

17:3B-4 et seq

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:3B-4 et seq

("Market Rate Consumer Loan Act")

LAWS OF: 1985

CHAPTER: 81

Bill No: A2295

Sponsor(s): Flynn and others

Date Introduced: June 25, 1984

Committee: Assembly: -----

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments denoted by asterisks according to Governor's recommendations

Date of Passage: Assembly: June 28, 1984 Re-enacted 2-25-85
Senate: November 19, 1984 Re-enacted 3-7-85

Date of Approval: March 14, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No
Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

3-14-85

[OFFICIAL COPY REPRINT]

## ASSEMBLY, No. 2295

## STATE OF NEW JERSEY

INTRODUCED JUNE 25, 1984

By Assemblyman FLYNN, Assemblywoman WALKER, Assemblymen  
GALLO, KARCHER and M. ADUBATO

AN ACT authorizing and regulating certain consumer credit  
transactions.

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

1 1. This act shall be known and may be cited as the "Market  
2 Rate Consumer Loan Act."

1 2. Definitions. As used in this act:

2 a. "Borrower" means a natural person or persons obtaining  
3 credit for personal, family or household purposes.

4 b. "Closed end credit" means the extension of credit by a lender  
5 to a borrower pursuant to a note or *\*\*loan\*\** agreement which  
6 *\*\*contains a term of payment and which\*\** is not a revolving credit  
6A plan.

7 c. "Credit device" means any card, check, identification code,  
8 or other means of identification contemplated by the agreement  
9 governing a revolving credit plan.

10 d. "Lender" means a banking institution as defined in section 1  
11 of P. L. 1948, c. 67 (C. 17:9A-1), a federally chartered savings  
12 bank, and an association as defined in section 5 of P. L. 1963, c. 144  
13 (C. 17:12B-5).

14 e. "Loan" means an advance or extension of credit to a bor-  
15 rower.

16 f. "Note" or "loan agreement" means a promissory note, bond  
17 or other written evidence of the extension by the lender of credit  
18 to a borrower.

19 g. "Outstanding unpaid indebtedness" means, on any day, the

**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:

\*—Senate committee amendments adopted September 13, 1984.

\*\*—Assembly amendments adopted in accordance with Governor's recom-  
mendations February 4, 1985.

20 amount not in excess of the total amount of purchases and loans  
 21 charged to the borrower's account under the plan which is out-  
 22 standing and unpaid at the end of such day, after adding the  
 23 aggregate amount of any new purchases and loans charged to the  
 24 account as of that day and deducting the aggregate amount of any  
 25 payments and credits applied to that indebtedness as of that day.

26 h. "Purchases" means an agreement to make payment for  
 27 property of whatever nature, real or personal, tangible or intan-  
 28 gible, and an agreement to make payment for services, licenses,  
 29 taxes, official fees, fines, private or governmental obligations, or  
 30 any other thing of value.

31 i. "Revolving credit plan" or "plan" means a plan contemplat-  
 32 ing the extension of credit under an account governed by an  
 33 agreement between a lender and a borrower pursuant to which:

34 (1) The lender permits the borrower and, if the agreement  
 35 governing the plan so provides, persons acting on behalf of or  
 36 with authorization from the borrower, from time to time to  
 37 make purchases or to obtain loans by use of a credit device;

38 (2) The amounts of the purchases and loans are charged  
 39 to the borrower's account under the revolving credit plan;

40 (3) The borrower is required to pay the lender the amounts  
 41 of all purchases and loans charged to the borrower's account  
 42 under the plan but has the privilege of paying those amounts  
 43 outstanding from time to time in full or in installments; and

44 (4) Interest may be charged and collected by the lender  
 45 from time to time on the outstanding unpaid indebtedness  
 46 under that plan, except that interest shall be calculated on a  
 47 simple interest basis.

48 *\*\*j. "Periodic percentage rate" means a rate of interest on a*  
 49 *revolving credit plan or under a closed-end credit agreement for a*  
 50 *daily, weekly, monthly, annual or other period.\*\**

1 3. Extension of credit under revolving credit plan. Any lender  
 2 offering and extending credit under a revolving credit plan to a  
 3 borrower may charge and collect interest and charges and may  
 4 take security as collateral in connection therewith as hereinafter  
 5 provided. Credit may be extended under a revolving credit plan  
 6 by a lender's acquisition of obligations arising out of the honoring  
 7 by a merchant, a lender, whether chartered or organized under the  
 8 laws of this or any other state, the District of Columbia, the United  
 9 States or any district, territory or possession of the United States,  
 10 or any foreign country, or a government or governmental subdivi-  
 11 sion or agency of a credit device made available to a borrower  
 12 under a plan, whether directly or indirectly by means of telephone,

13 point of sale terminal, automated teller machine or other electronic  
14 or similar device or through the mails.

