

LEGISLATIVE HISTORY OF R.S.17:11A-34 to 63  
(Secondary mortgage Loan Act)

Original Secondary Mortgage Loan Act was: L.1965 Chap.91 (See  
Legislative History of 17:11A-1 et seq.

Attempts to change and/or revise it:

- 1966 - AJR7 - Study Commission
- 1968 - A673 - Fees and adv. of licensed persons
- 1968 - S283 - Secondary Mortgage Loan Act
- 1968 - S643 - " " "
- 1968 - S857 - " " "
- 1969 - S347 - " " "
- 1969 - S506 - " " "
- 1970 - All - " " "
- 1970 - A68 - Requires fees and adv. of licensed persons
- 1970 - S289 - Secondary Mortgage Loan Act

L.1970 - Chap.205 - S289

Prefiled by Tanzman, Bateman and McDermott  
Bill had statement (copy enclosed)  
Amended in Senate (copy enclosed)  
Amended in Assembly (copy enclosed)

Governor made statement on signing (copy enclosed)

Reports and hearings:

- 974.90 New Jersey. Second Mortgage Loan Study
- R288 Commission
- 1968 Report and recommendations...
- January, 1968

No hearings were located on the 1970 bill (S289) which  
became law.

Clippings located: (Vertical file -- New Jersey -- Mortgages)

- N.J. Court upholds 2nd mortgage law - TET - 7/23/68
- Court ruling nullified in 2nd  
mortgage lease - NEN - 9/12/68
- Second mortgage reform? - TET - 2/12/69
- 2nd mortgage financing bill in  
Senate - TET - 1/16/67
- Bill closes loopholes in 2nd mortgage  
law - NEN - 6/14/68
- 2nd mortgage reform glides through  
Senate handily - TET - 5/6/69

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17:11A - 34 to 63

(2)

Second chance for second mortgage bill	- Sun S-L - 5/25/69
South Jersey second mortgage firms want a hearing on regulations bill	- TET - 3/5/70
Mortgaging bill given Senate OK	- APP - 2/10/70
Bill aimed at curbing "fast buck"	- NEN - 2/10/70
Bill on second mortgages causes legislative stalemate	- STA - 5/3/70
Decision reserved on mortgage law	- NEN - 12/3/69
New second mortgage law signed	- TET - 9/25/70
Cahill signs mortgage loan act (copies enclosed)	- NEN - 9/24/70

RSL/EH  
Enclosure

SENATE, No. 289

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1970 SESSION

By Senators TANZMAN, BATEMAN and McDERMOTT

AN ACT supplementing Title 17 of the Revised Statutes, to define and regulate secondary mortgage loans and to repeal "An act to define and regulate secondary mortgage loans," approved June 9, 1965 (P. L. 1965, c. 91).

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

1 1. This act shall be known as the "Secondary Mortgage Loan  
2 Act."

1 2. As used in this act, the following words and terms shall have  
2 the following meanings unless the context otherwise requires:

3 a. "Secondary mortgage loan" means a loan made to an indi-  
4 vidual, association, joint venture, partnership, limited partnership,  
5 limited partnership association, or any other group of individuals  
6 however organized, except a corporation, which is secured in whole  
7 or in part by a lien upon any interest in real property created by  
8 a security agreement, including a mortgage, indenture, or any  
9 other similar instrument or document, which real property is sub-  
10 ject to one or more prior mortgage liens and which is used as a  
11 dwelling, including a dual purpose or combination type dwelling  
12 which is also used as a business or commercial establishment, and  
13 has accommodations for not more than 4 families, except that a  
14 loan which: (1) is to be repaid in 90 days or less; (2) is taken as  
15 security for a home repair contract executed in accordance with  
16 the provisions of chapter 41, P. L. 1960; (3) is at an interest rate  
17 which is not in excess of the usury rate in existence at the time  
18 the loan is made, as established in accordance with the law of this  
19 State, and on which loan the borrower has not agreed to pay, di-  
20 rectly or indirectly, any charge, cost, expense or any fee whatso-  
21 ever other than said interest; or (4) is the result of the private  
22 sale of a dwelling if title to the dwelling is in the name of the seller

23 and the seller has resided in said dwelling for at least one year if  
24 the buyer is purchasing said dwelling for his own residence and,  
25 as part of the purchase price, executes a secondary mortgage in  
26 favor of the seller; shall not be subject to the provisions of this act.

