

17:11A-35 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:11A-35 et al. (Secondary Mortgage Loan Act--increase interest rate--create parity among banking institutions)

LAWS 1981 CHAPTER 100

Bill No. S1575

Sponsor(s) Bedell and others

Date Introduced Nov. 10, 1980

Committee: Assembly Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Feb. 19, 1981

Senate Jan. 26, 1981

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Following statements are attached if available:

Sponsor statement Yes ~~No~~ Also attached: Senate amendments, adopted 1-22-81 (with statement)

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing Yes ~~No~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

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SENATE, No. 1575

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 10, 1980

By Senators BEDELL, GREGORIO, KENNEDY, WALLWORK and  
SCARDINO

Referred to Committee on Labor, Industry and Professions

AN ACT to amend the "Secondary Mortgage Loan Act," approved  
September 23, 1970 (P. L. 1970, c. 205).

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 loan made to an indi-  
6 vidual association joint venture partnership, limited partnership,  
7 limited partnership association, or any other group of individuals  
8 however organized, except a corporation, which is secured in whole  
9 or in part by a lien upon any interest in real property\*, *including*  
10 *but not limited to shares of stock in a cooperative corporation,\**  
11 created by a security agreement, including a mortgage, indenture,  
12 or any other similar instrument or document, which real property is  
12A subject to one or more prior mortgage liens [and which is used as a  
13 dwelling, including a dual purpose or combination type dwelling  
14 which is also used as a business or commercial establishment, and  
15 has accommodations for not more than 4 families], except that a  
16 loan which: (1) is to be repaid in 90 days or less; (2) is taken as  
17 security for a home repair contract executed in accordance with  
18 the provisions of chapter 41, P. L. 1960; (3) is at an interest rate  
19 which is not in excess of the usury rate in existence at the time  
20 the loan is made, as established in accordance with the law of this  
21 State, and on which loan the borrower has not agreed to pay, di-  
22 rectly or indirectly, any charge, cost, expense or any fee whatso-  
23 ever other than said interest; or (4) is the result of the private  
24 sale of a dwelling if title to the dwelling is in the name of the seller

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

25 and the seller has resided in said dwelling for at least 1 year if  
 26 the buyer is purchasing said dwelling for his own residence and,  
 27 as part of the purchase price, executes a secondary mortgage in  
 28 favor of the seller; shall not be subject to the provisions of this act.

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

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

34 d. "Person" means an individual, association, joint venture,  
 35 partnership, limited partnership, limited partnership association,  
 36 corporation or any other group of individuals however organized.

37 e. "Commissioner" means the Commissioner of Banking of  
 38 New Jersey including his deputies, or any other salaried employee  
 39 of the Department of Banking appointed or designated by the com-  
 40 missioner to perform the functions required for the administration  
 41 or enforcement of this act.

1 2. Section 11 of P. L. 1970, c. 205 (C. 17:11A-44) is amended to  
 2 read as follows:

3 11. a. A licensee shall have authority to make a secondary  
 4 mortgage loan~~[], repayable in installments,]~~ *\*repayable in install-*  
 5 *ments\** and may charge, contract for and receive thereon interest  
 6 at an annual percentage rate not exceeding 15%, computed by the  
 7 actuarial method (United States rule) and; provided further, the  
 8 Commissioner of Banking, with the advice of a special advisory  
 9 board constituted as hereinafter provided, may by regulation  
 10 adopted, amended and rescinded from time to time, provide that the  
 11 interest which may be taken for any such loan shall be more than  
 12 15% per annum but not more than ~~[18%]~~ *24% per annum* as shall  
 13 be prescribed in such regulation.

14 (1) No interest shall be paid, deducted, or received in advance.  
 15 Interest shall not be compounded and shall be computed only on  
 16 unpaid principal balances. For the purposes of computing in-  
 17 terest, whether at the maximum rate or less, a month shall be con-  
 18 sidered a calendar month and where a fraction of a month is in-  
 19 volved a day shall be considered 1/30 of a month.

