

17:11C-1 to 50

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

NJSA: 17:11C-1 to 17:11C-50 (Licensed lenders)

LAWS OF: 1996 CHAPTER: 157

BILL NO: A2513

SPONSOR(S): Bateman and Cohen

DATE INTRODUCED: November 14, 1996

COMMITTEE: ASSEMBLY: Financial Institutions
SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: December 19, 1996
SENATE: December 19, 1996

DATE OF APPROVAL: January 8, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

DEPOSITORY COPY

Do Not Remove From Library

974.90 The STARR report: strategy to advance regulatory reform: a response
L514 of the Whitman administration. July, 1995. Trenton, 1995.
1995

KBP:pp

§§1-49, 54
C.17:11C-1 to
17:11C-50
§55 - Repealer
§56
Note to §§1-55

P.L. 1996, CHAPTER 157, *approved January 8, 1997*
Assembly, No. 2513 (*First Reprint*)

1 AN ACT concerning licensed lenders, supplementing Title 17 of the
2 Revised Statutes, and amending and repealing various parts of the
3 statutory law.

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

7
8 1. (New section) Sections 1 through 49 of this act shall be known
9 and may be cited as the "New Jersey Licensed Lenders Act."

10

11 2. (New section) As used in this act:

12 "Billing cycle" means the time interval between periodic billing
13 dates. A billing cycle shall be considered monthly if the closing date
14 of the cycle is the same date each month or does not vary by more than
15 four days from such date.

16 "Borrower" means any person applying for a loan from a lender
17 licensed under this act, whether or not the loan is granted, and any
18 person who has actually obtained such a loan.

19 "Closed-end loan" means a secondary mortgage loan pursuant to
20 which the licensee advances a specified amount of money and the
21 borrower agrees to repay the principal and interest in substantially
22 equal installments over a stated period of time, except that: (1) the
23 amount of the final installment payment may be substantially greater
24 than the previous installments if the term of the loan is at least 36
25 months, or under 36 months if the remaining term of the first mortgage
26 loan is under 36 months; or (2) the amount of the installment
27 payments may vary as a result of the change in the interest rate as
28 permitted by this act.

29 "Consumer loan business" means the business of making loans of
30 money, credit, goods or things in action in the amount or value of
31 \$15,000 or less and charging, contracting for, or receiving a greater

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted December 9, 1996.

1 rate of interest, discount or consideration therefor than the lender
2 would be permitted by law to charge if he were not a licensee
3 hereunder, except as authorized by this act and without first obtaining
4 a license from the commissioner. Any person directly or indirectly
5 engaging in the business of soliciting or taking applications for such
6 loans of \$15,000 or less, or in the business of negotiating or arranging
7 or aiding the borrower or lender in procuring or making such loans of
8 \$15,000 or less, or in the business of buying, discounting or indorsing
9 notes, or of furnishing, or procuring guarantee or security for
10 compensation in amounts of \$15,000 or less, shall be deemed to be
11 engaging in the consumer loan business.

12 "Commissioner" means the Commissioner of Banking and
13 Insurance.

14 "Consumer lender" means a person licensed, or a person who
15 should be licensed, under this act to engage in the consumer loan
16 business.

17 "Consumer loan" means a loan of \$15,000 or less made by a
18 consumer lender pursuant to the terms of this act, and not a first
19 mortgage loan or a secondary mortgage loan.

20 "Controlling interest" means ownership, control or interest of 25%
21 or more of the licensee or applicant.

22 "Correspondent mortgage banker" means a mortgage banker
23 which: (1) in the regular course of business, does not hold mortgage
24 loans in its portfolio, or service mortgage loans, for more than 90
25 days; and (2) has shown to the department's satisfaction an ability to
26 fund loans through warehouse agreements, table funding agreements
27 or otherwise.

28 "Department" means the Department of Banking and Insurance.

29 "Depository institution" means a state or federally chartered bank,
30 savings bank, savings and loan association, building and loan
31 association or credit union.

32 "First mortgage loan" means any loan secured by a first mortgage
33 on real property on a one to six family dwelling, a portion of which
34 may be used for nonresidential purposes.

35 "Licensee" means a person who is licensed under this act.

36 "Mortgage banker" means any person, not exempt under section 4
37 of this act and licensed pursuant to the provisions of this act, who for
38 compensation or gain, or in the expectation of compensation or gain,
39 either directly or indirectly originates, acquires or negotiates first
40 mortgage loans in the primary market.

41 "Mortgage broker" means any person, not exempt under section 4
42 of this act and licensed pursuant to the provisions of this act, who for
43 compensation or gain, or in the expectation of compensation or gain,
44 either directly or indirectly negotiates, places or sells for other, or
45 offers to negotiate, place or sell for others, first mortgage loans in the
46 primary market.

1 "Open-end loan" means a secondary mortgage loan or consumer
2 loan made by a secondary lender or consumer lender pursuant to a
3 written agreement with the borrower whereby:

4 (1) The lender may permit the borrower to obtain advances of
5 money from the secondary lender from time to time or the secondary
6 lender may advance money on behalf of the borrower from time to
7 time as directed by the borrower;

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

11 (3) Interest is computed on the unpaid principal balance or
12 balances of the account from time to time; and

13 (4) The borrower has the privilege of paying the account in full at
14 any time or, if the account is not in default, in monthly installments of
15 fixed or determinable amounts as provided in the agreement.

16 "Person" means an individual, association, joint venture,
17 partnership, limited partnership association, limited liability company,
18 corporation, trust, or any other group of individuals however
19 organized.

20 "Primary market" means the market wherein first mortgage loans
21 are originated between a lender and a borrower, whether or not
22 through a mortgage broker or other conduit.

23 "Sales finance company" shall have the meaning ascribed to it in
24 section 1 of P.L.1960, c.40 (C.17:16C-1).

25 "Secondary lender" means a person licensed, or a person who
26 should be licensed, under this act to engage in the secondary mortgage
27 loan business.

28 "Secondary mortgage loan" means a loan made to an individual,
29 association, joint venture, partnership, limited partnership association,
30 limited liability company, trust, or any other group of individuals,
31 however organized, except a corporation, which is secured in whole
32 or in part by a lien upon any interest in real property, including but not
33 limited to shares of stock in a cooperative corporation, created by a
34 security agreement, including a mortgage, indenture, or any other
35 similar instrument or document, which real property is subject to one
36 or more prior mortgage liens and on which there is erected a structure
37 containing one, two, three, four, five or six dwelling units, a portion
38 of which structure may be used for nonresidential purposes, except
39 that the following loans shall not be subject to the provisions of this
40 act: (1) a loan which is to be repaid in 90 days or less; (2) a loan which
41 is taken as security for a home repair contract executed in accordance
42 with the provisions of the "Home Repair Financing Act," P.L.1960,
43 c.41 (C.17:16C-62 et seq.); or (3) a loan which is the result of the
44 private sale of a dwelling, if title to the dwelling is in the name of the
45 seller and the seller has resided in that dwelling for at least one year,
46 if the buyer is purchasing that dwelling for his own residence and, if

1 the buyer, as part of the purchase price, executes a secondary
2 mortgage in favor of the seller.

3 "Secondary mortgage loan business" means advertising, causing to
4 be advertised, soliciting, negotiating, offering to make or making a
5 secondary mortgage loan in this State, whether directly or by any
6 person acting for his benefit, or becoming the subsequent holder of a
7 promissory note or mortgage, indenture or any other similar
8 instrument or document received in connection with a secondary
9 mortgage loan.

10 "Solicitor" means any person not licensed as a mortgage banker or
11 mortgage broker who is employed as a solicitor by one, and not more
12 than one, licensee, who is subject to the direct supervision and control
13 of that licensee, and who solicits, provides or accepts first mortgage
14 loan applications, or assists borrowers in completing first mortgage
15 loan applications, and whose compensation is in any way based on the
16 dollar amount or volume of first mortgage loan applications, first
17 mortgage loan closings or other first mortgage loan activity.

18

19 3. (New section) a. No person shall act as a mortgage banker or
20 mortgage broker, engage in the secondary mortgage loan business or
21 engage in the consumer loan business without first obtaining a license
22 under this act, except that a person licensed as a mortgage banker may
23 act as a mortgage broker or mortgage solicitor, and a person licensed
24 as a mortgage broker may act as a mortgage solicitor.

25 b. The department shall issue licenses under this act which specify
26 whether a licensee may act as a mortgage banker or mortgage broker,
27 a secondary lender or a consumer lender. A licensee may not engage
28 in a licensed activity under the act unless the license issued by the
29 department specifies that the licensee may engage in that licensed
30 activity.

31 c. No person shall act as a solicitor without first being registered
32 with the department.

33 d. No corporation, partnership, association or any other entity shall
34 be issued or hold a license as a mortgage banker or broker or
35 secondary lender unless one officer or principal has an individual
36 license of that same type sought or held. The commissioner may, by
37 regulation, require a licensed mortgage banker or broker to employ
38 additional licensed individuals to properly supervise the licensee and
39 its branch offices. If the employed individual licensee allows his
40 license to lapse or for some other reason is no longer affiliated with
41 the employing licensee, the employing licensee shall notify the
42 commissioner within 10 days, and shall appoint another licensed
43 individual within 90 days or such longer period as permitted by the
44 commissioner.

45

46 4. (New section) The ¹[following persons may] requirements of

- 1 this act ¹ ~~as~~ which apply to a mortgage banker, mortgage broker
2 or mortgage solicitor ¹ ~~without obtaining a license under this act~~
3 shall not apply to :
- 4 a. Depository institutions and insurance companies; but subsidiaries
5 and service corporations of these institutions or companies shall not
6 be exempt.
- 7 b. A person making, acquiring or selling mortgage loans for private
8 investment or gain and not in the regular course of business. Only a
9 person not engaged in the financial services industry who makes one
10 or two mortgage loans in a calendar year, or a person employed in the
11 financial services industry who makes one or two private mortgage
12 loans in a calendar year outside of his employment, shall qualify for
13 this exemption.
- 14 c. An attorney at law of this State, not actively and principally
15 engaged in the business of a mortgage banker or broker, when the
16 attorney renders services in the course of his practice.
- 17 d. A person licensed as a real estate broker or salesperson pursuant
18 to R.S.45:15-1 et seq., and not engaged in the business of a mortgage
19 banker or broker. Any person holding a license under this act as a
20 mortgage banker or mortgage broker shall be exempt from the
21 licensing and other requirements of R.S.45:15-1 et seq. in the
22 performance of those functions authorized by this act.
- 23 e. Builders who ¹ ~~broker first mortgage loans~~ secure mortgages
24 for their own construction or for sale of their own construction ¹ ~~and~~
25 not engaged in the business of a mortgage banker or broker ¹ .
26
- 27 5. (New section) a. Depository institutions and insurance
28 companies are exempt from licensing as secondary mortgage lenders;
29 but subsidiaries and service corporations of these institutions or
30 companies shall not be exempt.
- 31 b. A real estate broker or salesperson licensed in New Jersey
32 pursuant to R.S.45:15-1 et seq. is not required to obtain a license to
33 negotiate a secondary mortgage loan in the normal course of business
34 as a real estate broker or salesman.
- 35 c. An attorney authorized to practice law in New Jersey is not
36 required to obtain a license to negotiate a secondary mortgage loan in
37 the normal course of business as an attorney.
- 38 d. Any person who makes one or two secondary mortgage loans in
39 this State during any calendar year which are at an interest rate which
40 is not in excess of the usury rate in existence at the time the loan is
41 made, as established in accordance with the law of this State, and on
42 which the borrower has not agreed to pay, directly or indirectly, any
43 charge, cost, expense or any fee whatsoever, other than that interest,
44 shall not be required to obtain a license under this act.
- 45 e. Any employer who provides secondary mortgage loans to his
46 employees as a benefit of employment which are at an interest rate

1 which is not in excess of the usury rate in existence at the time the
2 loan is made, as established in accordance with the law of this State,
3 and on which the borrower has not agreed to pay, directly or
4 indirectly, any charge, cost, expense or any fee whatsoever, other than
5 said interest, is not required to be licensed.

