

31:1-1

LEGISLATIVE HISTORY CHECKLIST

NJSA 31:1-1 (Extend exemption from 8% mortgage interest limitation to 6-unit buildings)

Laws of 1976 Chapter 56

Bill No. A596

Sponsor(s) Bornheimer & others

Date Introduced Pre-filed

Committee: Assembly Commerce, Banking & Insurance

Senate Labor, Industry & Professions

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

Date of passage: Assembly April 1, 1976

Senate May 17, 1976

Date of approval July 28, 1976

Following statements are attached if available:

Sponsor statement Yes No

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. 596

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Assemblymen BORNHEIMER, KOZLOSKI, CHINNICI
and HURLEY

AN ACT concerning interest and usury and amending R. S. 31:1-1.

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

1 1. R. S. 31:1-1 is amended to read as follows:

2 31:1-1. (a) Except as otherwise provided by law, no person shall,
3 upon contract, take, directly or indirectly for loan of any money,
4 wares, merchandise, goods and chattels, above the value of \$6.00
5 for the forbearance of \$100.00 for a year; except that the Com-
6 missioner of Banking, with the advice of a special advisory board
7 constituted as hereinafter provided, may by regulation adopted,
8 amended and rescinded from time to time, provide that the value
9 which may be taken for any such loan shall be a value more than
10 \$6.00 but not more than \$9.50 for the forbearance of \$100.00 for
11 a year, as shall be prescribed in such regulation, and after that
12 rate for a greater or less sum or for longer or shorter time. The
13 special advisory board herein provided for shall consist of the
14 members of the Banking Advisory Board as constituted pursuant
15 to Article 43 of the Banking Act of 1948, P. L. 1948, c. 67, plus
16 two additional persons appointed by the Governor with the advice
17 and consent of the Senate, one of whom shall be an officer of an
18 association as defined in section 5 (3) of the Savings and Loan
19 Act (1963), P. L. 1963, c. 144, and the other of whom shall be an
20 officer of a life insurance company incorporated under the laws of
21 this State. The two additional persons so appointed shall hold
22 office for a term of 1 year. When, however, pursuant to any such
23 contract, interest or discount is taken or reserved for a period 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 less than 1 year, or when interest is required to be paid at intervals
 25 of less than 1 year, such interest or discount may be computed on
 26 a daily basis, or on a monthly basis, or on a combination of both
 27 such bases when the period for which interest or discount is taken
 28 or reserved contains 1 or more months and 1 or more days; and,
 29 in any such case, a day shall be deemed to be a 1/360 part of a
 30 year, and a month shall be deemed to be a 1/12 part of a year,
 31 regardless of the number of days contained in such month. Any
 32 computation of interest or discount made on any such basis shall
 33 constitute a compliance with this section, and any such basis may
 34 be applied regardless whether the principal debt is payable in
 35 more than or less than 1 year from the time of making the loan.

36 (b) In making, amending and rescinding regulations pursuant
 37 to subsection (a) of this section, the Commissioner of Banking
 38 and the special advisory board shall consider the general state
 39 of the economy, the discount rates prescribed by the Federal
 40 Reserve Bank of New York and the Federal Reserve Bank of
 41 Philadelphia, the advance rate as prescribed by the Federal Home
 42 Loan Bank of New York, the availability of funds for loans,
 43 studies and statistics published by the Federal Home Loan Bank
 44 Board and other agencies of the United States and of this State,
 45 and such other factors and bases for determination as the commis-
 46 sioner and the board may deem pertinent. The rate established by
 47 any such regulation shall reasonably reflect prevailing market
 48 conditions, regionally and nationally, based upon the studies,
 49 statistics and factors considered, and shall remain in force until
 50 such time as such regulation is rescinded or such rate is increased
 51 or decreased by a subsequent regulation. Any such regulation shall
 52 have prospective effect only, and any rate established in excess
 53 of 8% shall apply only to loans secured by real estate on which
 54 there is erected or to be erected a ****[one-, two-, [or three-family]**
 55 *three-, four-, or five-family dwelling]** [occupied or to be occupied*
 56 *by the borrower] ****structure containing one, two, three, four, five***
 56A *or six dwelling units, a portion of which structure may also be used*
 56B *for nonresidential purposes.*** Notwithstanding the provisions of
 57 paragraph (a) of this section, contracts for the following classes or
 58 types of loans may provide for any rate of interest which the
 59 parties agree upon, and interest at any such rate may be taken,
 60 notwithstanding that it exceeds a rate limited by paragraph (a)
 60A of this section:

