. L. 1970, c. 205
 2 (C. 17:11A-39, 17:11A-40, 17:11A-44, 17:11A-56 and 17:11A-58)
 3 and sections 3 through 7 of P. L. 1983, c. 437 (C. 17:11A-44.1
 4 through 17:11A-44.5) are repealed.****

1 *~~[23.]~~* ***~~[27.]~~**** ****~~[20.]~~**** ****~~25.~~**** This act
 2 shall take effect immediately.

BANKING AND FINANCIAL INSTITUTIONS
 Amends "Secondary Mortgage Loan Act."

28 in the name of the commissioner pursuant to the provisions of [the
29 Penalty Enforcement Law, L. 1948, c. 253, 1 et seq., Revised Stat-
30 utes] "*the penalty enforcement law*," N. J. S. 2A:58-1 et seq.

1 20. (New section) Except for a good faith error, if a licensee
2 charges or collects interest, costs or other charges in excess of
3 those permitted by the "Secondary Mortgage Loan Act," P. L. 1970,
4 c. 205 (C. 17:11A-34 et seq.), the licensee may collect only the
5 principal amount of the loan, and may not collect interest, costs or
6 other charges with respect to the loan. In addition, a licensee who
7 knowingly and willfully violates any provision of that act also shall
8 forfeit to the borrower three times any amount of such interest,
9 costs or other charges collected in excess of that authorized by law.

1 21. (New section) a. A licensee shall have no liability for unin-
2 tentional error if within 30 days after discovering an error the
3 licensee notifies the borrower concerned of the error and makes
4 adjustments in the account as necessary to assure that the borrower
5 will not be required to pay any interest, costs, or other charges
6 which aggregate in excess of the charges permitted under the
7 "Secondary Mortgage Loan Act," P. L. 1970, c. 205 (C. 17:11A-34
8 et seq.).

9 b. If a contract is made in good faith in conformity with an
10 interpretation of the "Secondary Mortgage Loan Act," P. L. 1970,
11 c. 205 (C. 17:11A-34 et seq.) by the Appellate Division of Superior
12 Court or in compliance with a rule or regulation officially promul-
13 gated by the commissioner, no provision of that act imposing any
14 penalty shall apply, notwithstanding that after that contract is
15 made, that interpretation, rule or regulation is amended, rescinded,
16 or determined by judicial or other authority to be invalid for any
17 reason.

1 22. Sections 6, 7, 11, 23 and 25 of P. L. 1970, c. 205 (C. 17:11A-39,
2 17:11A-40, 17:11A-44, 17:11A-56 and 17:11A-58) and sections 3
3 and 7 of P. L. 1983, c. 437 (C. 17:11A-44.1 and 17:11A-44.5) are
4 repealed.

1 23. This act shall take effect immediately.

STATEMENT

This bill constitutes an extensive revision of the "Secondary Mortgage Loan Act." The purpose of the revision is to provide secondary mortgage lenders with additional lending flexibility so that they can remain competitive with financial institutions. The revisions should also draw more funds into New Jersey for secondary mortgage loans.

A2857(1986)

Despite several amendments since its adoption in 1970, the "Secondary Mortgage Loan Act" remains substantially as originally enacted. Its purpose at that time was to check abuses in the industry. Substantial restraints were placed upon lenders. The present revision retains many of the provisions of the original act designed to protect consumers.

The revision has several main features. It allows adjustable rate closed-end installment loans under certain restrictions and provides a limited ability to make "balloon loans" as second mortgage loans. Additionally, it allows lenders to charge for certain third party costs associated with closing a secondary mortgage loan.

The revision also strengthens the consumer protection aspects of the act by doubling the net worth required for a licensee. The revision answers a number of questions that have arisen as to the applicability of the act by making all loans which result in a secondary mortgage lien on a one to six-family dwelling subject to the act except for seller financing. Also, a licensee would be required to obtain a bond of at least \$25,000.00 for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the secondary mortgage lender.

BANKING AND FINANCIAL INSTITUTIONS
Amends "Secondary Mortgage Loan Act."

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2857

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1986

This bill constitutes an extensive revision of the "Secondary Mortgage Loan Act." The purpose of the revision is to provide secondary mortgage lenders with additional lending flexibility so that they can remain competitive with financial institutions. The revisions should also draw more funds into New Jersey for secondary mortgage loans.

The revision has several main features. It allows adjustable rate closed-end installment loans under certain restrictions and provides a limited ability to make "balloon loans" as second mortgage loans. Additionally, it allows lenders to charge for certain third party costs associated with closing a secondary mortgage loan.

The revision also strengthens the consumer protection aspects of the act by doubling the net worth required for a licensee. The revision answers a number of questions that have arisen as to the applicability of the act by making all loans which result in a secondary mortgage lien on a one to six-family dwelling subject to the act except for seller financing. Also, a licensee would be required to obtain a bond of at least \$25,000.00 for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the secondary mortgage lender.