1 4. Interest. Notwithstanding the provisions of R. S. 31:1-1, a  
2 lender may, subject to the criminal usury provisions of N. J. S.  
3 2C:21-19, charge and collect interest under a revolving credit plan  
4 on outstanding unpaid indebtedness in the borrower's account  
5 under the plan at daily, weekly, monthly, annual or other periodic  
6 percentage rates as the agreement governing the plan provides or  
7 as established in the manner provided in the agreement governing  
8 the plan. If the applicable periodic percentage rate under the  
9 agreement governing the plan is other than daily, interest may be  
10 calculated on an amount not in excess of the average of outstanding  
11 unpaid indebtedness for the applicable billing period, determined  
12 by dividing the total of the amounts of outstanding unpaid indeb-  
13 tedness for each day in the applicable billing period by the number  
14 of days in the billing period. If the applicable periodic percentage  
15 rate under the agreement governing the plan is monthly, a billing  
16 period shall be deemed to be a month or monthly if the last day of  
17 each billing period is on the same day of each month or does not  
18 vary by more than four days therefrom.

19 Nothing in this section shall be construed to authorize the  
20 charging of interest on the amount of any accrued interest remain-  
21 ing unpaid on the account \* or any late charge levied in accordance  
22 with section 6 of this act\*.

1 5. Periodic percentage rates. If the agreement governing the  
2 revolving credit plan so provides, the periodic percentage rates of  
3 interest under the plan may increase or decrease in correspondence  
4 with the movement of the market interest rate index specified in  
5 the revolving credit plan agreement, which index shall be readily  
6 verifiable by the borrower and beyond the control of the lender.  
7 Periodic \*\* interest\*\* \*\*percentage\*\* rate increases, based on a  
8 rise in the interest rate index, may be made at the option of the  
9 lender. Periodic \*\* interest\*\* \*\*percentage\*\* rate decreases  
10 shall be made whenever there is a decrease in the interest rate  
11 index which results in an interest rate which is less than the inter-  
12 est rate then applicable to the note or loan, except that the revol-  
13 ving credit plan agreement may stipulate a percentage decrease in  
14 the interest rate index below which a corresponding decrease in  
15 the periodic \*\* interest\*\* \*\*percentage\*\* rate need not be made  
16 by the lender, provided that the index decrement shall be the same  
17 as the index increment used for interest rate increases. Interest  
17A rate increases may, and interest rate decreases shall, apply to all  
18 outstanding unpaid indebtedness under the plan on or after the

19 effective date of the rate variation, as provided in the plan  
20 agreement.

1 \***[6.** Additional charges. a. Notwithstanding the provisions of  
2 any other law to the contrary, a lender which issues a credit card  
3 under the provision of this act in connection with a revolving credit  
4 plan may charge the borrower a fee not to exceed \$15.00 per annum  
5 on an annual or monthly basis. The charge (1) may be collected in  
6 advance, (2) shall be in addition to and not in substitution of any  
7 other fee or charge authorized by this act, and (3) shall not be  
8 deemed to be an interest charge.

9 b. If payment on a revolving credit plan remains unpaid for a  
10 period of more than 15 days after payment falls due pursuant to  
11 the agreement between the lender and the borrower, the lender  
12 may access and collect a late charge in such amount as may be pro-  
13 vided in the loan agreement, but no late charge shall exceed 5%  
14 of the amount of the payment in default or \$5.00, whichever is the  
15 lesser amount. Not more than one late charge shall be assessed on  
16 any one payment in arrears.]\*

1 \***[7.]**\* \*6.\* Purchases and loans—differing terms. A lender may,  
2 if the agreement governing a revolving credit plan so provides,  
3 impose different terms, including, without limitation, the terms gov-  
4 erning the periodic percentage rate or rates used to calculate inter-  
5 est, the method of computing the outstanding unpaid indebtedness  
6 to which the rates are applied, and the terms of the installment  
7 repayment schedule, with respect to indebtedness arising out of  
8 purchases or loans made under the plan.

