

46:10B-1 ET SEQ.

LEGISLATIVE HISTORY CHECKLIST

NJSA 46:10B-1 et seq.

(INCREASE ALLOWABLE MORTGAGE INTEREST RATE TO 8 1/2%)

Laws of 1968 Chapter 54

Bill No. S731

Sponsor(s) Dowd

Date Introduced May 6, 1968

Committee: Assembly -

Senate Banking & Insurance

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

Date of passage: Assembly June 3, 1968

Senate May 27, 1968

Date of approval June 6, 1968

Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
Senate	Yes	No
Fiscal Note	Yes	No
Veto message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

LEGISLATIVE COPY

To Not Remove From Library

SENATE, No. 731

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1968

By Senators DOWD, SISCO, DELTUFO, GIULIANO,
MATTURRI and W. F. KELLY

Referred to Committee on Banking and Insurance

AN ACT concerning mortgages on real property.

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

1 1. As used in this act:

2 (a) "Mortgage loan" means a loan secured by an interest in real
3 property consisting of land upon which is erected or to be erected,
4 in whole or in part with the proceeds of such loan, a one-family,
5 2-family, 3-family or 4-family dwelling, in which the mortgagor or
6 his immediate family resides on origination of such mortgage loan
7 or at the time of prepayment thereof, and upon which interest is
8 taken or contracted for at a rate in excess of \$6.00 for the forbear-
9 ance of \$100.00 for a year;

10 (b) "Mortgagor" includes any person other than a corporation
11 liable for the payment of a mortgage loan, and the owner of the
12 real property which secures the payment of a mortgage loan;

13 (c) "Prepayment" of a mortgage loan means the payment in
14 full of the balance owing on a mortgage loan at any time prior to
15 the time limited for the final payment of such loan in an instrument
16 evidencing such loan.

1 2. Prepayment of a mortgage loan may be made by or on behalf
2 of a mortgagor at any time, and the holder of the mortgage loan
3 shall be entitled to charge and collect a fee for the exercise of the
4 right of such repayment according to the following schedule:

5 (a) If prepayment is made within the first year from the date
6 of such mortgage loan, the prepayment fee shall not exceed 3%
7 of the face amount of the mortgage loan;

8 (b) If prepayment is made on or after 1 year from the date of
9 the mortgage plan, but within 3 years from such date, the prepay-
10 ment fee shall not exceed 2% of the face amount of the mortgage
11 loan;

12 (c) If prepayment is made on or after 3 years from the date of
13 the mortgage loan, but within 5 years from such date, the prepay-
14 ment fee shall not exceed 1% of the face amount of the mortgage
15 loan;

16 (d) If prepayment is made on or after 5 years from the date of
17 the mortgage loan, no fee shall be charged or collected therefor.

1 3. A mortgagor shall have the right, during any 12-month period
2 beginning with the date of the mortgage loan, to pay, without
3 charge or penalty, an additional sum of \$50.00, or multiples thereof,
4 on account of the principal amount owing on a mortgage loan,
5 provided that the additional sums so paid and the principal pay-
6 ments required to be made by the terms of such mortgage loan
7 during such year do not together exceed in any such year 20% of
8 the face amount of such mortgage loan. The right to make addi-
9 tional payments as provided by this section shall not be cumulative,
10 and, to the extent that it is not exercised during any year, shall
11 lapse.

1 4. No provision in a mortgage or instrument of indebtedness
2 which denies the rights conferred by sections 2 and 3 of this act,
3 or which provides for prepayment fees in excess of those permitted
4 by this act, or in which the rights conferred by sections 2 and 3 of
5 this act are modified to the detriment of the mortgagor, or are
6 waived or surrendered, shall be enforceable.

1 5. Any holder of a mortgage loan or agent acting on behalf of
2 the holder of a mortgage loan who shall knowingly demand and
3 receive prepayment fees, except as provided in this act, shall be
4 liable to the mortgagor for the return of the whole amount of the
5 prepayment fees so received, plus interest thereon from the date of
6 such receipt at the rate of 6% per annum.

