

46:10B-36

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2008 **CHAPTER:** 86

NJSA: 46:10B-36 (Provides period of extension for repayment of introductory rate mortgages on residential property under certain circumstances.)

BILL NO: A2780 (substituted for S1853)

SPONSOR(S) Cohen and others

DATE INTRODUCED: May 22, 2008

COMMITTEE: **ASSEMBLY:** Financial Institutions and Insurance

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 23, 2008

SENATE: June 23, 2008

DATE OF APPROVAL: September 15, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Second reprint enacted)

A2780

[SPONSOR'S STATEMENT:](#) (Begins on page 10 of original bill) Yes

COMMITTEE STATEMENT: [ASSEMBLY:](#) Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

[FLOOR AMENDMENT STATEMENT:](#) Yes

LEGISLATIVE FISCAL ESTIMATE: No

S1853

[SPONSOR'S STATEMENT:](#) (Begins on page 9 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes [Commerce 6-9-08](#)
[Commerce 6-19-08](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

Yes

NEWSPAPER ARTICLES:

No

974.90 B218, 2007

Public hearing before Assembly Financial Institutions and Insurance Committee: testimony on subprime lending crisis: [April 19, 2007, Trenton, New Jersey]/ meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.

By New Jersey. Legislature. General Assembly. Financial Institutions and Insurance Committee. Trenton, N.J. : The Unit, [2007]

LAW/RWH 4/1/09

P.L. 2008, CHAPTER 86, *approved September 15, 2008*
Assembly, No. 2780 (*Second Reprint*)

1 AN ACT concerning certain residential mortgages, and
2 supplementing Title 46 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “Save New
8 Jersey Homes Act of 2008”.

9

10 2. The Legislature finds and declares that:

11 a. Many thousands of New Jersey homeowners are at risk of
12 losing their homes as a result of mortgage foreclosures in the
13 immediate future;

14 b. Foreclosure of a family’s home often represents the loss of
15 the family’s most valuable financial asset, and foreclosures
16 undermine the health and economic vitality of neighborhoods;

17 c. Foreclosures result in the loss of millions of dollars in assets,
18 not only those of the homeowners who are the victims of
19 foreclosure, but also in terms of the property values of homes
20 located in the vicinity of foreclosed properties, as well as millions
21 in additional costs to state and local government for the loss of
22 property tax revenue;

23 d. According to a report issued by the U.S. Government
24 Accountability Office (GAO) in October 2007, New Jersey
25 experienced an increase in residential mortgage foreclosure start
26 rates in excess of 50% over the prior two years and the GAO found
27 that defaults and foreclosures on mortgages have a significant
28 economic impact on homeowners, lenders, and neighborhoods;

29 e. According to a report issued in April 2008 by the State
30 Foreclosure Prevention Working Group, which is composed of
31 banking regulators and attorneys general of 11 states, the collective
32 efforts of mortgage lenders and government officials to address
33 rising foreclosures has not resulted in meaningful improvement in
34 foreclosure prevention, and new approaches, such as targeted
35 efforts to slow down the foreclosure process, are needed to prevent
36 millions of unnecessary foreclosures nationwide.

37 f. Foreclosures are largely the result of subprime lending
38 practices, which have placed many homeowners in loans that they

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted May 22, 2008.

²Assembly floor amendments adopted June 16, 2008.

1 cannot realistically afford, by using mortgage loan features such as
2 low introductory rates which reset to higher, variable rates, thereby
3 increasing the risk of default for many homeowners in the state
4 who, at an increasing rate, cannot sell their home or refinance their
5 mortgage;

6 g. Industry analysts estimate that, nationwide, about 1.5 million
7 mortgages are due to reset in 2008, and that as many as three
8 million subprime mortgages could end up in foreclosure over the
9 next several years; and

10 h. There is a compelling need for the State of New Jersey to
11 address the ongoing economic crisis in the subprime mortgage
12 market and to provide the means by which homeowners can obtain
13 a period of extension to adjust their finances in order to increase
14 their ability to retain their homes, encourage mortgage lenders to
15 modify mortgage loan terms and resolve foreclosure disputes, and
16 protect local governments and neighborhoods from the negative
17 social, economic, and fiscal consequences of foreclosure and
18 abandonment.

19

20 3. As used in this act:

21 “Creditor” means a State chartered bank, savings bank, savings
22 and loan association or credit union, any person required to be
23 licensed under the provisions of the “New Jersey Licensed Lenders
24 Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on
25 behalf of the creditor named in the debt obligation including, but
26 not limited to, servicers.

27 “Eligible borrower” means a borrower who is obligated to repay
28 a loan secured by an introductory rate mortgage.

29 “Eligible foreclosed borrower” means a borrower who is
30 obligated to repay a loan secured by an introductory rate mortgage
31 and who receives a notice of intention to foreclose that mortgage
32 pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-
33 53 et seq.), except that an “eligible foreclosed borrower” shall not
34 include an eligible borrower who has previously exercised the right
35 to obtain a three year period of extension pursuant to section 5 of
36 this act.

37 ²“Full repayment” means the full repayment of the amounts due
38 under the introductory rate mortgage, including, without limitation,
39 upon the maturity date, a refinancing, or a sale of or other transfer
40 of title to the property.²

41 ¹**“Fully indexed rate”** ¹“Fully indexed rate”¹ means the sum of
42 the current value of the index used for the adjustable rate mortgage
43 and the margin disclosed in the loan agreement.

44 “Introductory rate mortgage” means a consumer credit
45 transaction in which the loan is secured by a mortgage ²**or deed of**
46 **trust**² on real estate in this State upon which there is located a one
47 to four family dwelling which is occupied by the borrower as the

1 borrower's principal residence, and which provides for ²: (1)² an
2 introductory payment² rate option² that is set at least 3 percent²
3 below the fully indexed rate at the time the loan was originated and
4 payments² may adjust by more than 3 percent² at the reset date
5 regardless of whether the variable rate index has increased ²; or (2)
6 an interest rate that may adjust by more than 2 percent at the end of
7 the initial fixed rate period of the loan and which, notwithstanding
8 the payment rate in effect, had an interest rate at origination of more
9 than 200 basis points over the Freddie Mac 30-year conventional
10 interest rate and which provides for an introductory rate that is set
11 below the fully indexed rate at the time the loan was originated and
12 may adjust at the reset date regardless of whether the variable rate
13 index has increased² . ¹"Introductory rate mortgage" shall not
14 include: (1) a loan that provides for a fixed rate of interest for the
15 first five years ²or longer² ; or (2) a loan that provides for an
16 introductory rate that is set below the fully indexed rate at the time
17 the loan was originated only as a result of the borrower's payment
18 of bona fide discount points.¹

19

20 4. a. Prior to the date on which the interest rate in effect during
21 the introductory period of an introductory rate mortgage resets to a
22 variable interest rate under the terms of the mortgage, a creditor
23 shall provide a series of written notices, separate and distinct from
24 all other correspondence, to an eligible borrower. The creditor shall
25 provide these notices at 60 day and 30 day intervals prior to the date
26 that the introductory interest rate resets.

27 b. Each notice required pursuant to subsection a. of this section
28 shall include, in plain language and in at least 14 point bold type:

29 (1) the current interest rate under the terms of the introductory
30 rate mortgage;

31 (2) the date on which the interest rate resets from a fixed interest
32 rate applicable during the introductory period to a variable interest
33 rate;

34 (3) an explanation of how the reset interest rate and monthly
35 payment would be determined;

36 (4) the best estimate by the creditor of the amount of the monthly
37 payment that will apply after the date of the reset, and the
38 assumptions upon which the estimate is based;

39 (5) a list of alternatives an eligible borrower may pursue before
40 the date of the reset, including any refinancing of the loan offered
41 by the creditor or any renegotiation of loan terms offered by the
42 creditor;

43 (6) an explanation of the borrower's right to obtain a period of
44 extension prior to the initial interest rate reset of an introductory
45 rate mortgage pursuant to this act and an explanation of the
46 procedure that a borrower must follow to obtain a period of
47 extension; and

1 (7) a certification of extension form that can be completed by a
2 borrower in order to obtain a period of extension authorized
3 pursuant to section 5 of this act.

4
5 5. a. Notwithstanding any law or contract right to the contrary,
6 prior to the initial interest rate reset of an introductory rate
7 mortgage, a creditor shall provide an eligible borrower a period of
8 extension for three years as provided in this section, during which
9 the interest rate on the introductory rate mortgage shall not increase
10 above the original introductory rate, provided the eligible borrower
11 completes and returns a certification of extension to the creditor in
12 accordance with the provisions of this section.

13 b. In order to obtain the period of extension, the eligible
14 borrower shall provide to the creditor, prior to the date that the
15 interest rate resets under the terms of the introductory rate
16 mortgage, a completed certification of extension form signed by the
17 eligible borrower, which contains:

18 (1) the name of the eligible borrower;

19 (2) the address of the property; and

20 (3) an affirmative statement that the eligible borrower:

21 (a) does not have sufficient monthly income, after deductions for
22 necessary living expenses, to pay the monthly payments that will
23 apply after the date that the interest rate resets;

24 (b) requests the period of extension;

25 (c) agrees to continue, during the period of extension, monthly
26 payments, which shall include principal and interest calculated at
27 the introductory rate on the date that the introductory rate mortgage
28 was originated, as well as amounts for taxes, insurance, and any
29 other amounts being paid under the terms of the mortgage prior to
30 the interest rate reset;

31 (d) agrees to pay the creditor, at the time of the ²[eligible
32 borrower's transfer of the title to the property] full repayment of
33 the introductory rate mortgage², any interest deferred on account of
34 the period of extension;

35 (e) agrees to accept the creditor's placement of a ¹[subordinate
36 lien] modification of mortgage¹ on the property to secure the
37 repayment of the interest deferred on account of the period of
38 extension; and

39 (f) agrees to sign a modification of mortgage ¹[loan document]
40 form¹ that contains the terms of the period of extension and any
41 documentation necessary to establish or record the ¹[subordinate
42 lien] modification of mortgage¹.

43 c. An eligible borrower who makes a knowing material
44 misrepresentation in a certification of extension is guilty of a crime
45 of the fourth degree.

46 d. The creditor, upon receiving the completed certification of
47 extension, shall grant the eligible borrower the three year period of

1 extension, which shall commence on the date that the introductory
2 rate is due to reset under the terms of the introductory rate
3 mortgage.

4 e. Within a reasonable amount of time after the receipt of a
5 completed certification of extension from an eligible borrower, a
6 creditor shall provide to the eligible borrower a written
7 acknowledgment that the certification of extension has been
8 received. The acknowledgment shall contain the following:

9 (1) the monthly payment amount that is due from the eligible
10 borrower during the period of extension, which shall include
11 principal and interest, calculated at the introductory rate on the date
12 the introductory rate mortgage was originated, as well as amounts
13 for taxes, insurance, and any other amounts being paid under the
14 terms of the mortgage prior to the interest rate reset;

15 (2) a schedule of payments, indicating the date that the first
16 monthly payment is due and the dates that each subsequent monthly
17 payment is due during the period of extension;

18 (3) the address to which the ²eligible² borrower shall send the
19 monthly payment; and

20 (4) a statement of proposed ¹[subordinate lien] modification of
21 mortgage¹, which shall include:

22 (a) a notice to the ²eligible² borrower that the creditor will place
23 a ¹[subordinate lien] modification of mortgage¹ on the property
24 that is the security for the introductory rate mortgage, to secure the
25 ²eligible² borrower's repayment of the amount of interest deferred
26 by the period of extension; and

27 (b) an explanation of the method the creditor will use to calculate
28 the amount of the interest deferred by the period of extension.

