

17:10-5 ET AL.

LEGISLATIVE HISTORY CHECKLIST
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(Consumer loans--amendments)

NJSA: 17:10-15 ET AL.

LAWS OF: 1993 **CHAPTER:** 260

BILL NO: A2522/A1966

SPONSOR(S) Penn and others

DATE INTRODUCED: May 10, 1993

COMMITTEE: **ASSEMBLY:** Financial Institutions
SENATE: ---

AMENDED DURING PASSAGE: Yes Assembly committee substitute enacted

DATE OF PASSAGE: **ASSEMBLY:** June 17, 1993
SENATE: June 28, 1993

DATE OF APPROVAL: August 16, 1993

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: No

HEARINGS: No

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2522 and 1966

STATE OF NEW JERSEY

ADOPTED MAY 17, 1993

Sponsored by Assemblymen PENN, ROBERTS and GAFFNEY

1 AN ACT concerning certain licensed lenders and amending
2 various parts of the statutory law.

3

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

6 1. R.S.17:10-5 is amended to read as follows:

7 17:10-5. (a) [Investigation of application. Upon the filing of
8 such application and the payment of such fees, the commissioner
9 shall investigate the facts concerning the application and the
10 requirements provided for in subsection (b) of this section.
11 Within 20 days after the filing of such application, he shall mail a
12 notice of the receipt of the application to each licensee having a
13 place of business in the county where the applicant proposes to do
14 business. Every applicant shall within 10 days from the filing of
15 the application cause to be published a notice of the application
16 in a newspaper, designated by the commissioner, which has
17 general circulation in the county in which the applicant proposes
18 to do business and in the form prescribed by the commissioner. If
19 objections to the issuance of the license are filed with the
20 commissioner within 10 days after notice of the application has
21 been mailed by the commissioner, he may designate a time and
22 place for a hearing, which time shall not be less than 30 days nor
23 more than 90 days after the 10-day limitation for filing
24 objections has expired.](Deleted by amendment, P.L. , c.).

25 (b) Issuance of license. If the commissioner, upon the filing of
26 the application and payment of the fees, finds that the financial
27 responsibility, experience, character and general fitness of the
28 applicant and members thereof if the applicant is a copartnership
29 or association, and of the officers and directors thereof if the
30 applicant is a corporation, are such as to command the
31 confidence of the community and to warrant belief that the
32 business will be operated honestly, fairly and efficiently within
33 the purposes of this chapter and that the applicant has a net
34 worth of at least \$100,000.00 and has available for the purpose of
35 making loans under this chapter at the specified location liquid
36 assets of at least \$100,000.00, except that an applicant who holds
37 a license pursuant to this chapter on the effective date of this
38 1989 amendatory act shall not be required to have a net worth of
39 at least \$100,000.00 and have available liquid assets of at least
40 \$100,000.00 for the purpose of making loans under this chapter at
41 the location specified in the application until five years after the

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

Matter underlined thus is new matter.

1 effective date of this 1989 amendatory act, then he shall
2 thereupon issue and deliver a license to the applicant to make
3 loans in accordance with this chapter at the location specified in
4 the application. The license shall remain in full force and effect
5 until it is surrendered by the licensee or revoked or suspended as
6 hereinafter provided.

7 If the commissioner shall not so find he shall not issue the
8 license and he shall notify the applicant of the denial and return
9 to the applicant the appointment for service of process and the
10 sum paid by the applicant as a license fee, retaining the
11 investigation and application fees to cover the costs of
12 investigating and processing the application. The commissioner
13 shall approve or deny every application for license hereunder
14 within 180 days from the hearing, if any, but if there shall be no
15 hearing then within 90 days after the 10-day limitation for filing
16 objections has expired.

17 (cf: P.L.1989, c.38, s.4)

18 2. R.S.17:10-12 is amended to read as follows:

19 17:10-12. The licensee shall keep and use in his business, in
20 form satisfactory to the commissioner, such books, accounts, and
21 records as will enable the commissioner to determine whether the
22 licensee is complying with the provisions of this chapter and with
23 the rules and regulations lawfully made by the commissioner
24 hereunder. Every licensee shall preserve the books, accounts, and
25 records, including cards used in the card system, if any, for at
26 least two years after making the final entry on any loan recorded
27 therein, but in the case of an open-end loan, the two-year period
28 shall be measured from the date of each entry.

29 Each licensee shall annually on or before February first file a
30 report with the commissioner giving such information as the
31 commissioner requires concerning the business and operations
32 during the preceding calendar year of each licensed place of
33 business conducted by the licensee in this state. The report shall
34 be made under oath or affirmation and shall be in the form
35 prescribed by the commissioner, who shall make and publish
36 annually an analysis and recapitulation of the reports.

37 (cf: R.S.17:10-12)

38 3. R.S.17:10-13 is amended to read as follows:

39 17:10-13. Restrictions Upon Licensee; Contract Provisions for
40 Payments in Installments.

41 No licensee shall advertise, print, display, publish, distribute,
42 telecast or broadcast, or permit to be advertised, printed,
43 displayed, published, distributed, telecast or broadcast, any
44 statement or representation which refers to the supervision by
45 the State of the business licensed hereunder. No licensee or any
46 other person shall knowingly in any such manner make or permit
47 to be made any statement or representation with regard to the
48 rates, terms, or conditions for making loans in the sum of
49 \$15,000.00 or less, which is false, misleading, or deceptive.

50 No licensee shall make any loan upon security of any
51 assignment of or order for the payment of any salary, wages,
52 commissions or other compensation for services earned, or to be
53 earned, nor shall any such assignment or order be taken by a
54 licensee at any time in connection with any loan, or for the

1 enforcement of repayment thereof, and any such assignment or
2 order hereafter so taken or given to secure any loan made by any
3 licensee under this chapter shall be void and of no effect.

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

7 No licensee shall conduct the business of making loans under
8 the provisions of this chapter within any office, room, or place of
9 business in which any other business is solicited or engaged in, or
10 in association or conjunction therewith, except as may be
11 authorized in writing by the commissioner. If a licensee conducts
12 the business of making loans under the provisions of this act in
13 any office, room or place of business in which it conducts other
14 business properly authorized by the commissioner, the limitations
15 of R.S.17:10-14 shall not apply to the other business, but only to
16 loans made and activities engaged in under the provisions of the
17 "Consumer Loan Act," R.S.17:10-1 et seq.

18 No licensee shall transact such business or make any loan
19 provided for by this chapter under any other name or at any other
20 place of business than that named in the license.

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

24 Every loan contract, other than an open-end loan contract,
25 shall provide for repayment of principal and interest combined in
26 installments which shall be payable at approximately equal
27 periodic intervals of time and which shall be so arranged that no
28 installment is substantially greater in amount than any preceding
29 installment, except that the repayment schedule may reduce or
30 omit such installments when necessary because of the seasonal
31 nature of the borrower's income.

32 (cf: P.L.1989, c.38, s.7)

33 4. R.S.17:10-14 is amended to read as follows:

34 17:10-14. Notwithstanding the provisions of R.S.31:1-1 or any
35 other law to the contrary, every licensee hereunder may loan any
36 sum of money not exceeding \$15,000.00 repayable in installments,
37 and may charge, contract for and receive thereon interest at an
38 annual percentage rate or rates agreed to by the licensee and the
39 borrower.

40 A closed-end loan contract may provide for a variation in the
41 rate of interest in which adjustments to the interest rate shall
42 correspond directly to the movement of an interest rate index
43 which is readily available to and verifiable by the borrower and is
44 beyond the control of the lender. No increase during the entire
45 loan term shall result in an interest rate of more than 6% per
46 annum over the rate applicable initially, nor shall the rate be
47 raised more than 3% per annum during any 12-month period. The
48 lender shall not be obligated to decrease the interest rate more
49 than 6% over the term of the loan, nor more than 3% per annum
50 during any 12-month period. If a rate increase is applied to the
51 loan, the lender shall also be obligated to adopt and implement
52 uniform standards for decreasing the rate. If the contract
53 provides for the possibility of an increase or decrease, or both, in
54 the rate, that fact shall be clearly described in plain language, in

1 at least 8-point bold face type on the face of the contract. No
2 rate increase shall take effect during the first three years of the
3 term of the loan, or thereafter, (a) unless at least 90 days prior to
4 the effective date of the first such increase, or 30 days prior to
5 the effective date of any subsequent increase, a written notice
6 has been mailed or delivered to the borrower that clearly and
7 conspicuously describes such increase, and (b) unless at least 365
8 days have elapsed without any increase in the rate. No increase
9 during the entire loan shall result in an interest rate of more than
10 6% per annum over the rate applicable initially, nor shall the rate
11 be raised more than 3% per annum during any 12-month period.
12 Where the loan contract so provides for an increase or decrease
13 in the rate of interest, the provision of R.S.17:10-13 requiring
14 that no installment be substantially greater in amount than any
15 preceding installment shall not apply.