27 b. "Borrower" means any person applying for a secondary  
28 mortgage loan, whether or not the loan is granted, and any person  
29 who has actually obtained such a loan.

30 c. "Licensee" means a person who is required to be licensed by  
31 section 3 of this act.

32 d. "Person" means an individual, association, joint venture,  
33 partnership, limited partnership, limited partnership association,  
34 corporation or any other group of individuals however organized.

35 e. "Commissioner" means the Commissioner of Banking and  
36 Insurance of New Jersey including his deputies, or any other sal-  
37 aried employee of the Department of Banking and Insurance ap-  
38 pointed or designated by the commissioner to perform the func-  
39 tions required for the administration or enforcement of this act.

1 3. No person shall engage in the secondary mortgage loan busi-  
2 ness in this State unless such person shall first obtain a license  
3 under this act. For the purpose of this act, a person is deemed to  
4 be engaged in the secondary mortgage loan business in this State  
5 if: (a) such person advertises, causes to be advertised, solicits,  
6 negotiates, offers to make or makes a secondary mortgage loan in  
7 this State, whether directly or by any person acting for his bene-  
8 fit; or (b) such person becomes the subsequent holder of a promis-  
9 sory note or mortgage, indenture or any other similar instrument  
10 or document received in connection with a secondary mortgage  
11 loan. A real estate broker licensed pursuant to the provisions of  
12 the law of this State or an attorney authorized to practice law in  
13 this State shall not be required to obtain a license to negotiate a  
14 secondary mortgage loan in the normal course of the business of  
15 a real estate broker or attorney.

1 4. a. An application for a secondary mortgage loan license shall  
2 be on a form provided by the commissioner. The application shall  
3 set forth the name and resident address of the applicant and, if  
4 the applicant is other than an individual or corporation, of each  
5 partner or member, and if the applicant is a corporation, of each  
6 officer, director and the registered agent. The application shall  
7 also set forth the address or addresses where the secondary mort-  
8 gage loan business is to be conducted in this State.

9 b. The application shall demonstrate that the applicant has  
10 liquid assets available for the purpose of making secondary mort-

11 gage loans and a net worth of at least \$50,000.00.

12 c. The application shall contain such other information as the  
13 commissioner shall require in order to carry out the purposes of  
14 this act.

15 d. If the applicant intends to conduct business under a trade  
16 name, a certified copy of the applicant's trade name certificate as  
17 required by the law of this State shall accompany the application.

18 e. If the applicant is a foreign corporation, said corporation  
19 shall be authorized to do business in this State in accordance  
20 with the law of this State regulating corporations.

21 f. Applicants for a secondary mortgage loan license shall file  
22 with the application an irrevocable consent, duly acknowledged,  
23 that suits and actions may be commenced against such licensee in  
24 the courts of this State by the service of process or any pleading  
25 upon the commissioner, in the usual manner provided for  
26 service of process and pleadings by the statutes and Court Rules  
27 of this State. Said consent shall provide that such service shall be  
28 as valid and binding as if service had been made personally upon  
29 the licensee in this State. In all cases where process or pleadings  
30 are served upon the commissioner pursuant to the provisions of  
31 this section, such process or pleadings shall be served in duplicate,  
32 one of which shall be filed in the office of the commissioner and  
33 the other shall be forwarded by the commissioner, by certified or  
34 registered mail, return receipt, to the last known principal place of  
35 business of the licensee to whom such process or pleadings is  
36 directed.