1 6. Any holder of a mortgage loan or agent acting on behalf of
2 such holder who shall willfully fail or refuse to deliver a cancella-
3 tion or discharge of a mortgage loan within a reasonable time after
4 tender to him of the amount owing thereon together with the pre-
5 payment fee, if any, as provided in this act, shall forfeit his right
6 to receive any prepayment fee, and the Superior Court shall have
7 jurisdiction, in a summary action or otherwise, to order such can-
8 cellation or discharge upon payment into court of the amount owing
9 thereon.

1 7. Any holder of a mortgage loan or agent acting on behalf of
2 such holder who shall willfully fail or refuse to accept additional
3 payments tendered pursuant to section 3 of this act shall forfeit
4 his right to receive interest on the amount so tendered.

1 8. Mortgage loans and other agreements related thereto, made
2 prior to the effective date of this act which contain a provision to
3 the effect that the rate of interest payable on such loans shall be
4 increased, whether automatically or at the option of the holders
5 thereof, if a rate of interest higher than that provided for by the
6 terms of any such mortgage loan becomes lawful, shall be subject
7 to all the provisions of this act if the holder of any such mortgage
8 loan demands or takes interest thereon at a rate in excess of 6%
9 per annum.

1 9. This act shall not apply to loans secured by a mortgage on
2 real property the prepayment of which is governed by any other
3 statute of this State or of the United States, nor shall it apply to
4 any loans, secured by mortgage on real property, made pursuant
5 to any statute of this State or of the United States expressly au-
6 thorizing interest charges in excess of 6% per annum.

1 10. Except as otherwise provided by law, no mortgage loan shall
2 be made at an interest rate in excess of the rate authorized by sec-
3 tion 31:1-1 of the Revised Statutes. The charging of points to a
4 borrower in connection with a mortgage loan is prohibited. For
5 the purposes of this act, "points" means an amount of money or
6 other consideration paid by a borrower as a consideration for the
7 making of a mortgage loan, but does not include any such sum paid
8 pursuant to a statute of this State or of the United States, nor does
9 it include reasonable expenses and charges.

1 11. Any holder of a mortgage loan or agent acting on behalf of
2 the holder of a mortgage loan who shall knowingly receive points
3 as defined herein shall be liable to the mortgagor for the return of
4 the points and all interest paid on the mortgage loan plus a penalty
5 of \$1,000.00 and costs to be recovered by the mortgagor in a civil
6 action instituted within 6 years from the date of payment of the
7 points.

1 12. This act shall take effect immediately.

STATEMENT

This bill is a companion bill to a bill concurrently introduced raising the contract interest rate from 6% to 8% per annum, and giving the Commissioner of Banking and Insurance, with the concurrence of a Special Advisory Board, the power to control rates in excess of 6% per annum. The purpose of this bill is to prevent homeowners from being locked in with long-term mortgages bearing interest in excess of 6% per annum.

SENATE COMMITTEE AMENDMENTS TO
SENATE, No. 731

STATE OF NEW JERSEY

ADOPTED MAY 20, 1968

Amend page 3, section 8, lines 1 to 9, delete section 8 in its entirety and insert in lieu thereof: "8. If any mortgage loan provides for an increase in the rate of interest during the term of such loan the increased rate shall not exceed 6% per annum in the case of a loan made before the effective date of this act or such rate of interest as may be authorized by law at the time such loan is made in the case of a loan made on or after the effective date of this act."

Amend page 3, section 10, line 3, delete "to a".

Amend page 3, section 10, line 4, delete "borrower".

Amend page 3, section 10, line 6, delete "by a borrower as a consideration".

Amend page 3, section 10, line 7, after "loan," insert "other than interest payable pursuant to the terms of the mortgage loan,".

SENATE AMENDMENT TO
SENATE, No. 731
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MAY 27, 1968

Amend page 3, section 8, lines 1 to 9, delete section 8 in its entirety and insert in lieu thereof:

“8. If any mortgage loan or written contract or commitment for such loan provides for an increase in the rate of interest during the term of such loan, or after the execution of a written contract or commitment for such a loan, the increased rate shall not exceed 6% per annum in the case of a loan or written contract or commitment made before the effective date of this act or such rate of interest as may be authorized by law at the time such loan or written contract or commitment for such loan is made in the case of a loan or written contract or commitment for such loan made on or after the effective date of this act.”.

[OFFICIAL COPY REPRINT]

SENATE, No. 731

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1968

By Senators DOWD, SISCO, DELTUFO, GIULIANO,
MATTURRI and W. F. KELLY

Referred to Committee on Banking and Insurance

AN ACT concerning mortgages on real property.