16 An open-end loan agreement may provide that the lender may
17 at any time, or from time to time, change the terms of the
18 agreement, including the terms governing the periodic interest
19 rate, calculation of interest or the method of computing the
20 required amount of periodic installment payments, provided
21 however, that:

22 a. the periodic interest rate shall not be changed more than
23 once in each billing cycle;

24 b. any change in the periodic interest rate shall correspond to
25 the movement of a market interest rate index specified in the
26 agreement which is readily verifiable by the borrower and beyond
27 the control of the lender;

28 c. a change in any term of the agreement including the
29 periodic interest rate may be permitted to apply to any
30 then-outstanding unpaid indebtedness in the borrower's account
31 including any indebtedness which shall have arisen from advances
32 obtained prior to the effective date of the change, provided that
33 fact is clearly and conspicuously disclosed in the agreement;

34 d. if the agreement provides for the possibility of change in
35 any term of the agreement including the rate, that fact shall be
36 clearly described in plain language, in at least 8-point bold face
37 type on the face of the written notice; and

38 e. no change in any term of the agreement or of the index
39 specified in the agreement shall be effective unless: (1) at least
40 30 days prior to the effective date of the change, a written
41 notice has been mailed or delivered to the borrower that clearly
42 and conspicuously describes the change and the indebtedness to
43 which it applies and states that the incurrence by the borrower or
44 another person authorized by him of any further indebtedness
45 under the law to which the agreement relates on or after the
46 effective date of the change specified in the notice shall
47 constitute acceptance of the change; and (2) either the borrower
48 agrees in writing to the change or the borrower or another person
49 authorized by him incurs such further indebtedness on or after
50 the effective date of the change stated in such notice, which
51 indebtedness may include outstanding balances.

52 The lender shall notify each affected borrower of any change in
53 the manner set forth in the closed-end and open-end agreement
54 governing the plan and in compliance with the requirements of

1 the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and
2 regulations promulgated thereunder, as in effect from time to
3 time, if applicable.

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

14 No interest shall be paid, deducted, or received in advance.
15 Interest shall not be compounded and shall be computed only on
16 unpaid principal balances. For the purpose of computing interest,
17 all installment payments shall be applied on the date of receipt,
18 and interest shall be charged for the actual number of days
19 elapsed at the daily rate of 1/365 of the yearly rate.

20 No licensee shall induce or permit any person nor any husband
21 and wife, jointly or severally, to become obligated, directly or
22 contingently or both, under more than one contract of loan at the
23 same time for the purpose of obtaining a higher rate of interest
24 than would otherwise be permitted by this section. This
25 prohibition shall not apply to any loan made pursuant to any other
26 law of this State.

27 In addition to the interest herein provided for no further or
28 other charge, or amount whatsoever for any examination, service,
29 brokerage, commission, expense, fee, or bonus or other thing or
30 otherwise shall be directly or indirectly charged, contracted for,
31 or received, except (1) amounts for insurance obtained or
32 provided by the licensee in accordance with the provisions of this
33 chapter; [and] (2) on actual sale of the security in foreclosure
34 proceedings or upon the entry of judgment; and (3) a returned
35 check fee not to exceed \$20 which the licensee may charge the
36 borrower if a check of the borrower is returned to the licensee
37 uncollected due to insufficient funds in the borrower's account.
38 If any interest, consideration or charges in excess of those
39 permitted by this chapter are charged, contracted for or
40 received, except as the result of a good faith error, the contract
41 of loan shall be void and the licensee shall have no right to
42 collect or receive any principal, interest, or charges whatsoever,
43 and the borrower shall be entitled to recover from the lender any
44 such sums paid or returned to the lender by the borrower on
45 account of or in connection with the loan.

46 (cf: P.L.1989, c.38, s.8)

47 5. Section 6 of P.L.1979, c.493 (C.17:10-14.3) is amended to
48 read as follows:

49 6. a. No closed-end loan in an amount of [~~\$1,000.00~~] \$1,000 or
50 less shall be made for a greater period of time than 36 months
51 and 15 days.

52 b. No closed-end loan in an amount in excess of [~~\$1,000.00~~]
53 \$1,000, but not exceeding [~~\$2,500.00~~] \$2,500, shall be made for a
54 greater period of time than 48 months and 15 days.

1 c. No closed-end loan in an amount in excess of [\$2,500.00]
2 \$2,500, but not exceeding \$5,000, shall be made for a greater
3 period of time than 60 months and 15 days.

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

7 e. No closed-end loan in an amount in excess of \$10,000 shall
8 be made for a greater period of time than 120 months and 15 days.
9 (cf: P.L.1979, c.493, s.6)

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

11 17:10-21. Violation a [misdemeanor] crime of the fourth
12 degree; contract void. A person, copartnership, association, or
13 corporation and the several members, officers, directors, agents,
14 and employees thereof, who shall violate or participate in the
15 violation of any provision of [sections] R.S.17:10-2, 17:10-12,
16 17:10-13, 17:10-14, 17:10-15 or 17:10-20 [of this title] or section
17 1 of P.L.1962, c.159 (C.17:10-14.1), section 1 of P.L.1983, c.348
18 (C.17:10-14.1a), sections 5 and 6 of P.L.1979, c.493 (C.17:10-14.2
19 and 17:10-14.3), shall be guilty of a [misdemeanor] crime of the
20 fourth degree.

21 A contract of loan not invalid for any other reason, in the
22 making or collection of which any act shall have been done which
23 constitutes a [misdemeanor] crime of the fourth degree under this
24 section, shall be void and the lender shall have no right to collect
25 or receive any principal, interest or charges unless the act was
26 the result of a good faith error, including a good faith error made
27 as a result of a licensee's acting in conformity with a rule or
28 regulation of the commissioner which is later held to be invalid or
29 in violation of R.S. 17:10-1 et seq. by a judgment by a court of
30 competent jurisdiction, and the licensee notifies the borrower of
31 the error within 90 days after discovering it and makes
32 adjustments in the account necessary to assure that the borrower
33 will not be required to pay any interest, costs, or other charges
34 which aggregate in excess of the charges permitted under
35 R.S.17:10-1 et seq.

36 (cf: P.L.1979, c.493, s.11)

37 7. Section 20 of P.L.1987, c.230 (C.17:11A-44.8) is amended to
38 read as follows:

39 20. Notwithstanding the provisions of R.S.31:1-1 or any other
40 law to the contrary, and subject to all applicable provisions of
41 this act, a licensee shall have authority to make open-end loans [,
42 and may charge, contract for, and receive thereon, interest at an
43 annual percentage rate agreed to by the licensee and the
44 borrower,] under P.L.1970, c.205 (C.17:11A-34 et seq.) and also
45 upon the same terms and conditions permitted to banks, savings
46 banks, and savings and loan associations pursuant to State and
47 federal laws and regulations promulgated thereunder, and may
48 charge, contract for, and receive thereon, interest at an annual
49 percentage rate agreed to by the licensee and the borrower.

50 (cf: P.L.1987, c.230, s.20)

51 8. Section 21 of P.L.1987, c.230 (C.17:11A-44.9) is amended to
52 read as follows:

53 21. Licensees shall have authority to collect fees for title
54 examination, abstract of title, survey, title insurance, credit

1 reports, appraisals, and recording fees when those fees are
2 actually paid by the licensee to a third party for those services or
3 purposes and to include those fees in the amount of the loan
4 principal. Licensees shall also have the authority to charge and
5 collect [check collection charges in the amount charged to the
6 licensee] a returned check fee in an amount not to exceed \$20
7 which the licensee may charge the borrower if a check of the
8 borrower is returned to the licensee uncollected due to
9 insufficient funds in the borrower's account. Licensees shall also
10 have the authority to charge and collect a late charge in any
11 amount as may be provided in the note or loan agreement, but no
12 late charge shall exceed 5% of the amount of payment in
13 default. Not more than one late charge shall be assessed on any
14 one payment in arrears.

15 (cf: P.L.1987, c.230, s.21)

16 9. Section 12 of P.L.1970, c.205 (C.17:11A-45) is amended to
17 read as follows:

18 12. A secondary mortgage loan licensee shall:

19 a. (Deleted by amendment, P.L.1987, c.230.)

20 b. (Deleted by amendment, P.L.1987, c.230.)

