

2C:21-19

LEGISLATIVE HISTORY CHECKLIST

NJSA 2C:21-19 ("Criminal usury"--redefine)

LAWS 1981 CHAPTER 104

Bill No. S3101

Sponsor(s) Weiss, Merlino and Parker

Date Introduced Feb. 19, 1981

Committee: Assembly -----

Senate Judiciary

Amended during passage Yes No Substituted for A3156 (bill and Assembly Committee statement--attached)

Date of Passage: Assembly March 2, 1981

Senate Feb. 26, 1981

Date of approval March 31, 1981

Following statements are attached if available:

Sponsor statement Yes No (Below)

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

Sponsor's statement:

This bill further defines criminal usury to include the taking of interest on a loan which exceeds 30% per annum or 50% per annum, in the case of loans made for corporations.

6/22/81

OC 1981

SENATE, No. 3101

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 19, 1981

By Senators WEISS, MERLINO and PARKER

Referred to Committee on Judiciary

AN ACT concerning the definition of criminal usury and amending
N. J. S. 2C:21-19.

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

1 1. N. J. S. 2C:21-19 is amended to read as follows:

2 2C:21-19. Wrongful credit practices and related offenses.

3 a. Criminal usury. A person is guilty of criminal usury when
4 not being authorized or permitted by law to do so, he:

5 (1) Loans or agrees to loan, directly or indirectly, any money or
6 other property at a rate exceeding the maximum rate permitted
7 by law; or

8 (2) Takes, agrees to take, or receives any money or other
9 property as interest on the loan or on the forbearance of any money
10 or other interest in excess of the maximum rate permitted by law.

11 *For the purposes of this section and notwithstanding any law of*
12 *this State which permits as a maximum interest rate a rate or*
13 *rates agreed to by the parties to the transaction, any loan or*
14 *forbearance with an interest rate which exceeds 30% per annum*
15 *shall not be a rate authorized or permitted by law, except if the*
16 *loan or forbearance is made to a corporation any rate not in excess*
17 *of 50% per annum shall be a rate authorized or permitted by law.*

18 Criminal usury is a crime of the second degree if the rate of
19 interest on any loan made to any person exceeds 50% per annum
20 or the equivalent rate for a longer or shorter period. It is a crime
21 of the third degree if the interest rate on any loan made to any
22 person except a corporation does not exceed 50% per annum but
23 the amount of the loan or forbearance exceeds \$1,000.00. Other-
24 wise making a loan to any person in violation of subsection a.
25 (1) and a. (2) this section is a disorderly persons offense.

26 b. Business of criminal usury. Any person who knowingly
27 engages in the business of making loans or forbearances in vio-
28 lation of subsection a. is guilty of a crime of the second degree

29 and, notwithstanding the provisions of section 2C:43-3, shall be
30 subject to a fine of not more than \$250,000.00 and any other appro-
31 priate disposition authorized by section 2C:43-2b.

32 c. Possession of usurious loan records. A person is guilty of a
33 crime of the third degree when, with knowledge of the nature
34 thereof, he possesses any writing, paper instrument or article
35 used to record criminally usurious transactions prohibited by sub-
36 section a.

37 d. Unlawful collection practices. A person is guilty of a dis-
38 orderly persons offense when, with purpose to enforce a claim
39 or judgment for money or property, he sends, mails or delivers
40 to another person a notice, document or other instrument which
41 has no judicial or official sanction and which in its format or
42 appearance simulates a summons, complaint, court order or pro-
43 cess or an insignia, seal or printed form of a Federal, State or
44 local government or an instrumentality thereof, or is otherwise
45 calculated to induce a belief that such notice, document or instru-
46 ment has a judicial or official sanction.

47 e. Making a false statement of credit terms. A person is guilty of
48 a disorderly persons offense when he understates or fails to state
49 the interest rate, or fails to make or makes a false or inaccurate or
50 incomplete statement of any other credit terms.

51 f. Debt adjusters. Any person who shall act or offer to act as
52 a debt adjuster shall be guilty of a crime of the fourth degree.

53 "Debt adjuster" means a person who acts or offers to act for
54 a consideration as an intermediary between a debtor and his
55 creditors for the purpose of settling, compounding, or otherwise
56 altering the terms of payment of any debts of the debtor and, to
57 that end, receives money or other property from the debtor, or
58 on behalf of the debtor, for payment to, or distribution among, the
59-60 creditors of the debtor. "Debtor" means an individual or two or
61 more individuals who are jointly and severally, or jointly or
62 severally indebted.

63 The following persons shall not be deemed debt adjusters for
64 the purposes of this section: an attorney at law of this State;
65 a nonprofit social service or consumer credit counseling agency;
66 a person who is a regular, full-time employee of a debtor, and who
67 acts as an adjuster of his employer's debts; a person acting pur-
68 suant to any order or judgment of court, or pursuant to authority
69 conferred by any law of this State or of the United States; a
70 person who is a creditor of the debtor, or an agent of one or more

71 creditors of the debtor, and whose services in adjusting the
72 debtor's debts are rendered without cost to the debtor; or a
73 person who, at the request of a debtor, arranges for or makes
74 a loan to the debtor, and who, at the authorization of the debtor,
75 acts as an adjuster of the debtor's debts in the disbursement of
76 the proceeds of the loan, without compensation for the services
77 rendered in adjusting such debts.