20 b. In making, amending, and rescinding regulations pursuant to  
 21 the preceding provision, the Commissioner of Banking and the  
 22 special advisory board shall consider the general state of the  
 23 economy, the discount rates prescribed by the Federal Reserve  
 24 Bank of New York and the Federal Reserve Bank of Philadelphia,  
 24A the advance rate as prescribed by the Federal Home Loan Bank of  
 25 New York, the availability of funds for loans, studies and statistics

26 published by the Federal Home Loan Bank Board and other agen-  
27 cies of the United States and of this State, and such other factors  
28 and bases for determination as the commissioner and the board  
29 may deem pertinent. The rate established by any such regulation  
30 shall reasonably reflect prevailing market conditions, regionally and  
31 nationally, based upon the studies, statistics and factors considered,  
32 and shall remain in force until such time as such regulation is  
33 rescinded or such rate is increased or decreased by a subsequent  
34 regulation. Any such regulation shall have prospective effect only.

35 c. The special advisory board herein provided for shall consist  
36 of the Commissioner of Banking, who shall be ex-officio chairman  
37 of the board, and 5 members appointed by the Governor with the  
38 advice and consent of the Senate. Any appointed member of the  
39 board may be removed from office by the Governor whenever, in his  
40 judgment, the public interest may so require. Each of the 5 ap-  
41 pointed members shall have had, at the time of his appointment,  
42 practical experience in consumer financing or fields so related  
43 thereto as to qualify each as an authority for the purpose of advis-  
44 ing the Commissioner of Banking regarding the interest which may  
45 be taken for any secondary mortgage loan. At no time shall there  
46 be more than a single representative on the board from any one  
47 institution or group of institutions.

48 d. Each member of the board shall hold office for a term of 2  
49 years, and thereafter until his successor is appointed and has  
50 qualified, subject to removal by the Governor pursuant to the  
51 preceding provision. Members of the board shall be eligible for  
52 reappointment in the same manner as the initial appointment of  
53 members of the board as provided for heretofore. Any vacancies  
54 in the board shall be filled for the unexpired portion of the term  
55 in the same manner as for a full term.

56 e. The members of the special advisory board shall serve without  
57 compensation, but shall be reimbursed for their actual and neces-  
58 sary expenses in attending meetings of the board. All claims for  
59 reimbursement shall be submitted in the form and manner pre-  
60 scribed for like claims of the Commissioner of Banking.

61 f. The board shall meet at least semiannually, at such times and  
62 places in the State as it may determine. The commissioner may  
63 call such other meetings as he may deem necessary, and he shall  
64 call a meeting when requested by 2 or more members of the board.  
65 At least 3 days notice of every meeting shall be given to each mem-  
66 ber of the board personally, or by mail, telephone, or telegraph.  
67 Four members of the board shall constitute a quorum.

68 g. The special advisory board shall elect a secretary who may be  
 69 an employee of the Department of Banking but who shall receive  
 70 no extra compensation for serving as secretary. The secretary shall  
 71 keep an accurate record of all meetings of the board and shall per-  
 72 form such other duties as may be prescribed by the board.

73 h. For the purpose of discharging its duties, the board shall  
 74 have access to all relevant records in the Department of Banking,  
 75 including reports and confidential communications, but each member  
 76 of the board shall treat all information so obtained as confidential  
 77 and shall not reveal any such information to any person other than  
 78 another member of the board.

79 i. No member of the board, including the Commissioner of  
 80 Banking, shall be personally liable for any act done or omitted in  
 81 connection with the performance of his duties under this act.

82 j. At the initial meeting of the special advisory board, the mem-  
 83 bers shall agree, by majority vote, to the procedure by which rec-  
 84 ommendations will be made to the commissioner concerning the  
 85 interest rate to be established pursuant to this act.

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

3 12. A secondary mortgage loan licensee shall:

4 a. Maintain at least one licensed place of business in this State.

5 b. Conspicuously display his license at each licensed place of  
 6 business.

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 licensee will com-  
 12 ply with the provisions of this act. The aggregate liability of the  
 13 surety on the bond shall in no event exceed the amount of said bond.

14 d. Maintain a net worth of \*~~[\$50,000.00]~~\* \*\$100,000.00\* at all  
 14A times\*; *except that licensees licensed prior to the effective date of*  
 14B *this amendatory and supplementary act shall maintain a net worth*  
 14C *of \$50,000.00 at all times\*.*

15 e. Maintain at his place of business in this State an original or  
 16 true copy of the following instruments, documents, accounts, books  
 17 and records:

18 (1) Promissory note evidencing each borrower's secondary mort-  
 19 gage loan indebtedness.

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

23 (3) Credit life and accident and health insurance policy or a  
24 certificate of insurance where such insurance is obtained in ac-  
25 cordance with section 16 of this act.