1 \***[8.]**\* \*7.\* Overdraft accounts. If credit under a revolving credit  
2 plan is offered and extended in connection with a demand deposit  
3 account or other account maintained by the borrower with the lender  
4 pursuant to an agreement or arrangement whereby the lender  
5 agrees to honor checks, drafts or other debits to the account,  
6 which if paid would create or increase a negative balance in the  
7 account, by making extensions of credit to the borrower under the  
8 revolving credit plan, any charges customarily imposed by the  
9 lender, under the terms governing the demand deposit or other  
10 transaction account in the absence of any associated revolving  
11 credit plan, may continue to be imposed on the account without  
12 specific reference thereto or incorporation thereof by reference in  
13 the agreement governing the revolving credit plan, and the amount  
14 of the charge, to the extent the balance in the demand deposit or  
15 other transaction account is insufficient to pay the charge, may be  
16 charged to the borrower's account under the plan as a loan there-  
17 under and may be included in outstanding unpaid indebtedness in

18 accordance with the terms of the agreement governing the revolving  
19 credit plan.

1 \***[9.]**\* \*8.\* Omitted installments. A lender may at any time ex-  
2 tend to a borrower under a revolving credit plan the option of  
3 omitting monthly installments.

1 \***[10.]**\* \*9.\* Loans under a revolving credit plan. A lender may:

2 a. Take personal \***[or real]**\* property as security on a loan made  
3 under a revolving credit plan;

4 b. Require that any property securing the loan be insured for  
5 the benefit of the lender against loss or damage of the security,  
6 and retain out of the proceeds of the loan the premium for the  
7 insurance;

8 c. Require that all taxes, assessments\***[, water rents]**\* and other  
9 governmental charges against \*personal\* property securing the  
10 loan be paid when due and that the security be maintained free of  
11 all executions, levies, encumbrances, and other charges which may  
12 adversely affect the value of the lender's interest in the security.

1 \***[11.]**\* \*10.\* Revolving credit plan prohibitions. No revolving  
2 credit plan agreement shall contain:

3 a. An acceleration clause under which any part or all of the  
4 balance, not yet matured, may be declared immediately due and  
5 payable because the lender deems himself to be insecure, which  
6 provision shall be void and unenforceable;

7 b. A provision whereby the borrower waives any right of action  
8 or defense against the lender or other person acting on his behalf  
9 for any illegal act committed in the collection of the payments  
10 under the revolving credit plan, which provision shall be void and  
11 unenforceable;

12 c. A power of attorney to confess judgment or any other power  
13 of attorney, which provision shall be void and unenforceable \***[.]**\*  
14 \*; and\*

15 \*d. A requirement that the credit be secured by real property.\*

1 \***[12.]**\* \*11.\* Collection costs. Upon the filing of an action for  
2 the collection of an amount in default under the terms of the re-  
3 volving credit plan, the lender, in addition to the recovery of all  
4 court costs, reasonable attorney fees and expenses of repossessing  
5 and storing goods where so authorized by law, may charge and  
6 collect from the borrower other reasonable collection costs incurred  
7 not to exceed 20% of the first \$500.00 of the amount in default, 10%  
8 of the amount over \$500.00 up to \$2,000.00, and 5% of any amount  
9 in excess of \$2,000.00.

1 \***[13.]**\* \*12.\* Changes in terms. a. A lender may, if the agree-  
2 ment governing a revolving credit plan so provides, at any time

3 amend the terms of the agreement with respect to the periodic  
4 percentage rates used to calculate interest, the method of computing  
5 the outstanding unpaid indebtedness to which those rates are ap-  
6 plied, and the terms of the installment repayment schedule, subject  
7 to the limitations of subsection b. of this section.

8 b. The lender shall notify each affected borrower of any amend-  
9 ment pursuant to subsection a. by mailing or delivering to the  
10 borrower, at least **\*\*[15]\*\*** **\*\*30\*\*** days before the effective date of  
11 the amendment, a clear and conspicuous written notice which shall  
12 describe the amendment and the existing terms of the agreement  
13 affected by the amendment and shall also set forth the effective date  
14 of the amendment and the pertinent information contemplated by  
15 the following provisions of this section. If the amendment has the  
16 effect of increasing the interest or other charges to be paid by  
17 the borrower by changing the method of calculating interest or  
18 the index used to calculate the interest, the amendment shall become  
19 effective only if the borrower uses the plan after a date specified  
20 in the notice which is at least **\*\*[15]\*\*** **\*\*30\*\*** days after the giving  
21 of the notice, but which need not be the date the amendment be-  
22 comes effective, by making a purchase or obtaining a loan, or if the  
23 borrower indicates to the lender in writing the borrower's express  
24 agreement to the amendment, and the amendment may become ef-  
25 fective as to a particular borrower as of the first day of the billing  
26 period during which the borrower so used the borrower's account  
27 or so indicated agreement to the amendment. Any borrower who  
28 fails to use the borrower's account or so to indicate agreement to an  
29 amendment shall be permitted to pay the outstanding unpaid in-  
30 debtedness in the borrower's account under the plan in accordance  
31 with the terms of the agreement governing the plan without giving  
32 effect to the amendment.