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

1 1. As used in this act:

2 (a) "Mortgage loan" means a loan secured by an interest in real
3 property consisting of land upon which is erected or to be erected,
4 in whole or in part with the proceeds of such loan, a one-family,
5 2-family, 3-family or 4-family dwelling, in which the mortgagor or
6 his immediate family resides on origination of such mortgage loan
7 or at the time of prepayment thereof, and upon which interest is
8 taken or contracted for at a rate in excess of \$6.00 for the forbear-
9 ance of \$100.00 for a year;

10 (b) "Mortgagor" includes any person other than a corporation
11 liable for the payment of a mortgage loan, and the owner of the
12 real property which secures the payment of a mortgage loan;

13 (c) "Prepayment" of a mortgage loan means the payment in
14 full of the balance owing on a mortgage loan at any time prior to
15 the time limited for the final payment of such loan in an instrument
16 evidencing such loan.

1 2. Prepayment of a mortgage loan may be made by or on behalf
2 of a mortgagor at any time, and the holder of the mortgage loan
3 shall be entitled to charge and collect a fee for the exercise of the
4 right of such repayment according to the following schedule:

5 (a) If prepayment is made within the first year from the date
6 of such mortgage loan, the prepayment fee shall not exceed 3%
7 of the face amount of the mortgage loan;

8 (b) If prepayment is made on or after 1 year from the date of
9 the mortgage plan, but within 3 years from such date, the prepay-
10 ment fee shall not exceed 2% of the face amount of the mortgage
11 loan;

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

12 (c) If prepayment is made on or after 3 years from the date of
13 the mortgage loan, but within 5 years from such date, the prepay-
14 ment fee shall not exceed 1% of the face amount of the mortgage
15 loan;

16 (d) If prepayment is made on or after 5 years from the date of
17 the mortgage loan, no fee shall be charged or collected therefor.

1 3. A mortgagor shall have the right, during any 12-month period
2 beginning with the date of the mortgage loan, to pay, without
3 charge or penalty, an additional sum of \$50.00, or multiples thereof,
4 on account of the principal amount owing on a mortgage loan,
5 provided that the additional sums so paid and the principal pay-
6 ments required to be made by the terms of such mortgage loan
7 during such year do not together exceed in any such year 20% of
8 the face amount of such mortgage loan. The right to make addi-
9 tional payments as provided by this section shall not be cumulative,
10 and, to the extent that it is not exercised during any year, shall
11 lapse.

1 4. No provision in a mortgage or instrument of indebtedness
2 which denies the rights conferred by sections 2 and 3 of this act,
3 or which provides for prepayment fees in excess of those permitted
4 by this act, or in which the rights conferred by sections 2 and 3 of
5 this act are modified to the detriment of the mortgagor, or are
6 waived or surrendered, shall be enforceable.

1 5. Any holder of a mortgage loan or agent acting on behalf of
2 the holder of a mortgage loan who shall knowingly demand and
3 receive prepayment fees, except as provided in this act, shall be
4 liable to the mortgagor for the return of the whole amount of the
5 prepayment fees so received, plus interest thereon from the date of
6 such receipt at the rate of 6% per annum.

1 6. Any holder of a mortgage loan or agent acting on behalf of
2 such holder who shall willfully fail or refuse to deliver a cancella-
3 tion or discharge of a mortgage loan within a reasonable time after
4 tender to him of the amount owing thereon together with the pre-
5 payment fee, if any, as provided in this act, shall forfeit his right
6 to receive any prepayment fee, and the Superior Court shall have
7 jurisdiction, in a summary action or otherwise, to order such can-
8 cellation or discharge upon payment into court of the amount owing
9 thereon.

1 7. Any holder of a mortgage loan or agent acting on behalf of
2 such holder who shall willfully fail or refuse to accept additional
3 payments tendered pursuant to section 3 of this act shall forfeit
4 his right to receive interest on the amount so tendered.