6 f. A municipality, its officer, employee or any agency or
7 instrumentality thereof, which, in accordance with a housing element
8 that has received substantive certification from the Council on
9 Affordable Housing pursuant to the "Fair Housing Act," P.L.1985,
10 c.222 (C.52:27D-301 et seq.), or in fulfillment of a regional
11 contribution agreement with a municipality that has received such
12 certification, employs or proposes to employ municipally generated
13 funds, funds obtained through any State or federal subsidy, or funds
14 acquired by the municipality under a regional contribution agreement,
15 to finance the provision of affordable housing by extending loans or
16 advances the repayment of which is secured by a lien, subordinate to
17 any prior lien, upon the property that is to be rehabilitated, is not
18 required to be licensed.

19
20 6. (New section) A depository institution, trust company,
21 insurance company, or pawnbroker operating under R.S.45:22-1 et
22 seq., may conduct consumer loan business without obtaining a license
23 under this act and without being subject to this act.

24
25 7. (New section) The commissioner shall issue a license under this
26 act if the following conditions are met:

27 a. A written application for a new license or for a renewal of a
28 license shall be submitted to the commissioner on the forms and in the
29 manner, and accompanied by such evidence in support of the
30 application, as required by this act and as may be prescribed by the
31 commissioner, and shall be accompanied by the required fees.

32 b. An individual applicant for a new license shall qualify by
33 examination, the content and form of which shall be approved by the
34 commissioner. The commissioner may designate an independent
35 testing service to prepare and administer the examinations. In
36 addition, the commissioner by regulation may establish additional
37 requirements for licensure as an individual, including education and
38 experience.

39 c. If the commissioner finds that the financial responsibility,
40 experience, character, and general fitness of the applicant for a new
41 license or for a renewal of a license demonstrate that the business will
42 be operated honestly, fairly, and efficiently within the purposes of this
43 act, and if all other licensing requirements of this act and regulations
44 promulgated by the commissioner are met, the commissioner shall
45 issue the license of the type sought by the applicant.

46 d. A person holding a license under this act or as a sales finance

1 company pursuant to the "Retail Installment Sales Act of 1960,"
2 P.L.1960, c.40 (C.17:16C-1 et seq.), who is in full compliance with
3 this act, the "Retail Installment Sales Act of 1960," and the regulations
4 promulgated thereunder, as applicable, may apply to the commissioner
5 for a license to act as a mortgage banker or mortgage broker, a
6 secondary lender, a consumer lender or a sales finance company, or
7 any combination of these capacities for which the person is not already
8 licensed, by filing with the commissioner an abbreviated application
9 containing the information which the commissioner deems necessary
10 when considering whether to license that person for that specific
11 activity, an application fee, and the necessary additional license fee.

12

13 8. (New section) a. Every application for an initial license shall be
14 accompanied by an application fee of not more than \$500, as
15 established by the commissioner by regulation. When the applicant at
16 the same time seeks a license to engage in more than one activity, only
17 one application fee may be charged. The license fee, as prescribed by
18 the commissioner by regulation, shall be based on the number of the
19 following activities in which the person is licensed to engage under this
20 act or the "Retail Installment Sales Act of 1960," P.L.1960, c.40
21 (C.17:16C-1 et seq): a mortgage banker or mortgage broker; a
22 secondary lender; a consumer lender; or a sales finance company. The
23 fee for a biennial license or a renewal thereof shall be set according to
24 the following schedule:

25 (1) If the person is licensed to engage in one activity, the fee shall
26 not be more than \$3,000;

27 (2) If the person is licensed to engage in two activities, the fee shall
28 not be more than \$4,000;

29 (3) If the person is licensed to engage in three activities, the fee
30 shall not be more than \$5,000; and

31 (4) If the person is licensed to engage in all four activities, the fee
32 shall not be more than \$6,000.

33 b. When the initial license is issued in the second year of the
34 biennial licensing period, the license fee shall equal one-half of the
35 license fee for the biennial period set forth above. In lieu of, or in
36 addition to, the fees set forth above, the department may impose other
37 fees and charges as provided by regulation.

38

39 9. (New section) a. A licensee may maintain a branch office or
40 offices. The licensee shall license all branch offices in this State and
41 all branch offices outside this State from which the licensee has direct
42 contact with New Jersey consumers regarding origination or
43 brokering.

44 b. The commissioner shall issue a branch office license if:

45 (1) The licensee has submitted a completed application form, a
46 branch application fee of not more than \$300 as set by regulation, and

1 a branch license fee;

2 (2) The application for the branch office demonstrates that the
3 office is in a suitable location; and

4 (3) The application contains a certification that the office is
5 covered by the surety bond.

6 c. The license fee for a branch office shall be based on the number
7 of activities in which the person is authorized to engage at that
8 location pursuant to the schedule provided in section 8 of this act.

9

10 10. (New section) a. The license shall state the name of the
11 licensee and the licensee's place of business or businesses, as
12 applicable, and shall contain such other information as the
13 commissioner may see fit to require.

14 b. The license shall be posted conspicuously in the place or places
15 of business of the licensee.

16 c. A licensee or any other person shall not photocopy or otherwise
17 reproduce the license except for legitimate business purposes.

18 d. Licenses issued pursuant to this act or the "Retail Installment
19 Sales Act of 1960," P.L.1960, c.40 (C17:16C-1 et seq.) shall not be
20 transferable or assignable, other than as provided by section 12 of this
21 act.

22 e. No licensee shall change the name or address of the licensee's
23 place or places of business without notice to the commissioner.

24

25 11. (New section) a. Each license issued pursuant to this act shall
26 expire at the end of the biennial period. The first biennial period shall
27 begin on July 1, 1997, and shall end on June 30, 1999. Every licensee
28 shall on or before June 30 of every other year pay to the commissioner
29 a biennial license fee for the next biennial period. The license fee shall
30 be determined by the provisions of sections 8 and 9 of this act.

31 b. Licenses issued to persons under the "Secondary Mortgage Loan
32 Act," P.L.1970, c.205 (C.17:11A-34 et seq.) or the "Consumer Loan
33 Act," R.S.17:10-1 et seq. or under the "Retail Installment Sales Act of
34 1960," P.L.1960, c.40 (C.17:16C-1 et seq.) as a sales finance
35 company, and in effect prior to the operative date of this act shall
36 expire on July 1, 1997. All such persons shall receive a credit of \$250
37 to renew any authority to engage in the secondary mortgage loan
38 business, the consumer loan business or the sales finance company
39 business.

40 c. The commissioner may by regulation provide for individual
41 mortgage banker, mortgage broker and secondary lender licenses to
42 continue in existence in an inactive status for a specified period of
43 time.

44

45 12. (New section) Any sale or transfer of a controlling interest in
46 a licensee's or applicant's business shall be approved by the

1 commissioner prior to the transfer or sale, after the licensee or
2 applicant has provided written notice of the proposed sale or transfer
3 to the commissioner. The commissioner shall approve the transfer or
4 sale unless the commissioner determines, following an opportunity for
5 a hearing, that sufficient grounds exist to deny, revoke or suspend the
6 license. The sale or transfer shall be deemed approved if the
7 commissioner does not deny the application within 30 days after
8 receipt, or 10 days when the sale or transfer is to another licensee
9 under this act. The commissioner may charge such fee as set by
10 regulation, not to exceed \$200, for considering an application for a
11 sale or transfer of a controlling interest.

12

13 13. (New section) A licensee, prior to doing business as a
14 mortgage banker or broker or as a secondary lender, shall obtain a
15 bond in an amount and form prescribed by regulations of the
16 commissioner, but not less than \$25,000. The bond shall be obtained
17 from a surety company authorized by law to do business in this State.
18 In lieu of individual bonds, a licensee may procure a blanket bond to
19 cover all employees licensed under the provisions of this act in an
20 amount as prescribed by regulations of the commissioner. The bond
21 shall run to the State for the benefit of any person injured by the
22 wrongful act, default, fraud or misrepresentation of the licensee or its
23 employees. No bond shall comply with the requirements of this
24 section unless the bond contains a provision that it shall not be
25 canceled for any cause unless notice of intention to cancel is filed in
26 the department at least 30 days before the day upon which cancellation
27 shall take effect.

28

29 14. (New section) a. Each applicant for a license as a mortgage
30 banker shall demonstrate that it has tangible net worth of \$250,000,
31 except that an applicant for a correspondent mortgage banker license
32 shall demonstrate that it has tangible net worth of at least \$150,000.
33 Each applicant for a license as a mortgage broker shall demonstrate
34 that it has tangible net worth of at least \$50,000.

35 b. Each licensed mortgage banker shall maintain at all times
36 tangible net worth of at least \$250,000, except that a correspondent
37 mortgage banker shall maintain at all times tangible net worth of at
38 least \$150,000. Each licensed mortgage broker shall maintain at all
39 times tangible net worth of at least \$50,000.

40 c. In the case of the application of an officer, partner, member,
41 employee or other principal of a corporation, partnership, association
42 or other entity, that individual shall not be required to demonstrate
43 that the individual has the tangible net worth required by this section.

44 d. The commissioner may by regulation: define the term "tangible
45 net worth;" provide for a phase-in period for licensees acting as
46 mortgage bankers or mortgage brokers to comply with the tangible net

1 worth requirements of this section; and establish standards for
2 determining compliance with those requirements and any remedial
3 action, including suspension of a license, for failure to comply with
4 those requirements.

5 e. The net worth and liquid asset requirements of this section and
6 of sections 15 and 16 of this act are not cumulative, and the net worth
7 and liquid assets necessary to satisfy the requirements for one licensed
8 activity may also be used to satisfy another licensed activity.

9

10 15. (New section) a. Each applicant for a license as a secondary
11 lender shall demonstrate that the applicant has liquid assets of at least
12 \$150,000 available for the purpose of making secondary mortgage
13 loans and a net worth of at least \$150,000 except that, in the case of
14 the application of an officer, partner, member or other principal of a
15 corporation, partnership, association or other entity, that individual
16 shall not be required to demonstrate that the individual has liquid
17 assets and a net worth of at least \$150,000.

18 b. Each secondary lender shall maintain a net worth and liquid
19 assets of \$150,000.00 at all times except that, in the case of an officer,
20 partner, member or other principal of a corporation, partnership,
21 association or other entity, that individual shall not be required to
22 maintain a net worth of at least \$150,000.

23 c. In lieu of the liquid asset requirement of this section, the
24 commissioner may, by regulation, require that a licensee demonstrate
25 to the satisfaction of the commissioner that it has adequate means to
26 fund loans through lines of credit, or otherwise.

27

28 16. (New section) a. Every applicant for a license as a consumer
29 lender shall prove in a form satisfactory to the commissioner, that the
30 applicant has a net worth of at least \$100,000, and has available for
31 the purpose of making consumer loans liquid assets of at least
32 \$100,000.

33 b. Every consumer lender shall have at all times a net worth of at
34 least \$100,000 and shall maintain at all times assets of at least
35 \$100,000 in liquid form available for or actually used in the making of
36 consumer loans.

37

38 17. (New section) a. A licensee engaging in business as a
39 mortgage banker or mortgage broker, a secondary lender or a
40 consumer lender shall have and maintain a place of business in this
41 State for the transaction of business. Nothing in this act or in the
42 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et
43 seq.), shall be construed to require an entity licensed as only a sales
44 finance company to maintain a branch office in this State so long as it
45 is qualified to do business here and has a registered agent for service
46 of process.

1 b. If a licensee maintains a branch office or offices, one of the
2 offices shall be designated as a principal office.

3 c. A licensee which changes the address of its principal office or a
4 branch office shall file with the commissioner those documents
5 required by regulation, and shall pay an administrative fee not in
6 excess of \$100.