33 For purposes of this section a variation in periodic **\*\*[interest]\*\***  
34 **\*\*percentage\*\*** rates **\*\*of interest\*\*** in accordance with the terms  
35 of the index established in the revolving credit plan agreement  
36 **\*\*and notice provided pursuant to section 25\*\*** shall not be con-  
37 sidered to be an amendment.

1 **\*\*[14.]\*\*** **\*\*13.\*\*** Extension of closed end credit. A lender may, sub-  
2 ject to the provisions of this act, offer and extend closed end credit  
3 in amounts, at rates of interest, and for a term of payment, and  
4 may take security, including personal property or real property,  
5 as collateral for the loan made in connection therewith, as may be  
6 agreed to by the lender and borrower, and as set forth in the note  
7 or loan agreement.

1 **\*\*[15.]\*\*** **\*\*14.\*\*** Interest. Notwithstanding the provisions of R. S.

2 31:1-1, a lender extending closed end credit may, subject to the  
 3 criminal **\*\*[usury]\*\*** *\*\*usury\*\** provisions of N. J. S. 2C:21-19,  
 4 charge and collect interest with respect to a note or loan as daily,  
 5 weekly, monthly, annual or other periodic percentage rates estab-  
 6 lished in accordance with the terms of the loan agreement, except  
 7 that the interest shall be calculated on a simple interest basis. In  
 8 no instance shall the precomputed interest method be used. Noth-  
 9 ing in this section shall be construed to authorize the charging of  
 10 interest on any accrued interest remaining unpaid on the account  
 11 **\*\*[or on any late charge levied in accordance with section 17 of**  
 11A **this act]\*\***.

12 For purposes of this section, a year may be, but need not be, a  
 13 calendar year and shall be a period of 365 days. "Precomputed  
 14 interest" means an amount equal to the whole amount of interest  
 15 payable on a loan for the period from the making of the loan to  
 16 the date scheduled by the terms of the loan for the repayment of  
 17 the loan in full.

1 **\*\*[16.]\*\* 15.\*** Periodic percentage rates. The periodic percentage  
 2 rates of interest charged and collected with respect to a loan under  
 3 a closed end credit agreement may, subject to any limitations set  
 4 forth in the loan agreement, vary in accordance with the market  
 5 interest rate index specified in the loan agreement, which index  
 6 shall be readily verifiable by the borrower and beyond the control  
 7 of the lender. Periodic **\*\*[interest]\*\*** *\*\*percentage\*\** rate in-  
 8 creases, based on a rise in the interest rate index, may be made at  
 9 the option of the lender. Periodic **\*\*[interest]\*\*** *\*\*percentage\*\**  
 10 rate decreases shall be made whenever there is a decrease in the  
 11 interest rate index which results in an interest rate which is less  
 12 than the interest rate then applicable to the note or loan, except  
 13 that the loan agreement may stipulate a percentage decrease below  
 14 which a corresponding decrease in the periodic **\*\*[interest]\*\***  
 15 *\*\*percentage\*\** rate need not be made by the lender, provided the  
 16 index decrement shall be the same as the index increment used for  
 17 interest rate increases. Interest rate increases may, and interest  
 18 rate decreases shall, apply to any outstanding and unpaid loan  
 19 balances on or after the effective date of the rate variation. Upon  
 19A an increase in the rate of interest, the term of the note shall be  
 20 extended as necessary to provide for payment of the balance due  
 21 without any increase in the amount of each of the borrower's  
 22 periodic payments, except that the periodic payments may be  
 23 increased, if either a. the borrower, at his option *\*\*within 20 days*  
 24 *of the date of the notice provided by the lender pursuant to section*  
 25 *25\*\**, specifically requests the lender *\*\**, *in writing\*\** to increase



26 each periodic payment or the final payment, rather than extend the  
 27 term, or b. if the periodic payment amounts would not be sufficient  
 28 to reduce the principal amount due, the lender\*\*, *after notifying*  
 29 *the borrower of that fact pursuant to section 25,\*\** may require  
 29A that the periodic payments be increased, or that there be a combina-  
 29B tion of an extended term and increased periodic payments.