61 (1) Loans in the amount of \$50,000.00 or more, except loans where
 62 the security given is a mortgage on real property consisting of a

63 lot of land upon which there is constructed or in the course of
64 construction a dwelling house of three family units or less. The
65 rate of interest stated in such contract upon the origination of
66 such loans may be taken notwithstanding that payments thereon
67 reduce the amount outstanding to less than \$50,000.00;

68 (2) Loans or advances of credit made by savings and loan associa-
69 tions, banking institutions, or any Department of Housing and
70 Urban Affairs or Federal Housing Administration approved mort-
71 gagees ***[for which an offer or commitment to purchase has been**
72 **received and]*** which are subsequently purchased, in whole or in
73 part, by the Federal Housing Administration, Veterans Administra-
74 tion, Farmers Home Administration, Federal National Mortgage
75 Association, Government National Mortgage Association, Federal
76 Home Loan Mortgage Corporation, and any successor thereof or
77 **by any organization authorized by the Emergency Home Finance*
78 *Act of 1970 to purchase such loans or** by any State or Federal
79 Governmental or quasi-governmental organizations.

80 **If such loan is not purchased within 395 days from the date the*
81 *loan instruments are executed, the maximum rate of interest which*
82 *may be charged on such loan shall not be in excess of that autho-*
83 *rized by the commissioner under the provisions of this section and*
84 *such rate of interest, if in excess of that rate, shall be reduced to*
85 *the rate in effect at the date of the execution of the loan instru-*
86 *ments. No such reduction shall change the maturity date of the*
87 *loan without the written consent of the borrower nor shall such*
88 *reduction affect the lien of the mortgage which secures the loan.**

89 Any provision in a mortgage commitment contracted prior to
90 the effective date of this act providing for an increase in interest
91 rates to be charged based on the highest lawful interest rate shall
92 be null and void.

1 2. This act shall take effect immediately.

ASSEMBLY, No. 596

STATE OF NEW JERSEY

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By Assemblymen BORNHEIMER, KOZLOSKI, CHINNICI
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6 missioner of Banking, with the advice of a special advisory board
7 constituted as hereinafter provided, may by regulation adopted,
8 amended and rescinded from time to time, provide that the value
9 which may be taken for any such loan shall be a value more than
10 \$6.00 but not more than \$9.50 for the forbearance of \$100.00 for
11 a year, as shall be prescribed in such regulation, and after that
12 rate for a greater or less sum or for longer or shorter time. The
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14 members of the Banking Advisory Board as constituted pursuant
15 to Article 43 of the Banking Act of 1948, P. L. 1948, c. 67, plus
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19 Act (1963), P. L. 1963, c. 144, and the other of whom shall be an
20 officer of a life insurance company incorporated under the laws of
21 this State. The two additional persons so appointed shall hold
22 office for a term of 1 year. When, however, pursuant to any such
23 contract, interest or discount is taken or reserved for a period of
24 less than 1 year, or when interest is required to be paid at intervals
25 of less than 1 year, such interest or discount may be computed on
26 a daily basis, or on a monthly basis, or on a combination of both

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

27 such bases when the period for which interest or discount is taken
28 or reserved contains 1 or more months and 1 or more days; and,
29 in any such case, a day shall be deemed to be a 1/360 part of a
30 year, and a month shall be deemed to be a 1/12 part of a year,
31 regardless of the number of days contained in such month. Any
32 computation of interest or discount made on any such basis shall
33 constitute a compliance with this section, and any such basis may
34 be applied regardless whether the principal debt is payable in
35 more than or less than 1 year from the time of making the loan.

36 (b) In making, amending and rescinding regulations pursuant
37 to subsection (a) of this section, the Commissioner of Banking
38 and the special advisory board shall consider the general state
39 of the economy, the discount rates prescribed by the Federal
40 Reserve Bank of New York and the Federal Reserve Bank of
41 Philadelphia, the advance rate as prescribed by the Federal Home
42 Loan Bank of New York, the availability of funds for loans,
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44 Board and other agencies of the United States and of this State,
45 and such other factors and bases for determination as the commis-
46 sioner and the board may deem pertinent. The rate established by
47 any such regulation shall reasonably reflect prevailing market
48 conditions, regionally and nationally, based upon the studies,
49 statistics and factors considered, and shall remain in force until
50 such time as such regulation is rescinded or such rate is increased
51 or decreased by a subsequent regulation. Any such regulation shall
52 have prospective effect only, and any rate established in excess
53 of 8% shall apply only to loans secured by real estate on which
54 there is erected or to be erected a one-, two-, **[or three-family]**
55 *three-, four-, or five-family* dwelling **[occupied or to be occupied**
56 **by the borrower]**. Notwithstanding the provisions of paragraph
57 (a) of this section, contracts for the following classes or types of
58 loans may provide for any rate of interest which the parties agree
59 upon, and interest at any such rate may be taken, notwithstanding
60 that it exceeds a rate limited by paragraph (a) of this section:

61 (1) Loans in the amount of \$50,000.00 or more, except loans where
62 the security given is a mortgage on real property consisting of a
63 lot of land upon which there is constructed or in the course of
64 construction a dwelling house of three family units or less. The
65 rate of interest stated in such contract upon the origination of
66 such loans may be taken notwithstanding that payments thereon
67 reduce the amount outstanding to less than \$50,000.00;

68 (2) Loans or advances of credit made by savings and loan associa-

69 tions, banking institutions, or any Department of Housing and
70 Urban Affairs or Federal Housing Administration approved mort-
71 gagees for which an offer or commitment to purchase has been
72 received and which are subsequently purchased, in whole or in
73 part, by the Federal Housing Administration, Veterans Administra-
74 tion, Farmers Home Administration, Federal National Mortgage
75 Association, Government National Mortgage Association, Federal
76 Home Loan Mortgage Corporation, and any successor thereof or
77 by any State or Federal Governmental or quasi-governmental
78 organizations.

79 Any provision in a mortgage commitment contracted prior to
80 the effective date of this act providing for an increase in interest
81 rates to be charged based on the highest lawful interest rate shall
82 be null and void.

1 2. This act shall take effect immediately.

STATEMENT

This bill permits interest rates in excess of 8% on loans secured by a mortgage as five-family and under dwelling houses and deletes the requirement that such houses be owner occupied.

ASSEMBLY COMMERCE, BANKING AND
INSURANCE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 596

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 1976

This bill, amending the New Jersey usury law (R. S. 31:1 et seq.), deletes from the present statute the requirement that a dwelling be occupied by the owner in order to qualify for a mortgage loan at the rate which applies to a one-family, two-family, or three-family residential dwelling. Currently there is an 8% statutory limitation on mortgage loans on one-, two-, or three-family dwelling which are not owner-occupied. During periods when interest rates are generally high it is difficult for investors to borrow at this relatively low rate. Consequently, individuals who might wish to construct or purchase this type of dwelling are unable to do so. The elimination of the requirement that the mortgagor occupy the dwelling would make it possible for investors to borrow money more easily at the higher rate and thus would help to encourage new construction.

The bill extends the higher rate to apply to four- and five-family residential units as well. There are a number of these units available for purchase in inner city areas; however, it is difficult to obtain mortgage loans on these at the current 8% rate. This measure would make more money available for investment in such properties and will facilitate the rehabilitation of inner city areas. The Commissioner of Banking supports the bill as a means of encouraging new housing as well as investment in and rehabilitation of existing housing in the State.

By the provisions of 12 U.S.C. 85, federally chartered banks are permitted to charge interest rates either 1) at the same rate permitted to State-chartered institutions by the State usury law or 2) 1% over the Federal Reserve discount rate, whichever is greater. Thus, when the discount rate is greater than 7%, federally chartered institutions may charge rates higher than the 8% permitted to State-chartered institutions. On mortgages on nonowner-occupied dwellings, therefore, federally chartered institutions have a competitive advantage over State-chartered institutions because of the usury rate limitation.

The present usury law exempts loans purchased in whole or in part by the Federal Housing Administration Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, or Federal Home Loan Mortgage Corporation from the interest rate limitations established for mortgage loans. The committee amendment provides that if such loans are not purchased by these agencies or organizations within 395 days of the execution of the loan instruments, the interest rate must be reduced to the statutory limit.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 596

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with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 3, 1976

This bill, amending the New Jersey usury law (R. S. 31:1 et seq.), deletes from the present statute the requirement that a dwelling be occupied by the owner in order to qualify for a mortgage loan at the rate which applies to a one-family, two-family, or three-family residential dwelling. Currently there is an 8% statutory limitation on mortgage loans on one, two, or three-family dwellings which are not owner-occupied. During periods when interest rates are generally high it is difficult for investors to borrow at this relatively low rate. Consequently, individuals who might wish to construct or purchase this type of dwelling are unable to do so. The elimination of the requirement that the mortgagor occupy the dwelling would make it possible for investors to borrow money more easily at the higher rate and thus would help to encourage new construction.

