

17:10-2 et al

LEGISLATIVE HISTORY CHECKLIST

WJA 17:10-2 et al. (Small loan law--amendment)

LAWS OF 1979 CHAPTER 493

Bill No. A3652

Sponsor(s) Bornheimer

Date Introduced Dec. 3, 1979

Committee: Assembly Banking and Insurance

Senate

Amended during passage Yes xx Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 17, 1979

Senate Jan. 3, 1980

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement	Yes	No	Original Bill not printed
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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ASSEMBLY, No. 3652

STATE OF NEW JERSEY

INTRODUCED DECEMBER 3, 1979

By Assemblyman BORNHEIMER

Referred to Committee on Banking and Insurance

AN ACT concerning the small loan business, amending sections 17:10-2, 17:10-13, 17:10-14, 17:10-16, 17:10-17, 17:10-19, 17:10-20, and 17:10-21 of the Revised Statutes, P. L. 1962, c. 159, and supplementing Chapter 10 of Title 17 of the Revised Statutes.

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

1 1. R. S. 17:10-2 is amended to read as follows:

2 17:10-2. Loan Business to be Licensed; Scope of Chapter. No
3 person, copartnership, association or corporation shall engage in
4 the business of making loans of money, credit, goods or things in
5 action in the amount of or the value of **[\$2,500.00]** \$5,000.00 or less
6 and charge, contract for, or receive a greater rate of interest,
7 discount, or consideration therefor than the lender would be per-
8 mitted by law to charge if he were not a licensee hereunder, except
9 as authorized by this chapter and without first obtaining a license
10 from the commissioner.

11 Any person, copartnership, association or corporation directly
12 or indirectly engaging in the business of soliciting or taking appli-
13 cations for such loans of **[\$2,500.00]** \$5,000.00 or less, or in the
14 business of negotiating or arranging or aiding the borrower or
15 lender in procuring or making such loans of **[\$2,500.00]** \$5,000.00
16 or less, or in the business of buying, discounting or indorsing notes
17 or of furnishing or procuring guarantee or security for compensa-
18 tion in amounts of **[\$2,500.00]** \$5,000.00 or less shall be deemed to
19 be engaging in the business of making loans subject to the pro-
20 visions of this chapter.

1 2. R. S. 17:10-13 is amended to read as follows:

2 17:10-13. Restrictions Upon Licensee; Contract Provisions for
3 Payments in Installments. No licensee shall advertise, print, dis-
4 play, publish, distribute, telecast or broadcast, or permit to be
5 advertised, printed, displayed, published, distributed, telecast or

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

6 broadcast, any statement or representation which refers to the
 7 supervision by the State of the business licensed hereunder. No
 8 licensee or any other person shall knowingly in any such manner
 9 make or permit to be made any statement or representation with
 10 regard to the rates, terms, or conditions for making loans in the
 11 sum of ~~[\$2,500.00]~~ \$5,000.00 or less, which is false, misleading, or
 12 deceptive.

13 No licensee shall make any loan upon security of any assignment
 14 of or order for the payment of any salary, wages, commissions or
 15 other compensation for services earned, or to be earned, nor shall
 16 any such assignment or order be taken by a licensee at any time
 17 in connection with any loan, or for the enforcement of repayment
 18 thereof, and any such assignment or order hereafter so taken or
 19 given to secure any loan made by any licensee under this chapter
 20 shall be void and of no effect.

21 No licensee shall take a lien upon real estate as security for any
 22 loan under the provisions of this chapter, except such lien as is
 23 created by law upon the recording of a judgment.

24 No licensee shall conduct the business of making loans under the
 25 provisions of this chapter within any office, room, or place of
 26 business in which any other business is solicited or engaged in, or
 27 in association or conjunction therewith, except as may be authorized
 28 in writing by the commissioner.

29 No licensee shall transact such business or make any loan pro-
 30 vided for by this chapter under any other name or at any other
 31 place of business than that named in the license.

32 No licensee which is a corporation shall publicly sell or offer for
 33 sale within this State any of its capital stock without the written
 34 approval of the commissioner first obtained.

35 Every loan contract, *other than an open-end loan contract*, shall
 36 provide for repayment of principal and interest combined in install-
 37 ments which shall be payable at approximately equal periodic
 38 intervals of time and which shall be so arranged that no installment
 39 is substantially greater in amount than any preceding installment,
 40 except that the repayment schedule may reduce or omit such install-
 41 ments when necessary because of the seasonal nature of the
 42 borrower's income.