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

27 (5) Appraisal or search, where utilized.

28 (6) Individual ledger card or any other form of record which  
29 shows all installment payments made by the borrower and all other  
30 charges or credits to the borrower's account.

31 (7) Individual file in which the borrower's application for a loan  
32 and any correspondence, including collection letters, memoran-  
33 dum, notes or any other written information pertaining to the bor-  
34 rower's account, shall be kept.

35 (8) General ledger, cash receipts and disbursements register,  
36 check book, canceled checks and such other accounts, books or  
37 records as shall be required by the commissioner in order to as-  
38 certain whether the licensee has been conducting his secondary  
39 mortgage loan business in full compliance with the provisions of  
40 this act.

41 All of the aforementioned instruments, documents, accounts,  
42 books and records shall be kept separate and apart from the rec-  
43 ords of any other business conducted by the licensee and shall be  
44 preserved and kept available for investigation or examination by  
45 the commissioner for at least 2 years after a secondary mortgage  
46 loan has been paid in full. The provisions of this section shall not  
47 apply to any instrument, document, account, book or record which  
48 is assigned, sold or transferred to another secondary mortgage  
49 loan licensee nor shall the 2-year requirement apply to an instru-  
50 ment or document which must be returned to the borrower at the  
51 time a secondary mortgage loan is paid in full.

52 f. Annually, before February 1, file a report with the commis-  
53 sioner which shall set forth such information as the commissioner  
54 shall require concerning the business conducted as a licensee during  
55 the preceding calendar year. The report shall be in writing, under  
56 oath and on a form provided by the commissioner.

57 g. Be subject to an examination by the commissioner, at least  
58 once a year, at which time the commissioner shall have free access,  
59 during regular business hours, to the licensee's place or places of  
60 business in this State and to all instruments, documents, accounts,  
61 books and records which pertain to the licensee's secondary mort-  
62 gage loan business. The cost of any such examination shall be  
63 borne by the licensee.

64 h. In the event a borrower's application for a secondary mort-  
65 gage loan is denied, notify the borrower, in writing, of said denial

66 [and, provided further, the name of any such borrower or a list of  
 67 any such borrowers shall not be referred by the licensee, in any  
 68 manner whatsoever, to any other lender, retail seller or personal  
 69 property or services or to any other person, whether in this or any  
 70 other State] *\*and, provided further, the name of any such borrower*  
 70A *or a list of any such borrowers shall not be referred by the licensee,*  
 70B *in any manner whatsoever, to any other lender, retail seller*  
 70C *\*\*\*[or]\*\*\* \*\*\*of\*\*\* personal property or services or to any other*  
 70D *person, whether in this or any other state\*.*

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

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

75 k. Give to the borrower, without charge, written evidence of  
 76 credit life and accident and health insurance, if any, in accordance  
 77 with regulations promulgated by the commissioner pursuant to  
 78 chapter 169, P. L. 1958.

79 l. Give to the borrower, without charge, at the time a secondary  
 80 mortgage loan is made, a closing statement which itemizes the in-  
 81 dividual amounts disbursed to or on behalf of the borrower, in-  
 82 cluding, but not limited to, the premium for credit life and accident  
 83 and health insurance, if any, the total amount of the funds so dis-  
 84 bursed, the amount of the interest charge, total amount of the loan,  
 85 the amount, number and due date of the installment payments and  
 86 the interest charge expressed as an annual percentage rate.

87 m. When a payment is made in cash on account of a secondary  
 88 mortgage loan, give to the borrower, without charge, at the time  
 89 such payment is actually received, a written receipt which shall  
 90 show the name and address of the licensee, the name and address  
 91 of the borrower, account number or other identification mark or  
 92 symbol, date\*[,] \*and\* amount paid \*[]and the unpaid balance of  
 93 the account prior to and after the cash payment]\*.

94 n. Upon written request from the borrower, give or forward to  
 95 the borrower, without charge, within 5 days from the date of re-  
 96 ceipt of such request, a written statement of the borrower's ac-  
 97 count which shall show the dates and amounts of all installment  
 98 payments credited to the borrower's account, the dates, amounts  
 99 and an explanation of all other charges or credits to the account  
 100 and the unpaid balance thereof. A licensee shall not be required  
 101 to furnish more than 2 such statements in any 12-month period.

102 o. When a secondary mortgage loan is paid in full:

103 (1) Refund to the borrower, in accordance with regulations  
 104 promulgated by the commissioner pursuant to chapter 169, P. L.