29 f. ¹(1)¹ A creditor who grants a period of extension to an eligible
30 borrower shall have the right to record a ¹[subordinate lien]
31 modification of mortgage¹ on the eligible borrower's property ¹in
32 the public records in the county in which the property is located¹ to
33 secure the ²eligible² borrower's repayment of the amount of interest
34 deferred by the period of extension. The ¹[subordinate lien]
35 modification of mortgage¹ shall be effective from the date ¹[of
36 recording in the public records in the county in which the property
37 is located] that it is executed¹. Notwithstanding any law to the
38 contrary, the ¹[subordinate lien] modification of mortgage¹ shall
39 have the same priority as the lien of the introductory rate mortgage.
40 Upon payment by the eligible borrower of the total amount of
41 interest deferred pursuant to the period of extension ², which shall
42 only be due upon full repayment of the introductory rate mortgage²
43 , the creditor shall provide the eligible borrower with a recordable
44 satisfaction of the ¹[subordinate lien] modification of mortgage¹,
45 or otherwise cause the ¹[subordinate lien] modification of
46 mortgage¹ to be discharged of record.

1 ¹(2) If an eligible borrower fails to return to a creditor, who has a
2 right to record a modification of mortgage pursuant to paragraph (1)
3 of this subsection, a properly executed modification of mortgage or
4 any other documentation necessary to establish or record the
5 modification of mortgage, within 30 days from the borrower's
6 receipt from the creditor of a modification of mortgage form, the
7 creditor may record the eligible borrower's ²[certificate]
8 certification² of extension in place of the modification of mortgage.
9 Notwithstanding any other law to the contrary, the ²[certificate]
10 certification² of extension shall have the same priority as the lien of
11 the introductory rate mortgage. Upon payment by the eligible
12 borrower of the total amount of interest deferred pursuant to the
13 period of extension, the creditor shall provide the eligible borrower
14 with a recordable satisfaction of the ²[certificate] certification² of
15 extension, or otherwise cause the ²[certificate] certification² of
16 extension to be discharged of record.¹

17 g. ²A creditor shall not require an eligible borrower to limit or
18 waive the rights of the borrower to bring any claims, defenses,
19 demands, proceedings, actions, or causes of action against the
20 creditor as a condition of accepting an offer of any loss mitigation
21 activities made available by the "Save New Jersey Homes Act of
22 2008," P.L. , c. (C.) (pending before the Legislature as this
23 bill).

24 h.² An eligible borrower who has been granted a period of
25 extension shall forfeit all rights concerning deferment of interest
26 payments provided by this act if the eligible borrower fails to make
27 payments under the schedule of payments set forth in the creditor's
28 acknowledgment of the period of extension or fails to comply with
29 the terms of any ¹[mortgage loan]¹ modification ¹[agreement] of
30 mortgage¹ entered into between the creditor and the eligible
31 ¹[foreclosed]¹ borrower relating to the period of extension, such
32 that the modification [agreement] ¹of mortgage¹ becomes 60 days
33 delinquent.

34
35 6. a. A creditor that issues to an eligible foreclosed borrower a
36 notice of intention to foreclose an introductory rate mortgage
37 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
38 53 et seq.), shall send to the eligible foreclosed borrower a series of
39 written notices, by regular and registered mail, separate and distinct
40 from all other correspondence. The notices shall include in plain
41 language and in at least 14 point bold type:

42 (1) A statement that the information in the notice is being
43 provided as required by the "Save New Jersey Homes Act of 2008,"
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 which was enacted by the New Jersey Legislature and which
46 provides certain rights to borrowers whose homes are the subject of
47 a mortgage foreclosure action;

1 (2) A list of alternatives to foreclosure that an eligible foreclosed
2 borrower may pursue, including any refinancing of the loan offered
3 by the creditor and any renegotiation of loan terms offered by the
4 creditor;

5 (3) An explanation of the eligible foreclosed borrower's right to
6 obtain a period of extension for three years pursuant to the "Save
7 New Jersey Homes Act of 2008," P.L. , c. (C.) (pending
8 before the Legislature as this bill), and an explanation of the
9 procedure that an eligible foreclosed borrower must follow to obtain
10 a period of extension;

11 (4) A statement that the notice should be read carefully and that
12 the eligible foreclosed borrower may wish to consult with an
13 attorney to understand the rights that may be available under the
14 "Save New Jersey Homes Act of 2008," P.L. , c. (C.)
15 (pending before the Legislature as this bill); and

16 (5) A certification of extension form that can be completed by
17 an eligible foreclosed borrower in order to obtain the period of
18 extension authorized pursuant to section 7 of this act.

19 b. The notices required pursuant to subsection a. of this section
20 shall be sent at the following intervals:

21 (1) within 10 days of issuing the notice of intention; and

22 (2) at the time that the creditor applies for entry of final
23 judgment of foreclosure pursuant to section 6 of P.L.1995, c.244
24 (C.2A:50-58).

25 c. The notices shall be sent in envelopes that state the following
26 information on the outside front portion of the envelope: "The New
27 Jersey Legislature has enacted the Save New Jersey Homes Act of
28 2008, which may help you save your home from foreclosure.
29 Details as to the rights you may have to obtain a period of extension
30 of foreclosure under this new law are contained within. Please read
31 the contents carefully. You may wish to consult with an attorney to
32 understand your rights under this new law."
33

34 7. a. Notwithstanding any law or contract right to the contrary, a
35 creditor shall provide an eligible foreclosed borrower a period of
36 extension for three years as provided in this section, during which
37 foreclosure proceedings pursuant to the "Fair Foreclosure Act,"
38 P.L.1995, c.244 (C.2A:50-53 et seq.) shall be suspended and the
39 ²eligible ²foreclosed² borrower shall continue to pay
40 monthly payments, which shall include principal and interest,
41 calculated at the introductory rate on the date that the introductory
42 rate mortgage was originated, as well as amounts for taxes,
43 insurance, and any other amounts being paid under the terms of the
44 mortgage prior to the interest rate reset, provided the eligible
45 foreclosed borrower completes and returns a certification of
46 extension to the creditor in accordance with the provisions of this
47 section.

1 b. In order to obtain the period of extension, the eligible
2 foreclosed borrower shall provide to the creditor, no later than 90
3 days from the date that the creditor sends the notice required
4 pursuant to paragraph (2) of subsection b. of section 6 of this act, a
5 completed certification of extension form signed by the eligible
6 foreclosed borrower, which contains:

7 (1) the name of the eligible foreclosed borrower;
8 (2) the address of the property; and
9 (3) an affirmative statement that the eligible foreclosed
10 borrower:

11 (a) requests the period of extension;

12 (b) agrees to continue, during the period of extension, monthly
13 payments which shall include principal and interest, calculated at
14 the introductory rate on the date that the introductory rate mortgage
15 was originated, as well as amounts for taxes, insurance, and any
16 other amounts being paid under the terms of the mortgage prior to
17 the interest rate reset;

18 (c) agrees to pay the creditor, at the time of ²[transfer of title to
19 the property] full repayment of the introductory rate mortgage² :

20 (i) any interest deferred on account of the period of extension;

21 (ii) any fees and costs incurred by the creditor in connection with
22 the foreclosure proceeding; and

23 (iii) any arrearages owed to the creditor for monthly principal
24 and interest payments, homeowners insurance payments, property
25 tax payments, and any other payments that the eligible ²foreclosed²
26 borrower was required to pay, but failed to pay, under the terms of
27 the introductory rate mortgage;

28 (d) agrees to accept the creditor's placement of a ¹[subordinate
29 lien] modification of mortgage¹ on the property to secure the
30 repayment of amounts owed pursuant to subparagraph (c) of this
31 paragraph; and

32 (e) agrees to sign a modification of mortgage ¹[loan document]
33 form¹ that contains the terms of the period of extension and any
34 documentation necessary to establish or record the ¹[subordinate
35 lien] modification of mortgage¹.

36 c. The creditor, upon receiving the completed certification of
37 extension within the time period specified in subsection b. of this
38 section, shall:

39 (1) grant the eligible foreclosed borrower the three year period of
40 extension, which shall commence no later than 30 days from the
41 date that the creditor receives the eligible foreclosed borrower's
42 completed certification of extension; and

43 (2) suspend the foreclosure proceeding that the creditor initiated
44 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
45 53 et seq.).

46 A creditor may grant relief pursuant to paragraphs (1) and (2) of
47 this subsection, upon receipt of a completed ¹[certificate]

1 certification¹ of extension from an eligible foreclosed borrower
2 after the time period specified in subsection b. of this section, in the
3 sole discretion of the creditor.

4 d. Within a reasonable period of time after the receipt of a
5 completed certification of extension from an eligible foreclosed
6 borrower within the time period specified in subsection b. of this
7 section, a creditor shall provide to the eligible foreclosed borrower
8 a written acknowledgment that the certification of extension has
9 been received. The acknowledgment shall contain the following:

10 (1) a statement that the foreclosure ²~~proceedings~~ proceeding²
11 initiated pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244
12 (C.2A:50-53 et seq.) will be suspended during the period of
13 extension;

14 (2) the monthly payment amount that is due from the eligible
15 foreclosed borrower during the period of extension, which shall
16 include principal and interest, calculated at the introductory rate, on
17 the date the introductory mortgage rate was originated, as well as
18 amounts for taxes, insurance, and any other amounts being paid
19 under the terms of the mortgage prior to the interest rate reset;

20 (3) a schedule of payments, indicating the date that the first
21 monthly payment is due and the dates that each subsequent monthly
22 payment is due during the period of extension;

23 (4) the address to which the ²eligible foreclosed² borrower
24 ²~~must~~ shall² send the monthly payment; and

25 (5) a statement of proposed ¹~~subordinate lien~~ modification of
26 mortgage¹, which shall include:

27 (a) a notice to the eligible foreclosed borrower that the creditor
28 will place a ¹~~subordinate lien~~ modification of mortgage¹ on the
29 property that is the security for the introductory rate mortgage, to
30 secure the eligible foreclosed borrower’s repayment of the amounts
31 provided for in paragraph (1) of subsection e. of this section; and

32 (b) an explanation of the method the creditor will use to calculate
33 the amount of the interest deferred by the period of extension, and
34 the amounts provided for in paragraph (1) of subsection e. of this
35 section, for which repayment is secured by the ¹~~subordinate lien~~
36 modification of mortgage¹.

37 e. (1) A creditor that grants a period of extension to an eligible
38 foreclosed borrower shall have the right to record a ¹~~subordinate~~
39 lien modification of mortgage¹ on the eligible foreclosed
40 borrower’s property to secure the eligible foreclosed borrower’s
41 repayment of:

42 (a) the amount of interest deferred by the period of extension;

43 (b) any fees and costs already incurred in connection with the
44 foreclosure proceeding; and

45 (c) any arrearages owed to the creditor for monthly payments of
46 principal and interest, homeowner insurance payments, property tax
47 payments, or any other payments that the eligible foreclosed

1 borrower was required to pay, but failed to pay, under the terms of
2 the introductory rate mortgage.

3 (2) The ¹[subordinate lien] modification of mortgage¹ shall be
4 effective from the date ¹[of recording in the public records in the
5 county in which the property is located] that it is executed¹.
6 Notwithstanding any other law to the contrary, the ¹[subordinate
7 lien] modification of mortgage¹ shall have the same priority as the
8 lien of the introductory rate mortgage. Upon payment by the
9 ²eligible foreclosed² borrower of the total amount of interest
10 deferred pursuant to the period of extension, and any other amounts
11 representing the arrearages for which the ¹[subordinate lien]
12 modification of mortgage¹ secures repayment pursuant to this act,
13 which shall only be due upon ²[the borrower's transfer of title to
14 the property] full repayment of the introductory rate mortgage² ,
15 the creditor shall provide the eligible foreclosed borrower with a
16 recordable satisfaction of the ¹[subordinate lien] modification of
17 mortgage¹ , or otherwise cause the ¹[subordinate lien] modification
18 of mortgage¹ to be discharged of record.