21 c. (Deleted by amendment, P.L.1987, c.230.)

22 d. Maintain a net worth of \$150,000 at all times; except that
23 licensees licensed prior to March 31, 1981 shall maintain a net
24 worth of \$50,000, until five years from July 31, 1987, at which
25 time the licensee shall be required to prove and maintain at all
26 times a net worth of at least \$100,000, and except that licensees
27 licensed prior to the effective date of P.L.1992, c.20, shall
28 maintain the net worth required of them prior to that date until
29 three years from the effective date of P.L.1992, c.20, at which
30 time the licensee shall be required to prove and maintain at all
31 times a net worth of at least \$150,000.

32 e. Maintain at his place of business in this State an original,
33 true, xerographic or electronic copy of the following instruments,
34 documents, accounts, books and records:

35 (1) Promissory note or loan agreement evidencing each
36 borrower's secondary mortgage loan indebtedness.

37 (2) Mortgage, indenture or any other similar instrument or
38 document which creates a lien on the real property which is taken
39 as security for a secondary mortgage loan.

40 (3) Any insurance policies or certificates of insurance where
41 such insurance is obtained in accordance with section 2 of
42 P.L.1983, c.348 (C.17:11A-49.1).

43 (4) Closing statement for each secondary mortgage loan.

44 (5) Appraisal, survey, title examination, title insurance policy,
45 abstract of title, credit report or search, where utilized.

46 (6) Individual ledger card or any other form of record which
47 shows all installment payments made by the borrower and all
48 other charges or credits to the borrower's account.

49 (7) Individual file in which the borrower's application for a
50 loan and any correspondence, including collection letters,
51 memorandums, notes or any other written information pertaining
52 to the borrower's account, shall be kept.

53 (8) Accounts, books and records as shall be required by the
54 commissioner in order to ascertain whether the licensee has been

1 conducting his secondary mortgage loan business in full
2 compliance with the provisions of this act.

3 All of the aforementioned instruments, documents, accounts,
4 books and records shall be preserved and kept available for
5 investigation or examination by the commissioner for at least two
6 years after a secondary mortgage loan has been paid in full, but
7 in the case of an open-end loan, the two-year period is measured
8 from the date of each entry. The provisions of this section shall
9 not apply to any instrument, document, account, book or record
10 which is assigned, sold or transferred to another secondary
11 mortgage loan licensee nor shall the two-year requirement apply
12 to an instrument or document which must be returned to the
13 borrower at the time a secondary mortgage loan is paid in full.

14 f. Annually, before February 1, file a report with the
15 commissioner which shall set forth such information as the
16 commissioner shall require concerning the business conducted as
17 a licensee during the preceding calendar year. The report shall
18 be in writing, under oath and on a form provided by the
19 commissioner.

20 g. Be subject to an examination by the commissioner, not more
21 than once in any 18 month period, unless the commissioner has
22 reason to believe that the licensee is not complying with the
23 provisions of P.L.1970, c.205 (C.17:11A-34 et seq.) or any rule or
24 regulation promulgated thereunder, at which time the
25 commissioner shall have free access, during regular business
26 hours, to the licensee's place or places of business in this State
27 and to all instruments, documents, accounts, books and records
28 which pertain to the licensee's secondary mortgage loan
29 business. The cost of any such examination shall be borne by the
30 licensee.

31 h. In the event a borrower's application for a secondary
32 mortgage loan is denied, notify the borrower, in writing, of said
33 denial and, provided further, the name of any such borrower or a
34 list of any such borrowers shall not be referred by the licensee, in
35 any manner whatsoever, to any other lender, retail seller of
36 personal property or services or to any other person, whether in
37 this or any other state.

38 i. If a secondary mortgage loan is not consummated, return all
39 documents executed by or belonging to the borrower.

40 j. Give to the borrower, without charge, a copy of every
41 instrument, document or other writing the borrower signs.

42 k. Give to the borrower, without charge, written evidence of
43 any insurance obtained in accordance with section 16 of P.L.1970,
44 c.205 (C.17:11A-49).

45 l. Give to the borrower, without charge, at the time a
46 closed-end loan is made, and at the time of the first advance on
47 an open-end loan, a closing statement which itemizes the
48 individual amounts disbursed to or on behalf of the borrower,
49 including, but not limited to, the premium for insurance, if any,
50 the total amount of the funds so disbursed, the amount of the
51 interest charge, total amount of the loan, the amount, number
52 and due date of the installment payments and the interest charge
53 expressed as an annual percentage rate, as applicable.

54 m. When a payment is made in cash on an account of a

1 secondary mortgage loan, give to the borrower, without charge,
2 at the time such payment is actually received, a written receipt
3 which shall show the name and address of the licensee, the name
4 and address of the borrower, account number or other
5 identification mark or symbol, date and amount paid.

6 n. With respect to closed-end loans, upon written request from
7 the borrower, give or forward to the borrower, without charge,
8 within five days from the date of receipt of such request, a
9 written statement of the borrower's account which shall show
10 the dates and amounts of all installment payments credited to the
11 borrower's account, the dates, amounts and an explanation of all
12 other charges or credits to the account and the unpaid balance
13 thereof. A licensee shall not be required to furnish more than
14 two such statements in any 12-month period.

15 o. When a closed-end loan is paid in full, or when an open-end
16 loan is paid in full and the borrower has notified the licensee in
17 writing to discontinue his account with the licensee:

18 (1) Refund or credit to the borrower, in accordance with
19 regulations promulgated by the Commissioner of Insurance, any
20 unearned portion of the premium for any insurance, if a premium
21 for such insurance was disbursed on behalf of the borrower at the
22 time the secondary mortgage loan was originally made.

23 (2) Stamp or write on the face of the promissory note or loan
24 agreement evidencing the borrower's secondary mortgage loan
25 indebtedness "Paid in Full" or "Cancelled," the date paid and the
26 name and address of the licensee and, within 45 days, return the
27 promissory note or loan agreement to the borrower.

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

40 p. No provision of P.L.1970, c.205 (C.17:11A-34 et seq.) shall
41 be deemed to prohibit the licensee from engaging in other
42 business activities with a borrower, provided that such activities
43 are not made a condition of the extension of credit by the
44 licensee and provided that the activity has been approved by the
45 commissioner by regulation and such other business activity is
46 conducted in conformity with the regulation. The commissioner
47 may, upon notice and hearing, order a licensee to cease and desist
48 from engaging in any activity which violates this section or any
49 other section of P.L.1970, c.205 (C.17:11A-34 et seq.).

50 (cf: P.L.1992, c.20, s.2)

51 10. Section 13 of P.L.1970, c.205 (C.17:11A-46) is amended to
52 read as follows:

53 13. A secondary mortgage loan licensee shall not:

54 a. Transact any business subject to the provisions of this act

1 under any other name or at any other location except that
2 designated in his license. For the purpose of this section, the
3 transaction of business includes, but is not limited to, the signing
4 of any instrument, document or any other form by the borrower,
5 except that a borrower's application for a secondary mortgage
6 loan need not be signed in the office of the licensee and that a
7 secondary mortgage loan need not be closed at the office of a
8 licensee provided that it is closed in New Jersey at the office of
9 an attorney admitted to practice in this State. A licensee who
10 changes his name or place of business shall immediately notify
11 the commissioner who shall issue a certificate to the licensee,
12 which shall specify the licensee's new name or address.

13 b. Photocopy or otherwise reproduce his license.

14 c. Request that a borrower incorporate in connection with a
15 secondary mortgage loan or aid or abet such a scheme.

16 d. Make a secondary mortgage loan which has been referred by
17 a retail seller, who, in connection with such referral, has required
18 the borrower to purchase personal property or services or has
19 indicated that such purchase is necessary as a condition
20 precedent for such loan.

21 e. Charge an application fee or make any other charge or
22 accept an advance deposit prior to the time a secondary
23 mortgage loan is closed.

24 f. Require or accept from a borrower any collateral or
25 security for a secondary mortgage loan other than a mortgage,
26 indenture or any other similar instrument or document which
27 creates a lien upon any real property or an interest in real
28 property including, but not limited to, shares of stock in a
29 cooperative corporation.