105 1958, any unearned portion of the premium for credit life and acci-  
 106 dent and health insurance, if a premium for such insurance was  
 107 disbursed on behalf of the borrower at the time the secondary mort-  
 108 gage loan was originally made.

109 (2) Stamp or write on the face of the promissory note evi-  
 110 dencing the borrower's secondary mortgage loan indebtedness  
 111 "Paid in Full" or "Cancelled," the date paid and the name and  
 112 address of the licensee and, within \*~~10~~\* \*15\* days, return the  
 113 promissory note to the borrower.

114 (3) Release, at the expense of the licensee, any lien on real  
 115 property and cancel the same of record and, at the time the promis-  
 116 sory note evidencing the borrower's secondary mortgage loan in-  
 117 debtedness is returned, deliver to the borrower such good and suf-  
 118 ficient assignments, releases or any other certificate, instrument  
 119 or document as may be necessary to vest the borrower with com-  
 120 plete evidence of title, insofar as the applicable secondary mort-  
 121 gage loan is concerned, to the real property.

1 4. Section 13 of P. L. 1970, c. 205 (C. 17:11A-46) is amended  
 2 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~~  
 8 any instrument, document or any other form by the borrower, ex-  
 9 cept that a borrower's application for a secondary mortgage loan  
 10 need not be signed in the office of the licensee] \*~~does not include~~  
 11 *the execution of the borrower's application for a secondary mort-*  
 12 *gage loan or the closing of such loan]* \**includes, but is not limited*  
 13 *to, the signing of any instrument, document or any other form by*  
 14 *the borrower, except that a borrower's application for a secondary*  
 15 *mortgage loan need not be signed in the office of the licensee\**. A  
 15A licensee who changes his name or place of business shall imme-  
 15B diately notify the commissioner who shall issue a certificate to the  
 15C licensee, which shall specify the licensee's new name or address.

16 b. Photocopy or otherwise reproduce his license.

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

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



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

26 **[f. Make a secondary mortgage loan until such time as the li-**  
27 **icensee has obtained:**

28 (1) A written statement signed by the borrower that the holder  
29 of every other existing mortgage on the real property offered as  
30 security for the secondary mortgage loan has declined to make a  
31 loan in the desired amount or;

32 (2) A written statement signed by the borrower that the terms  
33 offered by the holder of every other existing mortgage on the real  
34 property offered as security for the secondary mortgage loan are  
35 not acceptable to the borrower.]

36 **[g. Require or accept from a borrower any collateral or security**  
37 **for a secondary mortgage loan other than a mortgage, indenture or**  
38 **any other similar instrument or document which creates a lien**  
39 **upon any real property.]**

40 **[h. Contract for, charge, receive or collect directly or indirectly,**  
41 **any of the following in connection with a secondary mortgage loan:**  
42 **a charge for appraisal service; search; broker's or finder's fee;**  
43 **commission; discount; expense; examination fee; fine; interest;**  
44 **penalty; points; premium, or any other thing of value other than**  
45 **the charges authorized by this act, except the expenses incurred on**  
46 **actual sale of the real property in foreclosure proceedings or upon**  
47 **the entry of judgment, which are otherwise authorized by law;**  
48 **provided, however, a licensee may require a borrower to pay a**  
49 **reasonable legal fee at the time of the execution of the secondary**  
50 **mortgage loan, provided any such legal fee shall represent a charge**  
51 **actually incurred in connection with said secondary mortgage loan**  
52 **and shall not be paid to a person except an attorney authorized to**  
53 **practice law in this State; provided, further, that such legal fee**  
54 **shall be evidenced by a statement from such attorney issued to the**  
55 **licensee.]**

56 **[i. Assign, sell or transfer a secondary mortgage loan to a person**  
57 **other than another secondary mortgage loan licensee.]**

58 **[j. Solicit business through any other person by paying, directly**  
59 **or indirectly, for such business referred to the licensee by any such**  
60 **person.]**

61 **[k. 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.]**

64 *\*e. Charge an application fee or make any other charge or accept*

65 *an advance deposit prior to the time a secondary mortgage loan is*  
 66 *closed.*

67 *f. Require or accept from a borrower any collateral or security*  
 68 *for a secondary mortgage loan other than a mortgage, indenture*  
 69 *or any other similar instrument or document which creates a lien*  
 70 *upon any real property or an interest in real property including,*  
 71 *but not limited to, shares of stock in a cooperative corporation.*