30 \*\***[**If the interest rate is increased as provided in this section, the  
 31 lender shall mail a notice to the borrower setting forth, as of the  
 32 date of the notice, a. the interest rate; b. the principal balance  
 33 outstanding; c. either the maturity date or the number of months  
 34 necessary to pay off the entire balance at the interest rate then in  
 35 effect, and d. other information as the Commissioner of Banking  
 36 may require by regulation. The notice shall be mailed not later than  
 37 the thirtieth day following the end of the three month or quarterly  
 38 period within which an increase was effective. If the agreement  
 39 provides that the lender will provide the borrower with a monthly  
 40 bill or notice which includes the interest rate in effect at the time,  
 41 and if the bill or notice also includes such information as the com-  
 42 missioner may require by regulation, the monthly bill or notice  
 43 shall be in lieu of the notice otherwise required by this section.]\*\*

1 \***[17.]**\* *\*16.\** Additional charges. \***[a.]**\* If the loan agreement  
 2 so provides, a lender may, on a secured loan, charge and collect the  
 3 actual costs of filing or recording the instrument of security, or  
 4 notice or abstract thereof, if the filing or recording is authorized  
 4A by law.

5 \***[b.]** If payment on a closed end credit agreement remains unpaid  
 6 for a period of more than 15 days after payment falls due pursuant  
 7 to the loan agreement between the lender and the borrower, the  
 8 lender may assess and collect a late charge in an amount as may  
 9 be provided in the loan agreement, but no late charge shall exceed  
 10 5% of the amount of the payment in default or \$5.00, whichever is  
 11 the lesser amount. Not more than one late charge shall be assessed  
 12 on any one payment in arrears.]\*\*

1 \***[18.]**\* *\*17.\** Deferred installments. A lender under a closed end  
 2 credit agreement may, at any time, permit a borrower to defer in-  
 3 stallment payments on a loan and may, in connection with the de-  
 4 ferral, charge and collect deferral charges in accordance with the  
 5 loan agreement.

1 \***[19.]**\* *\*18.\** Insurance. A lender under a closed end credit  
 1A agreement may:

2 a. Subject to the terms of the loan agreement, require any prop-  
 3 erty securing the loan to be insured for the benefit of the lender  
 4 against loss or damage of the security;

5 b. Offer credit life insurance or credit accident and health in-  
6 surance, or both, on the borrower in accordance with the provisions  
7 of chapter 29 of Title 17B of the New Jersey Statutes.

8 A lender may deduct and retain from the proceeds of the loan  
9 the amount of the premium for any insurance provided by the  
10 lender to the borrower pursuant to this section.

1 \***[20.]**\* \*19.\* Prepayment in a closed end credit arrangement.

2 \*\*a.\*\* An individual borrower may prepay a loan in full at any  
3 time without payment of any prepayment charge.

4 \*\*b. *If a borrower wishes to prepay a loan, a lender shall not use*  
5 *the "rule of 78's" to calculate the amount of interest owed by the*  
6 *borrower. The lender shall use a simple interest basis to calculate*  
7 *the amount of interest owed by the borrower.\*\**

1 \***[21.]**\* \*20.\* Closed end loan prohibitions. No closed end loan  
2 agreement shall contain:

3 a. An acceleration clause under which any part or all of the  
4 balance, not yet matured, may be declared immediately due and  
5 payable because the lender deems himself to be insecure, which  
6 provision shall be void and unenforceable;

7 b. A provision whereby the borrower waives any right of action  
8 or defense against the lender or other person acting on his behalf  
9 for any illegal act committed in the collection of the payments  
10 under the agreement, which provision shall be void and unenforce-  
11 able; and

12 c. A power of attorney to confess judgment or any other power  
13 of attorney, which provision shall be void and unenforceable.

1 \***[22.]**\* \*21.\* Collection costs in a closed end credit arrangement.