19 ¹(3) If an eligible foreclosed borrower fails to return to a
20 creditor, who has a right to record a modification of mortgage
21 pursuant to paragraph (1) of this subsection, a properly executed
22 modification of mortgage or any other documentation necessary to
23 establish or record the modification of mortgage within 30 days
24 from the borrower's receipt from the creditor of a modification of
25 mortgage form, the creditor may record the eligible foreclosed
26 borrower's ²[certificate] certification² of extension in place of the
27 modification of mortgage. Notwithstanding any other law to the
28 contrary, the ²[certificate] certification² of extension shall have the
29 same priority as the lien of the introductory rate mortgage. Upon
30 payment by the eligible foreclosed borrower of the total amount of
31 interest deferred pursuant to the period of extension, ²and any other
32 amounts representing the arrearages for which the certification of
33 extension secures repayment pursuant to this act, ² the creditor shall
34 provide the eligible foreclosed borrower with a recordable
35 satisfaction of the ²[certificate] certification² of extension, or
36 otherwise cause the ²[certificate] certification² of extension to be
37 discharged of record.¹

38 f. ²A creditor shall not require an eligible foreclosed borrower to
39 limit or waive the rights of the borrower to bring any claims,
40 defenses, demands, proceedings, actions, or causes of action against
41 the creditor as a condition of accepting an offer of any loss
42 mitigation activities made available by the "Save New Jersey
43 Homes Act of 2008," P.L. , c. (C.) (pending before the
44 Legislature as this bill).

45 g. ² An eligible foreclosed borrower who has been granted a
46 period of extension shall forfeit all rights concerning deferment of

1 interest payments, suspension of foreclosure, and deferment of
2 payment of amounts secured by a ¹~~["subordinate lien"]~~ modification
3 of mortgage¹, provided by the provisions of this act if the eligible
4 foreclosed borrower fails to make payments under the schedule of
5 payments as set forth in the creditor's acknowledgment of the
6 period of extension or fails to comply with the terms of ¹~~["any"]~~ the
7 modification of¹ mortgage ¹~~["loan modification agreement"]~~¹ entered
8 into between the creditor and the eligible foreclosed borrower
9 relating to the period of extension, such that the modification
10 ¹~~["agreement"]~~ of mortgage¹ becomes 60 days delinquent.

11 ²~~["g."]~~ h.² A court shall not approve an entry of final judgment in
12 a foreclosure proceeding commenced pursuant to the "Fair
13 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) as to an
14 introductory rate mortgage unless the court is satisfied from the
15 pleadings and certifications on file with the court that notice of the
16 availability of the period of extension was provided to the eligible
17 foreclosed borrower in accordance with the provisions of this act.

18
19 8. ¹a.¹ Any person who ²willfully² violates any provision of this
20 act shall be liable to a penalty of not more than \$10,000 for the first
21 offense, and not more than \$20,000 for the second and subsequent
22 offense, which penalty may be collected in a summary proceeding
23 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
24 c.274 (C.2A:58-10 et seq.) ², except that immaterial errors in a
25 notice required to be provided by a creditor pursuant to this act,
26 shall not constitute a violation of this act².

27 ¹b. If a creditor violates any provision of this act, an eligible
28 borrower, an eligible foreclosed borrower, or the Attorney General
29 may bring an action to enforce compliance by a summary
30 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
31 P.L.1999, c.274 (C.2A:58-10 et seq.).¹

32
33 ¹9. Failure of a creditor to fulfill any obligation under this act
34 shall not be considered to be the exercise of a power, right, benefit,
35 or privilege under the parity provisions of P.L.1981, c.163
36 (C.17:9A-24b.1), section 48 of P.L.1963, c.144 (C.17:12B-48), or
37 section 12 of P.L.1984, c.171 (C.17:13-90), and it shall not be a
38 defense to a violation of this act that the failure to fulfill any
39 provision of the act is an exercise of such a power, right, benefit, or
40 privilege.¹

41
42 ¹~~["9."]~~ 10.¹ This act shall be liberally construed to effectuate the
43 purposes of the act.

44
45 ¹~~["10."]~~ 11.¹ If any section, subsection, paragraph, sentence or
46 other part of this act is adjudged unconstitutional or invalid, the

1 judgment shall not affect, impair or invalidate the remainder of this
2 act, but shall be confined in its effect to the section, subsection,
3 paragraph, sentence or other part of this act directly involved in the
4 controversy in which the judgment shall have been rendered.

5
6 ¹~~11.~~ 12. ¹The ¹Attorney General, in consultation with the¹
7 Department of Banking and Insurance shall ¹~~enforce the~~
8 provisions of this act, and the department, in consultation with the
9 Attorney General, shall¹ adopt regulations, pursuant to the
10 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
11 seq.) to effectuate the purposes of this act.

12
13 ¹~~12.~~ 13. ¹This act shall take effect immediately, and remain in
14 effect until January 1, 2011.

15

16

17

18

19 Provides period of extension for repayment of introductory rate
20 mortgages on residential property under certain circumstances.

ASSEMBLY, No. 2780

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 22, 2008

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Assemblyman L. HARVEY SMITH

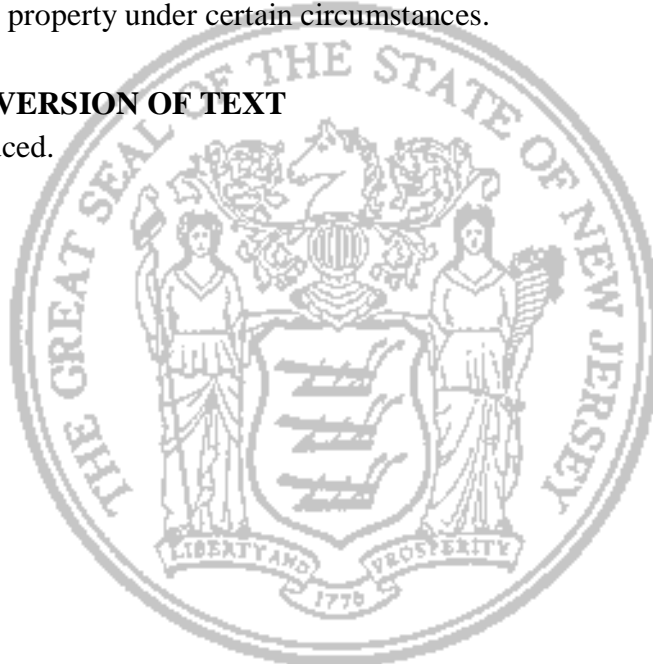
District 31 (Hudson)

SYNOPSIS

Provides period of extension for repayment of introductory rate mortgages on residential property under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain residential mortgages, and
2 supplementing Title 46 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Save New
8 Jersey Homes Act of 2008".

9

10 2. The Legislature finds and declares that:

11 a. Many thousands of New Jersey homeowners are at risk of
12 losing their homes as a result of mortgage foreclosures in the
13 immediate future;

14 b. Foreclosure of a family's home often represents the loss of
15 the family's most valuable financial asset, and foreclosures
16 undermine the health and economic vitality of neighborhoods;

17 c. Foreclosures result in the loss of millions of dollars in assets,
18 not only those of the homeowners who are the victims of
19 foreclosure, but also in terms of the property values of homes
20 located in the vicinity of foreclosed properties, as well as millions
21 in additional costs to state and local government for the loss of
22 property tax revenue;

23 d. According to a report issued by the U.S. Government
24 Accountability Office (GAO) in October 2007, New Jersey
25 experienced an increase in residential mortgage foreclosure start
26 rates in excess of 50% over the prior two years and the GAO found
27 that defaults and foreclosures on mortgages have a significant
28 economic impact on homeowners, lenders, and neighborhoods;

29 e. According to a report issued in April 2008 by the State
30 Foreclosure Prevention Working Group, which is composed of
31 banking regulators and attorneys general of 11 states, the collective
32 efforts of mortgage lenders and government officials to address
33 rising foreclosures has not resulted in meaningful improvement in
34 foreclosure prevention, and new approaches, such as targeted
35 efforts to slow down the foreclosure process, are needed to prevent
36 millions of unnecessary foreclosures nationwide.

37 f. Foreclosures are largely the result of subprime lending
38 practices, which have placed many homeowners in loans that they
39 cannot realistically afford, by using mortgage loan features such as
40 low introductory rates which reset to higher, variable rates, thereby
41 increasing the risk of default for many homeowners in the state
42 who, at an increasing rate, cannot sell their home or refinance their
43 mortgage;

44 g. Industry analysts estimate that, nationwide, about 1.5 million
45 mortgages are due to reset in 2008, and that as many as three
46 million subprime mortgages could end up in foreclosure over the
47 next several years; and

1 h. There is a compelling need for the State of New Jersey to
2 address the ongoing economic crisis in the subprime mortgage
3 market and to provide the means by which homeowners can obtain
4 a period of extension to adjust their finances in order to increase
5 their ability to retain their homes, encourage mortgage lenders to
6 modify mortgage loan terms and resolve foreclosure disputes, and
7 protect local governments and neighborhoods from the negative
8 social, economic, and fiscal consequences of foreclosure and
9 abandonment.

10

11 3. As used in this act:

12 “Creditor” means a State chartered bank, savings bank, savings
13 and loan association or credit union, any person required to be
14 licensed under the provisions of the “New Jersey Licensed Lenders
15 Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on
16 behalf of the creditor named in the debt obligation including, but
17 not limited to, servicers.

18 “Eligible borrower” means a borrower who is obligated to repay
19 a loan secured by an introductory rate mortgage.

20 “Eligible foreclosed borrower” means a borrower who is
21 obligated to repay a loan secured by an introductory rate mortgage
22 and who receives a notice of intention to foreclose that mortgage
23 pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-
24 53 et seq.), except that an “eligible foreclosed borrower” shall not
25 include an eligible borrower who has previously exercised the right
26 to obtain a three year period of extension pursuant to section 5 of
27 this act.

28 Fully indexed rate” means the sum of the current value of the
29 index used for the adjustable rate mortgage and the margin
30 disclosed in the loan agreement.

31 “Introductory rate mortgage” means a consumer credit
32 transaction in which the loan is secured by a mortgage or deed of
33 trust on real estate in this State upon which there is located a one to
34 four family dwelling which is occupied by the borrower as the
35 borrower’s principal residence, and which provides for an
36 introductory rate that is set below the fully indexed rate at the time
37 the loan was originated and may adjust at the reset date regardless
38 of whether the variable rate index has increased.

39

40 4. a. Prior to the date on which the interest rate in effect during
41 the introductory period of an introductory rate mortgage resets to a
42 variable interest rate under the terms of the mortgage, a creditor
43 shall provide a series of written notices, separate and distinct from
44 all other correspondence, to an eligible borrower. The creditor shall
45 provide these notices at 60 day and 30 day intervals prior to the date
46 that the introductory interest rate resets.

47 b. Each notice required pursuant to subsection a. of this section
48 shall include, in plain language and in at least 14 point bold type:

- 1 (1) the current interest rate under the terms of the introductory
2 rate mortgage;
- 3 (2) the date on which the interest rate resets from a fixed interest
4 rate applicable during the introductory period to a variable interest
5 rate;
- 6 (3) an explanation of how the reset interest rate and monthly
7 payment would be determined;
- 8 (4) the best estimate by the creditor of the amount of the monthly
9 payment that will apply after the date of the reset, and the
10 assumptions upon which the estimate is based;
- 11 (5) a list of alternatives an eligible borrower may pursue before
12 the date of the reset, including any refinancing of the loan offered
13 by the creditor or any renegotiation of loan terms offered by the
14 creditor;
- 15 (6) an explanation of the borrower's right to obtain a period of
16 extension prior to the initial interest rate reset of an introductory
17 rate mortgage pursuant to this act and an explanation of the
18 procedure that a borrower must follow to obtain a period of
19 extension; and
- 20 (7) a certification of extension form that can be completed by a
21 borrower in order to obtain a period of extension authorized
22 pursuant to section 5 of this act.

23

24 5. a. Notwithstanding any law or contract right to the contrary,
25 prior to the initial interest rate reset of an introductory rate
26 mortgage, a creditor shall provide an eligible borrower a period of
27 extension for three years as provided in this section, during which
28 the interest rate on the introductory rate mortgage shall not increase
29 above the original introductory rate, provided the eligible borrower
30 completes and returns a certification of extension to the creditor in
31 accordance with the provisions of this section.