72 *g. Contract for, charge, receive or collect directly or indirectly,*  
 73 *any of the following in connection with a secondary mortgage loan:*  
 74 *a charge for appraisal service; search; broker's or finder's fee;*  
 75 *commission; discount; expense; examination fee; fine; interest;*  
 76 *penalty; points; premium, or any other thing of value other than*  
 77 *the charges authorized by this act, except the expenses incurred on*  
 78 *actual sale of the real property in foreclosure proceedings or upon*  
 79 *the entry of judgment, which are otherwise authorized by law;*  
 80 *provided, however, a licensee may require a borrower to pay a*  
 81 *reasonable legal fee at the time of the execution of the secondary*  
 82 *mortgage loan, provided any such legal fee shall represent a charge*  
 83 *actually incurred in connection with said secondary mortgage loan*  
 84 *and shall not be paid to a person except an attorney authorized to*  
 85 *practice law in this State; provided, further, that such legal fee*  
 86 *shall be evidenced by a statement from such attorney issued to the*  
 87 *licensee.*

88 *h. Assign, sell or transfer a secondary mortgage loan to a person*  
 89 *other than \*\*\*a banking institution as defined in section 1 of P. L.*  
 89A *1948, c. 67 (C. 17:9A-1), association, as defined in section 5 of P. L.*  
 89B *1963, c. 144 (C. 17:12B-5), or\*\*\* another secondary mortgage loan*  
 89C *licensee.*

90 *i. Solicit business through any other person by paying, directly*  
 91 *or indirectly, for such business referred to the licensee by any such*  
 92 *person.*

93 *j. Solicit business, directly or indirectly, for any other licensee,*  
 94 *lender, retail seller of personal property or services or for any*  
 95 *other person, whether in this or any other state.\**

96 **[l.] \*~~e.~~ \*k.\*** Advertise, cause to be advertised or otherwise  
 97 solicit whether orally, in writing, by telecast, by broadcast or in any  
 98 other manner:

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

106 (2) Any name, address or telephone number other than the  
107 licensee's own name, address and telephone number in this State.

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

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

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

1 5. Section 14 of P. L. 1970, c. 205 (C. 17:11A-47) is amended  
2 to read as follows:

3 14. Every borrower shall have the right to be represented by  
4 an attorney of his own choosing at the time a secondary mortgage  
5 loan is closed and shall be advised of such right, in writing, at least  
6 4 days prior to the execution of the secondary mortgage loan] *\*in*  
7 *writing\**.

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

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

8 a. The insurance shall be obtained in accordance with **\*[chapter**  
9 **169, P. L. 1958]** *\*the provisions of N. J. S. 17B:29-4\**, and the  
10 regulations promulgated by the commissioner pursuant thereto.

11 **\*[b.** For the purpose of this section, the word "debtor" as defined  
12 in chapter 169, P. L. 1958, means, if more than one person is  
13 obligated for the payment of a secondary mortgage loan, the person  
14 whose signature appears on the first line provided for the signa-  
15 tures of borrowers on a promissory note evidencing the borrower's  
16 indebtedness, said person to be the only person for whom such  
17 insurance is obtained] *all the persons obligated for the payment*  
18 *of a secondary mortgage loan.]\**

18A **\*[c.]\* \*b.\*** The premium for any such insurance shall be deducted  
18B from the amount of the secondary mortgage loan requested by the  
18C borrower.

19 **\*[d.]\* \*c.\*** Nothing in this act or in any other law of this State  
20 shall prohibit a licensee or any employee, affiliate, subsidiary, or as-  
21 sociate of said licensee, from collecting the premium or identifiable  
22 charge for insurance permitted by this act and from receiving or

23 retaining any dividend, or any other gain or advantage resulting  
 24 from such insurance; subject, however, to the authority of the  
 25 commissioner to promulgate such rules and regulations with regard  
 26 to such dividend, gain or advantage as he may deem necessary,  
 27 including the authority to reduce the rate of interest to be charged  
 28 by a particular licensee to borrowers in consideration of the benefit  
 29 to said licensee from such dividend, gain or advantage.

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

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

4 a. Be in the form of a promissory note which shall be identifiable  
 5 by the use of the words "Secondary Mortgage Loan" printed  
 6 prominently, in 14-point bold type or larger, centered and at the  
 7 top of the promissory note and, directly underneath, in 8-point bold  
 8 type or larger, the statement, "This promissory note is subject to  
 9 the provisions of the Secondary Mortgage Loan Act."