2 Upon the filing of an action for the collection of an amount in de-  
3 fault under the terms of the loan agreement, the lender, in addition  
4 to the recovery of all court costs, reasonable attorney fees and  
5 expenses of repossession and storing goods where so authorized by  
6 law, may charge and collect from the borrower other reasonable  
7 collection costs incurred not to exceed 20% of the first \$500.00 of the  
8 unpaid balance of the loan, 10% of the amount over \$500.00 up to  
9 \$2,000.00, and 5% of any amount in excess of \$2,000.00.

1 \***[23.]**\* \*22.\* Applicable federal law. Revolving credit plans or  
2 closed end credit agreements shall be subject to the federal truth  
3 in lending provisions of the "Consumer Credit Protection Act,"  
4 Pub. L. 90-321 (15 U. S. C. A. § 1601 et seq.) or other applicable  
5 provisions of federal law.

1 \***[24.]**\* \*23.\* Administrative regulations. The Commissioner of  
2 Banking may promulgate regulations to implement the provisions  
3 of this act.

1     \*24. *Nonexclusivity. The provisions of this act are not exclusive*  
2 *and the lender may at its option elect to extend credit either pur-*  
3 *suant to this act or as otherwise permitted by applicable law. The*  
4 *provisions of this act shall apply to all transactions made pursuant*  
5 *to this act notwithstanding any limitation on interest rate, charges,*  
6 *costs, fees, term of loan or collateral in any other loan or credit*  
7 *laws of this State.\**

1     \*\*25. *A lender shall notify a borrower by mail of any variations*  
2 *in the periodic percentage rate of interest pursuant to section 5 or*  
3 *section 15 and of any change in the amount of periodic payment or*  
4 *term or both, resulting from a variation in the periodic percentage*  
5 *rate of interest pursuant to section 15. Any variation or change*  
6 *shall not take effect until at least 30 days and not more than 60*  
7 *days after the date of the notice to the borrower. The notice may*  
8 *be provided to the borrower in a periodic bill or statement. If there*  
9 *is an increase in the periodic payment as provided for in subsection*  
10 *b. of section 15, the lender shall so notify the borrower. The notice*  
11 *period shall be uniform for both increases and decreases in the*  
12 *periodic percentage rate of interest or change in the amount of*  
13 *periodic payment or term or both.\*\**

1     \*\*[25.]\*\* \*\*26.\*\* This act shall take effect immediately.

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4 balance, not yet matured, may be declared immediately due and  
5 payable because the lender deems himself to be insecure, which  
6 provision shall be void and unenforceable;

7 b. A provision whereby the borrower waives any right of action  
8 or defense against the lender or other person acting on his behalf  
9 for any illegal act committed in the collection of the payments  
10 under the agreement, which provision shall be void and unenforce-  
11 able; and

12 c. A power of attorney to confess judgment or any other power  
13 of attorney, which provision shall be void and unenforceable.

1 22. Collection costs in a closed end credit arrangement. Upon the  
2 filing of an action for the collection of an amount in default under  
3 the terms of the loan agreement, the lender, in addition to the  
4 recovery of all court costs, reasonable attorney fees and expenses of  
5 repossession and storing goods where so authorized by law, may  
6 charge and collect from the borrower other reasonable collection  
7 costs incurred not to exceed 20% of the first \$500.00 of the unpaid  
8 balance of the loan, 10% of the amount over \$500.00 up to \$2,000.00,  
9 and 5% of any amount in excess of \$2,000.00.

1 23. Applicable federal law. Revolving credit plans or closed end  
2 credit agreements shall be subject to the federal truth in lending  
3 provisions of the "Consumer Credit Protection Act," Pub. L.  
4 90-321 (15 U. S. C. A. § 1601 et seq.) or other applicable provisions  
5 of federal law.

1 24. Administrative regulations. The Commissioner of Banking  
2 may promulgate regulations to implement the provisions of this act.

1 25. This act shall take effect immediately.

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#### STATEMENT

This bill authorizes banks, savings banks and savings and loan associations to extend to consumers open and closed-end credit at those rates of interest and for those amounts and terms as may be agreed to by the lender and the borrower. If the rate of interest is on a variable rate basis, the rate shall be tied to a market index which is readily verifiable by the borrower and beyond the control of the lender and may vary in accordance with the index, except that rate reductions required by a decline in the index must be passed along by the lender to the borrower.