32 b. In order to obtain the period of extension, the eligible
33 borrower shall provide to the creditor, prior to the date that the
34 interest rate resets under the terms of the introductory rate
35 mortgage, a completed certification of extension form signed by the
36 eligible borrower, which contains:

- 37 (1) the name of the eligible borrower;
- 38 (2) the address of the property; and
- 39 (3) an affirmative statement that the eligible borrower:
 - 40 (a) does not have sufficient monthly income, after deductions for
41 necessary living expenses, to pay the monthly payments that will
42 apply after the date that the interest rate resets;
 - 43 (b) requests the period of extension;
 - 44 (c) agrees to continue, during the period of extension, monthly
45 payments, which shall include principal and interest calculated at
46 the introductory rate on the date that the introductory rate mortgage
47 was originated, as well as amounts for taxes, insurance, and any

1 other amounts being paid under the terms of the mortgage prior to
2 the interest rate reset;

3 (d) agrees to pay the creditor, at the time of the eligible
4 borrower's transfer of the title to the property, any interest deferred
5 on account of the period of extension;

6 (e) agrees to accept the creditor's placement of a subordinate lien
7 on the property to secure the repayment of the interest deferred on
8 account of the period of extension; and

9 (f) agrees to sign a modification of mortgage loan document that
10 contains the terms of the period of extension and any documentation
11 necessary to establish or record the subordinate lien.

12 c. An eligible borrower who makes a knowing material
13 misrepresentation in a certification of extension is guilty of a crime
14 of the fourth degree.

15 d. The creditor, upon receiving the completed certification of
16 extension, shall grant the eligible borrower the three year period of
17 extension, which shall commence on the date that the introductory
18 rate is due to reset under the terms of the introductory rate
19 mortgage.

20 e. Within a reasonable amount of time after the receipt of a
21 completed certification of extension from an eligible borrower, a
22 creditor shall provide to the eligible borrower a written
23 acknowledgment that the certification of extension has been
24 received. The acknowledgment shall contain the following:

25 (1) the monthly payment amount that is due from the eligible
26 borrower during the period of extension, which shall include
27 principal and interest, calculated at the introductory rate on the date
28 the introductory rate mortgage was originated, as well as amounts
29 for taxes, insurance, and any other amounts being paid under the
30 terms of the mortgage prior to the interest rate reset;

31 (2) a schedule of payments, indicating the date that the first
32 monthly payment is due and the dates that each subsequent monthly
33 payment is due during the period of extension;

34 (3) the address to which the borrower shall send the monthly
35 payment; and

36 (4) a statement of proposed subordinate lien, which shall include:

37 (a) a notice to the borrower that the creditor will place a
38 subordinate lien on the property that is the security for the
39 introductory rate mortgage, to secure the borrower's repayment of
40 the amount of interest deferred by the period of extension; and

41 (b) an explanation of the method the creditor will use to calculate
42 the amount of the interest deferred by the period of extension.

43 f. A creditor who grants a period of extension to an eligible
44 borrower shall have the right to record a subordinate lien on the
45 eligible borrower's property to secure the borrower's repayment of
46 the amount of interest deferred by the period of extension. The
47 subordinate lien shall be effective from the date of recording in the
48 public records in the county in which the property is located.

1 Notwithstanding any law to the contrary, the subordinate lien shall
2 have the same priority as the lien of the introductory rate mortgage.
3 Upon payment by the eligible borrower of the total amount of
4 interest deferred pursuant to the period of extension, the creditor
5 shall provide the eligible borrower with a recordable satisfaction of
6 the subordinate lien, or otherwise cause the subordinate lien to be
7 discharged of record.

8 g. An eligible borrower who has been granted a period of
9 extension shall forfeit all rights concerning deferment of interest
10 payments provided by this act if the eligible borrower fails to make
11 payments under the schedule of payments set forth in the creditor's
12 acknowledgment of the period of extension or fails to comply with
13 the terms of any mortgage loan modification agreement entered into
14 between the creditor and the eligible foreclosed borrower relating to
15 the period of extension, such that the modification agreement
16 becomes 60 days delinquent.

17

18 6. a. A creditor that issues to an eligible foreclosed borrower a
19 notice of intention to foreclose an introductory rate mortgage
20 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
21 53 et seq.), shall send to the eligible foreclosed borrower a series of
22 written notices, by regular and registered mail, separate and distinct
23 from all other correspondence. The notices shall include in plain
24 language and in at least 14 point bold type:

25 (1) A statement that the information in the notice is being
26 provided as required by the "Save New Jersey Homes Act of 2008,"
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 which was enacted by the New Jersey Legislature and which
29 provides certain rights to borrowers whose homes are the subject of
30 a mortgage foreclosure action;

31 (2) A list of alternatives to foreclosure that an eligible foreclosed
32 borrower may pursue, including any refinancing of the loan offered
33 by the creditor and any renegotiation of loan terms offered by the
34 creditor;

35 (3) An explanation of the eligible foreclosed borrower's right to
36 obtain a period of extension for three years pursuant to the "Save
37 New Jersey Homes Act of 2008," P.L. , c. (C.) (pending
38 before the Legislature as this bill), and an explanation of the
39 procedure that an eligible foreclosed borrower must follow to obtain
40 a period of extension;

41 (4) A statement that the notice should be read carefully and that
42 the eligible foreclosed borrower may wish to consult with an
43 attorney to understand the rights that may be available under the
44 "Save New Jersey Homes Act of 2008," P.L. , c. (C.)
45 (pending before the Legislature as this bill); and

46 (5) A certification of extension form that can be completed by
47 an eligible foreclosed borrower in order to obtain the period of
48 extension authorized pursuant to section 7 of this act.

1 b. The notices required pursuant to subsection a. of this section
2 shall be sent at the following intervals:

- 3 (1) within 10 days of issuing the notice of intention; and
4 (2) at the time that the creditor applies for entry of final
5 judgment of foreclosure pursuant to section 6 of P.L.1995, c.244
6 (C.2A:50-58).

7 c. The notices shall be sent in envelopes that state the following
8 information on the outside front portion of the envelope: “The New
9 Jersey Legislature has enacted the Save New Jersey Homes Act of
10 2008, which may help you save your home from foreclosure.
11 Details as to the rights you may have to obtain a period of extension
12 of foreclosure under this new law are contained within. Please read
13 the contents carefully. You may wish to consult with an attorney to
14 understand your rights under this new law.”

15

16 7. a. Notwithstanding any law or contract right to the contrary,
17 a creditor shall provide an eligible foreclosed borrower a period of
18 extension for three years as provided in this section, during which
19 foreclosure proceedings pursuant to the “Fair Foreclosure Act,”
20 P.L.1995, c.244 (C.2A:50-53 et seq.) shall be suspended and the
21 foreclosed eligible borrower shall continue to pay monthly
22 payments, which shall include principal and interest, calculated at
23 the introductory rate on the date that the introductory rate mortgage
24 was originated, as well as amounts for taxes, insurance, and any
25 other amounts being paid under the terms of the mortgage prior to
26 the interest rate reset, provided the eligible foreclosed borrower
27 completes and returns a certification of extension to the creditor in
28 accordance with the provisions of this section.

29 b. In order to obtain the period of extension, the eligible
30 foreclosed borrower shall provide to the creditor, no later than 90
31 days from the date that the creditor sends the notice required
32 pursuant to paragraph (2) of subsection b. of section 6 of this act, a
33 completed certification of extension form signed by the eligible
34 foreclosed borrower, which contains:

- 35 (1) the name of the eligible foreclosed borrower;
36 (2) the address of the property; and
37 (3) an affirmative statement that the eligible foreclosed
38 borrower:

- 39 (a) requests the period of extension;
40 (b) agrees to continue, during the period of extension, monthly
41 payments which shall include principal and interest, calculated at
42 the introductory rate on the date that the introductory rate mortgage
43 was originated, as well as amounts for taxes, insurance, and any
44 other amounts being paid under the terms of the mortgage prior to
45 the interest rate reset;

46 (c) agrees to pay the creditor, at the time of transfer of title to the
47 property:

- 48 (i) any interest deferred on account of the period of extension;

1 (ii) any fees and costs incurred by the creditor in connection with
2 the foreclosure proceeding; and

3 (iii) any arrearages owed to the creditor for monthly principal
4 and interest payments, homeowners insurance payments, property
5 tax payments, and any other payments that the eligible borrower
6 was required to pay, but failed to pay, under the terms of the
7 introductory rate mortgage;

8 (d) agrees to accept the creditor's placement of a subordinate lien
9 on the property to secure the repayment of amounts owed pursuant
10 to subparagraph (c) of this paragraph; and

11 (e) agrees to sign a modification of mortgage loan document that
12 contains the terms of the period of extension and any documentation
13 necessary to establish or record the subordinate lien.

14 c. The creditor, upon receiving the completed certification of
15 extension within the time period specified in subsection b. of this
16 section, shall:

17 (1) grant the eligible foreclosed borrower the three year period of
18 extension, which shall commence no later than 30 days from the
19 date that the creditor receives the eligible foreclosed borrower's
20 completed certification of extension; and

21 (2) suspend the foreclosure proceeding that the creditor initiated
22 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
23 53 et seq.).

24 A creditor may grant relief pursuant to paragraphs (1) and (2) of
25 this subsection, upon receipt of a completed certificate of extension
26 from an eligible foreclosed borrower after the time period specified
27 in subsection b. of this section, in the sole discretion of the creditor.

28 d. Within a reasonable period of time after the receipt of a
29 completed certification of extension from an eligible foreclosed
30 borrower within the time period specified in subsection b. of this
31 section, a creditor shall provide to the eligible foreclosed borrower
32 a written acknowledgment that the certification of extension has
33 been received. The acknowledgment shall contain the following:

34 (1) a statement that the foreclosure proceedings initiated
35 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
36 53 et seq.) will be suspended during the period of extension;

37 (2) the monthly payment amount that is due from the eligible
38 foreclosed borrower during the period of extension, which shall
39 include principal and interest, calculated at the introductory rate, on
40 the date the introductory mortgage rate was originated, as well as
41 amounts for taxes, insurance, and any other amounts being paid
42 under the terms of the mortgage prior to the interest rate reset;

43 (3) a schedule of payments, indicating the date that the first
44 monthly payment is due and the dates that each subsequent monthly
45 payment is due during the period of extension;

46 (4) the address to which the borrower must send the monthly
47 payment; and

48 (5) a statement of proposed subordinate lien, which shall include:

1 (a) a notice to the eligible foreclosed borrower that the creditor
2 will place a subordinate lien on the property that is the security for
3 the introductory rate mortgage, to secure the eligible foreclosed
4 borrower's repayment of the amounts provided for in paragraph (1)
5 of subsection e. of this section; and

6 (b) an explanation of the method the creditor will use to calculate
7 the amount of the interest deferred by the period of extension, and
8 the amounts provided for in paragraph (1) of subsection e. of this
9 section, for which repayment is secured by the subordinate lien.

10 e. (1) A creditor that grants a period of extension to an eligible
11 foreclosed borrower shall have the right to record a subordinate lien
12 on the eligible foreclosed borrower's property to secure the eligible
13 foreclosed borrower's repayment of:

14 (a) the amount of interest deferred by the period of extension;

15 (b) any fees and costs already incurred in connection with the
16 foreclosure proceeding; and

17 (c) any arrearages owed to the creditor for monthly payments of
18 principal and interest, homeowner insurance payments, property tax
19 payments, or any other payments that the eligible foreclosed
20 borrower was required to pay, but failed to pay, under the terms of
21 the introductory rate mortgage.

22 (2) The subordinate lien shall be effective from the date of
23 recording in the public records in the county in which the property
24 is located. Notwithstanding any other law to the contrary, the
25 subordinate lien shall have the same priority as the lien of the
26 introductory rate mortgage. Upon payment by the borrower of the
27 total amount of interest deferred pursuant to the period of extension,
28 and any other amounts representing the arrearages for which the
29 subordinate lien secures repayment pursuant to this act, which shall
30 only be due upon the borrower's transfer of title to the property, the
31 creditor shall provide the eligible foreclosed borrower with a
32 recordable satisfaction of the subordinate lien, or otherwise cause
33 the subordinate lien to be discharged of record.