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

21A *\*b. Provide for the payment, in full, of the total amount of the*  
 21B *secondary mortgage loan in substantially equal payment periods,*  
 21C *measured in terms of weeks or months, and installment payment*  
 21D *amounts, except that the initial payment period may be deferred*  
 21E *for 60 days and, provided further, when appropriate for the pur-*  
 21F *pose of facilitating payment in accordance with the borrower's*  
 21G *intermittent income, a promissory note may provide an installment*  
 21H *schedule which reduces or omits payments over any period or*  
 21I *periods of time during which period or periods the borrower's*  
 21J *income is reduced or suspended, and the final installment may be*  
 21K *\$1.00 more or less than the amount of all other regular installment*  
 21L *payments.\**

22 **[c.] \***[b.]** \*c.\*** Contain the following notice printed prominently,  
 23 in red, in the identical form indicated below, in 10-point bold type or

24 larger, directly above the space provided for the signature of the  
25 borrower.

“NOTICE TO BORROWER

26 Read this promissory note before you sign.

27 Do not sign this promissory note if it contains blank spaces.

28 This promissory note is secured by a secondary mortgage on your  
29 real property.”

30 **[d.] \* [c.] \* \*d.\*** Be completed in full before it is signed by the  
31 borrower. In the event that it is unnecessary to fill in a blank space  
32 provided for in any instrument, the figure -0- a dash, line or the  
33 word “none” shall be inserted in such blank space.

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

3 19. No writing of any kind executed in connection with a second-  
4 ary 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 law  
7 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 bal-  
14 ance of the promissory note or any other charge authorized by  
15 this act, *except a late charge \*for each installment period\* of*  
15A *\* [not more than] \* \$5.00 or \* 5% of each payment \*whichever is*  
15B *greater\*.*

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.

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

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

1 **\* [9. Sections 15 and 25 of P. L. 1970, c. 205 (C. 17:11A-48 and**  
2 **17:11A-58) are repealed.] \***

1 **\* [10.] \* \* [9.] \* \* \* 8. \* \* This act shall take effect immediately.**

3 19. No writing of any kind executed in connection with a second-  
4 ary 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 law  
7 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 bal-  
14 ance of the promissory note or any other charge authorized by  
15 this act, *except a late charge of not more than 5% of each payment.*

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.

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

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

1 9. Sections 15 and 25 of P. L. 1970, c. 205 (C. 17:11A-48 and  
2 17:11A-58) are repealed.

1 10. This act shall take effect immediately.

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#### STATEMENT

This bill would amend various sections of the "Secondary Mortgage Loan Act" to remove from secondary mortgage loan licensees certain restrictions on the conduct of their business which do not apply to banks or savings and loans, thus creating parity among these institutions.

In addition, the bill would increase the interest rate ceiling for secondary mortgages from 18% to 24%.

The bill redefines the word "debtor" to mean all persons obligated for the payment of the secondary mortgage loan.

S. 1575 (1981)

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

**SENATE, No. 1575**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 9, 1981

This legislation makes a number of modifications to the "Secondary Mortgage Loan Act." It would permit shares of stock in a cooperative corporation to be taken as security for a second mortgage loan, and would permit the Commissioner of Banking to set the maximum rate on such loans at 24%, instead of the present 18%. The bill changes the requirement for the net worth of new licensees; the present requirement of a net worth of \$50,000.00 would be changed to \$100,000.00.

The legislation eliminates the requirement that the receipt required for each loan payment contain the unpaid balance of the account prior to and after the loan payment. All documents connected with the making of a secondary mortgage loan under the act would be required to be executed in the office of the licensee with the exception of the application for the loan. The requirement that the loan be cancelled by marking the promissory note "paid in full" or "cancelled" within a 10 day period is extended by the legislation to 15 days. The bill eliminates the requirement that the borrower present a statement by every other lienholder on the property to be mortgaged that they decline to make a loan in the desired amount. The requirement that a secondary mortgage loan licensee advise the borrower of his right to be represented by an attorney of his own choice in the transaction 4 days prior to the execution of the loan is eliminated in favor of a requirement that notification take place in writing at a time not specified in the act. Credit life and credit health insurance would be permitted to be purchased by the borrowers at their option, pursuant to the provisions of N. J. S. 7B:29-4.