Collateral in the form of real or personal property may be required by the lender on loans made pursuant to a revolving credit plan or under a closed-end credit agreement. Property insurance on the collateral may be required by the lender. A lender, in regard

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to closed-end credit, may offer, but not require, credit life and credit accident and health insurance on the borrower. The bill provides for late charges on revolving and closed-end credit agreements. A lender who issues a credit card under the provisions of the bill in connection with a revolving credit plan may charge the borrowers a fee not to exceed \$15.00 per annum. When there is an interest rate increase on a closed-end credit agreement, the lender must disclose the increased rate by mailing a notice thereof to the borrower on a quarterly or 30-day period.

The bill prohibits acceleration clauses, waiver of borrower's right to sue clauses, and clauses granting power of attorney to confess judgment in revolving credit plans and closed-end credit agreements.

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SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2295**

with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: SEPTEMBER 13, 1984

This bill authorizes banks, savings banks and savings and loan associations to extend to consumers open and closed-end credit at those rates of interest and for those amounts and terms as may be agreed to by the lender and borrower. If the rate of interest is on a variable rate basis, the rate shall be tied to a market index which is readily verifiable by the borrower and beyond the control of the lender and may vary in accordance with the index, except that rate reductions required by a decline in the index must be passed along by the lender to the borrower.

Collateral in the form of personal property may be required by the lender on loans made pursuant to a revolving credit plan and collateral in the form of real or personal property may be required under a closed-end credit agreement. Property insurance on the collateral may be required by the lender. A lender, in regard to closed-end credit, may offer, but not require, credit life and credit accident and health insurance on the borrower. When there is an interest rate increase on a closed-end credit agreement, the lender must disclose the increased rate by mailing a notice thereof to the borrower on a quarterly or 30-day period.

The bill prohibits acceleration clauses, waiver of borrower's right to sue clauses, and clauses granting power of attorney to confess judgment in revolving credit plans and closed-end credit agreements.

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

February 4, 1985

ASSEMBLY BILL NO. 2295 (SR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 2295 (SR) with my recommendations for reconsideration.

Assembly Bill No. 2295 (SR), the Market Rate Consumer Loan Act, will allow lenders to offer consumers variable interest rate closed-end loans and variable interest rate revolving credit plans. The lender must give the borrower the benefit of a decline in interest rates. The lender has the option of taking advantage of an increase in interest rates. The lender is not required to offer revolving credit plans and closed-end consumer credit pursuant to the act. The lender may also extend credit in any other manner permitted by law.

Assembly Bill No. 2295 (SR) contains many consumer protection provisions. The lender must notify the borrower of certain amendments to the revolving credit plan agreement. The lender must notify the borrower of an increase in the interest rate on a closed-end loan. The lender may not take real property as security for a loan made in connection with a revolving credit plan. Revolving credit plans and closed-end consumer loan agreements cannot contain acceleration clauses, waivers of legal action against the lender or confessions of judgment.

I support the concept of variable interest rates on revolving credit plans and closed-end consumer credit. Lenders will make more consumer credit available. Variable interest rates will enable lenders to offer closed-end credit for a longer term.

Despite my support for the concept expressed within Assembly Bill No. 2295 (SR), I must return the bill to you and recommend that it be amended as follows:

The definition for the term "closed-end credit" must be amended. The term, as currently defined, is deficient. It does not adequately limit the kinds of acceptable credit vehicles. It makes no mention that the credit issued shall contain a term of payment.

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I am concerned that the terms "periodic interest rate" and "periodic percentage rate" are not defined and are used interchangeably within the bill. The terms are essential to understand the bill. In its current form, the bill is ambiguous.

I recommend that the bill be made uniform by deleting all reference to the term "periodic interest rate" and inserting in its place "periodic percentage rate". I also recommend that the term "periodic percentage rate" be defined. This will bring uniformity to the bill and enhance its clarity.

The notification period within section 12b should be extended from 15 days to 30 days. This subsection requires the lender to notify the borrower at least 15 days before the effective date of certain amendments to a revolving credit plan agreement. If an amendment has the effect of increasing the interest or other charges by changing the method of calculating interest or by changing the interest index, the amendment will become effective only if the borrower uses the plan after a date specified in the notice which must be at least 15 days following the notice.

The 15 day notification period does not give a borrower adequate time in which to decide whether to continue using the revolving credit plan. Increasing the notification period to 30 days will allow the consumer adequate time in which to make the decision.

I recommend that Assembly Bill No. 2295 (SR) be amended to prohibit a lender from using the "rule of 78's" when calculating the interest owed when a borrower wishes to prepay a loan. I further recommend that the lender be required to use a simple interest basis. The "rule of 78's" results in the consumer paying more interest at the beginning of the term. Therefore, if a borrower wishes to prepay a loan at an early point in the term, he may pay more interest than if interest is calculated on a simple interest basis.

