

17:9A-59. 25 et al

LEGISLATIVE HISTORY CHECKLIST

HJSA 17:9A-59.25, et al. (Small business loans--Allow 12% interest--  
increase maturity period)

LAWS OF 1979 CHAPTER 319

Bill No. S1057

Sponsor(s) Feldman

Date Introduced April 20, 1978

Committee: Assembly Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes ~~xxx~~ Amendments during passage  
denoted by asterisks

Date of Passage: Assembly Dec. 6, 1979

Senate April 23, 1979

Date of approval Jan. 18, 1980

Following statements are attached if available:

Sponsor statement	Yes	<del>xxx</del>
Committee Statement: Assembly	Yes	<del>xxx</del>
Senate	Yes	<del>xxx</del>
Fiscal Note	<del>Yes</del>	No
Veto message	<del>Yes</del>	No
Message on signing	<del>Yes</del>	No
Following were printed:		
Reports	<del>Yes</del>	No
Hearings	<del>Yes</del>	No

Do Not Remove From Library  
DEPOSITORY COPY

319  
1-18-80  
1979

[OFFICIAL COPY REPRINT]  
**SENATE, No. 1057**

**STATE OF NEW JERSEY**

INTRODUCED APRIL 20, 1978

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT to amend "An act concerning loans made by banks to small business concerns, and supplementing an act concerning banking and banking institutions (Revision of 1948), approved April 29, 1948 (P. L. 1948, c. 67)," approved July 31, 1964 (P. L. 1964, c. 162).

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

1 1. Section 1 of P. L. 1964, c. 162 (C. 17:9A-59.25) is amended to  
2 read as follows:

3 1. As used in this act, unless the context requires otherwise,

4 (a) "Concern" means any trade, business or professional en-  
5 tity conducted for profit, and includes, but is not limited to, indi-  
6 viduals, partnerships, corporations, joint ventures, associations  
7 and cooperatives;

8 (b) "Bank" means a bank as defined in section 1 of the act of  
9 which this act is a supplement and also means a national bank  
10 having its principal office in this State; "bank" excludes savings  
11 banks;

12 (c) "Small business concern" means a concern whose gross in-  
13 come from operations during its most recently completed fiscal  
14 year, as represented in writing by the concern, totaled not more  
15 than \$1,000,000.00, *but nothing herein shall prevent a bank from*  
16 *making a small business loan to a small business concern at any*  
17 *time during the first year of its existence, and such loan shall be*  
18 *enforceable by the bank according to its terms notwithstanding*  
19 *that it subsequently develops that the small business concern's*  
20 *gross income from operations during its first fiscal year totals*  
21 *more than \$1,000,000.00;*

22 (d) "Small business loan" means a loan which is made to a  
23 small business concern pursuant to this act and the purpose of

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

24 which, as represented to the bank in writing by the small business  
 25 concern, is to furnish the concern with funds for use in the conduct  
 26 of the concern's trade, business or profession;

27 (e) "Payment-period" means the period of time scheduled by  
 28 the terms of the note evidencing a small business loan to elapse  
 29 between the days upon which installment payments are required to  
 30 be made on such loan; except that, in a case where installment  
 31 payments are omitted pursuant to subsection b of section 4 of this  
 32 act, "payment-period" means the period of time scheduled to  
 33 elapse between the days upon which installment payments are re-  
 34 quired to be made during that portion of the term of such loan in  
 35 which no installment payment may be omitted;

36 (f) "*Actuarial method*" means the method of applying pay-  
 37 ments made on a loan between principal and interest pursuant to  
 38 which a payment is applied first to accumulated interest on the  
 39 principal amount of the loan and the remainder is applied to the  
 40 unpaid principal balance of the loan in reduction thereof;

41 (g) "*Precomputed finance charge*" means an amount equal to  
 42 the whole amount of interest payable on a small business loan for  
 43 the period from the making of the loan to the date scheduled by the  
 44 terms of the loan for the payment of the final installment;