34 f. An eligible foreclosed borrower who has been granted a
35 period of extension shall forfeit all rights concerning deferment of
36 interest payments, suspension of foreclosure, and deferment of
37 payment of amounts secured by a subordinate lien, provided by the
38 provisions of this act if the eligible foreclosed borrower fails to
39 make payments under the schedule of payments as set forth in the
40 creditor's acknowledgment of the period of extension or fails to
41 comply with the terms of any mortgage loan modification
42 agreement entered into between the creditor and the eligible
43 foreclosed borrower relating to the period of extension, such that
44 the modification agreement becomes 60 days delinquent.

45 g. A court shall not approve an entry of final judgment in a
46 foreclosure proceeding commenced pursuant to the "Fair
47 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) as to an
48 introductory rate mortgage unless the court is satisfied from the

1 pleadings and certifications on file with the court that notice of the
2 availability of the period of extension was provided to the eligible
3 foreclosed borrower in accordance with the provisions of this act.

4
5 8. Any person who violates any provision of this act shall be
6 liable to a penalty of not more than \$10,000 for the first offense,
7 and not more than \$20,000 for the second and subsequent offense,
8 which penalty may be collected in a summary proceeding pursuant
9 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:
10 58-10 et seq.).

11
12 9. This act shall be liberally construed to effectuate the purposes
13 of the act.

14
15 10. If any section, subsection, paragraph, sentence or other part
16 of this act is adjudged unconstitutional or invalid, the judgment
17 shall not affect, impair or invalidate the remainder of this act, but
18 shall be confined in its effect to the section, subsection, paragraph,
19 sentence or other part of this act directly involved in the
20 controversy in which the judgment shall have been rendered.

21
22 11. The Department of Banking and Insurance shall enforce the
23 provisions of this act, and the department, in consultation with the
24 Attorney General, shall adopt regulations, pursuant to the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.) to effectuate the purposes of this act.

27
28 12. This act shall take effect immediately, and remain in effect
29 until January 1, 2011.

30
31
32 STATEMENT

33
34 This bill, entitled the "Save New Jersey Homes Act of 2008,"
35 requires creditors to provide a three year period of extension to
36 borrowers who are obligated to repay introductory rate mortgage
37 loans on residential properties under certain circumstances. As
38 defined in the bill, an introductory rate mortgage provides for a
39 introductory interest rate that resets after a period of time. The bill
40 provides a period of extension, during which the introductory rate
41 does not reset, to "eligible borrowers" whose mortgage interest
42 rates are about to reset. The bill also provides a period of extension,
43 during which the introductory rate does not reset and during which
44 foreclosure proceedings are suspended, to "eligible foreclosed
45 borrowers" whose mortgages are being foreclosed pursuant to the
46 "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.).

47 The bill is intended to address an economic crisis resulting from
48 the resetting of mortgage rates from low introductory rates to

1 higher, variable rates, which is likely to contribute to the already
2 increasing rate of defaults experienced by New Jersey homeowners.
3 By providing a period of extension for existing mortgages, the bill
4 allows time for creditors and borrowers to renegotiate more
5 reasonable terms as to mortgage loans that are financially
6 unworkable for the borrowers, so as to avoid foreclosures that result
7 in a financial detriment to both creditor and borrower.

8 The bill provides that prior to the date on which the interest rate
9 will reset on an introductory rate mortgage, a creditor must provide
10 to an eligible borrower a series of written notices, alerting the
11 borrower to the impending interest rate reset, and providing certain
12 information about the reset interest rate, any refinancing or
13 renegotiation of the loan offered by the creditor, and the borrower's
14 right to obtain a three year period of extension under the terms of
15 the bill.

16 The creditor must provide an eligible borrower with a three year
17 period of extension, during which the interest rate on the
18 introductory rate mortgage shall not increase above the original
19 introductory rate, on the condition that the eligible borrower
20 provides a certificate of extension to the creditor, prior to the date
21 that interest rate resets under the terms of the introductory rate
22 mortgage. The certificate of extension must contain certain
23 statements, including that the eligible borrower: (1) is unable to pay
24 the monthly payments that will apply after the date that the interest
25 rate resets; (2) agrees to continue monthly payments calculated at
26 the introductory interest rate, during the period of extension; (3)
27 agrees to pay the creditor, at the time of transfer of the property,
28 any interest deferred on account of the period of extension; and (4)
29 agrees to accept the creditor's placement of a subordinate lien on
30 the property to secure the repayment of the interest deferred on
31 account of the period of extension. An eligible borrower who
32 makes a knowing material misrepresentation in a certificate of
33 extension is guilty of a crime of fourth degree.

34 A creditor who grants a period of extension to an eligible
35 foreclosed borrower shall have the right to record a subordinate lien
36 on the eligible foreclosed borrower's property to secure the
37 borrower's repayment of the amount of interest deferred by the
38 period of extension and any arrearages owed on the mortgage. The
39 subordinate lien shall have the same priority as the lien of the
40 introductory rate mortgage.

41 An eligible borrower who fails to make the appropriate payments
42 during the period of extension forfeits all rights concerning the
43 deferment of interest payments and suspension of foreclosure.

44 The bill also provides that a creditor that issues to an eligible
45 foreclosed borrower a notice of intention to foreclose an
46 introductory rate mortgage pursuant to the "Fair Foreclosure Act,"
47 P.L.1995, c.244 (C.2A:50-53 et seq.), shall send to the eligible
48 foreclosed borrower a series of written notices, by regular and

1 registered mail, separate and distinct from all other correspondence
2 and written in plain language. The notices shall include:

3 (1) A statement that the information in the notice is being
4 provided as required by the "Save New Jersey Homes Act of 2008,"
5 which was enacted by the New Jersey Legislature and which
6 provides certain rights to borrowers whose homes are the subject of a
7 mortgage foreclosure action;

8 (2) A list of alternatives to foreclosure that an eligible foreclosed
9 borrower may pursue, including any refinancing of the loan offered
10 by the creditor and any renegotiation of loan terms offered by the
11 creditor;

12 (3) An explanation of the eligible foreclosed borrower's right to
13 obtain a period of extension for three years and an explanation of
14 the procedure that an eligible foreclosed borrower must follow to
15 obtain a period of extension; and

16 (4) A certification of extension form that can be completed by
17 an eligible foreclosed borrower in order to obtain the period of
18 extension.

19 The notices shall be sent within 10 days of issuing the notice of
20 intention and also at the time that the creditor applies for entry of
21 final judgment of foreclosure. The notices shall be sent in
22 envelopes with certain information on the outside front portion of
23 the envelope that alerts the borrower to the enactment of the Save
24 New Jersey Homes Act of 2008 and to the period of extension from
25 foreclosure available under the act.

26 The bill also provides that a creditor must provide an eligible
27 foreclosed borrower with a three year period of extension, during
28 which the interest rate on the introductory rate mortgage shall not
29 increase above the original introductory rate, and during which
30 foreclosure proceedings pursuant to the "Fair Foreclosure Act" are
31 suspended. The creditor must grant this relief on the condition that
32 the eligible foreclosed borrower provides a certification of
33 extension to the creditor no later than 90 days of the date that the
34 creditor applies for entry of final judgment of foreclosure. The
35 certification of extension must contain certain statements, including
36 that the eligible borrower agrees: (1) to continue monthly payments,
37 with interest calculated at the introductory rate, during the period of
38 extension; (2) to pay the creditor, at the time of transfer of the
39 property, any interest deferred on account of the period of extension
40 and any arrearages on the mortgage; and (3) to accept the creditor's
41 placement of a subordinate lien on the property to secure the
42 repayment of the interest deferred on account of the period of
43 extension, and any arrearages owed on the mortgage.

44 A creditor who grants a period of extension to an eligible
45 foreclosed borrower shall have the right to record a subordinate lien
46 on the eligible foreclosed borrower's property to secure the
47 borrower's repayment of the amount of interest deferred by the
48 period of extension and any arrearages owed on the mortgage. The

1 subordinate lien shall have the same priority as the lien of the
2 introductory rate mortgage.

3 An eligible foreclosed borrower who fails to make the
4 appropriate payments during the period of extension forfeits all
5 rights concerning the deferment of interest payments and
6 suspension of foreclosure.

7 Any person who violates any provision of the bill shall be liable
8 to a penalty of not more than \$10,000 for the first offense, and not
9 more than \$20,000 for the second and subsequent offense, which
10 penalty may be collected in a summary proceeding pursuant to the
11 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
12 et seq.).

13 The bill provides that its terms become effect immediately upon
14 enactment, and remain in effect until January 1, 2011.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 2780

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 22, 2008

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 2780.

This bill, as amended, entitled the “Save New Jersey Homes Act of 2008,” requires creditors to provide a three year period of extension to borrowers who are obligated to repay introductory rate mortgage loans on residential properties under certain circumstances. As further defined in the bill, an introductory rate mortgage provides for an introductory interest rate that resets after a period of time. The bill provides a period of extension, during which the introductory rate does not reset, to “eligible borrowers” whose mortgage interest rates are about to reset. The bill also provides a period of extension, during which the introductory rate does not reset and during which foreclosure proceedings are suspended, to “eligible foreclosed borrowers” whose mortgages are being foreclosed pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.).

The bill is intended to address an economic crisis resulting from the resetting of mortgage rates from low introductory rates to higher, variable rates, which is likely to contribute to the already increasing rate of defaults experienced by New Jersey homeowners. By providing a period of extension for existing mortgages, the bill allows time for creditors and borrowers to renegotiate more reasonable terms as to mortgage loans that are financially unworkable for the borrowers, so as to avoid foreclosures that result in a financial detriment to both creditor and borrower.

The bill provides that prior to the date on which the interest rate will reset on an introductory rate mortgage, a creditor must provide to an eligible borrower a series of written notices, alerting the borrower to the impending interest rate reset, and providing certain information about the reset interest rate, any refinancing or renegotiation of the loan offered by the creditor, and the borrower’s right to obtain a three year period of extension under the terms of the bill.

The creditor shall provide an eligible borrower with a three year period of extension, during which the interest rate on the introductory rate mortgage shall not increase above the original introductory rate, on the condition that the eligible borrower provides a certification of extension to the creditor, prior to the date that interest rate resets under the terms of the introductory rate mortgage. The certification of extension must contain certain statements, including that the eligible borrower: (1) is unable to pay the monthly payments that will apply after the date that the interest rate resets; (2) agrees to continue monthly payments calculated at the introductory interest rate, during the period of extension; (3) agrees to pay the creditor, at the time of transfer of the property, any interest deferred on account of the period of extension; and (4) agrees to accept the creditor's placement of a modification of mortgage on the property to secure the repayment of the interest deferred on account of the period of extension. An eligible borrower who makes a knowing material misrepresentation in a certification of extension is guilty of a crime of fourth degree.

A creditor who grants a period of extension to an eligible borrower shall have the right to record a modification of mortgage on the eligible borrower's property to secure the borrower's repayment of the amount of interest deferred by the period of extension and any arrearages owed on the mortgage. The modification of mortgage shall have the same priority as the lien of the introductory rate mortgage.

If an eligible borrower fails to return to a creditor a properly executed modification of mortgage or any other documentation necessary to establish or record the modification of mortgage, within 30 days from the borrower's receipt from the creditor of a modification of mortgage form, the creditor may record the eligible borrower's certification of extension in place of the modification of mortgage.

An eligible borrower who fails to make the appropriate payments during the period of extension forfeits all rights concerning the deferment of interest payments.

The bill also provides that a creditor that issues to an eligible foreclosed borrower a notice of intention to foreclose an introductory rate mortgage pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), shall send to the eligible foreclosed borrower a series of written notices, by regular and registered mail, separate and distinct from all other correspondence and written in plain language. The notices shall include certain information that alerts the eligible foreclosed borrower to their rights under this bill, including the three year period of extension.