30 g. Contract for, charge, receive or collect directly or
31 indirectly, any of the following in connection with a secondary
32 mortgage loan: a broker's or finder's fee; commission; expense;
33 fine; penalty; premium, or any other thing of value other than the
34 charges authorized by this act; except the expenses incurred on
35 actual sale of the real property in foreclosure proceedings or
36 upon the entry of judgment, which are otherwise authorized by
37 law; provided, however, that:

38 (1) a licensee may require a borrower to pay a reasonable legal
39 fee at the time of the execution of the secondary mortgage loan,
40 provided any such legal fee shall represent a charge actually
41 incurred in connection with said secondary mortgage loan and
42 shall not be paid to a person except an attorney authorized to
43 practice law in this State; provided, further, that such legal fee
44 shall be evidenced by a statement from such attorney issued to
45 the licensee; and

46 (2) a licensee may charge and receive no more than three
47 discount points computed as a percentage of the amount of the
48 loan and may add such discount points to the principal balance of
49 the loan which discount points shall be fully earned when the loan
50 is made and shall be included in the finance charge and disclosed
51 to the borrower as required under the truth in lending provisions
52 of the Consumer Credit Protection Act, 15 U.S.C. §1601 et seq.
53 The annual percentage rate charged to the borrower, including
54 the discount points, if any, disclosed under this paragraph (2),

1 shall be subject to N.J.S.2C:21-19. As used in this paragraph (2),
2 "discount point" means one per cent of the amount of credit to
3 be extended to the borrower.

4 h. Assign, sell or transfer a secondary mortgage loan to a
5 person other than a banking institution as defined in section 1 of
6 P.L.1948, c.67 (C.17:9A-1), association, as defined in section 5 of
7 P.L.1963, c.144 (C.17:12B-5), or another secondary mortgage loan
8 licensee, the Federal National Mortgage Association created
9 pursuant to section 302 of the National Housing Act, 48 Stat.
10 1246 (12 U.S.C. §1717), the Federal Home Loan Mortgage
11 Corporation created pursuant to section 303 of the "Federal
12 Home Loan Mortgage Corporation Act," Pub.L. 91-351 (12 U.S.C.
13 §1452), or other persons or entities as from time to time
14 approved by the commissioner to facilitate and assure the steady
15 flow of secondary mortgage funds into the State. Notwithstanding
16 any other provisions of this act, such persons or entities need not
17 be licensed under the act to purchase or accept such an
18 assignment or transfer of a secondary mortgage loan.

19 i. Solicit secondary mortgage loan business through any other
20 person by paying, directly or indirectly, for such business referred
21 to the licensee by any such person, except [as described in
22 subsection j. of this section] that a licensee may solicit
23 secondary mortgage loan business on behalf of another licensee or
24 lender expressly authorized to make secondary mortgage loans in
25 this State if (1) such solicitation results in no additional cost or
26 expense to the borrower; and (2) the application and all
27 advertising in connection therewith clearly disclose the identity
28 of the person or entity which will be making the loan. If those
29 conditions are met, a licensee may collect a fee or a commission
30 from the lender as consideration for the solicitation.

31 j. [Solicit business, directly or indirectly, for any other
32 licensee, lender, retail seller of personal property or services or
33 for any other person, whether in this or any other state, except
34 that a licensee may solicit on behalf of another licensee or lender
35 expressly authorized to make secondary mortgage loans in this
36 State if (1) such solicitation results in no additional cost or
37 expense to the borrower; and (2) the application and all
38 advertising in connection therewith clearly disclose the identity
39 of the person or entity which will be making the loan. If those
40 conditions are met, a licensee may collect a fee or a commission
41 from the lender as consideration for the solicitation.](Deleted by
42 amendment, P.L. , c.).

43 k. Advertise, cause to be advertised or otherwise solicit
44 whether orally, in writing, by telecast, by broadcast or in any
45 other manner:

46 (1) That he is licensed by, or that his business is under the
47 supervision of, the State of New Jersey or the Department of
48 Banking, except that a licensee may advertise that he is "licensed
49 pursuant to the 'Secondary Mortgage Loan Act'"; provided,
50 however, that for the purpose of raising capital, no such
51 advertisement shall be permitted if it is to be used in connection
52 with a public solicitation for such funds.

53 (2) Any name, address or telephone number other than the
54 licensee's own name, address and telephone number in this State,

1 except as permitted in paragraph (3) of this subsection.

2 (3) The word "bank" or any term inferring that the licensee is
3 or is associated with a bank provided, however, that nothing in
4 this paragraph shall be deemed to prohibit a licensee which is
5 owned by or affiliated with a banking institution, as defined
6 pursuant to section 1 of P.L.1948, c.67 (C.17:9A-1), or a holding
7 company which owns or controls a banking institution from using
8 the name of the banking institution or the holding company in its
9 advertising.

10 (4) The amount of the interest to be charged, unless such
11 charge is also expressed as an annual percentage rate.

12 (5) Any statement or representation which is false, misleading
13 or deceptive and, provided further, a written or other visual
14 advertisement shall include the licensee's name, address and
15 telephone number in this State and the phrase "Secondary
16 Mortgage Loans" in 10-point bold type or larger.

17 (6) Any statement or representation that the licensee will
18 provide "immediate approval" of a loan application or
19 "immediate closing" of a loan or will afford unqualified access to
20 credit.

21 l. Make or offer to make any secondary mortgage loan which
22 would not be a prudent loan.

23 (cf: P.L.1992, c.20, s.3)

24 11. Section 23 of P.L.1987, c.230 (C.17:11A-59.2) is amended
25 to read as follows:

26 23. A licensee shall have no liability for unintentional error if
27 within 90 days after discovering an error the licensee notifies the
28 borrower of the error and makes adjustments in the account as
29 necessary to assure that the borrower will not be required to pay
30 any interest, costs, or other charges which aggregate in excess of
31 the charges permitted under the "Secondary Mortgage Loan Act,"
32 P.L.1970, c.205 (C.17:11A-34 et seq.). The discovery of an
33 unintentional error within the meaning of this section shall
34 include an entry of a judgment by a court of competent
35 jurisdiction holding that a rule or regulation with which the
36 licensee acted in conformity was invalid or in violation of
37 P.L.1970, c.205 (C.17:11A-34 et seq.) and a licensee shall have no
38 liability for such unintentional error if the licensee takes the
39 actions required upon discovery of an error pursuant to this
40 section within the time stated therein following entry of such a
41 judgment.

42 (cf: P.L.1987, c.230, s.23)

43 12. This act shall take effect immediately.

44

45

46

47

48 Makes certain changes in the "Consumer Loan Act" and the
49 "Secondary Mortgage Loan Act."

ASSEMBLY, No. 2522
STATE OF NEW JERSEY

INTRODUCED MAY 10, 1993

By Assemblymen PENN, ROBERTS, and Gaffney

1 AN ACT concerning "Consumer Loan Act" and "Secondary
2 Mortgage Loan Act" licensees and amending various parts of
3 the statutory law.

4

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

7 1. R.S.17:10-5 is amended to read as follows:

8 17:10-5. (a) [Investigation of application. Upon the filing of
9 such application and the payment of such fees, the commissioner
10 shall investigate the facts concerning the application and the
11 requirements provided for in subsection (b) of this section.
12 Within 20 days after the filing of such application, he shall mail a
13 notice of the receipt of the application to each licensee having a
14 place of business in the county where the applicant proposes to do
15 business. Every applicant shall within 10 days from the filing of
16 the application cause to be published a notice of the application
17 in a newspaper, designated by the commissioner, which has
18 general circulation in the county in which the applicant proposes
19 to do business and in the form prescribed by the commissioner. If
20 objections to the issuance of the license are filed with the
21 commissioner within 10 days after notice of the application has
22 been mailed by the commissioner, he may designate a time and
23 place for a hearing, which time shall not be less than 30 days nor
24 more than 90 days after the 10-day limitation for filing
25 objections has expired.](Deleted by amendment, P.L. , c.).

26 (b) Issuance of license. If the commissioner, upon the filing of
27 the application and payment of the fees, finds that the financial
28 responsibility, experience, character and general fitness of the
29 applicant and members thereof if the applicant is a copartnership
30 or association, and of the officers and directors thereof if the
31 applicant is a corporation, are such as to command the
32 confidence of the community and to warrant belief that the
33 business will be operated honestly, fairly and efficiently within
34 the purposes of this chapter and that the applicant has a net
35 worth of at least \$100,000.00 and has available for the purpose of
36 making loans under this chapter at the specified location liquid
37 assets of at least \$100,000.00, except that an applicant who holds
38 a license pursuant to this chapter on the effective date of this
39 1989 amendatory act shall not be required to have a net worth of
40 at least \$100,000.00 and have available liquid assets of at least
41 \$100,000.00 for the purpose of making loans under this chapter at
42 the location specified in the application until five years after the
43 effective date of this 1989 amendatory act, then he shall

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

Matter underlined thus is new matter.