1 3. R. S. 17:10-14 is amended to read as follows:

2 17:10-14. Amount of Loan; Interest; Other Charges; Effect of
 3 Violations. Every licensee hereunder may loan any sum of money
 4 not exceeding ~~[\$2,500.00]~~ \$5,000.00, repayable in installments, and
 5 may charge, contract for and receive thereon interest at an annual
 6 percentage rate not exceeding 24% on that part of the unpaid

7 principal balance not exceeding \$500.00, and 22% on that part of
8 the unpaid balance in excess of \$500.00 but not in excess of \$1,500.00,
9 and 18% on any remainder of such unpaid principal balance.

10 The interest and periodic payments for loans at these maximum
11 rates shall be computed from standard tables based on the actuarial
12 or annuity method which conforms to the so-called "United States
13 Rule of Partial Payments," which provides that interest shall be
14 calculated whenever a payment is made and the payment shall be
15 first applied to the payment of interest and if it exceeds the interest
16 due, the balance is to be applied to diminish principal. If the pay-
17 ment is insufficient to pay the entire amount of interest the balance
18 of interest due shall not be added to principal, so as to produce
19 interest thereon.

20 No interest shall be paid, deducted, or received in advance.
21 Interest shall not be compounded and shall be computed only on
22 unpaid principal balances. For the purpose of computing interest,
23 whether at the maximum rate or less, [a month shall be considered
24 a calendar month and where a fraction of a month is involved a
25 day shall be considered one-thirtieth of a month.] *all installment*
26 *payments shall be applied no later than the next day, other than a*
27 *public holiday, after the date of receipt, and interest shall be*
28 *charged for the actual number of days elapsed at the daily rate of*
29 *1/365th of the yearly rate.*

30 No licensee shall induce or permit any person nor any husband
31 and wife, jointly or severally, to become obligated, directly or
32 contingently or both, under more than one contract of loan at the
33 same time for the purpose of obtaining a higher rate of interest
34 than would otherwise be permitted by this section. *This prohibition*
35 *shall not apply to any loan made pursuant to any other law of this*
36 *State.*

37 In addition to the interest herein provided for no further or other
38 charge, or amount whatsoever for any examination, service, broker-
39 age, commission, expense, fee, or bonus or other thing or otherwise
40 shall be directly or indirectly charged, contracted for, or received,
41 except (1) amounts for insurance obtained or provided by the
42 licensee in accordance with the provisions of this chapter; and (2)
43 on actual sale of the security in foreclosure proceedings or upon
44 the entry of judgment. If any interest, consideration or charges in
45 excess of those permitted by this chapter are charged, contracted
46 for, or received, *except as the result of a good faith error*, the
47 contract of loan shall be void and the licensee shall have no right
48 to collect or receive any principal, interest, or charges whatsoever,

49 and the borrower shall be entitled to recover from the lender any
 50 *such* sums paid or returned to the lender by the borrower on
 51 account of or in connection with the loan.

1 4. Section 1 of P. L. 1962, c. 159 (C. 17:10-14.1) is amended to
 2 read as follows:

3 1. When the borrower consents thereto in writing, a licensee may
 4 obtain or provide insurance on the life and on the health or dis-
 5 ability, or both, of **the** *one* obligor, **but only one** obligor,
 6 **irrespective of the number of obligors on such contract,** *and on*
 7 *the lives of two obligors if spouses*, pursuant to the provisions of
 8 “An act to provide for the regulation of credit life insurance and
 9 credit accident and health insurance as defined and supplementing
 10 Title 17 of the Revised Statutes” (P. L. 1958, c. 169), and may
 11 deduct from the principal of a loan and retain an amount equal to
 12 the premium lawfully charged by the insurance company. The
 13 amount so deducted and retained shall not be considered a pro-
 14 hibited charge or amount of any examination, service, brokerage,
 15 commission, expense, fee or bonus or other thing or otherwise. If a
 16 borrower obtains such insurance from or through a licensee, the
 17 statement required by Revised Statutes 17:10-15 shall show the
 18 amount of the charge therefor, and the licensee shall cause to
 19 be delivered to the borrower a copy of the policy, certificate or
 20 other evidence of such insurance when the loan is made. Nothing in
 21 the small loan law shall prohibit the licensee, or any employee,
 22 affiliate, subsidiary or associate of the licensee, from collecting the
 23 premium or identifiable charge for insurance permitted by this
 24 section and from receiving and retaining any dividend, or any
 25 other gain or advantage resulting from such insurance, nor shall
 26 the sale or provision of such insurance be deemed to require prior
 27 authorization under the provision of Revised Statutes 17:10-13.