7

8 18. (New section) a. The commissioner may refuse to issue and
9 may revoke, suspend or refuse to renew a license or impose a penalty
10 pursuant to this act, or refuse to register or rescind or revoke a
11 solicitor registration, if the commissioner finds, after notice and an
12 opportunity for a hearing in accordance with the "Administrative
13 Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and any rules
14 adopted thereunder, that any person, applicant for or holder of the
15 license has:

16 (1) Violated any of the provisions of this act or any order, rule or
17 regulation made or issued pursuant to this act;

18 (2) Withheld information or made a material misstatement in the
19 application for the license;

20 (3) Been convicted of an offense involving breach of trust, moral
21 turpitude or fraudulent or dishonest dealing, or had a final judgment
22 entered against him in a civil action upon grounds of fraud,
23 misrepresentation or deceit;

24 (4) Become insolvent, or failed to attain or maintain the required
25 net worth;

26 (5) Demonstrated unworthiness, incompetence, bad faith or
27 dishonesty in the transaction of business as a licensee; or

28 (6) Engaged in any other conduct which would be deemed by the
29 commissioner to be the cause for denial of the license.

30 b. A license of a corporation, partnership, association or other
31 entity may be suspended or revoked if any officer, director or member
32 of the licensee has committed any act which would be cause for
33 suspending or revoking a license issued to him as an individual.

34 c. If the license issued to an individual is revoked or suspended, the
35 license issued to the partnership, association, corporation or other
36 entity shall also be revoked or suspended by the commissioner, unless
37 within the time fixed by the commissioner, in the case of a partnership,
38 the connection therewith of the member whose license has been
39 revoked shall be severed and that member's interest in the partnership
40 and share in its activities brought to an end, or in the case of an
41 association, corporation, or other entity, the offending officer or
42 director shall be discharged and shall have no further participation in
43 its activity. Officers and directors of the corporation shall be required
44 to fully divest themselves of all stock, bonds or other corporate
45 holdings.

46 d. The department may suspend or revoke the entire license of a

1 person whose license is suspended or revoked for only one of its
2 authorized licensed activities.

3 e. Any licensee may surrender any license by delivering to the
4 commissioner written notice that the license is surrendered, along with
5 the license, but the surrender shall not affect the licensee's civil or
6 criminal liability for an act committed prior to the surrender.

7

8 19. (New section) a. Every licensee shall maintain, at the place of
9 business in this State designated in the license, those books, accounts,
10 records and documents of the business conducted under the license as
11 may be prescribed by the commissioner to enable the commissioner to
12 determine whether the business of the licensee is being conducted in
13 accordance with the provisions of this act and the orders, rules and
14 regulations issued hereunder.

15 b. A licensee operating two or more licensed places of business in
16 this State shall maintain the records of all licensed places at any one
17 of the licensed places. Upon appropriate notice to the commissioner
18 and if a change in location of records is made, the commissioner shall
19 be notified in writing of the change within five business days of the
20 change.

21 c. Every licensee shall preserve all books, accounts, records and
22 documents pertaining to its business, and keep them available for
23 examination by the commissioner, for at least three years from the date
24 of original entry, or such longer time as prescribed by the
25 commissioner by regulation.

26 d. A licensee may, upon approval of the commissioner, keep
27 records at a location, designated by the licensee, outside this State,
28 provided that the licensee shall make the records available in this State
29 upon request of the commissioner, or, at its option have the records
30 examined at its out-of-State location and shall pay the reasonable
31 expenses of the commissioner for the examination.

32

33 20. (New section) a. No person or licensee shall advertise, print,
34 display, publish, distribute, telecast or broadcast, or cause or permit
35 to be advertised, printed, displayed, published, distributed, televised
36 or broadcast, in any manner, any statement or representation which is
37 false, misleading or deceptive.

38 b. No licensee shall transact business provided for by this act under
39 any name other than that named in the license.

40 c. No licensee shall make any statement or representation that the
41 licensee will provide "immediate approval" of a mortgage loan
42 application or "immediate closing" of a loan or will afford unqualified
43 access to credit.

44

45 21. (New section) a. A borrower shall not be required to purchase
46 credit life or accident and health insurance or credit involuntary

1 unemployment insurance in connection with a first mortgage loan, a
2 secondary mortgage loan or a consumer loan. If the borrower or
3 borrowers consent thereto in writing, a licensee may obtain or provide:

4 (1) Insurance on the life and on the health or disability, or both, of
5 one borrower, and on the lives, health or disability of two borrowers
6 pursuant to the provisions of N.J.S. 17B:29-1 et seq; and

7 (2) Credit involuntary unemployment insurance in accordance with
8 forms and rates filed and approved by the commissioner pursuant to
9 applicable regulations.

10 b. If a licensee obtains or provides any credit insurance for a
11 borrower or borrowers pursuant to subsection a. of this section, a
12 licensee may deduct from the principal of a loan and retain an amount
13 equal to the premium lawfully charged by the insurance company. The
14 premium may be charged monthly in the case of an open-end loan or
15 open-end consumer loan. The amount so deducted and retained shall
16 not be considered a prohibited charge or amount of any examination,
17 service, brokerage, commission, expense, fee or bonus or other thing
18 or otherwise.

19 c. If a borrower or borrowers obtain such insurance from or
20 through a licensee, the licensee shall show the amount of the charge
21 for the insurance and cause to be delivered to the borrower or
22 borrowers a copy of the policy, certificate or other evidence of that
23 insurance when the loan is made. Nothing in this act shall prohibit the
24 licensee from collecting the premium or identifiable charge for
25 insurance permitted by this section and from receiving and retaining
26 any dividend, or any other gain or advantage resulting from that
27 insurance.

28 d. A licensee may require a borrower to demonstrate that the
29 property securing a first mortgage loan or secondary mortgage loan is
30 insured against damage or loss due to fire and other perils, including
31 those of extended coverage, for a term not to exceed the term of the
32 loan and in an amount not to exceed the amount of the secondary
33 loan, together with the amount needed to satisfy all prior liens on that
34 property.

35 The licensee shall provide the borrower with the following written
36 statement, to be printed in at least 10-point bold type:

37

38

NOTICE TO THE BORROWER

39

YOU MAY BE REQUIRED TO PURCHASE PROPERTY
INSURANCE AS A CONDITION OF RECEIVING THE LOAN.

40

41

IF PROPERTY INSURANCE IS REQUIRED, YOU MAY
SECURE INSURANCE FROM A COMPANY OR AGENT OF
YOUR OWN CHOOSING.

42

43

44

45 e. Incident to a consumer loan, a licensee may make available,
46 insurance covering direct or indirect damage or loss, by fire or other

1 perils, including those of extended coverage, to the personal property
2 of the borrower all or part of which is security for the loan. The
3 insurance shall be for an amount and term not to exceed the total
4 amount of payments and term of the loan.

5 The licensee shall provide the borrower with the following written
6 statement, to be printed in at least 10-point bold type:

7

8

NOTICE TO THE BORROWER

9 YOU ARE NOT REQUIRED TO PURCHASE PERSONAL
10 PROPERTY INSURANCE AS A CONDITION OF RECEIVING
11 THE CONSUMER LOAN. IF YOU DESIRE PERSONAL
12 PROPERTY INSURANCE YOU MAY SECURE INSURANCE
13 FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.

14

15 22. (New section) a. No person shall use the word "mortgage" or
16 similar words in any advertising, signs, letterheads, cards, or like
17 matter which tend to represent that the person arranges first mortgage
18 loans unless that person is licensed to act as a mortgage banker or
19 mortgage broker under this act, or is exempt from licensing under
20 section 4 of this act. No person licensed under this act shall be
21 granted a license in a name containing such words as "insured,"
22 bonded," "guaranteed," "secured" and the like. Notwithstanding the
23 provisions of section 18 of P.L.1948, c.67 (C.17:9A-18) or any other
24 law to the contrary, a person licensed under this act to act as a
25 mortgage banker or mortgage broker may use the terms "mortgage
26 banker" or "mortgage broker," respectively, as part of the licensee's
27 name.

28 b. No mortgage banker or mortgage broker shall, in connection
29 with or incidental to the making of a first mortgage loan, require or
30 permit the mortgage instrument or bond or note to be signed by a
31 party to the transaction if the instrument contains any blank spaces to
32 be filled in after it has been signed, except blank spaces relating to
33 recording.

34 c. No mortgage banker or mortgage broker shall charge or exact
35 directly or indirectly from the mortgagor or any other person fees,
36 commissions or charges not authorized by this act.

37 d. No person shall receive any commission, bonus or fee in
38 connection with arranging or originating a first mortgage loan for a
39 borrower unless that person is licensed or exempt from licensure as a
40 mortgage banker or mortgage broker, except that a registered
41 mortgage solicitor may receive a commission, bonus, or fee from his
42 employer.

43 e. No person or licensee authorized to act as a mortgage banker or
44 mortgage broker shall pay any commission, bonus or fee to any
45 person not licensed or not exempt under the provisions of this act in
46 connection with arranging for or originating a mortgage loan for a

1 borrower, except that a registered mortgage solicitor may be paid a
2 bonus, commission or fee by his employer.

3 f. No person shall obtain or attempt to obtain a license by fraud or
4 misrepresentation.

5 g. No mortgage banker or mortgage broker shall misrepresent,
6 circumvent, or conceal the nature of any material particular of any
7 transaction to which the mortgage banker or broker is a party.

8 h. No mortgage banker or mortgage broker shall fail to disburse
9 funds in accordance with the mortgage banker's or broker's
10 agreements, unless otherwise ordered by the commissioner or a court
11 of this State or of the United States.

12 i. No mortgage banker or mortgage broker shall fail without good
13 cause to account or deliver to any person any personal property,
14 money, fund, deposit, check, draft, mortgage, document or thing of
15 value, which is not the mortgage banker's or broker's property, or
16 which the mortgage banker or broker is not in law or equity entitled
17 to retain under the circumstances, at the time which has been agreed
18 upon, or is required by law or, in the absence of a fixed time, upon
19 demand of the person entitled to such accounting and delivery.

20 j. No person or licensee shall fail to place in escrow, immediately
21 upon receipt, any money, fund, deposit, check or draft entrusted to
22 him by any person dealing with him as a mortgage banker or mortgage
23 broker, in a manner approved by the commissioner, or to deposit the
24 funds in a trust or escrow account maintained by him with a financial
25 institution the deposits of which are insured by the Federal Deposit
26 Insurance Corporation or the Federal Savings and Loan Insurance
27 Corporation, wherein the funds shall be kept until the disbursement
28 thereof is properly authorized.

29 k. No mortgage banker or mortgage broker shall fail (1) to present
30 a certified check, cashier's check or bank check for the proceeds of the
31 first mortgage loan; (2) to arrange an electronic fund transfer for the
32 proceeds of the loan; or (3) to provide for payment by any other means
33 which is ethically permissible to the purchaser, acting on the
34 purchaser's own behalf, or to the attorney for the purchaser, at a
35 reasonable time and place prior to the time of the mortgage closing
36 transaction. This subsection shall not prevent a person or licensee
37 from utilizing any method of payment which is agreed upon by the
38 person or licensee and the closing agent; nor shall it prevent the person
39 or licensee from assessing a reasonable charge as set forth by
40 regulation by the commissioner to reflect the additional cost to the
41 person or licensee for the issuance of a certified, cashier's or bank
42 check, an electronic fund transfer, or any other means of payment
43 which is ethically permissible. That reasonable charge shall be fully
44 disclosed at application or at or prior to the issuance of the loan
45 commitment. A "bank check" means a negotiable instrument drawn by
46 a state or federally chartered bank, savings bank or savings and loan

1 association on itself or on its account in another state or federally
2 chartered bank, savings bank or savings and loan association doing
3 business in this State.

4

5 23. (New section) a. Notwithstanding the provisions of any other
6 law, a person licensed as a mortgage banker, incidental to the
7 origination, processing and closing of a mortgage loan transaction,
8 shall have the right to charge only the following fees; (1) credit report
9 fee; (2) appraisal fee; (3) application fee; (4) commitment fee; (5)
10 warehouse fee; (6) fees necessary to reimburse the mortgage banker
11 for charges imposed by third parties; and (7) discount points.

12 b. Notwithstanding the provisions of any other law, a person
13 licensed as a mortgage broker, incidental to the brokering of a first
14 mortgage loan transaction, shall have the right to charge only the
15 following fees: (1) application fee; and (2) discount points.

16 c. No person licensed as a mortgage banker or mortgage broker
17 may charge any fee either not expressly authorized by this section or
18 authorized by the commissioner by regulation.