1 thereupon issue and deliver a license to the applicant to make
2 loans in accordance with this chapter at the location specified in
3 the application. The license shall remain in full force and effect
4 until it is surrendered by the licensee or revoked or suspended as
5 hereinafter provided.

6 If the commissioner shall not so find he shall not issue the
7 license and he shall notify the applicant of the denial and return
8 to the applicant the appointment for service of process and the
9 sum paid by the applicant as a license fee, retaining the
10 investigation and application fees to cover the costs of
11 investigating and processing the application. The commissioner
12 shall approve or deny every application for license hereunder
13 within 180 days from the hearing, if any, but if there shall be no
14 hearing then within 90 days after the 10-day limitation for filing
15 objections has expired.

16 (cf: P.L.1989, c.38, s.4)

17 2. R.S.17:10-12 is amended to read as follows:

18 The licensee shall keep and use in his business, in form
19 satisfactory to the commissioner, such books, accounts, and
20 records as will enable the commissioner to determine whether the
21 licensee is complying with the provisions of this chapter and with
22 the rules and regulations lawfully made by the commissioner
23 hereunder. Every licensee shall preserve the books, accounts, and
24 records, including cards used in the card system, if any, for at
25 least two years after making the final entry on any loan recorded
26 therein, but in the case of an open-end loan, the two-year period
27 shall be measured from the date of each entry.

28 Each licensee shall annually on or before February first file a
29 report with the commissioner giving such information as the
30 commissioner requires concerning the business and operations
31 during the preceding calendar year of each licensed place of
32 business conducted by the licensee in this state. The report shall
33 be made under oath or affirmation and shall be in the form
34 prescribed by the commissioner, who shall make and publish
35 annually an analysis and recapitulation of the reports.

36 (cf: R.S.17:10-12)

37 3. R.S.17:10-13 is amended to read as follows:

38 17:10-13. Restrictions Upon Licensee; Contract Provisions for
39 Payments in Installments.

40 No licensee shall advertise, print, display, publish, distribute,
41 telecast or broadcast, or permit to be advertised, printed,
42 displayed, published, distributed, telecast or broadcast, any
43 statement or representation which refers to the supervision by
44 the State of the business licensed hereunder. No licensee or any
45 other person shall knowingly in any such manner make or permit
46 to be made any statement or representation with regard to the
47 rates, terms, or conditions for making loans in the sum of
48 \$15,000.00 or less, which is false, misleading, or deceptive.

49 No licensee shall make any loan upon security of any
50 assignment of or order for the payment of any salary, wages,
51 commissions or other compensation for services earned, or to be
52 earned, nor shall any such assignment or order be taken by a
53 licensee at any time in connection with any loan, or for the
54 enforcement of repayment thereof, and any such assignment or

1 order hereafter so taken or given to secure any loan made by any
2 licensee under this chapter shall be void and of no effect.

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

6 No licensee shall conduct the business of making loans under
7 the provisions of this chapter within any office, room, or place of
8 business in which any other business is solicited or engaged in, or
9 in association or conjunction therewith, except as may be
10 authorized in writing by the commissioner. If a licensee conducts
11 the business of making loans under the provisions of this act in
12 any office, room or place of business in which it conducts other
13 business properly authorized by the commissioner, the limitations
14 of R.S.17:10-14 shall not apply to the other business, but only to
15 loans made and activities engaged in under the provisions of the
16 "Consumer Loan Act," R.S.17:10-1 et seq.

17 No licensee shall transact such business or make any loan
18 provided for by this chapter under any other name or at any other
19 place of business than that named in the license.

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

23 Every loan contract, other than an open-end loan contract,
24 shall provide for repayment of principal and interest combined in
25 installments which shall be payable at approximately equal
26 periodic intervals of time and which shall be so arranged that no
27 installment is substantially greater in amount than any preceding
28 installment, except that the repayment schedule may reduce or
29 omit such installments when necessary because of the seasonal
30 nature of the borrower's income.

31 (cf: P.L.1989, c.38, s.7)

32 4. R.S.17:10-14 is amended to read as follows:

33 17:10-14. Notwithstanding the provisions of R.S.31:1-1 or any
34 other law to the contrary, every licensee hereunder may loan any
35 sum of money not exceeding \$15,000.00 repayable in installments,
36 and may charge, contract for and receive thereon interest at an
37 annual percentage rate or rates agreed to by the licensee and the
38 borrower.

39 A closed-end loan contract may provide for a variation in the
40 rate of interest in which adjustments to the interest rate shall
41 correspond directly to the movement of an interest rate index
42 which is readily available to and verifiable by the borrower and is
43 beyond the control of the lender. No increase during the entire
44 loan term shall result in an interest rate of more than 6% per
45 annum over the rate applicable initially, nor shall the rate be
46 raised more than 3% per annum during any 12-month period. The
47 lender shall not be obligated to decrease the interest rate more
48 than 6% over the term of the loan, nor more than 3% per annum
49 during any 12-month period. If a rate increase is applied to the
50 loan, the lender shall also be obligated to adopt and implement
51 uniform standards for decreasing the rate. If the contract
52 provides for the possibility of an increase or decrease, or both in
53 the rate, that fact shall be clearly described in plain language, in
54 at least 8-point bold face type on the face of the contract. No

1 rate increase shall take effect during the first three years of the
2 term of the loan, or thereafter, (a) unless at least 90 days prior to
3 the effective date of the first such increase, or 30 days prior to
4 the effective date of any subsequent increase, a written notice
5 has been mailed or delivered to the borrower that clearly and
6 conspicuously describes such increase, and (b) unless at least 365
7 days have elapsed without any increase in the rate. No increase
8 during the entire loan shall result in an interest rate of more than
9 6% per annum over the rate applicable initially, nor shall the rate
10 be raised more than 3% per annum during any 12-month period.
11 Where the loan contract so provides for an increase or decrease
12 in the rate of interest, the provision of R.S.17:10-13 requiring
13 that no installment be substantially greater in amount than any
14 preceding installment shall not apply.

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

21 a. the periodic interest rate shall not be changed more than
22 once in each billing cycle;

23 b. any change in the periodic interest rate shall correspond to
24 the movement of a market interest rate index specified in the
25 agreement which is readily verifiable by the borrower and beyond
26 the control of the lender;

27 c. a change in any term of the agreement including the
28 periodic interest rate may be permitted to apply to any
29 then-outstanding unpaid indebtedness in the borrower's account
30 including any indebtedness which shall have arisen from advances
31 obtained prior to the effective date of the change, provided that
32 fact is clearly and conspicuously disclosed in the agreement;

33 d. if the agreement provides for the possibility of change in
34 any term of the agreement including the rate, that fact shall be
35 clearly described in plain language, in at least 8-point bold face
36 type on the face of the written notice; and

37 e. no change in any term of the agreement or of the index
38 specified in the agreement shall be effective unless: (1) at least
39 30 days prior to the effective date of the change, a written
40 notice has been mailed or delivered to the borrower that clearly
41 and conspicuously describes the change and the indebtedness to
42 which it applies and states that the incurrence by the borrower or
43 another person authorized by him of any further indebtedness
44 under the law to which the agreement relates on or after the
45 effective date of the change specified in the notice shall
46 constitute acceptance of the change; and (2) either the borrower
47 agrees in writing to the change or the borrower or another person
48 authorized by him incurs such further indebtedness on or after
49 the effective date of the change stated in such notice, which
50 indebtedness may include outstanding balances.

51 The lender shall notify each affected borrower of any change in
52 the manner set forth in the closed-end and open-end agreement
53 governing the plan and in compliance with the requirements of
54 the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and

1 regulations promulgated thereunder, as in effect from time to
2 time, if applicable.

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

13 No interest shall be paid, deducted, or received in advance.
14 Interest shall not be compounded and shall be computed only on
15 unpaid principal balances. For the purpose of computing interest,
16 all installment payments shall be applied on the date of receipt,
17 and interest shall be charged for the actual number of days
18 elapsed at the daily rate of 1/365 of the yearly rate.

19 No licensee shall induce or permit any person nor any husband
20 and wife, jointly or severally, to become obligated, directly or
21 contingently or both, under more than one contract of loan at the
22 same time for the purpose of obtaining a higher rate of interest
23 than would otherwise be permitted by this section. This
24 prohibition shall not apply to any loan made pursuant to any other
25 law of this State.