1 5. (New section.)

2 a. As used in this amendatory and supplementary act:

3 (1) “Open-end loan” means a loan made by a licensee pursuant
 4 to an agreement between the licensee and the borrower whereby:

5 (i) The licensee may permit the borrower to obtain advances
 6 of money from the licensee from time to time or the licensee
 7 may advance money on behalf of the borrower from time to
 8 time as directed by the borrower;

9 (ii) The amount of each advance and permitted interest and
 10 charges are debited to the borrower’s account and payments
 11 and other credits are credited to the same account;

12 (iii) Interest is computed on the unpaid principal balance or
 13 balances of the account from time to time;

14 (iv) The borrower has the privilege of paying the account in
 15 full at any time or, if the account is not in default, in monthly
 16 installments of fixed or determinable amounts as provided in
 17 the agreement; and

18 (v) The agreement expressly states that it covers open-end
 19 loans pursuant to this chapter.

20 (2) "Billing Cycle" means the time interval between periodic
 21 billing dates. A billing cycle shall be considered monthly if the
 22 closing date of the cycle is the same date each month or does not
 23 vary by more than 4 days from such date.

24 b. Open-end loans shall be subject to the following:

25 (1) A licensee may make open-end loans and may contract for
 26 and receive thereon interest as set forth in R. S. 17:10-14 of this
 27 chapter.

28 (2) A licensee shall not compound interest by adding any unpaid
 29 interest authorized by this section to the unpaid principal balance
 30 of the borrower's account; provided, however, the unpaid principal
 31 balance may include the additional charges authorized by R. S.
 32 17:10-14 and P. L. 1962, c. 159 (C. 17:10-14.1).

33 (3) Interest authorized by this section shall be deemed not to
 34 exceed the maximum interest permitted by this chapter if such
 35 interest is computed in each billing cycle by any of the following
 36 methods:

37 (i) By converting each yearly rate to a daily rate and
 38 multiplying such daily rate by the applicable portion of the
 39 daily unpaid principal balance of the account, in which case
 40 each daily rate is determined by dividing each yearly rate by
 41 365; or

42 (ii) By multiplying one-twelfth of each yearly rate by the
 43 applicable portion of the average daily unpaid principal
 44 balance of the account in the billing cycle, in which case the
 45 average daily unpaid principal balance is the sum of the
 46 amount unpaid each day during the cycle divided by the number
 47 of days in the cycle; or

48 (iii) By converting each yearly rate to a daily rate and
 49 multiplying such daily rate by the applicable portion of the
 50 average daily unpaid principal balance of the account in the
 51 billing cycle, in which case each daily rate is determined by
 52 dividing each yearly rate by 365, and the average daily unpaid
 53 principal balance is the sum of the amount unpaid each day
 54 during the cycle divided by the number of days in the cycle.

55 (4) For all of the above methods of computation, the billing
 56 cycle shall be monthly and the unpaid principal balance on any day

57 shall be determined by adding to any balance unpaid as of the
58 beginning of that day all advances and other permissible amounts
59 charged to the borrower and deducting all payments and other
60 credits made or received that day.

61 c. The borrower may at any time pay all or any part of the
62 unpaid balance in his account; or, if the account is not in default,
63 the borrower may pay the unpaid principal balance in monthly in-
64 stallments, subject to minimum payment requirements set forth
65 in this subsection.

66 Minimum monthly payments shall be in such amount as would
67 result in the full repayment of the initial loan advance, exclusive
68 of any interest, within the maximum term set forth for other loans
69 of the same amount in section 6 of this amendatory and supple-
70 mentary act. This minimum payment shall continue at that amount
71 until such time as an additional advance to the borrower is made,
72 other than for permitted charges, at which time the minimum
73 monthly payment shall be determined and shall be in such amount
74 as would result in the full repayment of the unpaid principal
75 balance of the loan, after the advance and including the advance,
76 within the maximum term set forth for the other loans of the same
77 amount. Minimum payments after each subsequent advance shall
78 be determined in the same manner. No minimum payment shall
79 exceed the amount required to pay the balance in full, including
80 unpaid interest and charges to date.