1 ***[**8. Mortgage loans and other agreements related thereto, made
 2 prior to the effective date of this act which contain a provision to
 3 the effect that the rate of interest payable on such loans shall be
 4 increased, whether automatically or at the option of the holders
 5 thereof, if a rate of interest higher than that provided for by the
 6 terms of any such mortgage loan becomes lawful, shall be subject
 7 to all the provisions of this act if the holder of any such mortgage
 8 loan demands or takes interest thereon at a rate in excess of 6%
 9 per annum.**]***

10 ***8. If any mortgage loan provides for an increase in the rate*
 11 *of interest during the term of such loan the increased rate shall not*
 12 *exceed 6% per annum in the case of a loan made before the effective*
 13 *date of this act or such rate of interest as may be authorized by*
 14 *law at the time such loan is made in the case of a loan made on or*
 15 *after the effective date of this act.***

1 9. This act shall not apply to loans secured by a mortgage on
 2 real property the prepayment of which is governed by any other
 3 statute of this State or of the United States, nor shall it apply to
 4 any loans, secured by mortgage on real property, made pursuant
 5 to any statute of this State or of the United States expressly au-
 6 thORIZING interest charges in excess of 6% per annum.

1 10. Except as otherwise provided by law, no mortgage loan shall
 2 be made at an interest rate in excess of the rate authorized by sec-
 3 tion 31:1-1 of the Revised Statutes. The charging of points ***[**to a
 4 borrower**]*** in connection with a mortgage loan is prohibited. For
 5 the purposes of this act, "points" means an amount of money or
 6 other consideration paid ***[**by a borrower as a consideration**]*** for
 7 the making of a mortgage loan, **other than interest payable pur-*
 7A *suant to the terms of the mortgage loan,** but does not include any
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 9 States, nor does it include reasonable expenses and charges.

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 2 the holder of a mortgage loan who shall knowingly receive points
 3 as defined herein shall be liable to the mortgagor for the return of
 4 the points and all interest paid on the mortgage loan plus a penalty
 5 of \$1,000.00 and costs to be recovered by the mortgagor in a civil
 6 action instituted within 6 years from the date of payment of the
 7 points.

1 12. This act shall take effect immediately.

CHAPTER 54 LAWS OF N. J. 1968
APPROVED 6-6-68
[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 731

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1968

By Senators DOWD, SISCO, DELTUFO, GIULIANO,
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9 ance of \$100.00 for a year;

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4 liable to the mortgagor for the return of the whole amount of the
5 prepayment fees so received, plus interest thereon from the date of
6 such receipt at the rate of 6% per annum.

1 6. Any holder of a mortgage loan or agent acting on behalf of
2 such holder who shall willfully fail or refuse to deliver a cancella-
3 tion or discharge of a mortgage loan within a reasonable time after
4 tender to him of the amount owing thereon together with the pre-
5 payment fee, if any, as provided in this act, shall forfeit his right
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7 jurisdiction, in a summary action or otherwise, to order such can-
8 cellation or discharge upon payment into court of the amount owing
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2 such holder who shall willfully fail or refuse to accept additional
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4 his right to receive interest on the amount so tendered.

1 ***[8. Mortgage loans and other agreements related thereto, made**
 2 **prior to the effective date of this act which contain a provision to**
 3 **the effect that the rate of interest payable on such loans shall be**
 4 **increased, whether automatically or at the option of the holders**
 5 **thereof, if a rate of interest higher than that provided for by the**
 6 **terms of any such mortgage loan becomes lawful, shall be subject**
 7 **to all the provisions of this act if the holder of any such mortgage**
 8 **loan demands or takes interest thereon at a rate in excess of 6%**
 9 **per annum.]***

10 ****[8. If any mortgage loan provides for an increase in the rate**
 11 **of interest during the term of such loan the increased rate shall not**
 12 **exceed 6% per annum in the case of a loan made before the effective**
 13 **date of this act or such rate of interest as may be authorized by**
 14 **law at the time such loan is made in the case of a loan made on or**
 15 **after the effective date of this act.]****

16 ****8. If any mortgage loan or written contract or commitment**
 17 **for such loan provides for an increase in the rate of interest dur-**
 18 **ing the term of such loan, or after the execution of a written con-**
 19 **tract or commitment for such a loan, the increased rate shall not**
 20 **exceed 6% per annum in the case of a loan or written contract or**
 21 **commitment made before the effective date of this act or such rate**
 22 **of interest as may be authorized by law at the time such loan or**
 23 **written contract or commitment for such loan is made in the case**
 24 **of a loan or written contract or commitment for such loan made on**
 25 **or after the effective date of this act.****

1 9. This act shall not apply to loans secured by a mortgage on
 2 real property the prepayment of which is governed by any other
 3 statute of this State or of the United States, nor shall it apply to
 4 any loans, secured by mortgage on real property, made pursuant
 5 to any statute of this State or of the United States expressly au-
 6 thorizing interest charges in excess of 6% per annum.