45 (h) "*Precomputed loan*" means a small business loan which is  
 46 evidenced by a note the face amount of which consists of the  
 47 aggregate of the principal amount of the loan so evidenced, and  
 48 the precomputed interest thereon;

49 (i) "*Nonprecomputed loan*" means a small business loan which  
 50 is evidenced by a note the face amount of which consists solely of  
 51 the principal amount of the loan so evidenced;

52 (j) "*Unpaid balance*" of a small business loan means the aggre-  
 53 gate of the following:

54 (1) *The face amount of the note evidencing such loan; and*  
 55 (2) *All amounts paid by the bank and added to such loan as*  
 56 *provided in paragraph (c) of section 6 of \***[P. L. 1964, c. 162***  
 57 *(C. 17:9A-59.30)]\* **this act**;* and

58 (3) *All interest charges accrued and unpaid; and*

59 (4) *Such further charges as the bank may make pursuant to*  
 60 *law in protecting or enforcing a security interest in any prop-*  
 61 *erty securing the payment of such loan or otherwise; and*

62 (5) *In the case of precomputed loans, the amount of all late*  
 63 *charges imposed pursuant to section 8 of \***[P. L. 1964, c. 162***  
 64 *(C. 17:9A-59.32)]\* **this act**;*

65 *less the aggregate of the following:*

66 (6) *All installment payments made in the case of a pre-*  
 67 *computed loan, or all payments made in reduction of principal*  
 68 *in the case of a nonprecomputed loan; and*

69 (7) *All payments made on account of or in payment in full*  
 70 *of any charges or amounts referred to in subparagraphs (2),*  
 71 *(3), (4) and (5) of this paragraph (j) and*

72 (8) *In the case of a precomputed loan, the amount of the*  
 73 *credit to which the borrower is entitled pursuant to section 11*  
 74 *of \***[P. L. 1964, c. 162 (C. 17:9A-59.35)]**\* \*this act\*.*

75 (k) "Legal rate" means a rate of interest not in excess of the  
 76 rate *authorized by section 3 to be paid on small business loans.*

1 2. Section 3 of P. L. 1964, c. 162 (C. 17:9A-59.27) is amended  
 2 to read as follows:

3 3. **[(a) A bank may make and collect a finance charge on a small**  
 4 **business loan according to the following schedule:**

5 (1) When the amount of the sum borrowed does not exceed  
 6 \$5,500.00, the finance charge shall not exceed \$6.00 per \$100.00  
 7 per year on the sum borrowed;

8 (2) When the amount of the sum borrowed exceeds \$5,500.00  
 9 but does not exceed \$7,500.00, the finance charge shall not  
 10 exceed \$6.00 per \$100.00 per year on the first \$5,500.00 of the  
 11 sum borrowed, plus \$5.50 per \$100.00 per year on the excess  
 12 over \$5,500.00;

13 (3) When the amount of the sum borrowed exceeds \$5,500.00  
 14 but does not exceed \$50,000.00, the finance charge shall not  
 15 exceed \$6.00 per \$100.00 per year on the first \$5,500.00 of the  
 16 sum borrowed, plus \$5.50 per \$100.00 per year on the excess  
 17 over \$5,500.00 up to \$7,500.00, plus \$5.00 per \$100.00 per year  
 18 on the excess over \$7,500.00.]

19 (a) *A bank may contract for and receive interest on a small*  
 20 *business loan calculated according to the actuarial method, at a*  
 21 *rate not exceeding 12% per annum on the unpaid balances of the*  
 22 *principal; except that the Commissioner of Banking may, with*  
 23 *advice of the special advisory board created pursuant to P. L. 1970,*  
 24 *c. 205, section 11 (C. 17:11A-44) by regulation adopted, amended*  
 25 *and rescinded from time to time, provide that the rate of interest*  
 26 *which may be contracted for and received on any such loan may*  
 27 *be more than 12% per annum but not more than 15% per annum*  
 28 *as shall be established by such regulation. In adopting, amending,*  
 29 *and rescinding regulations pursuant to this subsection, the com-*  
 30 *missioner and the special advisory board shall consider the general*  
 31 *state of the economy, the discount rates prescribed by the Federal*