81 d. In addition to the interest permitted under subsection b., a
82 licensee may contract for and receive the other charges permitted
83 by this chapter on other loans, subject to all the conditions and
84 restrictions set forth in those sections with the following variations:

85 (1) If credit life or disability insurance is provided and if the
86 insured dies or becomes disabled when there is an outstanding
87 open-end loan indebtedness, the insurance shall be sufficient to pay
88 the total balance of the loan due on the date of the borrower's
89 death in the case of credit life insurance, or all minimum payments
90 which become due on the loan during the covered period of dis-
91 ability in the case of credit disability insurance. The additional
92 charge for credit life insurance or credit disability insurance shall
93 be calculated in each billing cycle by applying the current monthly
94 premium rate for such insurance, as the rate may be determined
95 by the Commissioner of Insurance, to the unpaid balances in the
96 borrower's account, using any of the methods specified in subsec-
97 tion b. (3) for the calculation of interest.

98 (2) No credit life or disability insurance written in connection
 99 with an open-end loan shall be cancelled by the licensee because of
 100 delinquency of the borrower in the making of the required minimum
 101 payments on the loan unless one or more of the payments is past
 102 due for a period of 90 days or more; and the licensee shall advance
 103 to the insurer the amounts required to keep the insurance in force
 104 during that period, which amounts may be debited to the borrower's
 105 account.

106 e. A licensee may take a security interest in personal property
 107 to secure an open-end loan. Any security interest may be retained
 108 until the open-end account is terminated, provided that if the
 109 security interest covers consumer goods, then within 1 month or
 110 within 10 days following written demand by the borrower after
 111 there is no outstanding balance in the account and no commitment
 112 by the licensee to make advances, the licensee shall release the
 113 security interest. If the security interest covers personal property
 114 other than consumer goods, whenever there is no outstanding
 115 balance in the account and no commitment by the licensee to make
 116 advances, the licensee shall within 10 days following written
 117 demand by the borrower release the security interest. **If a security*
 118 *interest is taken, the open-end loan agreement shall state the nature*
 119 *and extent of such security interest.**

120 f. R. S. 17:10-15 shall not apply to open-end loans made under
 121 this chapter, except that no licensee shall take any confession of
 122 judgment or power of attorney in connection with an open-end
 123 loan, or take any instrument in which blanks are left to be filled
 124 in after the loan is made.

125 g. The record-keeping systems used by licensees for open-end
 126 loans shall be reviewed on an individual basis to determine whether
 127 the records are adequate for the purposes of R. S. 17:10-12.

1 6. (New section.)

2 a. No loan in an amount of \$1,000.00 or less shall be made for a
 3 greater period of time than 36 months and 15 days.

4 b. No loan in an amount in excess of \$1,000.00, but not exceeding
 5 \$2,500.00, shall be made for a greater period of time than 48 months
 6 and 15 days.

7 c. No loan in an amount in excess of \$2,500.00 shall be made for a
 8 greater period of time than 60 months and 15 days.

1 7. R. S. 17:10-16 is amended to read as follows:

2 17:10-16. Amount of Charges Limited. No licensee shall directly
 3 or indirectly charge, contract for, or receive any interest, discount,
 4 or consideration greater than he would be permitted by law to
 5 charge if he were not a licensee hereunder upon the loan, use, or

6 forbearance of money, goods, or things in action, or upon the loan,
 7 use, or sale of credit, of the amount or value of more than
 8 **[\$2,500.00]** *\$5,000.00*. The foregoing prohibition shall also apply
 9 to any licensee who permits any person, as borrower or as in-
 10 dorser, guarantor, or surety for any borrower, or otherwise, to
 11 owe directly or contingently or both under one or more loan
 12 contracts to the licensee at any time the sum of more than
 13 **[\$2,500.00]** *\$5,000.00* for principal.

1 8. R. S. 17:10–17 is amended to read as follows:

2 17:10–17. Payment in Consideration of Assignment. The pay-
 3 ment of **[\$2,500.00]** *\$5,000.00* or less in money, credit, goods or
 4 things in action, as consideration for any sale, assignment or order
 5 for the payment of wages, salary, commissions or other compensa-
 6 tion for services, whether earned or to be earned, shall, for the
 7 purposes of this chapter, be deemed a loan secured by the assign-
 8 ment. The transaction shall be governed by and subject to the
 9 provisions of this chapter and any such sale, assignment or order
 10 hereafter made shall, for the purposes of this chapter, be void and
 11 of no effect.