The notices shall be sent within 10 days of issuing the notice of intention and also at the time that the creditor applies for entry of final judgment of foreclosure. The notices shall be sent in envelopes with certain information on the outside front portion of the envelope that alerts the borrower to the enactment of the Save New Jersey Homes

Act of 2008 and to the period of extension from foreclosure available under the act.

The bill also provides that a creditor shall provide an eligible foreclosed borrower with a three year period of extension, during which the interest rate on the introductory rate mortgage shall not increase above the original introductory rate, and during which foreclosure proceedings pursuant to the "Fair Foreclosure Act" are suspended. The creditor shall grant this relief on the condition that the eligible foreclosed borrower provides a certification of extension to the creditor no later than 90 days from the date that the creditor applies for entry of final judgment of foreclosure. The certification of extension must contain certain statements, including that the eligible borrower agrees to: (1) continue monthly payments, with interest calculated at the introductory rate, during the period of extension; (2) pay the creditor, at the time of transfer of the property, any interest deferred on account of the period of extension and any arrearages on the mortgage; and (3) accept the creditor's placement of a modification of mortgage on the property to secure the repayment of the interest deferred on account of the period of extension, and any arrearages owed on the mortgage.

A creditor who grants a period of extension to an eligible foreclosed borrower shall have the right to record a modification of mortgage on the eligible foreclosed borrower's property to secure the borrower's repayment of the amount of interest deferred by the period of extension and any arrearages owed on the mortgage. The modification of mortgage shall have the same priority as the lien of the introductory rate mortgage.

If an eligible foreclosed borrower fails to return to a creditor a properly executed modification of mortgage or any other documentation necessary to establish or record the modification of mortgage within 30 days from the borrower's receipt from the creditor of a modification of mortgage form, the creditor may record the eligible foreclosed borrower's certificate of extension in place of the modification of mortgage.

An eligible foreclosed borrower who fails to make the appropriate payments during the period of extension forfeits all rights concerning the deferment of interest payments and suspension of foreclosure.

Any person who violates any provision of the bill shall be liable to a penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and subsequent offense, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition, eligible borrowers, eligible foreclosed borrowers, or the Attorney General can bring an action pursuant to that act against a creditor to enforce compliance with the bill's provisions.

The bill also creates an exception to certain State statutes, commonly known as "parity" acts, so that these acts would not allow a

creditor to avoid fulfilling any obligation required under the bill by claiming the same powers, rights, benefits, or privileges as those authorized for out-of-State or federally chartered financial institutions.

The bill provides that the Attorney General, in consultation with the Department of Banking and Insurance, shall adopt regulations to effectuate the bill's provisions.

The bill provides that its terms take effect immediately upon enactment, and remain in effect until January 1, 2011.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- * revise the definition of "introductory rate mortgage" so as not include: (1) a loan that provides for a fixed rate of interest for the first five years; or (2) a loan that provides for an introductory rate that is set below the fully indexed rate at the time the loan was originated only as a result of the borrower's payment of bona fide discount points.
- * clarify that to obtain the relief provided by the bill to an eligible borrower and an eligible foreclosed borrower, respectively, a borrower must return a properly executed modification of mortgage to the creditor, in order to secure the repayment of the amounts deferred on account of a period of extension. When recorded, the modification of mortgage has the same priority of lien as the introductory rate mortgage. If a borrower fails to return a properly executed modification of mortgage within 30 days of receipt, the creditor can record the borrower's certification of extension in its place.
- * create an exception to certain State statutes, commonly known as "parity" acts, so that these acts would not allow a creditor to avoid fulfilling any obligation required under the bill by claiming the same powers, rights, benefits, or privileges as those authorized for out-of-State or federally chartered financial institutions.
- * allows eligible borrowers, eligible foreclosed borrowers, and the Attorney General to bring an action against a creditor to enforce compliance with the bill's provisions, pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
- * provides that the Attorney General, instead of the Department of Banking and Insurance, shall adopt regulations to effectuate the bill's provisions. The Attorney General shall consult with the department in adopting the regulations.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 2780

with Assembly Floor Amendments
(Proposed By Assemblyman COHEN)

ADOPTED: JUNE 16, 2008

These amendments revise the definition of “introductory rate mortgage,” to ensure the applicability of the bill’s provisions to certain subprime loan products, including pay option adjustable rate mortgages with negative amortization features.

The amendments also clarify that a borrower who obtains a deferment of interest or other arrearages through a period of extension of an introductory rate mortgage, shall pay the creditor those amounts at the time of full repayment of the mortgage, which could be upon the maturity date, a refinancing, or a sale or other transfer of title to the property.

In addition, the amendments provide that a creditor shall not require a borrower to limit or waive the borrower’s rights to bring any claims, defenses, demands, proceedings, actions, or causes of action against the creditor as a condition of accepting an offer of any loss mitigation activities made available by the bill.

The amendments also provide that the bill’s penalty provisions apply only to willful actions that violate the bill’s provisions, and that immaterial errors in a notice required to be provided by a creditor, shall not constitute a violation of the bill’s provisions.

The amendments also make certain technical changes to the bill.

SENATE, No. 1853

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 19, 2008

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)

SYNOPSIS

Provides period of extension for repayment of introductory rate mortgages on residential property under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain residential mortgages, and
2 supplementing Title 46 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Legislature finds and declares that:

8 a. Many thousands of New Jersey homeowners are at risk of
9 losing their homes as a result of mortgage foreclosures in the
10 immediate future;

11 b. Foreclosure of a family's home often represents the loss of
12 the family's most valuable financial asset, and foreclosures
13 undermine the health and economic vitality of neighborhoods;

14 c. Foreclosures result in the loss of millions of dollars in assets,
15 not only those of the homeowners who are the victims of
16 foreclosure, but also in terms of the property values of homes
17 located in the vicinity of foreclosed properties, as well as millions
18 in additional costs to state and local government for the loss of
19 property tax revenue;

20 d. According to a report issued by the U.S. Government
21 Accountability Office (GAO) in October, 2007, New Jersey
22 experienced an increase in residential mortgage foreclosure start
23 rates in excess of 50% over the prior two years and the GAO found
24 that defaults and foreclosures on mortgages have a significant
25 economic impact on homeowners, lenders, and neighborhoods;

26 e. According to a report issued in April, 2008 by the State
27 Foreclosure Prevention Working Group, which is composed of
28 banking regulators and attorneys general of 11 states, the collective
29 efforts of mortgage lenders and government officials to address
30 rising foreclosures has not resulted in meaningful improvement in
31 foreclosure prevention, and new approaches, such as targeted
32 efforts to slow down the foreclosure process, are needed to prevent
33 millions of unnecessary foreclosures nationwide.

34 f. Foreclosures are largely the result of subprime lending
35 practices, which have placed many homeowners in loans that they
36 cannot realistically afford, by using mortgage loan features such as
37 low introductory rates which reset to higher, variable rates, thereby
38 increasing the risk of default for many homeowners in the state
39 who, at an increasing rate, cannot sell their home or refinance their
40 mortgage;

41 g. Industry analysts estimate that, nationwide, about 1.5 million
42 mortgages are due to reset in 2008, and that as many as three
43 million subprime mortgages could end up in foreclosure over the
44 next several years; and

45 h. There is a compelling need for the State of New Jersey to
46 address the ongoing economic crisis in the subprime mortgage
47 market and to provide the means by which homeowners can obtain
48 a period of extension to adjust their finances in order to increase

1 their ability to retain their homes, encourage mortgage lenders to
2 modify mortgage loan terms and resolve foreclosure disputes, and
3 protect local governments and neighborhoods from the negative
4 social, economic, and fiscal consequences of foreclosure and
5 abandonment.

6

7 2. As used in this act:

8 “Creditor” means a State chartered bank, savings bank, savings
9 and loan association or credit union, any person required to be
10 licensed under the provisions of the “New Jersey Licensed Lenders
11 Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on
12 behalf of the creditor named in the debt obligation including, but
13 not limited to, servicers.

14 “Eligible borrower” means a borrower who is obligated to repay
15 a loan secured by an introductory rate mortgage.

16 “Eligible foreclosed borrower” means a borrower who is
17 obligated to repay a loan secured by an introductory rate mortgage
18 and who receives a notice of intention to foreclose that mortgage
19 pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-
20 53 et seq.), except that an “eligible foreclosed borrower” shall not
21 include an eligible borrower who has previously exercised the right
22 to obtain a three year period of extension pursuant to section 4 of
23 this act.

24 “Introductory rate mortgage” means a consumer credit
25 transaction in which the loan is secured by a mortgage or deed of
26 trust on real estate in this State upon which there is located a one to
27 four family dwelling which is occupied by the borrower as the
28 borrower’s principal residence, and which provides for a fixed
29 interest rate for an introductory period that resets to a variable
30 interest rate after a period of time.

31

32 3. a. Prior to the date on which the interest rate in effect during
33 the introductory period of an introductory rate mortgage resets to a
34 variable interest rate under the terms of the mortgage, a creditor
35 shall provide a series of written notices, separate and distinct from
36 all other correspondence, to an eligible borrower. The creditor shall
37 provide these notices at the following intervals prior to the date that
38 the interest rate resets:

39 (1) 120 days;

40 (2) 90 days;

41 (3) 60 days; and

42 (4) 30 days.

43 b. Each notice required pursuant to subsection a. of this section
44 shall include, in plain language:

45 (1) the current interest rate under the terms of the introductory
46 rate mortgage;

- 1 (2) the date on which the interest rate resets from a fixed interest
- 2 rate applicable during the introductory period to a variable interest
- 3 rate;
- 4 (3) an explanation of how the reset interest rate and monthly
- 5 payment would be determined;
- 6 (4) the best estimate by the creditor of the amount of the monthly
- 7 payment that will apply after the date of the reset, and the
- 8 assumptions upon which the estimate is based;
- 9 (5) a list of alternatives an eligible borrower may pursue before
- 10 the date of the reset, including any refinancing of the loan offered
- 11 by the creditor or any renegotiation of loan terms offered by the
- 12 creditor;
- 13 (6) an explanation of the borrower's right to obtain a period of
- 14 extension pursuant to this act and an explanation of the procedure
- 15 that a borrower must follow to obtain a period of extension; and
- 16 (7) an affidavit of extension form that can be completed by a
- 17 borrower in order to obtain a period of extension authorized
- 18 pursuant to section 4 of this act.
- 19
- 20 4. a. Notwithstanding any law or contract right to the contrary, a
- 21 creditor shall provide an eligible borrower a period of extension for
- 22 three years as provided in this section, during which the interest rate
- 23 on the introductory rate mortgage shall not increase above the
- 24 original introductory rate, provided the eligible borrower completes
- 25 and returns an affidavit of extension to the creditor in accordance
- 26 with the provisions of this section.
- 27 b. In order to obtain the period of extension, the eligible
- 28 borrower shall provide to the creditor, prior to the date that the
- 29 interest rate resets under the terms of the introductory rate
- 30 mortgage, a completed affidavit of extension form signed by the
- 31 eligible borrower, which contains:
- 32 (1) the name of the eligible borrower;
- 33 (2) the address of the property; and
- 34 (3) an affirmative statement that the eligible borrower:
- 35 (a) does not have sufficient monthly income, after deductions for
- 36 necessary living expenses, to pay the monthly payments that will
- 37 apply after the date that the interest rate resets;
- 38 (b) requests the period of extension;
- 39 (c) agrees to continue monthly payments of principal and
- 40 interest calculated at the introductory rate during the period of
- 41 extension;
- 42 (d) agrees to pay the creditor, at the time of the eligible
- 43 borrower's transfer of the title to the property, any interest deferred
- 44 on account of the period of extension;
- 45 (e) agrees to accept the creditor's placement of a subordinate lien
- 46 on the property to secure the repayment of the interest deferred on
- 47 account of the period of extension; and

1 (f) agrees to sign a modification of mortgage loan document that
2 contains the terms of the period of extension and any documentation
3 necessary to establish or record the subordinate lien.

4 c. An eligible borrower who makes a knowing material
5 misrepresentation in an affidavit of extension is guilty of a crime of
6 the fourth degree.