26 In addition to the interest herein provided for no further or
27 other charge, or amount whatsoever for any examination, service,
28 brokerage, commission, expense, fee, or bonus or other thing or
29 otherwise shall be directly or indirectly charged, contracted for,
30 or received, except (1) amounts for insurance obtained or
31 provided by the licensee in accordance with the provisions of this
32 chapter; [and] (2) on actual sale of the security in foreclosure
33 proceedings or upon the entry of judgment; and (3) check
34 collection charges in the amount charged to the licensee plus a
35 check collection fee not to exceed \$20 which the licensee may
36 charge the borrower if a check of the borrower is returned to the
37 licensee uncollected due to insufficient funds in the borrower's
38 account. If any interest, consideration or charges in excess of
39 those permitted by this chapter are charged, contracted for or
40 received, except as the result of a good faith error, the contract
41 of loan shall be void and the licensee shall have no right to
42 collect or receive any principal, interest, or charges whatsoever,
43 and the borrower shall be entitled to recover from the lender any
44 such sums paid or returned to the lender by the borrower on
45 account of or in connection with the loan.

46 (cf: P.L.1989, c.38, s.8)

47 5. Section 6 of P.L.1979, c.493 (C.17:10-14.3) is amended to
48 read as follows:

49 6. a. No closed-end loan in an amount of [~~\$1,000.00~~] \$1,000 or
50 less shall be made for a greater period of time than 36 months
51 and 15 days.

52 b. No closed-end loan in an amount in excess of [~~\$1,000.00~~]
53 \$1,000, but not exceeding [~~\$2,500.00~~] \$2,500, shall be made for a
54 greater period of time than 48 months and 15 days.

1 c. No closed-end loan in an amount in excess of [\$2,500.00]
2 \$2,500, but not exceeding \$5,000, shall be made for a greater
3 period of time than 60 months and 15 days.

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

7 e. No closed-end loan in an amount in excess of \$10,000 shall
8 be made for a greater period of time than 120 months and 15 days.
9 (cf: P.L.1979, c.493, s.6)

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

11 17:10-21. Violation a [misdemeanor] crime of the fourth
12 degree; contract void. A person, copartnership, association, or
13 corporation and the several members, officers, directors, agents,
14 and employees thereof, who shall violate or participate in the
15 violation of any provision of [sections] R.S. 17:10-2, 17:10-12,
16 17:10-13, 17:10-14, 17:10-15 or 17:10-20 [of this title] or section
17 1 of P.L.1962, c.159 (C.17:10-14.1), section 1 of P.L.1983, c.348
18 (C.17:10-14.1a), sections 5 and 6 of P.L.1979, c.493 (C.17:10-14.2
19 and 17:10-14.3), shall be guilty of a [misdemeanor] crime of the
20 fourth degree.

21 A contract of loan not invalid for any other reason, in the
22 making or collection of which any act shall have been done which
23 constitutes a [misdemeanor] crime of the fourth degree under this
24 section, shall be void and the lender shall have no right to collect
25 or receive any principal, interest or charges unless the act was
26 the result of a good faith error, including a good faith error made
27 as a result of a licensee's acting in conformity with a rule or
28 regulation of the commissioner which is later held to be invalid or
29 in violation of this act by a judgment by a court of competent
30 jurisdiction, and the licensee notifies the borrower of the error
31 within 90 days after discovering it and makes adjustments in the
32 account necessary to assure that the borrower will not be
33 required to pay any interest, costs, or other charges which
34 aggregate in excess of the charges permitted under R.S.17:10-1
35 et seq.

36 (cf: P.L.1979, c. 493, s.11)

37 7. Section 20 of P.L.1987, c. 230 (C.17:11A-44.8) is amended
38 to read as follows:

39 20. Notwithstanding the provisions of R.S. 31:1-1 or any other
40 law to the contrary, and subject to all applicable provisions of
41 this act, a licensee shall have authority to make open-end loans [,
42 and may charge, contract for, and receive thereon, interest at an
43 annual percentage rate agreed to by the licensee and the
44 borrower,] under P.L.1970, c.205 (C.17:11A-34 et seq.) and also
45 upon the same terms and conditions permitted to banks, savings
46 banks, and savings and loan associations pursuant to State and
47 federal laws and regulations promulgated thereunder, and may
48 charge, contract for, and receive thereon, interest at an annual
49 percentage rate agreed to by the licensee and the borrower.

50 (cf: P.L.1987, c.230, s.20)

51 8. Section 21 of P.L.1987, c.230 (C.17:11A-44.9) is amended to
52 read as follows:

53 21. Licensees shall have authority to collect fees for title
54 examination, abstract of title, survey, title insurance, credit

1 reports, appraisals, and recording fees when those fees are
2 actually paid by the licensee to a third party for those services or
3 purposes and to include those fees in the amount of the loan
4 principal. Licensees shall also have the authority to charge and
5 collect check collection charges in the amount charged to the
6 licensee plus a returned check fee in an amount not to exceed \$20
7 which the licensee may charge the borrower if a check of the
8 borrower is returned to the licensee uncollected due to
9 insufficient funds in the borrower's account. Licensees shall also
10 have the authority to charge and collect a late charge in any
11 amount as may be provided in the note or loan agreement, but no
12 late charge shall exceed 5% of the amount of payment in
13 default. Not more than one late charge shall be assessed on any
14 one payment in arrears.

15 (cf: P.L.1987, c.230, s.21)

16 9. Section 12 of P.L.1970, c.205 (C.17:11A-45) is amended to
17 read as follows:

18 12. A secondary mortgage loan licensee shall:

19 a. (Deleted by amendment, P.L.1987, c.230.)

20 b. (Deleted by amendment, P.L.1987, c.230.)

21 c. (Deleted by amendment, P.L.1987, c.230.)

22 d. Maintain a net worth of \$150,000 at all times; except that
23 licensees licensed prior to March 31, 1981 shall maintain a net
24 worth of \$50,000, until five years from July 31, 1987, at which
25 time the licensee shall be required to prove and maintain at all
26 times a net worth of at least \$100,000, and except that licensees
27 licensed prior to the effective date of P.L.1992, c.20, shall
28 maintain the net worth required of them prior to that date until
29 three years from the effective date of P.L.1992, c.20, at which
30 time the licensee shall be required to prove and maintain at all
31 times a net worth of at least \$150,000.

32 e. Maintain at his place of business in this State an original,
33 true, xerographic or electronic copy of the following instruments,
34 documents, accounts, books and records:

35 (1) Promissory note or loan agreement evidencing each
36 borrower's secondary mortgage loan indebtedness.

37 (2) Mortgage, indenture or any other similar instrument or
38 document which creates a lien on the real property which is taken
39 as security for a secondary mortgage loan.

40 (3) Any insurance policies or certificates of insurance where
41 such insurance is obtained in accordance with section 2 of
42 P.L.1983, c.348 (C.17:11A-49.1).

43 (4) Closing statement for each secondary mortgage loan.

44 (5) Appraisal, survey, title examination, title insurance policy,
45 abstract of title, credit report or search, where utilized.

46 (6) Individual ledger card or any other form of record which
47 shows all installment payments made by the borrower and all
48 other charges or credits to the borrower's account.

49 (7) Individual file in which the borrower's application for a
50 loan and any correspondence, including collection letters,
51 memorandums, notes or any other written information pertaining
52 to the borrower's account, shall be kept.

53 (8) Accounts, books and records as shall be required by the
54 commissioner in order to ascertain whether the licensee has been

1 conducting his secondary mortgage loan business in full
2 compliance with the provisions of this act.

3 All of the aforementioned instruments, documents, accounts,
4 books and records shall be preserved and kept available for
5 investigation or examination by the commissioner for at least two
6 years after a secondary mortgage loan has been paid in full, but
7 in the case of an open-end loan, the two-year period is measured
8 from the date of each entry. The provisions of this section shall
9 not apply to any instrument, document, account, book or record
10 which is assigned, sold or transferred to another secondary
11 mortgage loan licensee nor shall the two-year requirement apply
12 to an instrument or document which must be returned to the
13 borrower at the time a secondary mortgage loan is paid in full.

14 f. Annually, before February 1, file a report with the
15 commissioner which shall set forth such information as the
16 commissioner shall require concerning the business conducted as
17 a licensee during the preceding calendar year. The report shall
18 be in writing, under oath and on a form provided by the
19 commissioner.

20 g. Be subject to an examination by the commissioner, not more
21 than once in any 18 month period, unless the commissioner has
22 reason to believe that the licensee is not complying with the
23 provisions of P.L.1970, c.205 (C.17:11A-34 et seq.) or any rule or
24 regulation promulgated thereunder, at which time the
25 commissioner shall have free access, during regular business
26 hours, to the licensee's place or places of business in this State
27 and to all instruments, documents, accounts, books and records
28 which pertain to the licensee's secondary mortgage loan
29 business. The cost of any such examination shall be borne by the
30 licensee.