19

20 24. (New section) a. Notwithstanding the provisions of R.S. 31:1-
21 1 or any other law to the contrary, a person licensed as a secondary
22 lender may make closed-end loans, and may charge, contract for and
23 receive thereon interest at an annual percentage rate agreed to by the
24 licensee and the borrower.

25 b. The note evidencing a closed-end loan may provide for a
26 variation in the interest rate in which adjustments to the interest rate
27 shall correspond directly to the movement of an interest rate index
28 which is readily available to and verifiable by the borrower and is
29 beyond the control of the lender. If the note provides for a variation
30 in the interest rate, that fact shall be clearly described in plain
31 language, in at least eight-point bold face type on the face of the note.
32 If the note provides for a final payment which is substantially greater
33 than the previous installments, that fact, together with a statement that
34 the lender is under no obligation to refinance the loan, unless the
35 lender unconditionally obligates itself to do so, shall be clearly
36 disclosed in plain language, in at least eight-point bold face type on the
37 face of the note. No rate increase or decrease shall take effect during
38 the first six months of the term of the loan. Thereafter, no rate
39 increase or decrease shall take effect unless at least 30 days prior to
40 the effective date of that increase or decrease, a written notice has
41 been mailed or delivered to the borrower that clearly and
42 conspicuously describes the increase or decrease, and unless at least
43 six months have elapsed without any increase in the rate.

44 c. Upon written request from the borrower, a secondary lender
45 shall give to the borrower, without charge, within five days from the
46 date of receipt of that request, a written statement of the borrower's

1 account, which shall show the dates and amounts of all installment
2 payments on a closed-end loan credited to the borrower's account, the
3 dates, amounts and explanation of all other charges or credits to the
4 account and the unpaid balance thereof. A secondary lender shall not
5 be required to furnish more than two such statements in any 12-month
6 period.

7
8 25. (New section) Notwithstanding the provisions of R.S.31:1-1
9 or any other law to the contrary, and subject to all applicable
10 provisions of this act, a person licensed as a secondary lender shall
11 have authority to make open-end loans as defined in section 2 of this
12 act, upon the same terms and conditions permitted to banks, savings
13 banks, savings and loan associations pursuant to State and federal laws
14 and regulations promulgated thereunder, and may charge, contract for,
15 and receive thereon, interest at an annual percentage rate agreed to by
16 the licensee and the borrower, provided however, that with respect to
17 fees and other charges permitted in connection with open-end loans,
18 secondary mortgage lenders shall be subject to the provisions of this
19 act.

20

21 26. (New section) An instrument evidencing a secondary mortgage
22 loan shall:

23 a. Be in the form of a promissory note for a closed-end loan, and
24 in the form of a loan agreement for an open-end loan, and shall be
25 identifiable by the use of the words "Secondary Mortgage Loan"
26 printed prominently, in 14-point bold type or larger, centered and at
27 the top of the promissory note or loan agreement.

28 b. Provide for the payment, in full, of the total amount of the
29 secondary mortgage loan in substantially equal payment periods,
30 measured in terms of weeks or months, and, except as otherwise
31 permitted, substantially equal installment payment amounts, except
32 that the initial payment period may be deferred for 60 days, and,
33 provided further, when appropriate for the purpose of facilitating
34 payment in accordance with the borrower's intermittent income, a
35 promissory note or loan agreement may provide an installment
36 schedule which reduces or omits payments over any period or periods
37 of time during which the borrower's income is reduced or suspended,
38 and the final installment may be \$1 more or less than the amount of all
39 other installment payments.

40 c. Contain the following notice printed prominently, in the identical
41 form indicated below, in 10-point bold type or larger, directly above
42 the space provided for the signature of the borrower.

1 "NOTICE TO BORROWER

2

3 Read this promissory note or loan agreement before you sign.

4 Do not sign this promissory note or loan agreement if it contains
5 blank spaces.6 The promissory note or loan agreement is secured by a secondary
7 mortgage on your real property."8 d. Be completed in full before it is signed by the borrower. In the
9 event that it is unnecessary to fill in a blank space provided for in any
10 instrument, the figure -0-, a dash, line or the word "none" shall be
11 inserted in such blank space.

12

13 27. (New section) No writing of any kind executed in connection
14 with a secondary mortgage loan shall contain:

15 a. A power of attorney to confess judgment;

16 b. An assignment of or order for the payment of any salary, wages,
17 commissions or any other compensation for services, or any part
18 thereof, earned or to be earned.19 c. An agreement to pay any amount other than the unpaid balance
20 of the promissory note or loan agreement or any other charge
21 authorized by this act.22 d. A provision relieving the licensee from liability for any claim, or
23 from any legal remedy, which the borrower may have against the
24 licensee under the terms of the promissory note or loan agreement.25 e. A provision whereby the borrower waives any right of action
26 against the licensee, a subsequent holder or any person acting on the
27 licensee's or holder's behalf for any illegal act committed in the
28 collection of payments under the promissory note or loan agreement.29 f. An acceleration clause under which the unpaid balance of the
30 promissory note or loan agreement not yet matured or any part thereof
31 may be declared due and payable because the licensee or subsequent
32 holder deems himself to be insecure.

33

34 28. (New section) a. A secondary lender shall not contract for,
35 charge, receive or collect directly or indirectly, any of the following in
36 connection with a secondary mortgage loan: a broker's or finder's fee;
37 commission; expense; fine; penalty; premium; or any other thing of
38 value other than the charges authorized by this act; except the
39 expenses incurred on actual sale of the real property in foreclosure
40 proceedings or upon the entry of judgment, which are otherwise
41 authorized by law; provided, however, that:42 (1) A secondary lender may charge and receive no more than three
43 discount points computed as a percentage of the principal amount of
44 the loan and may add such discount points to the principal balance of
45 the loan, which discount points shall be fully earned when the loan is
46 made. The annual percentage rate charged to the borrower, including

1 the discount points, if any, shall be subject to N.J.S.2C:21-19. As
2 used in this paragraph, "discount point" means one percent of the
3 principal amount of the loan; and

4 (2) A secondary lender may require a borrower to pay a reasonable
5 legal fee at the time of the execution of the secondary mortgage loan,
6 provided that any legal fee shall represent a charge actually incurred
7 in connection with the secondary mortgage loan and shall not be paid
8 to any person other than an attorney authorized to practice law in this
9 state; provided further that the legal fee shall be evidenced by a
10 statement issued to the licensee from the attorney.

11 b. Secondary lenders shall have authority to collect fees for title
12 examination, abstract of title, survey, title insurance, credit reports,
13 appraisals, and recording fees when those fees are actually paid by the
14 licensee to a third party for those services or purposes and to include
15 those fees in the amount of the loan principal.

16 c. Secondary lenders shall also have the authority to charge and
17 collect a returned check fee in an amount not to exceed \$20 which the
18 secondary lender may charge the borrower if a check of the borrower
19 is returned to the licensee uncollected due to insufficient funds in the
20 borrower's account. Licensees shall also have the authority to charge
21 and collect a late charge in any amount as may be provided in the note
22 or loan agreement, but no late charge shall exceed 5% of the amount
23 of payment in default. Not more than one late charge shall be assessed
24 on any one payment in arrears.

25 d. A secondary lender shall not make any other charge or accept an
26 advance deposit prior to the time a secondary mortgage loan is closed,
27 except that a secondary lender may charge:

28 (1) an application fee at closing; and

29 (2) on an open-end loan, an annual fee of \$50 or 1% of the line of
30 credit, whichever is less.

31 e. A promissory note of loan agreement may provide for the
32 payment of attorney fees in the event it becomes necessary to refer the
33 promissory note or loan agreement to an attorney for collection;
34 provided, however, that any such provision shall be void and
35 unenforceable unless:

36 (1) The promissory note or loan agreement is referred to an
37 attorney authorized to practice law in this State;

38 (2) The attorney to whom the promissory note or loan agreement
39 is referred is not a partner, officer, director or employee, whether
40 salaried or commissioned, of the secondary lender; and

41 (3) Suit is actually filed by the attorney to whom the promissory
42 note or loan agreement is referred and subsequently decided in favor
43 of the secondary lender, in which event the attorney fees shall not
44 exceed 15% of the first \$500, 10% of the next \$500 and 5% of any
45 excess amount due and owing under the promissory note or loan
46 agreement and, provided further that at least 15 days prior to the

1 commencement of the suit, the secondary lender or his attorney shall
2 send to the borrower, by certified or registered mail, return receipt
3 requested, at the borrower's last known address, a statement of the
4 secondary lender's intention to sue, which statement shall also specify
5 the amount of principal, interest and any other charge due and owing
6 to the secondary lender.

7

8 29. (New section) a. If a secondary lender charges or collects
9 interest, costs or other charges on a secondary mortgage loan in
10 excess of those permitted by this act, the licensee may collect only the
11 principal amount of the loan, and may not collect interest, costs or
12 other charges with respect to the loan. In addition, a licensee who
13 knowingly and willfully violates any provision of this act shall also
14 forfeit to the borrower three times any amount of the interest, costs or
15 other charges collected in excess of that authorized by law.

16 b. A secondary lender shall have no liability on a secondary
17 mortgage loan for an unintentional error if within 90 days after
18 discovering an error the licensee notifies the borrower of the error and
19 makes adjustments in the account as necessary to assure that the
20 borrower will not be required to pay any interest, costs or other
21 charges which aggregate in excess of the charges permitted under this
22 act for secondary mortgage loans. The discovery of an unintentional
23 error within the meaning of this section shall include an entry of a
24 judgment by a court of competent jurisdiction holding that a rule or
25 regulation with which the licensee acted in conformity was invalid or
26 in violation of this act, and a licensee shall have no liability for that
27 unintentional error if the licensee takes the actions required upon
28 discovery of an error pursuant to this section within the time stated
29 therein following entry of such a judgment.

30

31 30. (New section) A secondary lender shall:

32 a. Give to the borrower, without charge, a copy of every
33 instrument, document or other writing the borrower signs, and written
34 evidence of any insurance obtained from the licensee.

35 b. Give to the borrower, without charge, at the time a closed-end
36 loan is made, and at the time of the first advance on an open-end loan,
37 a closing statement which itemizes the individual amounts disbursed
38 to or on behalf of the borrower, including, but not limited to, the
39 premium for insurance, if any, the total amount of funds so disbursed,
40 the amount of the interest charge, total amount of the loan, the
41 amount, number and due date of the installment payments and the
42 interest charge expressed as an annual percentage rate, as applicable.

43 c. In the event a borrower's application for a secondary mortgage
44 loan is denied, notify the borrower, in writing, of that denial and
45 provided further, the name of any such borrower or a list of such
46 borrowers shall not be referred by the licensee, in any manner

1 whatsoever, to any other lender, retail seller of personal property or
2 services or to any other person, whether in this or any other state.

3 d. If a secondary mortgage loan is not consummated, return all
4 documents executed by or belonging to the borrower.

5 e. When payment is made in cash on an account of a secondary
6 mortgage loan, give to the borrower, without charge, at the time that
7 payment is actually received, a written receipt which shall show the
8 name and address of the licensee, the name and address of the
9 borrower, account number or other identification mark or symbol, date
10 and amount paid.

11 f. When a closed-end loan is paid in full, or when an open-end loan
12 is paid in full and the borrower has notified the licensee in writing to
13 discontinue his account with the licensee:

14 (1) Refund or credit to the borrower, in accordance with
15 regulations promulgated by the commissioner, any unearned portion
16 of the premium for any insurance, if a premium for such insurance was
17 disbursed on behalf of the borrower at the time the secondary
18 mortgage loan was originally made.

19 (2) Stamp or write on the face of the promissory note or loan
20 agreement evidencing the borrower's secondary mortgage loan
21 indebtedness "Paid in Full" or "Canceled," the date paid and the name
22 and address of the licensee and, within 45 days, return the promissory
23 note or loan agreement to the borrower.