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 2 be made at an interest rate in excess of the rate authorized by sec-
 3 tion 31:1-1 of the Revised Statutes. The charging of points ***[to a**
 4 **borrower]*** in connection with a mortgage loan is prohibited. For
 5 the purposes of this act, "points" means an amount of money or
 6 other consideration paid ***[by a borrower as a consideration]*** for
 7 the making of a mortgage loan, **other than interest payable pur-*
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2 the holder of a mortgage loan who shall knowingly receive points
3 as defined herein shall be liable to the mortgagor for the return of
4 the points and all interest paid on the mortgage loan plus a penalty
5 of \$1,000.00 and costs to be recovered by the mortgagor in a civil
6 action instituted within 6 years from the date of payment of the
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1 12. This act shall take effect immediately.

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S-731

FROM: OFFICE OF THE GOVERNOR

DATE: JUNE 7, 1968

STATEMENT OF GOVERNOR RICHARD J. HUGHES
UPON THE SIGNING OF SENATE BILLS NOS.
731, 732.

The Legislature recently completed, despite understandable objections, favorable action on two companion measures which will hopefully contribute to a renaissance of the residential construction and sales industry in New Jersey. One of those bills, Senate Bill No. 732 of 1968, authorizes the Commissioner of Banking and Insurance to set a "contract interest rate" not in excess of eight percentum per annum. The other bill, Senate Bill No. 731 of 1968, prohibits the charging of "points" in connection with mortgage loans bearing interest greater than six percentum per annum, and provides mortgagors with a statutory right to "prepay" their mortgage loans according to a set fee schedule. The merits of these measures have been thoroughly mooted by and between the New Jersey Association of Real Estate Boards, the Mortgage Bankers Association of New Jersey, the New Jersey Bankers' Association, the New Jersey Economic Policy Council, and many other individuals and organizations who are conversant with the intricacies of the money market. My own review of these two bills, as well as the compelling arguments in support of them, obliged me to ratify the Legislature's foresight. Accordingly, yesterday I approved Senate Bills Nos. 731 and 732 as chapters 54 and 55, respectively, of the Laws of 1968.

The essential problem to which these two bills are addressed can be easily stated - the unavailability for investment in residential mortgage loans of sufficient funds from institutional investors. Unfortunately, however, proper and equitable solutions to this problem are not so simplistic. Indeed, any proposed solution must give due consideration to the nature of a mortgage loan as a long-term, fixed-return investment. As such, the economic

worth of mortgage loans is particularly subject to devaluation by the inflationary spiral presently apace in this nation. It is quite understandable, then, that the management of institutional investors -- all with responsibilities to their stockholders -- would invest their monies in a manner designed to maximize profit.

The public interest generally is served in yet another manner by my approval of these two bills -- a manner that is a function of the economics of the housing industry. In this sense, the term "housing industry" is indeed a misnomer, and really consists of numerous satellite industries all primarily dependent upon housing starts. Brick masons, carpenters, electrical contractors, plumbing contractors, home furnishing manufacturers, furniture manufacturers, appliance and other durable good manufacturers, real estate brokers -- all of their livelihoods depend in large measure on the pace of housing starts. Economists view with great respect the "multiple effect" of money invested in housing starts, and generally concede that four persons are employed in related industries for each person directly engaged in housing construction. Thus, to the extent that my approval of these bills will spur housing starts by making mortgage money more available, so also will the total economic profile of the State of New Jersey be improved. Such improvement is long overdue, for housing starts in New Jersey have never recovered from the depressed levels of 1966.

I would also like to point out that, in providing for a "contract interest rate" in excess of 6% per annum, the State of New Jersey is not charting an unknown course. More than 80% of the states of this country presently allow contract interest rates in excess of 6% per year. In addition, agencies of the federal government recently exercised their legal authority to increase the maximum permissible interest rate on FHA and VA insured or guaranteed loans.