7 d. The creditor, upon receiving the completed affidavit of
8 extension, shall grant the eligible borrower the three year period of
9 extension, which shall commence on the date that the creditor
10 receives the eligible borrower's completed affidavit of extension.

11 e. Upon receipt of a completed affidavit of extension from an
12 eligible borrower, a creditor shall provide to the eligible borrower a
13 written acknowledgment that the affidavit of extension has been
14 received. The acknowledgment shall contain the following:

15 (1) the monthly payment amount that is due from the eligible
16 borrower during the period of extension, which shall be the
17 minimum monthly payment of principal and interest, calculated at
18 the introductory rate, on the date the introductory rate mortgage was
19 originated;

20 (2) a schedule of payments, indicating the date that the first
21 monthly payment is due and the dates that each subsequent monthly
22 payment is due during the period of extension;

23 (3) the address to which the borrower shall send the monthly
24 payment; and

25 (4) a statement of proposed subordinate lien, which shall include:

26 (a) a notice to the borrower that the creditor will place a
27 subordinate lien on the property that is the security for the
28 introductory rate mortgage, to secure the borrower's repayment of
29 the amount of interest deferred by the period of extension; and

30 (b) an explanation of the method the creditor will use to calculate
31 the amount of the interest deferred by the period of extension.

32 f. A creditor who grants a period of extension to an eligible
33 borrower shall have the right to record a subordinate lien on the
34 eligible borrower's property to secure the borrower's repayment of
35 the amount of interest deferred by the period of extension. The
36 subordinate lien shall be effective from the date of recording in the
37 public records in the county in which the property is located.
38 Notwithstanding any law to the contrary, the subordinate lien shall
39 have the same priority as the lien of the introductory rate mortgage.
40 Upon payment by the eligible borrower of the total amount of
41 interest deferred pursuant to the period of extension, the creditor
42 shall provide the eligible borrower with a recordable satisfaction of
43 the subordinate lien, or otherwise cause the subordinate lien to be
44 discharged of record.

45 g. An eligible borrower who has been granted a period of
46 extension shall forfeit all rights concerning deferment of interest
47 payments provided by this act if the eligible borrower fails to make
48 payments under the schedule of payments set forth in the creditor's

1 acknowledgment of the period of extension or fails to comply with
2 the terms of any mortgage loan modification agreement entered into
3 between the creditor and the eligible foreclosed borrower relating to
4 the period of extension.

5
6 5. A creditor that issues to an eligible foreclosed borrower a
7 notice of intention to foreclose an introductory rate mortgage
8 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
9 53 et seq.), shall include with the notice of intention, an additional
10 notice, written in plain language, which shall include:

11 a. A list of alternatives to foreclosure that an eligible foreclosed
12 borrower may pursue, including any refinancing of the loan offered
13 by the creditor and any renegotiation of loan terms offered by the
14 creditor;

15 b. An explanation of the eligible foreclosed borrower's right to
16 obtain a period of extension for three years pursuant to this act and
17 an explanation of the procedure that an eligible foreclosed borrower
18 must follow to obtain a period of extension; and

19 c. An affidavit of extension form that can be completed by an
20 eligible foreclosed borrower in order to obtain the period of
21 extension authorized pursuant to section 6 of this act.

22
23 6. a. Notwithstanding any law or contract right to the contrary, a
24 creditor shall provide an eligible foreclosed borrower a period of
25 extension for three years as provided in this section, during which
26 foreclosure proceedings pursuant to the "Fair Foreclosure Act,"
27 P.L.1995, c.244 (C.2A50-53 et seq.) shall be suspended and the
28 interest rate on the introductory rate mortgage shall be deemed to be
29 the minimum monthly payment of principal and interest, calculated
30 at the introductory rate, on the date that the loan was originated,
31 provided the eligible foreclosed borrower completes and returns an
32 affidavit of extension to the creditor in accordance with the
33 provisions of this section.

34 b. In order to obtain the period of extension, the eligible
35 foreclosed borrower shall provide to the creditor, prior to a court's
36 entry of final judgment of foreclosure pursuant to the "Fair
37 Foreclosure Act," P.L.1995, c. 244 (C.2A:50-53 et seq.) or prior to
38 the expiration of a period of redemption provided pursuant to New
39 Jersey Court Rule 4:65-5, a completed affidavit of extension form
40 signed by the eligible foreclosed borrower, which contains:

41 (1) the name of the eligible foreclosed borrower;

42 (2) the address of the property; and

43 (3) an affirmative statement that the eligible foreclosed
44 borrower:

45 (a) requests the period of extension;

46 (b) agrees to continue monthly payments of principal and
47 interest, calculated at the introductory rate;

1 (c) agrees to pay the creditor, at the time of transfer of title to the
2 property:

- 3 (i) any interest deferred on account of the period of extension;
4 (ii) any fees and costs incurred by the creditor in connection with
5 the foreclosure proceeding; and
6 (iii) any arrearages owed to the creditor for monthly principal
7 and interest payments, homeowners insurance payments, property
8 tax payments, and any other payments that the eligible borrower
9 was required to pay, but failed to pay, under the terms of the
10 introductory rate mortgage;

11 (d) agrees to accept the creditor's placement of a subordinate lien
12 on the property to secure the repayment of amounts owed pursuant
13 to subparagraph (c) of this paragraph; and

14 (e) agrees to sign a modification of mortgage loan document that
15 contains the terms of the period of extension and any documentation
16 necessary to establish or record the subordinate lien.

17 c. The creditor, upon receiving the completed affidavit of
18 extension, shall:

19 (1) grant the eligible foreclosed borrower the three year period of
20 extension, which shall commence on the date that the creditor
21 receives the eligible foreclosed borrower's completed affidavit of
22 extension; and

23 (2) suspend the foreclosure proceeding that the creditor initiated
24 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
25 53 et seq.).

26 d. Upon receipt of a completed affidavit of extension from an
27 eligible foreclosed borrower, a creditor shall provide to the eligible
28 foreclosed borrower a written acknowledgment that the affidavit of
29 extension has been received. The acknowledgment shall contain the
30 following:

31 (1) a statement that the foreclosure proceedings initiated
32 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
33 53 et seq.) will be suspended during the period of extension;

34 (2) the monthly payment amount that is due from the eligible
35 foreclosed borrower during the period of extension, which shall be
36 the minimum monthly payment of principal and interest, calculated
37 at the introductory rate, on the date the introductory mortgage rate
38 was originated;

39 (3) a schedule of payments, indicating the date that the first
40 monthly payment is due and the dates that each subsequent monthly
41 payment is due during the period of extension;

42 (4) the address to which the borrower must send the monthly
43 payment; and

44 (5) a statement of proposed subordinate lien, which shall include:

45 (a) a notice to the eligible foreclosed borrower that the creditor
46 will place a subordinate lien on the property that is the security for
47 the introductory rate mortgage, to secure the eligible foreclosed

1 borrower's repayment of the arrearages provided for in paragraph
2 (1) of subsection e. of this section; and

3 (b) an explanation of the method the creditor will use to calculate
4 the amount of the interest deferred by the period of extension, and
5 the amounts provided for in subsection e. of this section, for which
6 repayment is secured by the subordinate lien.

7 e. (1) A creditor that grants a period of extension to an eligible
8 foreclosed borrower shall have the right to record a subordinate lien
9 on the eligible foreclosed borrower's property to secure the eligible
10 foreclosed borrower's repayment of:

11 (a) the amount of interest deferred by the period of extension;

12 (b) any fees and costs already incurred in connection with the
13 foreclosure proceeding; and

14 (c) any arrearages owed to the creditor for monthly payments of
15 principal and interest, homeowner insurance payments, property tax
16 payments, or any other payments that the eligible foreclosed
17 borrower was required to pay, but failed to pay, under the terms of
18 the introductory rate mortgage.

19 (2) The subordinate lien shall be effective from the date of
20 recording in the public records in the county in which the property
21 is located. Notwithstanding any other law to the contrary, the
22 subordinate lien shall have the same priority as the lien of the
23 introductory rate mortgage. Upon payment by the borrower of the
24 total amount of interest deferred pursuant to the period of extension,
25 and any other amounts representing the arrearages for which the
26 subordinate lien secures repayment pursuant to this act, the creditor
27 shall provide the eligible foreclosed borrower with a recordable
28 satisfaction of the subordinate lien, or otherwise cause the
29 subordinate lien to be discharged of record.

30 f. An eligible foreclosed borrower who has been granted a period
31 of extension shall forfeit all rights concerning deferment of interest
32 payments and suspension of foreclosure provided by the provisions
33 of this act if the eligible foreclosed borrower fails to make
34 payments under the schedule of payments as set forth in the
35 creditor's acknowledgment of the period of extension or fails to
36 comply with the terms of any mortgage loan modification
37 agreement entered into between the creditor and the eligible
38 foreclosed borrower relating to the period of extension.

39 g. A court shall not approve an entry of final judgment in a
40 foreclosure proceeding commenced pursuant to the "Fair
41 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) as to an
42 introductory rate mortgage unless the court is satisfied from the
43 pleadings and affidavits on file with the court that notice of the
44 availability of the period of extension was provided to the eligible
45 foreclosed borrower in accordance with the provisions of this act.

46

47 7. Any person who violates any provision of this act shall be
48 liable to a penalty of not more than \$10,000 for the first offense,

1 and not more than \$20,000 for the second and subsequent offense,
2 which penalty may be collected in a summary proceeding pursuant
3 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:
4 58-10 et seq.).

5
6 8. The Department of Banking and Insurance shall enforce the
7 provisions of this act, and the department, in consultation with the
8 Attorney General, shall adopt regulations, pursuant to the
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.) to effectuate the purposes of this act.

11
12 9. This act shall take effect immediately, and remain in effect
13 until January 1, 2011.

14
15
16 STATEMENT

17
18 This bill requires creditors to provide a three year period of
19 extension to borrowers who are obligated to repay introductory rate
20 mortgage loans on residential properties under certain
21 circumstances. As defined in the bill, an introductory rate mortgage
22 provides for a fixed interest rate for an introductory period that
23 resets to a variable interest rate after a period of time. The bill
24 provides a period of extension, during which the introductory rate
25 does not reset, to "eligible borrowers" whose mortgage interest
26 rates are about to reset. The bill also provides a period of extension,
27 during which the introductory rate does not reset and during which
28 foreclosure proceedings are suspended, to "eligible foreclosed
29 borrowers" whose mortgages are being foreclosed pursuant to the
30 "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.).

31 The bill is intended to address an economic crisis resulting from
32 the resetting of mortgage rates from low introductory rates to
33 higher, variable rates, which is likely to contribute to the already
34 increasing rate of defaults experienced by New Jersey homeowners.
35 By providing a period of extension for existing mortgages, the bill
36 allows time for creditors and borrowers to renegotiate more
37 reasonable terms as to mortgage loans that are financially
38 unworkable for the borrowers, so as to avoid foreclosures that result
39 in a financial detriment to both creditor and borrower.

40 The bill provides that prior to the date on which the interest rate
41 will reset on an introductory rate mortgage, a creditor must provide
42 to an eligible borrower a series of written notices, alerting the
43 borrower to the impending interest rate reset, and providing certain
44 information about the reset interest rate, any refinancing or
45 renegotiation of the loan offered by the creditor, and the borrower's
46 right to obtain a three year period of extension under the terms of
47 the bill.

1 The creditor must provide an eligible borrower with a three year
2 period of extension, during which the interest rate on the
3 introductory rate mortgage shall not increase above the original
4 introductory rate, on the condition that the eligible borrower
5 provides an affidavit of extension to the creditor, prior to the date
6 that the interest rate resets under the terms of the introductory rate
7 mortgage. The affidavit of extension must state that the eligible
8 borrower: (1) is unable to pay the monthly payments that will apply
9 after the date that the interest rate resets; (2) agrees to continue
10 monthly payments, calculated at the introductory rate, during the
11 period of extension; (3) agrees to pay the creditor, at the time of
12 transfer of the property, any interest deferred on account of the
13 period of extension; and (4) agrees to accept the creditor's
14 placement of a subordinate lien on the property to secure the
15 repayment of the interest deferred on account of the period of
16 extension. An eligible borrower who makes a knowing material
17 misrepresentation in an affidavit of extension is guilty of a crime of
18 the fourth degree.