As originally drafted, the legislation was intended to liberalize the secondary mortgage loan act to permit secondary mortgage loan licensees to make second mortgage loans in the same manner as depository institutions. The Senate Labor, Industry and Professions Committee, however, amended the legislation to restore some of the restrictions on secondary mortgage loan licensees which had been imposed by the licensing statute, P. L. 1970, c. 205.

The Assembly Banking and Insurance Committee has amended the bill to conform to the provisions of Assembly Bill No. 1768, which was previously released from committee. This amendment permits secondary mortgage loan licensees to sell their loans directly to depository institutions as well as to other secondary mortgage loan licensees. This modification in the law is in recognition of existing practice and a court decision which permitted the purchase of such loans by depository institutions.

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SENATE LABOR, INDUSTRY AND  
PROFESSIONS COMMITTEE

STATEMENT TO

**SENATE, No. 1575**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 11, 1980

This bill would amend various sections of the "Secondary Mortgage Loan Act" to remove from secondary mortgage loan licensees certain restrictions on the conduct of their business which do not apply to banks or savings and loans, thus creating parity among these institutions.

In addition, the bill would increase the interest rate ceiling for secondary mortgages from 18% to 24%.

The bill redefines the word "debtor" to mean all persons obligated for the payment of the secondary mortgage loan.

Amendments would restore a number of sections of the Secondary Mortgage Loan Act to their original form. The definition of secondary mortgage loan is amended to allow for the use of shares of stock in a cooperative corporation as collateral.

Secondary mortgage loan licensees licensed after the effective date of the act would be required to maintain a net worth of \$100,000.00 at all times; licensees licensed before the effective date of the act could maintain the present \$50,000.00 net worth. Licensees would no longer be required to inform the borrower, in writing, of the unpaid balance of the account before and after payment whenever a cash payment is made.

The amendments would allow the licensee 15 rather than 10 days to return the borrower's promissory note marked "Paid in Full" or "Cancelled" when the secondary mortgage loan is paid or cancelled.

The amendments would eliminate the 4-day time limit within which a secondary mortgage loan licensee must notify a borrower of his right to be represented by an attorney at the time the secondary mortgage loan is closed.

The amendments would delete the present restriction which permits only one borrower to obtain credit life insurance in connection with a secondary mortgage loan. The intent is to permit the purchase of credit life insurance by borrowers in recognition of the fact that many secondary mortgage loans are made based on the income of more than one individual in a household, and that the co-borrower is entitled to credit life insurance protection.

A late charge for each installment period of \$5.00 or 5% of the payment would be permitted.

SENATE AMENDMENTS TO  
**SENATE, No. 1575**  
[OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

ADOPTED JANUARY 22, 1981

Amend page 12, section 8, lines 1-26, omit.

Amend page 12, section 9, line 1, omit "9.", insert "8."

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**STATEMENT**

This amendment is recommended by the Commissioner of Banking and would prohibit late charges on secondary mortgage loans.

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FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

MARCH 31, 1981

NATHAN FORSYTH

Governor Byrne has signed the following bills:

A-2118, sponsored by Assemblyman James Bornheimer (D-Middlesex), which permits a savings and loan association to issue credit cards, assume certain trust powers, and make commercial mortgage loans, installment loans, mobile home loans and home improvement loans.

It is designed to extend to State-chartered savings and loan associations benefits and powers similar to those enjoyed by federal associations and in part of a package of parity bills made necessary by the Federal Depository Institutions Deregulation Act which significantly increased the powers of federally chartered savings and loan associations.

A-2119, also sponsored by Assemblyman Bornheimer and also part of the parity legislation package. This bill amends the "Retail Installment Sales Act of 1960" to include savings banks and savings and loan associations within the definition of "banking institution," thus permitting these institutions to make retail installment loans under the act.

S-1575, sponsored by Senator Eugene Bedell (R-Monmouth) which amends the "Secondary Mortgage Act" by removing certain restrictions from secondary mortgage licensees.

The bill changes the definition of the security for a second mortgage to provide that any real property or stock in a cooperative corporation may be used to secure a second mortgage. Under the current provisions of the Act, only residential real estate may be used.

S-1575 also deletes the requirement that an applicant for a second mortgage must go to the first mortgagee. Under existing law, a secondary mortgage licensee had to first refer a borrower to the first mortgagee, who had the option of refinancing the borrower rather than using secondary mortgage financing.

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