1 9. R. S. 17:10–19 is amended to read as follows:

2 17:10–19. Payment in Certain Cases Deemed a Loan. The pay-
 3 ment of **[\$2,500.00]** *\$5,000.00* or less in money, credit, goods or
 4 things in action as consideration for any sale of personal property
 5 which is made on condition that the property be sold back at a
 6 greater price shall, for the purposes of this chapter, be deemed to
 7 be a loan secured by the property and the amount by which the
 8 repurchase price exceeds the original payment actually paid shall
 9 be deemed interest or charges upon the loan from the date the
 10 original payment is made until the date the repurchase price is
 11 paid. The transaction shall be governed by and be subject to the
 12 provisions of this chapter.

1 10. R. S. 17:10–20 is amended to read as follows:

2 17:10–20. Prohibited Acts. No person, copartnership, associa-
 3 tion, or corporation, except as authorized by this chapter, shall
 4 directly or indirectly charge, contract for, or receive any interest,
 5 discount, or consideration greater than the lender would be per-
 6 mitted by law to charge if he were not a licensee hereunder upon the
 7 loan, use, or forbearance of money, goods, or things in action, or
 8 upon the loan, use, or sale of credit of the amount or value of
 9 **[\$2,500.00]** *\$5,000.00* or less.

10 The foregoing prohibition shall apply to any person, copartner-
 11 ship, association, or corporation who or which, by any device, sub-
 12 terfuge, or pretense, shall charge, contract for, or receive greater

13 interest, consideration, or charges than is authorized by this chapter
 14 for the loan, use, or forbearance of money, goods, or things in
 15 action or for the loan, use, or sale of credit.

16 No loans of the amount or value of ~~[\$2,500.00]~~ \$5,000.00 or less
 17 for which a greater rate of interest, consideration, or charge than
 18 is permitted by this chapter has been charged, contracted for, or
 19 received, whenever made, shall be enforced in this State and any
 20 person, copartnership, association or corporation in anywise
 21 participating therein in this State shall be subject to the provisions
 22 of this chapter. The foregoing shall not apply to loans legally
 23 made in any State which then has in effect a regulatory small loan
 24 law similar in principle to this chapter, but an action to enforce any
 25 loan made in any such State to a person then residing in this State
 26 may be maintained in this State only if the amount of interest, dis-
 27 count, consideration or other charge for such loan, demanded to be
 28 paid in such action, does not exceed that permitted to a licensee by
 29 this chapter for a loan of the same amount repayable in the same
 30 manner.

1 11. R. S. 17:10-21 is amended to read as follows:

2 17:10-21. Violation a misdemeanor; contract void. A person,
 3 copartnership, association, or corporation and the several members,
 4 officers, directors, agents, and employees thereof, who shall violate
 5 or participate in the violation of any provision of sections 17:10-2,
 6 17:10-12, 17:10-13, 17:10-14, 17:10-15 or 17:10-20 of this title,
 7 shall be guilty of a misdemeanor.

8 A contract of loan not invalid for any other reason, in the making
 9 or collection of which any act shall have been done which con-
 10 stitutes a misdemeanor under this section, shall be void and the
 11 lender shall have no right to collect or receive any principal,
 12 interest or charges *unless the act was the result of a good faith*
 13 *error.*

1 12. This act shall take effect on the sixtieth day following
 2 enactment.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3652

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 1979

This legislation increases the maximum amount of money which may be loaned by small loan companies from \$2,500.00 to \$5,000.00. The interest rate chargeable on such loans remains the same as at present: 24% on the first \$500.00, 22% for the unpaid principal balance in excess of \$500.00 but not in excess of \$1,500.00, and 18% on any amount loaned from \$1,500.00 to \$5,000.00. The legislation also permits small loan companies to offer life, health and disability on both obligors, if they are spouses. The bill establishes provisions for open-end loans, which are revolving-type accounts similar to retail credit agreements or bank credit cards. On revolving loan accounts, loans of \$1,000.00 or less may not have longer terms than 36 months 15 days, loans of \$1,000.00 to \$2,500.00 may not have terms longer than 48 months and 15 days, and no loans in excess of \$2,500.00 may have a term less than 60 months and 15 days. The bill also provides that the voiding penalty of the small loan law not be applicable in the case of good faith errors.

The committee amended the bill to require that the nature and extent of a security interest taken in connection with a revolving loan account be indicated in the loan agreement.