1 2. This act shall take effect immediately.

STATEMENT

This bill further defines criminal usury to include the taking of interest on a loan which exceeds 30% per annum or 50% per annum, in the case of loans made for corporations.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

MARCH 31, 1981

KATHRYN FORSYTH

Governor Brendan Byrne today signed S-3005, which repeals interest ceilings on many types of credit in New Jersey, and S-3101, which lowers the definition of criminal usury for loans to individuals from 50 percent per annum to 30 percent per annum.

Both measures were sponsored by Senator Lawrence S. Weiss (D-Middlesex). An explanation of S-3005 follows and a statement from Governor Byrne on the signing of both bills is attached to this release.

S-3005 deregulates the following types of credit: installment loans; educational loans, advance loans (overdraft accounts and credit cards); small business loans (through which the borrower grosses less than \$1 million); small loans of less than \$5,000; second mortgages; loans made by savings and loan associations; credit union loans; retail installment loans (car loans); retail charge accounts; home repair loans and insurance premium financing.

Residential first mortgages are not affected.

In addition to permitting the borrower and the lender to agree on an interest rate, the bill permits variable interest charges on all of the above loans, except small business loans, home repair credit and premium financing. The loan note or instrument must advise the borrower of this provision in eight point type.

Because a lender may change the rate of interest, the borrower must be given 90 days notice of the first change. Any subsequent changes must be preceded by 30 days notice, but the lender can only hike the interest once every 365 days and by no more than three percent.

The bill prohibits interest from rising by more than six percentage points from the initial rate and interest must remain stable for the first three years of the loan.

There are exceptions under the bill concerning floating credit charges for three types of loans: advance loans (overdraft accounts and credit cards), open-end small loans and retail charge accounts.

For these types of loans, there is no three-year freeze and no limit to the amount on timing of interest increases, although the creditor must still give 90 days advance notice of the first interest increase and 30 days advance notice for any subsequent increase.

The borrower also has the right to resist an increased interest charge in these types of loan relationships. Upon receipt of a 90 days increase notice, he can either agree in writing to the increase or continue to incur indebtedness after the effective date. If the borrower incurs no more debt after the effective date, then the interest accrues at the old rate.

In addition, the bill permits a bank or other credit card issuer to charge a fee of up to \$15 for credit cards.

Other provisions of the bill change the manner in which precomputed interest is rebated when installment loans, small business loans, loans by savings and loan associations, retail and car loans, home repair credit and insurance premium financing loans are repaid.

Beginning the twelfth month after this bill becomes law, precomputed interest must be rebated according to the actuarial method when the borrower prepays or when the loan is accelerated. If the loan is paid off during the first year that the bill is effective, there are certain minimum pre-payment charges.

Under the bill, discount points charged by mortgage lenders are deemed interest, thereby making them tax deductible by the borrower.

Finally, the measure requires the Commissioner of Banking to report to the Legislature nine months after enactment and annually thereafter of the effects of interest rate deregulation.

#

STATEMENT OF GOVERNOR BRENDAN BYRNE

IN SIGNING S-3005 AND S-3101

Senate Bill No. 3005, which I am signing today, removes State mandated ceilings on interest rates on a wide variety of loans. Additionally, lenders will be able to offer borrowers variable interest rate loans. I am also signing S-3101 which lowers the definition of criminal usury for loans to individuals from 50 percent per annum to 30 percent per annum.

Under this bill, interest rates for loans such as installment credit, retail credit, education loans, credit cards, second mortgages, overdraft accounts, car loans and others may be set according to market conditions. Interest rates may fluctuate provided the lender gives full disclosure to the borrower and advance notice in writing of any change. On most loans, the change in interest may not be more than three percent in any year and no more than six percent from the original rate.

Interest on credit cards and retail charge accounts could vary immediately for new indebtedness provided there is both adequate notice to the borrower and agreement by the borrower to the new rate. There is no limit on the amount or timing of rate increases.

On the other hand, a lender may not alter the interest rate during the first three years of the loan. Although the language in the bill could be clearer, I read it to restrict a lender's right to alter interest rates until the loan is at least three years old.

Credit has become a commodity in our society. At the same time, continued inflation has made credit more expensive like other items. Recently, as inflation has driven up the cost of credit, yesterday's interest ceilings have dried up credit, thereby quieting significant sectors of our economy. I believe that market forces and not the State should regulate the cost and availability of credit. Other states have already moved in this direction.

Some believe that this bill will ruin many consumers. I disagree. I expect that our banks and other lenders will behave responsibly; competitive pressures should prevent lenders from setting artificially high interest rates. Similarly, I believe that most New Jersey consumers will avoid excessive indebtedness. I share the concerns of the Public

Advocate about possible overreaching by second mortgage lenders. The concern he voiced was the principal reason why I would not sign S-3005 without the lowering of the criminal usury rate to 30 percent. Strict adherence to that law will be demanded.

The Commissioner of Banking and I will be watching the effects of this bill closely. If lenders abuse their new freedom of fixing unrealistic interest rates or by taking advantage of the disadvantaged, I shall address them swiftly.

#