24 (3) Release any lien on real property and cancel the same of record
25 pursuant to P.L.1975, c.137 (C.46:18-11.2 et seq.), and, at the time
26 the promissory note or loan agreement evidencing the borrower's
27 secondary mortgage loan indebtedness is returned, deliver to the
28 borrower such good and sufficient assignments, releases or any other
29 certificate, instrument or document as may be necessary to vest the
30 borrower with complete evidence of title, insofar as the applicable
31 secondary mortgage loan is concerned, to the real property, except
32 that the licensee may require the borrower to pay any charge imposed
33 upon the licensee by a county recording officer to effect the
34 cancellation or release.

35

36 31. (New section) A secondary lender shall not:

37 a. Transact any business subject to the provisions of this act under
38 any other name or at any other location except that designated in his
39 license. For the purpose of this section, the transaction of business
40 includes, but is not limited to, the signing of any instrument, document
41 or any other form by the borrower, except that a borrower's
42 application for a secondary mortgage loan need not be signed in the
43 office of the licensee and a secondary mortgage loan need not be
44 closed at the office of a licensee so long as it is closed in New Jersey
45 at the office of an attorney admitted to practice in this State.

46 b. Request that a borrower incorporate in connection with a

1 secondary mortgage loan or aid or abet such a scheme.

2 c. Make a secondary mortgage loan which has been referred by a
3 retail seller, who, in connection with that referral, has required the
4 borrower to purchase personal property or services or has indicated
5 that such a purchase is necessary as a condition precedent for that
6 loan.

7 d. Require or accept from a borrower any collateral or security for
8 a secondary mortgage loan other than a mortgage, indenture or any
9 other similar instrument or document which creates a lien upon any
10 real property or an interest in real property including, but not limited
11 to, shares of stock in a cooperative corporation.

12 e. Solicit secondary mortgage loan business through any other
13 person by paying, directly or indirectly, for such business referred to
14 the licensee by any such person, except that a licensee may solicit
15 secondary mortgage loan business on behalf of another licensee or
16 lender expressly authorized to make secondary mortgage loans in this
17 State if (1) that solicitation results in no additional cost or expense to
18 the borrower; and (2) the application and all advertising in connection
19 therewith clearly disclose the identity of the person or entity which will
20 be making the loan. If those conditions are met, a licensee may collect
21 a fee or a commission from the lender as consideration for the
22 solicitation.

23

24 32. (New section) a. Notwithstanding the provisions of R.S.31:1-
25 1 or any other law to the contrary, every licensee authorized to engage
26 in the consumer loan business may loan any sum of money not
27 exceeding \$15,000, repayable in installments, and may charge, contract
28 for and receive thereon interest at an annual percentage rate or rates
29 agreed to by the licensee and the borrower.

30 b. A closed-end consumer loan contract may provide for a
31 variation in the interest rate in which adjustments to the interest rate
32 shall correspond directly to the movement of an interest rate index
33 which is readily available to and verifiable by the borrower and is
34 beyond the control of the lender. No increase during the entire loan
35 term shall result in an interest rate of more than 6% per annum over
36 the rate applicable initially, nor shall the rate be raised more than 3%
37 per annum during any 12-month period. The lender shall not be
38 obligated to decrease the interest rate more than 6% over the term of
39 the loan, nor more than 3% per annum during any 12-month period.
40 If a rate increase is applied to the loan, the lender shall also be
41 obligated to adopt and implement uniform standards for decreasing the
42 rate. If the contract provides for the possibility of an increase or
43 decrease or both in the rate, that fact shall be clearly described in plain
44 language, in at least 8-point bold face type on the face of the contract.
45 No rate increase shall take effect unless (1) at least 90 days prior to
46 the effective date of the first such increase, or 30 days prior to the

1 effective date of any subsequent increase, a written notice has been
2 mailed or delivered to the borrower that clearly and conspicuously
3 describes such increase, and (2) unless at least 365 days have elapsed
4 without any increase in the rate. Where the loan contract so provides
5 for an increase or decrease in the rate of interest, the installments may
6 vary in amount, notwithstanding any other law to the contrary, except
7 that if the rate increases, the borrower may request, and the lender
8 shall provide for, either an increase in the amount of the installment
9 payment or an extension of the term of the loan, or some combination
10 of an increase in the amount of the installment payment and extension
11 of the term.

12 c. An open-end loan agreement may provide that the lender may at
13 any time, or from time to time, change the terms of the agreement,
14 including the terms governing the periodic interest rate, calculation of
15 interest or the method of computing the required amount of periodic
16 installment payments, provided however, that:

17 (1) the periodic interest rate shall not be changed more than once
18 in each billing cycle;

19 (2) any change in the periodic interest rate shall correspond to the
20 movement of a market interest rate index specified in the agreement
21 which is readily verifiable by the borrower and beyond the control of
22 the lender;

23 (3) a change in any term of the agreement, including the periodic
24 interest rate, may be permitted to apply to any then-outstanding unpaid
25 indebtedness in the borrower's account, including any indebtedness
26 which shall have arisen from advances obtained prior to the effective
27 date of the change, so long as that fact is clearly and conspicuously
28 disclosed in the agreement;

29 (4) if the agreement provides for the possibility of a change in any
30 term of the agreement, including the rate, that fact shall be clearly
31 described in plain language, in at least 8-point bold face type on the
32 face of the written notice; and

33 (5) no change in any term of the agreement or of the index
34 specified in the agreement shall be effective unless: (a) at least 30 days
35 prior to the effective date of the change, a written notice has been
36 mailed or delivered to the borrower that clearly and conspicuously
37 describes the change and the indebtedness to which it applies, and
38 states that the incurrence by the borrower or another person
39 authorized by him of any further indebtedness under the law to which
40 the agreement relates on or after the effective date of the change
41 specified in the notice shall constitute acceptance of the change; and
42 (b) either the borrower agrees in writing to the change or the borrower
43 or another person authorized by him incurs further indebtedness on or
44 after the effective date of the change stated in that notice, which
45 indebtedness may include outstanding balances. Any borrower who
46 fails to use the borrower's account or so to indicate agreement to the

1 change shall be permitted to pay the outstanding unpaid indebtedness
2 in the borrower's account in accordance with the terms governing the
3 open-end consumer loan agreement without giving effect to the
4 change.

5 d. The consumer lender shall notify each affected borrower in a
6 consumer loan agreement of any change in the manner set forth in the
7 closed-end and open-end agreement governing the plan and in
8 compliance with the requirements of the federal "Truth in Lending
9 Act" (15 U.S.C.1601 et seq.) and regulations promulgated thereunder,
10 as in effect from time to time, if applicable.

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

20 f. No interest on a consumer loan shall be paid, deducted, or
21 received in advance. Interest shall not be compounded and shall be
22 computed only on unpaid principal balances. For the purpose of
23 computing interest, all installment payments shall be applied on the
24 date of receipt, and interest shall be charged for the actual number of
25 days elapsed at the daily rate of 1/365 of the yearly rate.

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

33
34 33. (New section) a. In addition to the interest herein provided
35 for on a consumer loan, no further or other charge, or amount
36 whatsoever for any examination, service, brokerage, commission,
37 expense, fee, or bonus or other thing or otherwise shall be directly or
38 indirectly charged, contracted for, or received, except for any amount
39 actually paid by a licensee to a public official for the recording of a
40 security interest in connection with security given for the loan and (1)
41 amounts for insurance obtained or provided by the licensee in
42 accordance with the provisions of this act; (2) on actual sale of the
43 security in foreclosure proceedings or upon the entry of judgment; (3)
44 a returned check fee in an amount not to exceed \$20, which the
45 licensee may charge the borrower if a check of the borrower is
46 returned to the licensee uncollected due to insufficient funds in the

1 borrower's account; and (4) an annual fee on open-end accounts which
2 may not exceed an amount equal to one percent of the line of credit or
3 \$50, whichever is less.

4 b. A consumer lender who violates or participates in the violation
5 of any provision of sections 3, 19, 20, 21 34, 35 or 36 or subsections
6 a., b., or c. of section 32, or subsection a. of this section, or
7 subsections e. or f. of section 41 of this act, shall be guilty of a crime
8 of the fourth degree. A contract of loan not invalid for any other
9 reason, in the making or collection of which any act shall have been
10 done which constitutes a crime of the fourth degree under this section,
11 shall be void and the lender shall have no right to collect or receive
12 any principal, interest or charges unless the act was the result of a
13 good faith error, including a good faith error made as a result of a
14 licensee's acting in conformity with a rule or regulation of the
15 commissioner which is later held to be invalid or in violation of any
16 provision of this act by a judgment of a court of competent
17 jurisdiction, and the licensee notifies the borrower of the error within
18 90 days after discovering it and makes adjustments in the account
19 necessary to assure that the borrower will not be required to pay any
20 interest, costs, or other charges which aggregate in excess of the
21 charges permitted under this act. If any interest, consideration or
22 charges in excess of those permitted are charged, contracted for or
23 received, except as the result of a good faith error, the consumer
24 lender may collect only the principal amount of the loan, and may not
25 collect interest, costs or other charges with respect to the loan. In
26 addition, a consumer lender who knowingly and willfully violates any
27 provision of this act shall also forfeit to the borrower three times any
28 amount of the interest, costs or other charges collected in excess of
29 that authorized by law.

30 c. A consumer lender shall have no liability on a consumer loan for
31 an unintentional error if within 90 days after discovering an error the
32 licensee notifies the borrower of the error and makes adjustments in
33 the account as necessary to assure that the borrower will not be
34 required to pay any interest, costs or other charges which aggregate
35 in excess of the charges permitted under this act for consumer loans.
36 The discovery of an unintentional error within the meaning of this
37 section shall include an entry of a judgment by a court of competent
38 jurisdiction holding that a rule or regulation with which the consumer
39 lender acted in conformity was invalid or in violation of this act, and
40 a consumer lender shall have no liability for such unintentional error
41 if the consumer lender takes the actions required by this section upon
42 discovery of such an error within the time stated therein following
43 entry of such a judgment.

44

45 34. (New section) Every consumer lender, incident to a closed-end
46 consumer loan, shall:

1 a. Deliver to the borrower at the time a loan is made a statement
2 in the English language showing in clear and distinct terms the amount
3 and date of the loan and its maturity, the nature of the security, if any,
4 for the loan, the name and address of the borrower and of the licensee,
5 the payment schedule, the amount of interest charges, and the annual
6 percentage rate of interest;

7 b. Give to any borrower who makes a payment in cash a plain and
8 complete receipt for all payments made on account of the loan at the
9 time payments are made, specifying the amount applied to interest and
10 the amount, if any, applied to principal, and stating the unpaid balance,
11 if any of the loan;

12 c. Permit payment to be made in advance in any amount on any
13 contract of loan at any time, but the licensee may apply the payment
14 first to all interest in full at the agreed rate up to the date of payment;

15 d. Upon repayment of the loan in full, mark indelibly every
16 obligation and security signed by the borrower, or a copy thereof, with
17 the word "paid" or "canceled," and release, or give the borrower
18 evidence to release any mortgage, or security interest which no longer
19 secures an obligation to the licensee, restore any pledge, cancel and
20 return any note or a copy thereof, and cancel and return any
21 assignment or a copy thereof given to the licensee by the borrower.

22 No consumer lender shall take any confession of judgment incident
23 to a closed-end consumer loan. No consumer lender shall, incident to
24 a closed-end consumer loan take any note, promise to pay, or security
25 that does not accurately disclose the amount of the loan, the date of
26 the loan, the payment schedule, the amount of interest charges, and the
27 annual percentage rate of interest, nor any instrument in which blanks
28 are left to be filled in after the loan is made.

29

30 35. (New section) a. No closed-end consumer loan in an amount
31 of \$1,000 or less shall be made for a greater period of time than 36
32 months and 15 days.

33 b. No closed-end consumer loan in an amount in excess of \$1,000,
34 but not exceeding \$2,500, shall be made for a greater period of time
35 than 48 months and 15 days.

36 c. No closed-end consumer loan in an amount in excess of \$2,500,
37 but not exceeding \$5,000, shall be made for a greater period of time
38 than 60 months and 15 days.

39 d. No closed-end consumer loan in an amount in excess of \$5,000,
40 but not exceeding \$10,000, shall be made for a greater period of time
41 than 84 months and 15 days.

42 e. No closed-end consumer loan in an amount in excess of \$10,000
43 shall be made for a greater period of time than 120 months and 15
44 days.