32 *Reserve Bank of New York and the Federal Reserve Bank of*  
 33 *Philadelphia, the advance rate as prescribed by the Federal Home*  
 34 *Loan Bank of New York, the availability of funds for loans, studies*  
 35 *and statistics published by the Federal Home Loan Bank Board*  
 36 *and other agencies of the United States and of this State, and*  
 37 *such other factors and bases for determination as the commissioner*  
 38 *and the board may deem pertinent. The rate established by any*  
 39 *such regulation shall reasonably reflect prevailing market condi-*  
 40 *tions, regionally and nationally, based upon the studies, statistics*  
 41 *and factors considered, and shall remain in force until such time*  
 42 *as such regulation is rescinded or such rate is increased or de-*  
 43 *creased by a subsequent regulation. Any such regulation shall*  
 44 *have prospective effect only. This subsection shall not limit or*  
 45 *restrict the manner of contracting for the interest charge, whether*  
 46 *by way of add-on, discount or otherwise, so long as such charge*  
 47 *does not exceed the limitation imposed by this section. In the case*  
 48 *of a precomputed loan, the interest charge may be computed on*  
 49 *the assumption that all scheduled payments will be made when*  
 50 *due, and all scheduled installment payments made on a precomputed*  
 51 *loan may be applied as if they were received on their scheduled*  
 52 *due dates. In the case of nonprecomputed loans, all installment*  
 53 *payments shall be applied no later than the next day, other than a*  
 54 *public holiday, after the date of receipt, and a day shall be counted*  
 55 *as one-three-hundred-sixty-fifth of a year.*

56 (b) **[**The finance charge shall be computed on the sum borrowed  
 57 for the period from the making of such loan to the date scheduled  
 58 for the payment of such loan in full and shall be added to the  
 59 amount of the sum borrowed.**]** (*Deleted by amendment.*)

1 3. Section 4 of P. L. 1964, c. 162 (C. 17:9A-59.28) is amended  
 2 to read as follows:

3 4. (a) Every small business loan shall be evidenced by a note  
 4 which shall be dated the day of the making of such loan, *and the*  
 5 *face amount of which shall be in an amount determined pursuant*  
 6 *to paragraph (h) or (i) of section 1, of \***[**P. L. 1964, c. 162**]** \*this*  
 7 *act\* as the case may require. **[**The amount of the note shall be equal*  
 8 *to the sum borrowed plus the amount of the finance charge.**]***

9 (b) Each such note shall provide that the amount thereof shall  
 10 be payable in installments on dates separated by payment-periods  
 11 of equal duration measured in terms of months. Any such note  
 12 may provide for the omission of installments, including the first  
 13 installment, during any period not exceeding 93 days in any one  
 14 12-month period. Except as herein otherwise provided, no note

15 shall provide for payment-periods shorter than 1 month or longer  
 16 than 3 months. Each such note shall provide for installment pay-  
 17 ments in equal amounts, except that the final installment may be  
 18 not more than \$1.00 more or less than any previous installment, and  
 19 no such note shall provide that the final installment shall be pay-  
 20 able more than **[5]** 7 years and **[1 month]** 3 months from the date  
 21 of such note.

1 4. Section 5 of P. L. 1964, c. 162 (C. 17:9A-59.29) is amended  
 2 to read as follows:

3 5. No bank shall make a small business loan in a sum in excess of  
 4 \$50,000.00, nor shall a bank make any such loan for the payment of  
 5 which a small business concern will be liable to it in any capacity,  
 6 if the amount of such loan, exclusive of the **[finance charge]** *interest*  
 7 thereon, when added to the principal balances owing on all other  
 8 small business loans made by such bank for the payment of which  
 9 such small business concern is liable in any capacity, will, in the  
 10 aggregate, exceed \$50,000.00. **[When a bank makes a small business**  
 11 **loan to a small business concern at a time when such concern is liable**  
 12 **to the bank upon another or other small business loans, the principal**  
 13 **amounts owing upon such other small business loan or loans shall,**  
 14 **for the purpose of determining the finance charge which may be**  
 15 **made on such loan, be deemed to be a part of the sum then being**  
 16 **borrowed by such small business concern. For the purposes of this**  
 17 **section, the principal balance owing on a small business loan shall**  
 18 **be deemed to be the face amount of the note evidencing such loan,**  
 19 **less the aggregate of all installments paid thereon, and less a**  
 20 **credit computed according to the formula contained in section 11**  
 21 **of this act.]**

1 5. Section 8 of P. L. 1964, c. 162 (C. 17:9A-59.32) is amended to  
 2 read as follows:

3 8. (a) The note evidencing a small business loan may provide that

4 (1) Upon default in the payment of any installment on its  
 5 due date, the entire unpaid balance owing thereon shall, at the  
 6 election of the bank, become immediately due and payable;

7 (2) When the maturity of the unpaid balance owing on a  
 8 note is accelerated as provided by this section, the bank may  
 9 charge interest at the legal rate, *as defined in section 1 of*  
 10 *\*[P. L. 1964, c. 162,]\* \*this act\** from the date such acceleration  
 11 takes place upon the **[difference between the amount of the]**  
 12 **unpaid principal balance thereof; [ , and the amount of credit**  
 13 **given pursuant to section 11;]**

14 (3) ~~【~~The bank may charge interest at the legal rate upon  
15 each installment in arrears, for the period from the date when  
16 default in the payment of such installment occurs, to the date  
17 when payment of such installment is made; or, if the maturity  
18 of the unpaid balance owing on the note is accelerated as pro-  
19 vided by this section, to the date when such acceleration takes  
20 place. In lieu of providing for interest pursuant to this para-  
21 graph (3), the note may provide that, ~~】~~ ~~【on】~~ \**On*\* any install-  
22 ment of a *precomputed loan* in arrears for more than 10 days,  
23 the bank may make a late charge which shall not exceed 5% of  
24 such installment, or \$5, whichever is the lesser; provided,  
25 (A) ~~【~~that the total of such late charges shall not exceed \$25.00  
26 in any 12-month period, and ~~】~~ (*deleted by amendment*) (B) that  
27 only one such late charge shall be made on any one installment;  
28 and ~~【(C)】~~ \**(C)*\* that no such late charge shall be made upon  
29 any installment scheduled, by the terms of such note, to fall due  
30 upon a date subsequent to the date upon which the maturity  
31 of the unpaid balance of the loan is accelerated as provided by  
32 this section;

33 (4) No party to such note shall be released or discharged  
34 from liability to the bank by reason of the bank's extending the  
35 time for the payment of an installment or installments owing  
36 or due upon such note, or by reason of the bank's waiver of  
37 any term or condition of such note, or of the instrument  
38 intended to secure payment thereof;

39 (5) All parties to such note shall waive presentation for pay-  
40 ment, demand for payment, protest and notice of protest, non-  
41 payment, dishonor, and the bank's election to accelerate the  
42 maturity of the unpaid balance owing thereon.

43 (b) ~~【~~For the purposes of this section,

44 (1) "Unpaid principal balance" owing on a note means the  
45 face amount of the note, less the aggregate of all installments  
46 paid thereon and less the amount, if any, received by the bank  
47 on the cancellation of credit life insurance paid for by the  
48 borrower or the cost of which was retained by the bank out of  
49 the proceeds of the loan evidenced by the note, plus the cost  
50 of any insurance paid for by the bank pursuant to paragraph  
51 (C) of section 6 of this act, after crediting against such cost  
52 the amount of the return premium, if any, received by the bank  
53 on cancellation of prior insurance paid for by the borrower or  
54 the cost of which was retained out of the proceeds of the loan  
55 evidenced by the note;