31 h. In the event a borrower's application for a secondary
32 mortgage loan is denied, notify the borrower, in writing, of said
33 denial and, provided further, the name of any such borrower or a
34 list of any such borrowers shall not be referred by the licensee, in
35 any manner whatsoever, to any other lender, retail seller of
36 personal property or services or to any other person, whether in
37 this or any other state.

38 i. If a secondary mortgage loan is not consummated, return all
39 documents executed by or belonging to the borrower.

40 j. Give to the borrower, without charge, a copy of every
41 instrument, document or other writing the borrower signs.

42 k. Give to the borrower, without charge, written evidence of
43 any insurance obtained in accordance with section 16 of P.L.1970,
44 c.205 (C.17:11A-49).

45 l. Give to the borrower, without charge, at the time a
46 closed-end loan is made, and at the time of the first advance on
47 an open-end loan, a closing statement which itemizes the
48 individual amounts disbursed to or on behalf of the borrower,
49 including, but not limited to, the premium for insurance, if any,
50 the total amount of the funds so disbursed, the amount of the
51 interest charge, total amount of the loan, the amount, number
52 and due date of the installment payments and the interest charge
53 expressed as an annual percentage rate, as applicable.

54 m. When a payment is made in cash on an account of a

1 secondary mortgage loan, give to the borrower, without charge,
2 at the time such payment is actually received, a written receipt
3 which shall show the name and address of the licensee, the name
4 and address of the borrower, account number or other
5 identification mark or symbol, date and amount paid.

6 n. With respect to closed-end loans, upon written request from
7 the borrower, give or forward to the borrower, without charge,
8 within five days from the date of receipt of such request, a
9 written statement of the borrower's account which shall show
10 the dates and amounts of all installment payments credited to the
11 borrower's account, the dates, amounts and an explanation of all
12 other charges or credits to the account and the unpaid balance
13 thereof. A licensee shall not be required to furnish more than
14 two such statements in any 12-month period.

15 o. When a closed-end loan is paid in full, or when an open-end
16 loan is paid in full and the borrower has notified the licensee in
17 writing to discontinue his account with the licensee:

18 (1) Refund or credit to the borrower, in accordance with
19 regulations promulgated by the Commissioner of Insurance, any
20 unearned portion of the premium for any insurance, if a premium
21 for such insurance was disbursed on behalf of the borrower at the
22 time the secondary mortgage loan was originally made.

23 (2) Stamp or write on the face of the promissory note or loan
24 agreement evidencing the borrower's secondary mortgage loan
25 indebtedness "Paid in Full" or "Cancelled," the date paid and the
26 name and address of the licensee and, within 45 days, return the
27 promissory note or loan agreement to the borrower.

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

40 p. No provision of P.L.1970, c.205 (C.17:11A-34 et seq.) shall
41 be deemed to prohibit the licensee from engaging in other
42 business activities with a borrower, provided that such activities
43 are not made a condition of the extension of credit by the
44 licensee and provided that the activity has been approved by the
45 commissioner by regulation and such other business activity is
46 conducted in conformity with the regulation. The commissioner
47 may, upon notice and hearing, order a licensee to cease and desist
48 from engaging in any activity which violates this section or any
49 other section of P.L.1970, c.205 (C. 17:11A-34 et seq.).

50 (cf: P.L.1992, c.20, s.2)

51 10. Section 13 of P.L.1970, c.205 (C.17:11A-46) is amended to
52 read as follows:

53 13. A secondary mortgage loan licensee shall not:

54 a. Transact any business subject to the provisions of this act

1 under any other name or at any other location except that
2 designated in his license. For the purpose of this section, the
3 transaction of business includes, but is not limited to, the signing
4 of any instrument, document or any other form by the borrower,
5 except that a borrower's application for a secondary mortgage
6 loan need not be signed in the office of the licensee and that a
7 secondary mortgage loan need not be closed at the office of a
8 licensee provided that it is closed in New Jersey at the office of
9 an attorney admitted to practice in this State. A licensee who
10 changes his name or place of business shall immediately notify
11 the commissioner who shall issue a certificate to the licensee,
12 which shall specify the licensee's new name or address.

13 b. Photocopy or otherwise reproduce his license.

14 c. Request that a borrower incorporate in connection with a
15 secondary mortgage loan or aid or abet such a scheme.

16 d. Make a secondary mortgage loan which has been referred by
17 a retail seller, who, in connection with such referral, has required
18 the borrower to purchase personal property or services or has
19 indicated that such purchase is necessary as a condition
20 precedent for such loan.

21 e. Charge an application fee or make any other charge or
22 accept an advance deposit prior to the time a secondary
23 mortgage loan is closed.

24 f. Require or accept from a borrower any collateral or
25 security for a secondary mortgage loan other than a mortgage,
26 indenture or any other similar instrument or document which
27 creates a lien upon any real property or an interest in real
28 property including, but not limited to, shares of stock in a
29 cooperative corporation.

30 g. Contract for, charge, receive or collect directly or
31 indirectly, any of the following in connection with a secondary
32 mortgage loan: a broker's or finder's fee; commission; expense;
33 fine; penalty; premium, or any other thing of value other than the
34 charges authorized by this act; except the expenses incurred on
35 actual sale of the real property in foreclosure proceedings or
36 upon the entry of judgment, which are otherwise authorized by
37 law; provided, however, that:

38 (1) a licensee may require a borrower to pay a reasonable legal
39 fee at the time of the execution of the secondary mortgage loan,
40 provided any such legal fee shall represent a charge actually
41 incurred in connection with said secondary mortgage loan and
42 shall not be paid to a person except an attorney authorized to
43 practice law in this State; provided, further, that such legal fee
44 shall be evidenced by a statement from such attorney issued to
45 the licensee; and

46 (2) a licensee may charge and receive no more than three
47 discount points computed as a percentage of the amount of the
48 loan and may add such discount points to the principal balance of
49 the loan which discount points shall be fully earned when the loan
50 is made and shall be included in the finance charge and disclosed
51 to the borrower as required under the truth in lending provisions
52 of the Consumer Credit Protection Act, 15 U.S.C. §1601 et. seq.
53 The annual percentage rate charged to the borrower, including
54 the discount points, if any, disclosed under this paragraph (2),

1 shall be subject to N.J.S.2C:21-19. As used in this paragraph (2),
2 "discount point" means one per cent of the amount of credit to
3 be extended to the borrower.

4 h. Assign, sell or transfer a secondary mortgage loan to a
5 person other than a banking institution as defined in section 1 of
6 P.L.1948, c.67 (C.17:9A-1), association, as defined in section 5 of
7 P.L.1963, c.144 (C.17:12B-5), or another secondary mortgage loan
8 licensee, the Federal National Mortgage Association created
9 pursuant to section 302 of the National Housing Act, 48 Stat.
10 1246 (12 U.S.C. §1717), the Federal Home Loan Mortgage
11 Corporation created pursuant to section 303 of the "Federal
12 Home Loan Mortgage Corporation Act," Pub.L. 91-351 (12 U.S.C.
13 §1452), or other persons or entities as from time to time
14 approved by the commissioner to facilitate and assure the steady
15 flow of secondary mortgage funds into the State. Notwithstanding
16 any other provisions of this act, such persons or entities need not
17 be licensed under the act to purchase or accept such an
18 assignment or transfer of a secondary mortgage loan.

19 i. Solicit secondary mortgage loan business through any other
20 person by paying, directly or indirectly, for such business referred
21 to the licensee by any such person, except [as described in
22 subsection j. of this section] that a licensee may solicit
23 secondary mortgage loan business on behalf of another licensee or
24 lender expressly authorized to make secondary mortgage loans in
25 this State if (1) such solicitation results in no additional cost or
26 expense to the borrower; and (2) the application and all
27 advertising in connection therewith clearly disclose the identity
28 of the person or entity which will be making the loan. If those
29 conditions are met, a licensee may collect a fee or a commission
30 from the lender as consideration for the solicitation.

31 j. [Solicit business, directly or indirectly, for any other
32 licensee, lender, retail seller of personal property or services or
33 for any other person, whether in this or any other state, except
34 that a licensee may solicit on behalf of another licensee or lender
35 expressly authorized to make secondary mortgage loans in this
36 State if (1) such solicitation results in no additional cost or
37 expense to the borrower; and (2) the application and all
38 advertising in connection therewith clearly disclose the identity
39 of the person or entity which will be making the loan. If those
40 conditions are met, a licensee may collect a fee or a commission
41 from the lender as consideration for the solicitation.](Deleted by
42 amendment, P.L. , c.).