45

46 36. (New section) a. A licensee authorized to engage in the

1 consumer loan business may make open-end consumer loans and may
2 contract for and receive thereon interest at an annual percentage rate
3 or rates agreed to by the licensee and the borrower.

4 b. A consumer lender shall not compound interest on an open-end
5 consumer loan by adding any unpaid interest authorized by this act to
6 the principal balance of the borrower's account but the unpaid
7 principal balance may include other charges permitted by this act.

8 c. Interest on an open-end consumer loan shall be computed in
9 each billing cycle by one of the following methods:

10 (1) By converting each yearly rate to a daily rate and multiplying
11 that daily rate by the applicable portion of the daily unpaid principal
12 balance of the account, in which case each daily rate is determined by
13 dividing each yearly rate by 365; or

14 (2) By multiplying one-twelfth of each yearly rate by the applicable
15 portion of the average daily unpaid principal balance of the account in
16 the billing cycle, in which case the average daily unpaid principal
17 balance is the sum of the amount unpaid each day during the cycle
18 divided by the number of days in the cycle; or

19 (3) By converting each yearly rate to a daily rate and multiplying
20 that daily rate by the applicable portion of the average daily unpaid
21 principal balance of the account in the billing cycle, in which case each
22 daily rate is determined by dividing each yearly rate by 365, and the
23 average daily unpaid principal balance is the sum of the amount unpaid
24 each day during the cycle divided by the number of days in the cycle.

25 d. For all of the above methods of computation, the billing cycle
26 shall be monthly and the unpaid principal balance on any day shall be
27 determined by adding to any balance unpaid as of the beginning of that
28 day all advances and other permissible amounts charged to the
29 borrower and deducting all payments and other credits made or
30 received that day.

31 e. In an open-end consumer loan, the borrower may at any time
32 pay all or any part of the unpaid balance in his account; or, if the
33 account is not in default, the borrower may pay the unpaid principal
34 balance in monthly installments, subject to the following minimum
35 payment requirements. Minimum monthly payments shall be in an
36 amount which would result in the full repayment of the initial loan
37 advance, exclusive of any interest, within the maximum term set forth
38 for other loans of the same amount in section 35 of this act, except
39 that the minimum payment for any initial advance not exceeding
40 \$2,500 shall be in an amount which would result in full repayment of
41 the initial loan advance within the maximum term of 48 months and 15
42 days. This minimum payment shall continue at that amount until such
43 time as an additional advance to the borrower is made, other than for
44 permitted charges, at which time the minimum monthly payment shall
45 be determined and shall be in that amount which would result in the
46 full repayment of the unpaid principal balance of the loan, after the

1 advance and including the advance, within the maximum term set forth
2 for the other loans of the same amount, except that if the principal
3 balance of the loan, after the advance and including the advance, does
4 not exceed \$2,500, the minimum payment shall be in that amount
5 which would result in full repayment of the principal balance of the
6 loan within the maximum term of 48 months and 15 days. Minimum
7 payments after each subsequent advance shall be determined in the
8 same manner. No minimum payment shall exceed the amount required
9 to pay the balance in full, including unpaid interest and charges to
10 date.

11 f. In addition to interest, a licensee may contract for and receive on
12 an open-end consumer loan the charges permitted under this act for
13 other consumer loans, subject to all the conditions and restrictions on
14 those charges, with the following variations:

15 (1) If credit life, disability or involuntary unemployment insurance
16 is provided and if the insured dies or becomes disabled or involuntarily
17 unemployed when there is an outstanding open-end loan indebtedness,
18 the insurance shall be sufficient to pay the total balance of the loan due
19 on the date of the borrower's death in the case of credit life insurance,
20 all minimum payments which become due on the loan during the
21 covered period of disability in the case of credit disability insurance or
22 all covered minimum payments which become due on the loan during
23 the covered period of involuntary unemployment in the case of
24 involuntary unemployment insurance. The additional charge for credit
25 life insurance, credit disability insurance or credit involuntary
26 unemployment insurance shall be calculated in each billing cycle by
27 applying the current monthly premium rate for that insurance, as
28 determined by the commissioner, to the unpaid balances in the
29 borrower's account, using any of the methods specified in subsection
30 c. of this section for the calculation of interest;

31 (2) No credit life, disability or involuntary unemployment insurance
32 written in connection with an open-end loan shall be canceled by the
33 licensee because of delinquency of the borrower in the making of the
34 required minimum payments on the loan unless one or more of the
35 payments is past due for a period of 90 days or more; and the licensee
36 shall advance to the insurer the amounts required to keep the insurance
37 in force during that period, which amounts may be debited to the
38 borrower's account.

39 g. A consumer lender may take a security interest in personal
40 property to secure an open-end consumer loan. Any security may be
41 retained until the open-end account is terminated, except that if the
42 security interest covers consumer goods, then within one month, or
43 within 10 days following written demand by the borrower, after there
44 is no outstanding balance in the account and no commitment by the
45 licensee to make advances, the licensee shall release the security
46 interest. If a security interest is taken, the open-end consumer loan

1 agreement shall state the nature and extent of that security interest.

2 h. No licensee in connection with an open-end consumer loan shall
3 take any confession of judgment or power of attorney, or take any
4 instrument in which blanks are left to be filled in after the loan is made.

5

6 37. (New section) No licensee authorized to engage in the
7 consumer loan business shall directly or indirectly charge, contract for,
8 or receive any interest, discount, or consideration greater than he
9 would be permitted by law to charge if he were not a licensee under
10 this act upon the loan, use, or sale of credit, of the amount or value of
11 more than \$15,000. The foregoing prohibition shall also apply to any
12 licensee who permits any person, as borrower or as indorser,
13 guarantor, or surety for any borrower, or otherwise, to owe directly
14 or contingently or both under one or more loan contracts to the
15 licensee at any time the sum of more than \$15,000 for principal.

16

17 38. (New section) The payment of \$15,000 or less in money,
18 credit, goods or things in action, as consideration for any sale,
19 assignment or order for the payment of wages, salary, commissions or
20 other compensation for services, whether earned or to be earned, shall,
21 for the purposes of this act, be deemed a loan secured by the
22 assignment. The transaction shall be governed by and subject to the
23 provisions of this act and any such sale, assignment or order hereafter
24 made shall, for the purposes of this act, be void and of no effect.

25

26 39. (New section) No chattel mortgage or security interest, as
27 defined in N.J.S.12A:1-201, in, or other lien on, household furniture
28 then in the possession and use of the borrower, taken in connection
29 with a consumer loan, shall be valid unless that chattel mortgage and
30 the financing statement and the security agreement are in writing,
31 signed in person by the borrower, and if the borrower is married,
32 unless it is signed in person by both husband and wife. The written
33 assent of a spouse shall not be required when husband and wife have
34 been living separate and apart for a period of at least five months prior
35 to the making of the mortgage or lien or security interest.

36

37 40. (New section) The payment of \$15,000 or less in money,
38 credit, goods or things in action as consideration for any sale of
39 personal property which is made on condition that the property be
40 sold back at a greater price shall, for the purposes of this act, be
41 deemed to be a loan secured by the property and the amount by which
42 the repurchase price exceeds the original payment actually paid shall
43 be deemed interest or charges upon the loan from the date the original
44 payment is made until the date the repurchase price is paid. The
45 transaction shall be governed by and be subject to the provisions of
46 this act as if it were a consumer loan.

1 41. (New section) a. No consumer lender shall make any loan
2 upon security of any assignment of or order for the payment of any
3 salary, wages, commissions or other compensation for services earned,
4 or to be earned, nor shall any such assignment or order be taken by a
5 licensee at any time in connection with any consumer loan, or for the
6 enforcement or repayment thereof, and any such assignment or order
7 hereafter so taken or given to secure any loan made by any licensee
8 under this act shall be void and of no effect.

9 b. No consumer lender shall take a lien upon real estate as security
10 for any consumer loan, except a lien created by law upon the recording
11 of a judgment.

12 c. No licensee shall conduct the consumer loan business within any
13 office, room, or place of business in which any other business is
14 solicited or engaged in, or in association or conjunction therewith,
15 except as may be authorized in writing by the commissioner.

16 d. Every consumer loan contract, other than an open-end consumer
17 loan contract or a variable rate closed-end consumer loan contract
18 under subsection b. of section 32 of this act, shall provide for
19 repayment of principal and interest combined in installments which
20 shall be payable at approximately equal periodic intervals of time and
21 which shall be so arranged that no installment is substantially greater
22 in amount than any preceding installment, except that the repayment
23 schedule may reduce or omit installments when necessary because of
24 the seasonal nature of the borrower's income.

25 e. No person, except as authorized by this act, shall directly or
26 indirectly charge, contract for, or receive any interest, discount, or
27 consideration greater than the lender would be permitted by law to
28 charge if he were not a licensee hereunder upon the loan, use, or
29 forbearance of money, goods, or things in action, or upon the loan,
30 use, or sale of credit of the amount of \$15,000 or less. This
31 prohibition shall apply to any person who, by any device, subterfuge,
32 or pretense, shall charge, contract for, or receive greater interest,
33 consideration, or charges than is authorized by this act for the loan,
34 use, or forbearance of money, goods, or things in action or for the
35 loan, use, or sale of credit.

36 f. No consumer loans of the amount or value of \$15,000 or less for
37 which a greater rate of interest, consideration, or charge than is
38 permitted by this act has been charged, contracted for, or received,
39 whenever made, shall be enforced in this State and any person,
40 partnership, association or corporation in anyway participating therein
41 in this State shall be subject to the provisions of this act. The
42 foregoing shall not apply to loans legally made in any state which then
43 has in effect a regulatory small loan law similar in principle to this act,
44 but an action to enforce any loan made in any state to a person then
45 residing in this State may be maintained in this State only if the amount
46 of interest, discount, consideration or other charge for that loan,

1 demanded to be paid in the action, does not exceed that permitted to
2 a licensee authorized to engage in the consumer loan business by this
3 act for a loan of the same amount repayable in the same manner.
4

5 42. (New section) a. The commissioner may make such
6 investigations and examinations of any licensee or other person as the
7 commissioner deems necessary to determine compliance with this act
8 and the orders, rules and regulations issued hereunder. For these
9 purposes, the commissioner may examine the books, accounts, records
10 and other documents or matters of any licensee or other person. Each
11 licensee shall be subject to an examination by the commissioner, not
12 more than once in any 18 month period, unless the commissioner has
13 reason to believe that the licensee is not complying with the provisions
14 of this act or any rule or regulation promulgated thereunder, or is not
15 transacting business in accordance with law, at which time the
16 commissioner may conduct an examination at any time. The
17 commissioner shall have the power to compel by subpoena the
18 production of all relevant books, records and other documents and
19 materials relative to an examination or investigation. Examinations
20 conducted under the provisions of this act shall be confidential except
21 as required in the administration, enforcement and prosecution of
22 violations under this act or pursuant to court order. The cost of the
23 investigations and examinations shall be borne by the licensee.

24 b. The commissioner or the commissioner's designee shall have
25 power to issue subpoenas to compel the attendance of witnesses and
26 the production of documents, papers, books, records and other
27 evidence before him in any matter over which he has jurisdiction
28 pursuant to this act, and to administer oaths and affirmations to any
29 person.

30 c. If any person shall refuse to obey a subpoena, or to give
31 testimony or to produce evidence as required thereby, the
32 commissioner may apply ex parte to any court having jurisdiction over
33 that person for an order compelling the appearance of the witness
34 before the commissioner to give testimony or to produce evidence as
35 required thereby, or both.
36

37 43. (New section) A licensee shall annually file a report before
38 April 1 with the commissioner which shall set forth such information
39 as the commissioner shall require concerning the business conducted
40 as a licensee during the preceding calendar year. The report shall be
41 in writing under oath and on a form provided by the commissioner.
42 The commissioner shall charge a fee for the filing of the report to defer
43 the department's administrative expense.
44

45 44. (New section) Any agreement to waive any provision of this
46 act shall be unenforceable and void.