19 A creditor who grants a period of extension to an eligible
20 borrower shall have the right to record a subordinate lien on the
21 eligible borrower's property to secure the borrower's repayment of
22 the amount of interest deferred by the period of extension. The
23 subordinate lien shall have the same priority as the lien of the
24 introductory rate mortgage.

25 An eligible borrower who fails to make the appropriate payments
26 during the period of extension forfeits all rights concerning the
27 deferment of interest payments.

28 The bill also provides that a creditor must provide an eligible
29 foreclosed borrower with a three year period of extension, during
30 which the interest rate on the introductory rate mortgage shall not
31 increase above the original introductory rate, and during which
32 foreclosure proceedings pursuant to the "Fair Foreclosure Act" are
33 suspended. The creditor must grant this relief on the condition that
34 the eligible foreclosed borrower provides an affidavit of extension
35 to the creditor, prior to the entry of final judgment of foreclosure
36 pursuant to the "Fair Foreclosure Act" or prior to the period of
37 redemption provided pursuant to New Jersey Court Rule 4:65-5 .
38 The affidavit of extension must state that the eligible borrower: (1)
39 agrees to continue monthly payments, calculated at the introductory
40 rate, during the period of extension; (2) agrees to pay the creditor,
41 at the time of transfer of the property, any interest deferred on
42 account of the period of extension and any arrearages on the
43 mortgage; and (3) agrees to accept the creditor's placement of a
44 subordinate lien on the property to secure the repayment of the
45 interest deferred on account of the period of extension, and any
46 arrearages owed on the mortgage.

47 A creditor who grants a period of extension to an eligible
48 foreclosed borrower shall have the right to record a subordinate lien

S1853 GILL

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1 on the eligible foreclosed borrower's property to secure the
2 borrower's repayment of the amount of interest deferred by the
3 period of extension and any arrearages owed on the mortgage. The
4 subordinate lien shall have the same priority as the lien of the
5 introductory rate mortgage.

6 An eligible foreclosed borrower who fails to make the
7 appropriate payments during the period of extension forfeits all
8 rights concerning the deferment of interest payments and
9 suspension of foreclosure.

10 Any person who violates any provision of the bill shall be liable
11 to a penalty of not more than \$10,000 for the first offense, and not
12 more than \$20,000 for the second and subsequent offense, which
13 penalty may be collected in a summary proceeding pursuant to the
14 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A: 58-10
15 et seq.).

16 The bill provides that its terms becomes effect immediately upon
17 enactment, and remain in effect until January 1, 2011.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1853

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 2008

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1853.

This bill, as amended, entitled the “Save New Jersey Homes Act of 2008,” requires creditors to provide a three year period of extension to borrowers who are obligated to repay introductory rate mortgage loans on residential properties under certain circumstances. As further defined in the bill, an introductory rate mortgage provides for an introductory interest rate that resets after a period of time. The bill provides a period of extension, during which the introductory rate does not reset, to “eligible borrowers” whose mortgage interest rates are about to reset. The bill also provides a period of extension, during which the introductory rate does not reset and during which foreclosure proceedings are suspended, to “eligible foreclosed borrowers” whose mortgages are being foreclosed pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.).

The bill provides that prior to the date on which the interest rate will reset on an introductory rate mortgage, a creditor must provide to an eligible borrower a series of written notices, alerting the borrower to the impending interest rate reset, and providing certain information about the reset interest rate, a list of alternatives available before the reset, including refinancing or renegotiation options for the mortgage, and the borrower’s right to obtain a three year period of extension under the terms of the bill. As to an eligible foreclosed borrower, a similar series of notices regarding alternatives to foreclosure, including refinancing or renegotiating options and the right to obtain the three year period of extension, shall be sent by a creditor within 10 days of issuing a notice of intention to foreclose and at the time of applying for entry of final judgment of foreclosure.

The creditor shall provide a requesting eligible borrower or eligible foreclosed borrower with a three year period of extension, during which the interest rate on the introductory rate mortgage shall not increase above the original introductory rate, and during which foreclosure proceedings, in the case of an eligible foreclosed borrower, are suspended, on the condition that the borrower provides a certification of extension to the creditor. This certification shall

contain certain statements, including that the borrower: (1) agrees to continue monthly payments, with interest calculated at the introductory interest rate on the date the mortgage was originated, during the period of extension; (2) agrees to pay the creditor, at the time of transfer of the property, any interest or other amounts deferred on account of the period of extension; and (3) agrees to accept the creditor's placement of a modification of mortgage on the property to secure the repayment of amounts owed.

A creditor who provides a period of extension to an eligible borrower or eligible foreclosed borrower shall have the right to record a modification of mortgage on the borrower's property to secure the borrower's repayment of the amount of interest deferred by the period of extension and any other amounts owed to the creditor under the terms of the mortgage. The modification of mortgage shall have the same priority as the lien of the introductory rate mortgage.

If the borrower fails to make the appropriate payments during the period of extension provided by the creditor, the borrower forfeits all rights concerning the deferment of payments, and, in the case of an eligible foreclosed borrower, the suspension of the foreclosure proceeding.

Any person who violates any provision of the bill shall be liable to a penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and subsequent offense, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition, eligible borrowers, eligible foreclosed borrowers, or the Attorney General can bring an action pursuant to that act against a creditor to enforce compliance with the bill's provisions.

The bill provides that its terms take effect immediately upon enactment, and shall remain in effect until January 1, 2011.

The committee amendments to the bill:

- revise the definition of "introductory rate mortgage" to ensure the applicability of the bill to certain subprime loan products;

- revise the definition of "introductory rate mortgage" so as not to include: (1) a loan that provides for a fixed rate of interest for the first five years or longer; or (2) a loan that provides for an introductory rate that is set below the fully indexed rate at the time the loan was originated only as a result of the borrower's payment of bona fide discount points;

- alter the timetable for creditor notices to eligible borrowers regarding a borrower's impending interest rate reset and the availability of a period of extension, so that notices shall be provided at 60 day and 30 day intervals prior to the date the interest rate resets;

- require creditor notices to eligible foreclosed borrowers regarding alternatives to foreclosure and the availability of a period of extension to be sent: within 10 days of the creditor issuing a notice of intention

to foreclose; and at the time the creditor applies for entry of final judgment of foreclosure;

- require an eligible foreclosed borrower to request a period of extension from a creditor no later than 90 days from the date of the creditor notice sent at the time the creditor applies for entry of final judgment of foreclosure;

- replace the requirement that a borrower supply the creditor with an affidavit form to obtain a period of extension with the requirement of a certification;

- clarify that a borrower's monthly mortgage payments made during a period of extension shall include principal and interest calculated at the introductory rate on the date that the mortgage was originated;

- replace the use and recording of a "subordinate lien," to secure repayment of additional amounts owed by a borrower, with the use and recording of a "modification of mortgage";

- permit a creditor, who has a right to record a modification of mortgage form, to instead record a borrower's previously submitted certificate of extension, if the borrower fails to return a properly executed modification of mortgage form or other documentation necessary to establish or record the modification of mortgage;

- provide that a creditor shall not require a borrower to limit or waive the rights of the borrower to bring any claims, defenses, demands, proceedings, actions, or causes of action against the creditor as a condition of accepting an offer of any loss mitigation activities made available by the bill;

- expressly state the authority of an eligible borrower, eligible foreclosed borrower, or the Attorney General to enforce the collection of a penalty, through the "Penalty Enforcement Act of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), resulting from a violation of the bill;

- prevent those creditors that are State chartered financial institutions from avoiding compliance with the bill, by not allowing such creditors to assert any potentially applicable pre-emptive federal or out-of-State power or right established under federal or out-of-State banking laws and generally conferred upon such creditors automatically pursuant to the State's "parity" laws, P.L.1981, c.163 (C.17:9A-24b.1) (banks and savings banks), section 48 of P.L.1963, c.144 (C.17:12B-48) (associations), and section 12 of P.L.1984, c.171 (C.17:13-90) (credit unions); and

- provide the Attorney General, instead of the Department of Banking and Insurance, with the primary authority to promulgate rules and regulations to effectuate the bill's provisions, which shall be done in consultation with the department.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1853

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2008

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1853(1R).

This bill, as amended, entitled the “Save New Jersey Homes Act of 2008,” requires creditors to provide a three year period of extension to borrowers who are obligated to repay introductory rate mortgage loans on residential properties under certain circumstances. As further defined in the bill, an introductory rate mortgage provides for an introductory interest rate that resets after a period of time. The bill provides a period of extension, during which the introductory rate does not reset, to “eligible borrowers” whose mortgage interest rates are about to reset. The bill also provides a period of extension, during which the introductory rate does not reset and during which foreclosure proceedings are suspended, to “eligible foreclosed borrowers” whose mortgages are being foreclosed pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.).

The bill provides that prior to the date on which the interest rate will reset on an introductory rate mortgage, a creditor must provide to an eligible borrower a series of written notices, alerting the borrower to the impending interest rate reset, and providing certain information about the reset interest rate, a list of alternatives available before the reset, including refinancing or renegotiation options for the mortgage, and the borrower’s right to obtain a three year period of extension under the terms of the bill. As to an eligible foreclosed borrower, a similar series of notices regarding alternatives to foreclosure, including refinancing or renegotiating options and the right to obtain the three year period of extension, shall be sent by a creditor within 10 days of issuing a notice of intention to foreclose and at the time of applying for entry of final judgment of foreclosure.

The creditor shall provide a requesting eligible borrower or eligible foreclosed borrower with a three year period of extension, during which the interest rate on the introductory rate mortgage shall not increase above the original introductory rate, and during which foreclosure proceedings, in the case of an eligible foreclosed borrower,

are suspended, on the condition that the borrower provides a certification of extension to the creditor. This certification shall contain certain statements, including that the borrower: (1) agrees to continue monthly payments, with interest calculated at the introductory interest rate on the date the mortgage was originated, during the period of extension; (2) agrees to pay the creditor, upon full repayment of the mortgage, including at the date of maturity, a refinancing, or sale or other transfer, any interest or other amounts deferred on account of the period of extension; and (3) agrees to accept the creditor's placement of a modification of mortgage on the property to secure the repayment of amounts owed.

A creditor who provides a period of extension to an eligible borrower or eligible foreclosed borrower shall have the right to record a modification of mortgage on the borrower's property to secure the borrower's repayment of the amount of interest deferred by the period of extension and any other amounts owed to the creditor under the terms of the mortgage. The modification of mortgage shall have the same priority as the lien of the introductory rate mortgage.

If the borrower fails to make the appropriate payments during the period of extension provided by the creditor, the borrower forfeits all rights concerning the deferment of payments, and, in the case of an eligible foreclosed borrower, the suspension of the foreclosure proceeding.

Any person who willfully violates any provision of the bill shall be liable to a penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and subsequent offense, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition, eligible borrowers, eligible foreclosed borrowers, or the Attorney General can bring an action pursuant to that act against a creditor to enforce compliance with the bill's provisions.

The bill provides that its terms take effect immediately upon enactment, and shall remain in effect until January 1, 2011.

The committee amendments to the bill:

- provide that payment of any interest or other amounts deferred on account of a period of extension shall occur at the time of "full repayment" of the introductory rate mortgage, defined as any time the amounts due on the mortgage are paid in full, including upon the maturity date of the mortgage, a refinancing, or a sale or other transfer of title to the property subject to the mortgage;
- require that only a willful violation of the bill's provisions shall subject the violator to a penalty as set forth in the bill;
- clarify that immaterial errors in a notice required to be provided by a creditor pursuant to the bill shall not constitute a violation;
- clarify which provisions of the bill apply to "eligible borrowers" and which apply to "eligible foreclosed borrowers"; and

- ensure all references to a borrower's "certification of extension," provided to a creditor to obtain a period of extension, are consistent throughout the bill.