56 (2) "Unpaid balance" owing on a note means the amount of  
 57 the unpaid principal balance as herein defined, plus unpaid  
 58 interest and late charges, if any.】

59 (*Deleted by amendment.*)

60 (c) In addition to the provisions expressly authorized by sub-  
 61 section (a) of this section, the note evidencing a small business loan,  
 62 or the agreement pursuant to which such loan is made, may contain  
 63 such provisions, not contrary to law or inconsistent with the  
 64 provisions of this act, as the bank and the small business concern  
 65 may agree upon, but no such note or agreement shall provide that  
 66 payment of the note shall be accelerated because the bank, or other  
 67 holder of the note, deems itself insecure. No bank shall take any  
 68 power of attorney to confess judgment on any note evidencing  
 69 a small business loan.

1 6. Section 11 of P. L. 1964, c. 162 (C. 17:9A-59.35) is amended  
 2 to read as follows:

3 (a) When the unpaid balance owing on a *precomputed* small  
 4 business loan is repaid in full, or when the maturity of the unpaid  
 5 balance of such loan is accelerated before the date scheduled for  
 6 the payment of the final installment, the bank shall allow a credit  
 7 on account of the *precomputed* 【finance】 *interest* charge made on  
 8 such loan, the amount of which shall not be less than the amount  
 9 determined by the application of the formula  $C = AN \div D$  ("*the*  
 10 *rule of 78's*") in which "C" represents the amount of the credit  
 11 to be given; "A" represents the amount of the 【finance】 *pre-*  
 12 *computed interest* charge; and "D" is determined by ascribing to  
 13 each month included in the period for which the 【finance】 *pre-*  
 14 *computed interest* charge was computed, reckoning from the day  
 15 upon which the loan was made, the cardinal number descriptive of  
 16 the number of months scheduled, by the terms of the loan, to  
 17 elapse from the beginning of each such month, to the date to which  
 18 the 【finance】 *precomputed interest* charge was computed, and the  
 19 total of all the cardinal numbers so ascribed constitutes the quan-  
 20 tity "D"; and "N" represents the difference between the quantity  
 21 "D" and the total of all the cardinal numbers ascribed to the  
 22 months which have elapsed, in whole or in part, from the making  
 23 of the loan, to the day upon which such repayment is made, or to  
 24 the day upon which the maturity of the unpaid balance of such loan  
 25 is accelerated, as the case may be.

26 (b) The Commissioner of Banking 【and Insurance】 may prepare  
 27 and distribute to such banks as shall make a request therefor, a  
 28 schedule or schedules based upon the formula stated in subsection



29 (a) of this section, and credits allowed as provided in such schedule  
30 shall constitute a complete compliance with such subsection. A copy  
31 of such schedule, duly certified by the commissioner, shall be evi-  
32 dence in all courts and places.

33 (c) This section shall not apply where the amount of the credit to  
34 be allowed is less than \$5.00.

35 (d) *The unpaid balance owing on a nonprecomputed small busi-*  
36 *ness loan may be repaid in full at any time without penalty.*

1 7. Section 14 of P. L. 1964, c. 162 (C. 17:9A-59.38) is amended to  
2 read as follows:

3 14. Application of act. Nothing in this act applies to any loan  
4 *or extension of credit which a bank may make pursuant to any*  
5 *other law of this State or any regulation promulgated pursuant to*  
6 *such law, nor does this act apply to any loan or extension of credit*  
7 otherwise authorized or not prohibited by law, or otherwise enforce-  
8 able at law.

1 8. This act shall take effect immediately.

---

29 (a) of this section, and credits allowed as provided in such schedule  
 30 shall constitute a complete compliance with such subsection. A copy  
 31 of such schedule, duly certified by the commissioner, shall be evi-  
 32 dence in all courts and places.

33 (c) This section shall not apply where the amount of the credit to  
 34 be allowed is less than \$5.00.