1 45. (New section) The provisions of this act shall apply to any first
2 mortgage loan or secondary mortgage loan:

3 a. Advertised, caused to be advertised, solicited, negotiated,
4 offered, or otherwise transacted within this State, in whole or in part,
5 whether by the ultimate lender or any other person;

6 b. Made or executed within this State; or

7 c. Which is secured by real property located in this State,
8 notwithstanding the place of execution.

9

10 46. (New section) The failure of any person to comply with the
11 provisions of this act shall not affect the validity or enforceability of
12 any mortgage loan or secondary mortgage loan, and no person
13 acquiring such a loan shall be required to ascertain if a licensee has
14 made such a loan in compliance with the provisions of this act.

15

16 47. (New section) If the commissioner has reason to believe that
17 any person or licensee has engaged, is engaged, or is about to engage
18 in any practice or transaction prohibited by this act, the commissioner
19 may, in addition to any other remedies he may have, bring a summary
20 action in the name and on behalf of the State against the person or
21 licensee and any other person concerned or in any way participating in
22 or about to participate in those practices or those actions in violation
23 of this act, to enjoin the person or licensee from continuing the
24 practices or transactions or engaging therein or doing any act in
25 furtherance thereof or in violation of this act.

26

27 48. (New section) a. Any person or licensee who engages in any
28 conduct or practice prohibited by this act may be liable to a penalty
29 not exceeding \$5,000 to be recovered in a summary proceeding under
30 the "penalty enforcement law" (N.J.S.2A:58-1 et seq.). Each violation
31 shall constitute a separate offense, and the penalty under this section
32 shall be in addition to any suspension or revocation of license. In
33 addition, the commissioner may order any licensee to refund any fee
34 taken illegally or in violation of this act or rules, regulations or orders
35 issued pursuant hereto. Willful violations of this act shall be
36 considered a crime of the third degree.

37 b. After notice and an opportunity for a hearing, the commissioner
38 may order that any person who has purposely and knowingly violated
39 any provision of this act, or of the rules and regulations issued
40 pursuant hereto, and has thereby caused financial harm to consumers,
41 be barred for a term not exceeding 10 years from acting as a licensee,
42 a stockholder, a partner or other owner, or an employee of a licensee,
43 an officer of a licensee, a director of a licensee or in any other
44 capacity pursuant to this act. Violations of such a final order shall be
45 considered a crime of the third degree.

1 49. (New section) The commissioner may issue and promulgate
2 rules and regulations, in accordance with the "Administrative
3 Procedure act," P.L.1968, c. 410 (C.52:14B-1 et seq.), necessary to
4 effectuate the provisions of this act.

5
6 50. Section 7 of P.L.1992, c.66 (C.17:10B-7) is amended to read
7 as follows:

8 7. The provisions of this act shall not apply to State or federally
9 chartered banks, savings banks, savings and loan associations or credit
10 unions; mortgage solicitors as defined by **section 1 of P.L.1981, c.18**
11 **(C.17:11B-1)** section 2 of P.L. _____, c. _____ (pending before the
12 Legislature as this bill); licensees regulated pursuant to **chapter 10 of**
13 **Title 17 of the Revised Statutes, P.L.1970, c.205 (C.17:11A-34 et**
14 **seq.), P.L.1981, c.18 (C.17:11B-1 et seq.)** P.L. _____, c. _____ (pending
15 before the Legislature as this bill), P.L.1960, c.40 (C.17:16C-1 et
16 seq.), P.L.1968, c.223 (C.17:16C-61.1 et seq.), P.L.1960, c.41
17 (C.17:16C-62 et seq.) and P.L.1968, c.224 (C.17:16C-95 et seq.);
18 attorneys licensed to practice in this State; certified public accountants
19 licensed to practice in this State pursuant to P.L.1977, c.144
20 (C.45:2B-1 et seq.); or insurance companies.
21 (cf: P.L.1992, c.66, s.7)

22
23 51. Section 3 of P.L.1960, c.40 (C.17:16C-3) is amended to read
24 as follows:

25 3. **[(a) Application for a license under this act shall be in writing**
26 **under oath, and shall be in the form prescribed by the commissioner.**

27 **(b) The application shall state the name and residence and business**
28 **addresses of the applicant, and if the applicant is a copartnership or**
29 **association, of every member thereof, and if a corporation, of each**
30 **officer and director thereof. It shall also state the address where the**
31 **business is to be conducted and any other information the**
32 **commissioner may require.]**

33 An application for a new license or for a renewal thereof shall be
34 accompanied by the required application and license fees, as
35 appropriate, and shall be made on the forms and in the manner and
36 accompanied by such evidence in support of the application as may be
37 prescribed by the commissioner.

38 (cf: P.L.1960, c.40, s.3)

39
40 52. Section 7 of P.L.1960, c.40 (C.17:16C-7) is amended to read
41 as follows:

42 7. Every application for a new license shall be accompanied by an
43 application fee of not more than \$300, as established by the
44 commissioner by regulation. Every sales finance company shall pay to
45 the commissioner at the time of making the application and biennially
46 thereafter upon renewal a license fee for its principal place of business

1 and for each additional place of business conducted in this State. The
2 commissioner shall charge for a license such fee as he shall prescribe
3 by rule or regulation. 【Each fee shall not exceed \$1,000.00.】 The
4 license fee, as prescribed by the commissioner by regulation, shall be
5 based on the number of the following activities in which the person is
6 licensed to act: as a mortgage banker or mortgage broker, as a
7 secondary mortgage lender, as a consumer lender, or as a sales finance
8 company. The fee shall be set according to the following schedule:

9 a. If the person is licensed to engage in one activity, the fee shall
10 not be more than \$3,000;

11 b. If the person is licensed to engage in two activities, the fee shall
12 not be more than \$4,000;

13 c. If the person is licensed to engage in three activities, the fee shall
14 not be more than \$5,000; and

15 d. If the person is licensed to engage in all four activities, the fee
16 shall not be more than \$6,000.

17 The license shall run from the date of issuance to the end of the
18 biennial period. When the initial license is issued in the second year of
19 the biennial licensing period, the license fee shall be an amount equal
20 to one-half of the fee for the biennial licensing period.

21 For the purpose of coordination with licensing under the "New
22 Jersey Licensed Lenders Act," (P.L. , c. . (pending before the
23 Legislature as this bill.), each sales finance company license issued
24 pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40
25 (C.17:16C-1 et seq.), shall expire at the end of the biennial period.
26 The first biennial period shall begin on July 1, 1997, and shall end on
27 June 30, 1999.

28 (cf: P.L.1981, c.321, s.1)

29
30 53. Section 10 of P.L.1960, c.40 (C.17:16C-10) is amended to
31 read as follows:

32 10. 【The commissioner may suspend, revoke or refuse to renew
33 any license issued hereunder upon 10 days' notice in writing,
34 forwarded by registered or certified mail to the principal place of
35 business of such licensee, stating the contemplated action and in
36 general the grounds therefor, and after reasonable opportunity to be
37 heard, if he shall find that the licensee or any owner, director, officer,
38 member, partner, employee or agent of such licensee has:

39 (a) Made any material misstatement in the application;

40 (b) Knowingly or without the exercise of due care failed to comply
41 with or violated any provisions of this or any other act relating to
42 retail installment contracts or retail charge accounts;

43 (c) Defrauded any retail buyer or willfully failed to perform any
44 written agreement with any retail buyer;

45 (d) Willfully misrepresented or failed to disclose any of the material
46 particulars or the nature thereof required to be stated or furnished to

1 the retail buyer under this act or any other laws of this State relating
2 to retail installment contracts or retail charge accounts;

3 (e) Knowingly taken any instrument evidencing a retail installment
4 contract which was signed in blank; or

5 (f) Otherwise demonstrated unworthiness, bad faith or dishonesty.]

6 a. The commissioner may refuse to issue and may revoke, suspend
7 or refuse to renew a license or impose a penalty pursuant to this act if
8 the commissioner finds, after notice and an opportunity for a hearing
9 in accordance with the "Administrative Procedure Act," P.L.1968,
10 c.410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any
11 person, applicant for or holder of the license has:

12 (1) violated any of the provisions of P.L.1960, c.40 (C.17:16C-1
13 et seq.) or any order, rule or regulation made or issued pursuant to
14 that act;

15 (2) Withheld information or made a material misstatement in the
16 application for the license;

17 (3) Been convicted of an offense involving breach of trust, moral
18 turpitude or fraudulent or dishonest dealing, or had a final judgment
19 entered against him in a civil action upon grounds of fraud,
20 misrepresentation or deceit;

21 (4) Become insolvent, or failed to attain or maintain the required
22 net worth;

23 (5) Demonstrated unworthiness, incompetence, bad faith or
24 dishonesty in the transacting of business as a licensee; or

25 (6) Engaged in any other conduct which would be deemed by the
26 commissioner to be the cause for denial of the license.

27 b. A license of a corporation, partnership, association or other
28 entity may be suspended or revoked if any officer, director or member
29 of the licensee has committed any act which would be cause for
30 suspending or revoking a license to him as an individual.

31 c. No license issued under this act to a motor vehicle installment
32 seller shall be valid unless such seller is the holder of a valid and
33 subsisting license issued pursuant to chapter 10 of Title 39 of the
34 Revised Statutes.

35 (cf: P.L.1971, c.409, s.3)

36

37 54. (New section) a. A person licensed as a mortgage banker or
38 mortgage broker pursuant to the provisions of P.L.1981, c.18
39 (C.17:11B-1 et seq.), a secondary mortgage lender licensed pursuant
40 to the "Secondary Mortgage Loan Act," P.L.1970, c. 205 (C.17:11A-
41 34 et seq.), a consumer loan lender licensed pursuant to the
42 "Consumer Loan Act," R.S.17:10-1 et seq., or a sales finance
43 company, licensed pursuant to the "Retail Installment Sales Act of
44 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall continue as a
45 licensee under this act until July 1, 1997, at which time, if the licensee
46 intends to continue to engage in activities regulated by this act, the

1 licensee shall renew the license as a licensee under the provisions of
2 this act.

3 b. Any licensee to whom the provisions of subsection a. of this
4 section apply, shall be subject to a one-time administrative fee for each
5 license the licensee seeks to renew, provided however, that a licensee
6 seeking to renew a license to engage in one activity under this act
7 shall not be subject to this one-time administrative fee. The
8 administrative fee shall be set by the commissioner by regulation in an
9 amount not to exceed \$200 for each license a licensee seeks to renew.

10

11 55. The following are repealed:

12 The "Consumer Loan Act," R.S.17:10-1 through 17:10-3 and
13 17:10-5 through 17:10-26);

14 P.L.1962, c.159, s.1 (C.17:10-14.1);

15 P.L.1983, c.348, s.1 (C.17:10-14.1a);

16 P.L.1979, c.493 s.5 and 6 (C.17:10-14.2 and 17:10-14.3);

17 The "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-
18 34 through 17:11A-38, 17:11A-41 through 17:11A-55, 17:11A-57 and
19 17:11A-59 through 17:11A-63);

20 P.L.1987, c.230, s.4-7 and 19-23 (C.17:11A-45.1, 17:11A-39.1,
21 17:11A-45.2 and 17:11A-45.3, 17:11A-44.7 through 17:11A-44.9 and
22 17:11A-59.1 and 17:11A-59.2);

23 P.L.1983, c.348, s.2 (C.17:11A-49.1);

24 P.L.1983, c.437, s.8(C.17:11A-44.6); and

25 P.L.1981, c.18 (17:11B-1 et seq.).

26

27 56. Sections 49 and 54 of this act shall take effect immediately and
28 the remainder of this act shall take effect on July 1, 1997.