As amended by the Senate committee, the bill extends the higher rate to apply to structures containing one to six dwelling units, a portion of which may also be used for nonresidential purposes. There are a number of these units available for purchase in inner city areas; however, it is difficult to obtain mortgage loans on these at the current 8% rate. This measure would make more money available for investment in such properties and will facilitate the rehabilitation of inner city areas. The Commissioner of Banking supports the bill as a means of encouraging new housing as well as investment in and rehabilitation of existing housing in the State.

By the provisions of 12 U. S. C. 85, federally-chartered banks are permitted to charge interest rates either 1) at the same rate permitted to state-chartered institutions by the state usury law or 2) 1% over the Federal Reserve discount rate, whichever is greater. Thus, when the discount rate is greater than 7%, federally-chartered institutions may charge rates higher than the 8% permitted to state-chartered

institutions. On mortgages on nonowner-occupied dwellings, therefore, federally-chartered institutions have a competitive advantage over state-chartered institutions because of the usury rate limitation.

The present usury law exempts loans purchased in whole or in part by the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, or Federal Home Loan Mortgage Corporation from the interest rate limitations established for mortgage loans. The Assembly committee amendment provides that if such loans are not purchased by these agencies or organizations within 395 days of the execution of the loan instruments, the interest rate must be reduced to the statutory limit.

(12) Initiate Usury Law Reform

Under New Jersey's current usury law the Commissioner of Banking can authorize interest charges no greater than 9-1/2 percent. During tight money periods with high interest rates nationwide, the New Jersey 9-1/2 percent ceiling contributes to a shortage of mortgage funds in the State and higher down payment requirements. The low-moderate income home buyer, often an urban resident, is the major loser during these periods.

As one step to expand the availability of mortgage funds and control down payment requirements, the State should enact legislation authorizing variable interest rate mortgage loans which are not subject to any usury ceiling. Instead, this legislation would protect homeowners by prescribing standards for how often and how much the interest rate could vary for a variable rate mortgage.

For mortgages, other than variable rate mortgages, additional usury reform is necessary. Only four other states in the country have usury ceilings as low as the 9-1/2 percent ceiling in New Jersey. One state is New York, which is experiencing an acute mortgage shortage, and the other three are predominantly rural states: Iowa, Louisiana and North Dakota.

The New Jersey usury law should be amended so that the Commissioner of Banking can establish a mortgage interest ceiling which is competitive with mortgage rates throughout the country. The Department of Banking and Mortgage Finance Agency should develop this legislation, including an index formula, if appropriate, for adjusting the mortgage interest ceiling level. The Department of Banking should also consider, as part of this same legislation, measures to achieve increased availability of lower down payment mortgages. In certain situations, increased availability of lower down payment mortgages could be condition for allowing a somewhat high interest rate.

One savings and loan association, for example, (under an exemption from the State usury ceiling which involves mortgages originated for resale to certain federal agencies) is providing five to ten percent low down payment mortgages at a 10.125% interest rate.

(13) Reform "no points" law (R.C. 46:10B-10)

The Department of Banking and the Mortgage Finance Agency should consider repeal of the no points law and instead include points in a revised usury law. The revised usury law would then prescribe ceiling levels for total yield on mortgages (i.e., including points) instead of placing a ceiling on interest only.

The elimination of the no points prohibition will expand home buying opportunities. Some low or middle income borrowers who may not be able to purchase a house because of the mortgage interest rate, may be able to consummate the purchase if they or the seller pay points to the lender in return for a lower interest rate.

Repeal of the prohibition on points will enable mortgage bankers to originate a higher volume of mortgages. If points were allowed for conventional mortgages, mortgage bankers could originate conventional mortgages for resale on the secondary mortgage market. Since mortgages are purchased on the secondary market at a discount, mortgage bankers can make a profit with the origination and resale of these mortgages only if they are allowed to charge points to the borrowers. The opportunity for mortgage bankers to originate these conventional mortgages should increase the availability of mortgages in urban areas. Also, during periods of mortgage funds shortage and for areas of the State experiencing local shortages, all lenders will be able to expand mortgage availability if they can charge points and resell mortgages on the secondary market.