Finally, I am concerned with the way that the issue of notification to the borrower of a variation in the periodic percentage rate of interest or change in the amount of periodic payment or term or both is addressed. The issue is addressed in several sections of the bill. However, it is not addressed in a uniform fashion. A consumer will have difficulty determining when he is entitled to notice and if so, the amount of notice to which he is entitled.



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I recommend that the current provisions pertaining to the above issue be deleted and a new section inserted. This section shall require the lender to notify the borrower by mail of any variation in the periodic percentage rate of interest pursuant to section 5 or section 15 and of any change in the amount of periodic payment or term or both resulting from a variation in the periodic percentage rate of interest, pursuant to section 15. A variation or change shall not take effect until at least 30 days and not more than 60 days after the date of the notice. The lender may provide notice in a periodic bill or statement. The lender must specifically notify the borrower when an increase in the periodic percentage rate of interest causes his periodic payment to not be sufficient to reduce the principal amount due. The notice period must be uniform for increases and decreases in the periodic percentage rate of interest or change in the amount of the periodic payment or term or both. I emphasize that this section is to be distinguished from the notification provisions within section 12, pertaining to certain amendments to a revolving credit plan agreement.

Accordingly, for the aforementioned reasons, I return Assembly Bill No. 2295 (SR) and recommend that it be amended as follows:

Page 1, Section 2, Line 5: After "note or" insert "loan"

Page 1, Section 2, Line 5: After "which" insert "contains a term of payment and which"

Page 2, Section 2, Line 47: After line 47 insert new subsection as follows:

"j. "Periodic percentage rate" means a rate of interest on a revolving credit plan or under a closed-end credit agreement for a daily, weekly, monthly, annual or other period."

Page 3, Section 5, Line 7: After "Periodic" delete "interest" insert "percentage"

Page 3, Section 5, Line 8: Delete "interest" insert "percentage"

Page 3, Section 5, Line 14: Delete "interest" insert "percentage"

Page 6, Section 12, Line 10: Delete "15" insert "30"

Page 6, Section 12, Line 20: Delete "15" insert "30"

Page 6, Section 12, Line 33: Delete "interest" insert "percentage"

Page 6, Section 12, Line 34: After "rates" insert "of interest"

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Page 6, Section 12, Line 35: After "agreement" insert "and notice provided pursuant to section 25"

Page 6, Section 14, Line 3: Delete "usary" insert "usury"

Page 7, Section 15, Line 7: Delete "interest" insert "percentage"

Page 7, Section 15, Line 9: Delete "interest" insert "percentage"

Page 7, Section 15, Line 14: Delete "interest" insert "percentage"

Page 7, Section 15, Line 23: After "option" insert "within 20 days of the date of the notice provided by the lender pursuant to section 25"

Page 7, Section 15, Line 24: After "lender" insert ", in writing,"

Page 7, Section 15, Line 27: After "lender" insert ", after notifying the borrower of that fact pursuant to section 25,"

Page 7-8, Section 15, Lines 30-43: Delete lines 30-43 in their entirety

Page 9, Section 19, Line 2: Before "An" indent then insert "a."

Page 9, Section 19, Line 3: After line 3 insert new subsection as follows:

"b. If a borrower wishes to prepay a loan, a lender shall not use the "rule of 78's" to calculate the amount of interest owed by the borrower. The lender shall use a simple interest basis to calculate the amount of interest owed by the borrower."

Page 9, Section 24, Line 7: After line 7, insert new section as follows:

"25. A lender shall notify a borrower by mail of any variations in the periodic percentage rate of interest pursuant to section 5 or section 15 and of any change in the amount of periodic payment or term or both, resulting from a variation in the periodic percentage rate of interest pursuant to section 15. Any variation or change shall not take effect until at least 30 days and not more than 60 days after the date of the notice to the borrower. The notice may be provided to the borrower in a periodic bill or statement. If there is an increase in the periodic payment as provided for in subsection b. of Section 15, the lender shall so notify the borrower. The notice period shall be uniform for both increases and decreases in the periodic percentage rate of interest or change in the amount of periodic payment or term or both."

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Page 9, Section 25, Line 1: Delete "25." insert "26."

Respectfully,

/s/ Thomas H. Kean

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GOVERNOR

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Attest:

/s/ W. Cary Edwards

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Chief Counsel