29

30

31

32

33 Enacts the "New Jersey Licensed Lenders Act."

1 b. Any licensee to whom the provisions of subsection a. of this
 2 section apply, shall be subject to a one-time administrative fee for each
 3 license the licensee seeks to renew, provided however, that a licensee
 4 seeking to renew a license to engage in one activity under this act
 5 shall not be subject to this one-time administrative fee. The
 6 administrative fee shall be set by the commissioner by regulation in an
 7 amount not to exceed \$200 for each license a licensee seeks to renew.
 8

9 55. The following are repealed:

10 The "Consumer Loan Act," R.S.17:10-1 through 17:10-3 and
 11 17:10-5 through 17:10-26);

12 P.L.1962, c.159, s.1 (C.17:10-14.1);

13 P.L.1983, c.348, s.1 (C.17:10-14.1a);

14 P.L.1979, c.493 s.5 and 6 (C.17:10-14.2 and 17:10-14.3);

15 The "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-
 16 34 through 17:11A-38, 17:11A-41 through 17:11A-55, 17:11A-57 and
 17 17:11A-59 through 17:11A-63);

18 P.L.1987, c.230, s.4-7 and 19-23 (C.17:11A-45.1, 17:11A-39.1,
 19 17:11A-45.2 and 17:11A-45.3, 17:11A-44.7 through 17:11A-44.9 and
 20 17:11A-59.1 and 17:11A-59.2);

21 P.L.1983, c.348, s.2 (C.17:11A-49.1);

22 P.L.1983, c.437, s.8 (C.17:11A-44.6); and

23 P.L.1981, c.18 (17:11B-1 et seq.).
 24

25 56. Sections 49 and 54 of this act shall take effect immediately and
 26 the remainder of this act shall take effect on July 1, 1997.
 27

28 *start of sponsor on p. 36 of original bill*
 29 STATEMENT
 30

31 This bill repeals three laws and replaces them by providing for the
 32 licensing and regulation of the businesses of mortgage bankers and
 33 brokers, secondary mortgage lenders, consumer lenders and sales
 34 finance companies under one act.

35 The bill establishes requirements for applying and renewing licenses
 36 including: application and licensing fees; education and experience;
 37 and net worth and liquid assets. Under the bill, a person who meets
 38 the specific requirements for a license may be licensed to engage in
 39 that business; in addition, a person may be licensed to engage in more
 40 than one business as long as the person meets the requirements for
 41 each business. A licensee may establish and operate branch offices as
 42 long as each branch office is licensed and the licensee may engage in
 43 all the business for which that person is licensed as long as the branch
 44 office is so licensed.

45 The bill establishes requirements for licensees with respect to
 46 records to be kept and annual reports to be filed and requires that all

1 licenses be examined not more than once every 18 months, but
2 authorizes the commissioner to examine a licensee more frequently if
3 the commissioner has reason to believe such an examination is needed.

4 With respect to mortgage bankers and brokers, the bill:

5 1. prohibits the use of certain words in the name used by the
6 licensee that might lead consumers to believe the licensee is a
7 depository institution; the charging or extracting of fees, commissions
8 or charges not otherwise authorized by the act;

9 2. requires the disbursal of funds in accordance with agreements
10 and in a manner that guarantees that funds dispersed shall be "good
11 funds;"and

12 3. permits the charging of certain fees including, but not limited to,
13 a credit report fee, an appraisal fee, application fee, commitment fee,
14 warehouse fee, fees necessary to reimburse the mortgage bankers for
15 charges imposed by third parties, and discount points.

16 With respect to secondary lenders, the bill:

17 1. requires a certain form for, and certain content in, and prohibits
18 other content from being in an instrument evidencing a secondary
19 mortgage loan;

20 2. permits a secondary mortgage lender to make closed- and
21 open-end loans, which may have either a fixed or variable interest rate,
22 and specifies the conditions which have to be met under variable
23 interest rate loans; and

24 3. provides the specific charges that a secondary mortgage lender
25 may assess in addition to interest including, but not limited to: three
26 discount points, fees with respect to obtaining a clear title, credit
27 report and appraisal fees, recording fees, returned check and late
28 charge fees and an application fee at closing and, on an open end loan,
29 an annual fee of \$50 or 1% of the line of credit, whichever is less.

30 With respect to consumer lenders, the bill:

31 1. permits consumer lenders to make closed- and open-end loans
32 with a fixed or variable interest rate, and specifies the conditions which
33 have to be met under both; and

34 2. permits certain charges including, but not limited to, an amount
35 actually paid a public official for recording of a security interest in
36 connection with security given with a loan, amounts for credit
37 insurance, returned check fee, and an annual fee on open-end accounts
38 which may not exceed an amount equal to one percent of the line of
39 credit or \$50, whichever is less;

40 The bill sets an expiration date for licenses so that all licenses will
41 expire on July 1, 1997, and have to be renewed to begin the next
42 biennial license period on July 1, 1997, under the provisions of this
43 bill, and provides a refund to those licensees whose license extend to
44 the end of December 1997.

45 This bill changes current law in the following ways: it provides for
46 a simpler and more rational licensing and regulation procedure for the

1 Department of Banking and Insurance in connection with the four
2 businesses for which lenders may be licensed; it provides a changed
3 license fee schedule to take into consideration that a person may be
4 licensed to engage in more than one of the businesses for which a
5 person can be licensed; it provides that the net worth and liquid asset
6 requirements are not cumulative if a person seeks to be licensed in
7 more than one business; it places in statute, but does not change, the
8 net worth requirements for mortgage bankers, correspondent mortgage
9 bankers, and mortgage brokers; removes the statutory requirement
10 that branch offices of licensees have to have a licensee in that office
11 for supervisory purposes, but authorizes the commissioner by
12 regulation to require such supervision; permits secondary lenders to
13 charge an application fee at closing and, on open end loans, an annual
14 fee, the amount of which cannot exceed \$50 or one percent of the line
15 of credit, whichever is less; provides that a secondary lender may
16 change the rate of interest on a variable rate closed-end loan after the
17 first six months of the loan instead of after the first 12 months; and
18 provides for an administrative penalty against consumer lenders.

19 The bill repeals the "Consumer Loan Act," R.S.17:10-1 et seq.; the
20 "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et
21 seq.); and P.L.1981, c.18 (17:11B-1 et seq.), as well as laws
22 supplementing those acts.

23

24

25

26

27 Enacts the "New Jersey Licensed Lenders Act."

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2513

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 1996

The Assembly Financial Institutions Committee reports favorably and with committee amendments Assembly Bill No. 2513.

This bill enacts the "New Jersey Licensed Lenders Act." The provisions of this bill incorporate most of what is already in three separate laws: the "Consumer Loan Act," R.S.17:10-1 et seq., which applies to consumer lenders; the "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et seq.), which applies to secondary mortgage lenders; and P.L.1981, c.18 (C.17:11B-1 et seq.), which applies to mortgage bankers and brokers.

The bill enables the Division of Banking in the Department of Banking and Insurance to license these lenders under a single act, thus simplifying and unifying the licensing, regulating and supervising process.

The bill permits a person to be licensed to engage in up to four different activities under a single license: consumer lending; secondary mortgage lending; mortgage banking or brokering; and as a sales finance company. The fees charged by the department for issuing such a license are dependent upon the number of activities in which the license indicates the person is permitted to engage.

More specifically, the bill establishes requirements for applying and renewing licenses including: application and licensing fees; education and experience; and net worth and liquid assets. Under the bill, a person who meets the specific requirements for a license may be licensed to engage in that business; in addition, a person may be licensed to engage in more than one business as long as the person meets the requirements for each business. A licensee may establish and operate branch offices as long as each branch office is licensed and the licensee may engage in all the businesses for which that person is licensed at each branch office.

The bill establishes requirements for licensees with respect to records to be kept and annual reports to be filed and requires that all licensees be examined not more than once every 18 months, but authorizes the commissioner to examine a licensee more frequently if

the commissioner has reason to believe such an examination is needed.

With respect to mortgage bankers and brokers, the bill:

1. prohibits the use of certain words in the name used by the licensee that might lead consumers to believe the licensee is a depository institution; and the charging or extracting of fees, commissions or charges not otherwise authorized by the act;
2. requires the disbursement of funds in accordance with agreements and in a manner that guarantees that funds dispersed shall be "good funds;" and
3. permits the charging of certain fees including, but not limited to, a credit report fee, an appraisal fee, application fee, commitment fee, warehouse fee, fees necessary to reimburse the mortgage bankers for charges imposed by third parties, and discount points.

With respect to secondary lenders, the bill:

1. requires a certain form for, and certain content in, and prohibits other content from being in, an instrument evidencing a secondary mortgage loan;
2. permits a secondary mortgage lender to make closed- and open-end loans, which may have either a fixed or variable interest rate, and specifies the conditions which have to be met under variable interest rate loans; and
3. provides the specific charges that a secondary mortgage lender may assess in addition to interest including, but not limited to: no more than three discount points; fees with respect to obtaining a clear title; credit report and appraisal fees; recording fees; returned check and late payment fees; and an application fee at closing and, on an open end loan, an annual fee of \$50 or 1% of the line of credit, whichever is less.

With respect to consumer lenders, the bill:

1. permits consumer lenders to make closed- and open-end loans with a fixed or variable interest rate, and specifies the conditions which have to be met under both; and
2. permits certain charges including, but not limited to: an amount actually paid a public official for recording of a security interest in connection with security given with a loan; amounts for credit insurance; returned check fee; and an annual fee on open-end accounts, which may not exceed an amount equal to one percent of the line of credit or \$50, whichever is less;

The bill sets an expiration date for existing licenses, so that all licenses will expire on July 1, 1997, and have to be renewed to begin the next biennial license period on July 1, 1997, and provides a refund to those licensees whose existing licenses extend beyond July 1, 1997.

This bill changes current law in the following ways: it provides for a simpler and more rational licensing and regulation procedure for the Department of Banking and Insurance in connection with the four businesses for which lenders may be licensed; it provides a changed license fee schedule to take into consideration that a person may be licensed to engage in more than one of these businesses; it provides

that the net worth and liquid asset requirements are not cumulative if a person seeks to be licensed in more than one business; it places in statute, but does not change, the net worth requirements for mortgage bankers, correspondent mortgage bankers, and mortgage brokers; removes the statutory requirement that branch offices of licensees have to have a licensee in that office for supervisory purposes, but authorizes the commissioner by regulation to require such supervision; permits secondary lenders to charge an application fee at closing and, on open end loans, an annual fee, the amount of which cannot exceed \$50 or one percent of the line of credit, whichever is less; provides that a secondary lender may change the rate of interest on a variable rate closed-end loan after the first six months of the loan instead of after the first 12 months; and provides for an administrative penalty against consumer lenders who violate the new act's provisions.

The committee amended the bill to insure that the language in the bill exempting builders who secure first mortgages for their own construction or for sale of their own construction is the same as the language currently found in section 2 of P.L.1981, c.18 (C.17:11B-2).



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-004

TRENTON, NJ 08625

CONTACT: Becky Taylor
Jayne Rebovich
609-777-2600

RELEASE: Wed., Jan. 8, 1997

Gov. Christie Whitman today signed legislation which simplifies and consolidates lender licensing procedures as recommended by the Strategy To Advance Regulatory Reform (STARR) report. She also signed legislation concerning insurance practices.

The Governor signed the New Jersey Licensed Lenders Act which simplifies procedures for four licensed professions: mortgage bankers; secondary mortgage lenders; consumer loan lenders; and sales finance lenders.

"This legislation will encourage business development and expansion by reducing administrative burdens placed on both the license holder and the regulatory agency," said Gov. Whitman. "It implements one of the recommendations of the STARR report, and brings us another step forward in streamlining the regulatory process and stimulating the economy."

Many of the licensed professionals listed above hold multiple licenses and must complete a separate application and submit a separate license fee for each license received. This bill will greatly reduce administrative costs by consolidating the licensing process and allowing an individual to file for one license to engage in multiple activities. The consolidation will be revenue neutral. The fee for the combined license will be equal to the fees normally charged for separate licenses.

A-2513 was sponsored by Assembly Members Christopher Bateman (R-Morris/Somerset) and Neil Cohen (D-Union).

Gov. Whitman also signed the following the bills:

S-933, sponsored by Senator Gerald Cardinale, clarifies accounting treatment of certain dividends paid, from subsidiary to parent company, by certain domesticated insurers.

A-810, sponsored by Assembly Members Clare Farragher (R-Monmouth) and Paul Kramer (R-Mercer/Middlesex), adopts model language developed by the National Association of Insurance Commissioners to establish a deadline for filing claims and requires exhaustion of other policies in regard to claims against certain insurance guaranty funds.