The committee adopted several amendments that provide for the following:

- (a) Licensure of certain business entities only if a member or officer of that business entity is licensed as an individual;
- (b) Removing the liquid asset requirement for licensed individuals of a licensed corporate entity;
- (c) Examination and revocation procedures;
- (d) Certain regulations concerning a change in interest rate under a variable rate mortgage under the "Secondary Mortgage Loan Act;"
- (e) Grants to savings and loan associations the power to make loans under the "Secondary Mortgage Loan Act;" and
- (f) Various technical amendments.

SENATE Amendments
(Proposed by Senator Jackman)
to

ASSEMBLY Bill No. 2857 (2nd OCR) (SR)
(Sponsored by Assemblymen Kosco and Genova)

*adopted
3-26-87*

Amend:

Page Sec. Line

required to pay any interest, costs, or other charges which aggregate in excess of the charges permitted under the "Secondary Mortgage Loan Act," P.L. 1970, c. 205 (C. 17:11A-34 et seq.).

24. (New section) Sections 6, 7, 11, 23, and 25 of P.L. 1970, c. 205 (C. 17:11A-39, 17:11A-40, 17:11A-44, 17:11A-56 and 17:11A-58) and sections 3 through 7 of P.L. 1983, c. 437 (C. 17:11A-44.1 through 17:11A-44.5) are repealed." *ck*

27 20 1 Omit "20." insert "25."

STATEMENT

These amendments provide statutory authority for the Commissioner of Banking to establish individual license fees of up to \$1,200.00; clarify the permissible amount of property insurance that may be written in regard to a secondary mortgage loan and the length of that policy; and require that secondary mortgage licensees make only prudent loans. These amendments also allow secondary mortgage lenders: (1) to make open-end loans upon the same terms and conditions permitted banks, savings banks and savings and loan associations; (2) to make closed-end balloon second mortgages; (3) to collect fees for title examination, abstract of title, title insurance, credit reports, appraisals and recording fees when those fees are actually paid by the licensee to a third party; (4) to collect certain late charges and check collection charges; and (5) to make closed-end loans with a variable rate of interest tied to an index which is readily available to and verifiable by the borrower and is beyond the control of the lender.

A.V. 12-18-96

Senate Amendments
(Proposed by Senator Jackman)

to

Assembly Bill No. 2857 (2nd OCR)
(Sponsored by Assemblymen Kosco and Genova)

Amend:

Page Sec. Line

19. Sections 6, 7 and 23 of P.L. 1970, c.205
(C.17:11A-39, 17:11A-40 and 17:11A-56) are repealed."

27 27 1 Omit "27." insert "20."

Note to Printer - Printer's errors?

11 12 22 "business" should read "business"

15 13 63 "othe" should read "other"

STATEMENT

These amendments provide that licensed secondary mortgage lenders with a net worth of \$2,000,000.00 or more may make secondary mortgage loans on the same terms and conditions as financial institutions. These amendments also would leave the current law concerning secondary mortgage licensees intact except that those features of the bill which enhance the Commissioner of Banking's regulatory powers are retained.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: FRI., JULY 31, 1987

Governor Thomas H. Kean today signed legislation amending the Secondary Mortgage Loan Act that encourages the availability of home equity credit while protecting the borrower from abuse.

A-2857, sponsored by Assemblyman Louis Kosco, R-Bergen and Senator Chris Jackman, D-Hudson, allows for flexible home equity loans to be made available by licensed second mortgage lenders. These types of loans are now available from banks, savings and loan associations and credit unions.

The legislation, in addition to new proposed regulations from the Department of Banking, strengthen consumer protection by providing for substantial fines and license suspensions for violations, forfeiture of all interest charges on loans made in violation of the law, stricter licensing, and treble damages in cases of willful non-compliance.

The newer forms of flexible home equity loans have become increasingly popular in recent years as homeowner equity has increased due to rising home values. Further, interest rates are generally lower, and in most cases still tax deductible, on loans based on real property.

This legislation makes available to customers of licensed second mortgage lenders the same range of home equity loans now available only from banks, thrifts and credit unions, under the same standards applied to those institutions and with the same or stronger protection.

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Variable rate closed-end loans, those with an established term and amount can have their interest rates adjusted only in connection with the movement of an interest rate index which is readily available to the consumer and beyond the control of the lender, such as a major bank's prime interest rate.

Variable rate open-end loans, those which have no fixed term or amount, offered by all licensed lenders will have the same protection in new regulations promulgated by the Department of Banking.

The new banking regulation amendments further prohibit the use of a credit card as a means by which borrowers can obtain advances against their home equity credit lines.

The new amendments also prohibit interest which is due but unpaid from being added to the principal, which results in interest accruing on interest and would require same day crediting of payments.

The new regulations are submitted and the legislation is effective immediately.

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