43 k. Advertise, cause to be advertised or otherwise solicit
44 whether orally, in writing, by telecast, by broadcast or in any
45 other manner:

46 (1) That he is licensed by, or that his business is under the
47 supervision of, the State of New Jersey or the Department of
48 Banking, except that a licensee may advertise that he is "licensed
49 pursuant to the 'Secondary Mortgage Loan Act'"; provided,
50 however, that for the purpose of raising capital, no such
51 advertisement shall be permitted if it is to be used in connection
52 with a public solicitation for such funds.

53 (2) Any name, address or telephone number other than the
54 licensee's own name, address and telephone number in this State,

1 except as permitted in paragraph (3) of this subsection.

2 (3) The word "bank" or any term inferring that the licensee is
3 or is associated with a bank provided, however, that nothing in
4 this paragraph shall be deemed to prohibit a licensee which is
5 owned by or affiliated with a banking institution, as defined
6 pursuant to section 1 of P.L.1948, c.67 (C.17:9A-1), or a holding
7 company which owns or controls a banking institution from using
8 the name of the banking institution or the holding company in its
9 advertising.

10 (4) The amount of the interest to be charged, unless such
11 charge is also expressed as an annual percentage rate.

12 (5) Any statement or representation which is false, misleading
13 or deceptive and, provided further, a written or other visual
14 advertisement shall include the licensee's name, address and
15 telephone number in this State and the phrase "Secondary
16 Mortgage Loans" in 10-point bold type or larger.

17 (6) Any statement or representation that the licensee will
18 provide "immediate approval" of a loan application or
19 "immediate closing" of a loan or will afford unqualified access to
20 credit.

21 l. Make or offer to make any secondary mortgage loan which
22 would not be a prudent loan.

23 (cf: P.L.1992, c.20, s.3)

24 11. Section 23 of P.L.1987, c.230 (C. 17:11A-59.2) is amended
25 to read as follows:

26 23. A licensee shall have no liability for unintentional error if
27 within 90 days after discovering an error the licensee notifies the
28 borrower of the error and makes adjustments in the account as
29 necessary to assure that the borrower will not be required to pay
30 any interest, costs, or other charges which aggregate in excess of
31 the charges permitted under the "Secondary Mortgage Loan Act,"
32 P.L.1970, c.205 (C.17:11A-34 et seq.). The discovery of an
33 unintentional error within the meaning of this section shall
34 include an entry of a judgment by a court of competent
35 jurisdiction holding that a rule or regulation which the licensee
36 acted in conformity with was invalid or in violation of the act and
37 a licensee shall have no liability for such unintentional error if
38 the licensee takes the actions required upon discovery of an error
39 pursuant to this section within the time stated therein following
40 entry of such a judgment.

41 (cf: P.L.1987, c.230, s.23)

42 12. This act shall take effect immediately.

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STATEMENT

46

47 This bill makes several changes to the "Consumer Loan Act"
48 and the "Secondary Mortgage Loan Act."

49 In relation to the "Consumer Loan Act," the bill: requires a
50 licensee to keep books, accounts and records two years after the
51 date of each entry instead of after the date when the account is
52 closed; provides that any other business, authorized by the
53 commissioner as one which can be conducted by the licensee in
54 the same office, room or place of business, is not subject to the

1 provisions of R.S.17:10-14; permits a licensee to charge a
2 borrower a check collection charge in the amount charged to the
3 licensee plus a fee not to exceed \$20 if a borrower's check is
4 returned uncollected due to insufficient funds in the borrower's
5 account; permits a lender to make loans in an amount greater
6 than \$5,000 for a time period of up to 120 months; and changes
7 the violation section of the act to designate a violation of the act
8 as a crime of the fourth degree, in conformity with current law,
9 and provides that errors made as a result of an action by a
10 licensee in conformity with a rule or regulation of the
11 commissioner which is later held to be invalid or in violation of
12 the act by a court of competent jurisdiction are not violations of
13 the act as long as the licensee notifies the borrower within
14 90 days after discovering the error and makes any adjustments
15 necessary to assure that the borrower will not pay any interest,
16 costs or other charges which in the aggregate amount to more
17 than the charges normally permitted under the "Consumer Loan
18 Act."

19 In relation to the "Secondary Mortgage Loan Act," the bill:
20 permits a licensee to (1) charge a borrower a returned check fee
21 in an amount not to exceed \$20 if a check from the borrower is
22 returned uncollected due to insufficient funds in the borrower's
23 account and (2) engage in other business transactions with a
24 borrower as long as the other business transactions are not a
25 condition of an extension of credit to the borrower and the other
26 business is one which is authorized in writing by the
27 commissioner; clarifies (1) the authority of a licensee to make
28 open-end loans in parity with other lenders and (2) the conditions
29 under which a licensee may solicit secondary mortgage loan
30 business on behalf of another licensee and collect a fee or
31 commission from the other licensee; and extends the meaning of
32 unintentional error to cover acts of a licensee which are made in
33 conformity with a rule or regulation of the commissioner which is
34 later ruled invalid or in violation of the "Secondary Mortgage
35 Loan Act," with the result that a licensee would have no liability
36 for those acts as long as the licensee takes the actions required
37 under the "Secondary Mortgage Loan Act" to make the required
38 corrections.

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43 Makes certain changes in the "Consumer Loan Act" and the
44 "Secondary Mortgage Loan Act."

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 2522 and 1966

STATE OF NEW JERSEY

DATED: MAY 17, 1993

The Assembly Financial Institutions Committee reports favorably the Assembly Committee Substitute for Assembly, Nos. 2522 and 1966.

This bill makes several changes to the "Consumer Loan Act" and the "Secondary Mortgage Loan Act."

In relation to the "Consumer Loan Act," the bill: requires a licensee to keep books, accounts and records two years after the date of each entry instead of after the date when the account is closed; provides that any other business, authorized by the commissioner as one which can be conducted by the licensee in the same place of business, is not subject to the provisions of R.S.17:10-14; permits a licensee to charge a borrower a returned check fee in an amount not to exceed \$20 if a borrower's check is returned uncollected due to insufficient funds in the borrower's account; and permits a lender who makes loans in an amount greater than \$5,000 to make them for a time period of up to 120 months. The bill also changes the violation section of the act to designate a violation of the act as a crime of the fourth degree, in conformity with current law, and provides that errors made as a result of an action by a licensee in conformity with a rule or regulation of the commissioner which is later held to be invalid or in violation of the act by a court of competent jurisdiction are not violations of the act under certain circumstances.

In relation to the "Secondary Mortgage Loan Act," the bill permits a licensee to: (1) charge a borrower a returned check fee in an amount not to exceed \$20 if a check from the borrower is returned uncollected due to insufficient funds in the borrower's account, while at the same time removing permission to charge and collect check collection charges in the amount charged a licensee; and (2) engage in other business transactions with a borrower as long as the other business transactions are not a condition of an extension of credit to the borrower and the other business is one which is authorized in writing by the commissioner. The bill clarifies the authority of a licensee to make open-end loans in parity with other lenders and the conditions under which a licensee may solicit secondary mortgage loan business on behalf of another licensee and collect a fee or commission from the other licensee. It also extends the meaning of an unintentional error to cover acts of a licensee which are made in conformity with a rule or regulation of the commissioner which is later ruled invalid or in violation of the "Secondary Mortgage Loan Act," with the result that a licensee would have no liability for those acts as long as the licensee takes the actions required under the "Secondary Mortgage Loan Act" to make the required corrections.



OFFICE OF THE GOVERNOR NEWS RELEASE

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Friday
August 13, 1993

GOVERNOR FLORIO SIGNS CONSUMER PROTECTION BILL

Gov. Jim Florio today signed legislation that gives consumers and business owners more control over unsolicited telephone calls that involve recorded commercial messages.

"For many people, these recorded sales pitches are an invasion of privacy and could potentially block access to a telephone line in an emergency," Gov. Florio said. "For business owners, they often interfere with calls from customers. This legislation is about giving all people who rely on the telephone a choice - they can choose to listen to the commercials or they can tell the operator no thank you."

The new law prohibits the use of a telephone or telephone line to deliver recorded commercial messages unless an operator first obtains the subscriber's consent to play the message. The legislation provides exemptions in cases where a current business relationship exists, or in cases where the recorded messages are used to contact customers who have already ordered or purchased merchandise or services from the caller. An exemption also is provided in cases where the automatic calls are used for the collection of debts.

The legislation, S-511, sponsored by Sen. Wynona Lipman, provides civil penalties for violations of not less than \$300 and no more than \$800. Complaints could be filed in Superior or Municipal Courts. The law takes effect in 90 days.