35 (d) *The unpaid balance owing on a nonprecomputed small busi-*  
 36 *ness loan may be repaid in full at any time without penalty.*

1 7. Section 14 of P. L. 1964, c. 162 (C. 17:9A-59.38) is amended to  
 2 read as follows:

3 14. Application of act. Nothing in this act applies to any loan  
 4 *or extension of credit which a bank may make pursuant to any*  
 5 *other law of this State or any regulation promulgated pursuant to*  
 6 *such law, nor does this act apply to any loan or extension of credit*  
 7 otherwise authorized or not prohibited by law, or otherwise enforce-  
 8 able at law.

1 8. This act shall take effect immediately.

---

#### STATEMENT

The present Small Business Loan Act, Article 12A of the Bank-  
 ing Act of 1948, is meant to provide financial aid to small business,  
 but it is structured in such a way that it does not always meet the  
 cash flow needs of such concerns. The rates are based on the out-  
 moded "add-on" method of calculating interest, a formula which  
 acts as a strait jacket for the borrower, since early payments do not  
 lower interest charges. Moreover, the rate structure is confusing  
 with three different rates coming into play at different levels,  
 depending upon the amount borrowed.

In 1977, Article 12 of The Banking Act of 1948—the section  
 dealing with installment loans—was revised to extend maturities  
 and provide for a simple interest calculation in which interest can  
 be saved by early payments. This bill is intended to extend the  
 same benefits to small businesses and create a more flexible lending  
 atmosphere. Maturities would be extended to 7 years and 3 months,  
 as opposed to 5 years and 1 month in present law. It provides for  
 modern simple interest calculations at the single rate of 12% per  
 year, thus permitting a small business to save interest by making  
 payments early when cash flow permits. This flexibility will be of  
 great benefit to the small business borrower.

51057 (1979)

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 1057

STATE OF NEW JERSEY

DATED: MAY 21, 1979

This legislation amends P. L. 1964, c. 162 (C. 17:9A-59.25), which provides for lending by banks to small businesses which have no more than \$1,000,000.00 annual gross income. As the law presently stands, banks may lend such businesses an aggregate of \$50,000.00, with interest as follows:

Up to \$5,000.00—6%

\$5,000.00 - \$7,000.00—5½%

Over \$7,500.00—5%

The interest is computed according to the add-on method, and the payments are monthly.

This legislation makes several changes in the present law. It provides for the loan to be precomputed and charged on the unpaid balance of the loan. It establishes a uniform rate of 12% on the loan, but the rate ceiling may be raised as high as 15% by the commissioner after consultation with a special advisory board if economic conditions and market interest rate levels warrant such an increase. Acceleration of payment or prepayment of the loan would continue to result in an interest rebate calculated according to the rule of 78's, the formula for which is established in section 6 of the act. The legislation also amends the definition of "small business concern" to provide that a bank may lend funds to a small business during the first year of its existence notwithstanding the fact that its annual gross may exceed \$1,000,000.00 during that year. The term of the loan would be increased from 5 years 1 month to 7 years 3 months.

This legislation, in replacing the add-on method of interest computation with a more modern one, would make the law similar to Article 12 of the Banking Act, which provides for installment loans. As interest on these loans is computed on the unpaid balance, businessmen could accelerate their payment schedule as they see fit without any penalty. The legislation would also permit business to secure loans during their first year of operation which, because of a semantic problem with the language of the law governing gross income eligibility standards, was not always possible.

SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO

**SENATE No. 1057**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 1979

This bill alters the means by which loans are made to small businesses by:

- (1) Replacing the add-on method of calculating interest with a method which computes interest on the unpaid balance;
- (2) Permitting banks to charge 12% interest per year, on small business loans adjustable to 15% by the Commissioner of Banking as shall be established by regulation;
- (3) Increasing the maturity period of a small business loan from 5 years and 1 month to 7 years and 3 months;
- (4) Permitting the unpaid balance owing on a nonprecomputed small business loan to be repaid in full at any time without penalty.

The Senate Labor, Industry and Professions Committee made technical amendments to the bill.