1 5. An applicant shall pay to the commissioner at the time the  
2 application is filed, and annually thereafter upon renewal, a li-  
3 cense fee of \$200.00 for his principal place of business and an  
4 additional \$50.00 for each branch office in this State.

1 6. Within 60 days after an application is received, the commis-  
2 sioner shall determine whether a license should be issued. The  
3 commissioner may refuse to issue a license for any reason for  
4 which he may suspend, revoke or refuse to renew a license as pro-  
5 vided for by section 23a of this act.

1 7. If the commissioner refuses to issue a license, he shall notify  
2 the applicant, in writing, of his denial, the reason therefor and of  
3 the applicant's right to request a hearing; provided, however, that  
4 no such request shall be binding on the commissioner unless the  
5 request is made, in writing, within 10 days after receipt of the com-  
6 missioner's notice. If the applicant requests a hearing, the com-  
7 missioner shall hold a hearing within 10 days after receipt of the

8 applicant's request, and within 20 days after the hearing he shall  
 9 render a decision, in writing, which shall set forth his findings and  
 10 conclusions, a copy of which shall be sent to the applicant. Regis-  
 11 tered or certified mail, return receipt, shall be utilized by the com-  
 12 missioner to transmit any notice or decision to the applicant,  
 13 which shall be mailed to the applicant's principal place of business  
 14 in this State, as set forth in the application. If the applicant does  
 15 not request a hearing or if, after a hearing, the commissioner still  
 16 refuses to issue a license to the applicant, the amount paid as a  
 17 license fee shall be refunded to the applicant but the application  
 18 and all supplemental schedules, instruments or documents filed  
 19 with the application shall remain in the custody of the commis-  
 20 sioner.

1 8. Each license issued by the commissioner shall specify:

2 a. The name and address of the licensee, the address so specified  
 3 to be that of the licensee's principal place of business, or branch  
 4 office, in this State.

5 b. The licensee's reference number, which may remain the same  
 6 from year to year despite variations in annual license numbers  
 7 which may result from the renewal of licenses by mechanical tech-  
 8 niques.

9 c. Such other information as the commissioner shall require in  
 10 order to carry out the purposes of this act.

1 9. A license issued by the commissioner shall:

2 a. Expire on December 31 of each year. No refund in the  
 3 amount of the license fee shall be made if the license is issued for  
 4 less than 12 months or if the license is voluntarily surrendered to  
 5 or suspended or revoked by the commissioner prior to its expira-  
 6 tion date.

7 b. Be invalid, in the event the licensee is a corporation, if the  
 8 licensee's corporate charter is voided in accordance with the pro-  
 9 visions of any law of this or any other State.

1 10. A license shall not be assignable or transferable by opera-  
 2 tion of law or otherwise.

1 11. a. A licensee shall have authority to make a secondary  
 2 mortgage loan, repayable in installments, and may charge, con-  
 3 tract for and receive thereon interest at an annual percentage  
 4 rate not exceeding 15%, computed by the actuarial method (United  
 5 States rule) and; provided further, the Commissioner of Bank-  
 6 ing and Insurance, with the advice of a special advisory board  
 7 constituted as hereinafter provided, may by regulation adopted,  
 8 amended and rescinded from time to time, provide that the interest

9 which may be taken for any such loan shall be more than 15% per  
10 annum but not more than 18% per annum, as shall be prescribed  
11 in such regulation.

12 (1) No interest shall be paid, deducted, or received in advance.  
13 Interest shall not be compounded and shall be computed only on  
14 unpaid principal balances. For the purposes of computing in-  
15 terest, whether at the maximum rate or less, a month shall be con-  
16 sidered a calendar month and where a fraction of a month is in-  
17 volved a day shall be considered 1/30 of a month.

18 b. In making, amending, and rescinding regulations pursuant to  
19 the preceding provision, the Commissioner of Banking and Insur-  
20 ance and the special advisory board shall consider the general  
21 state of the economy, the discount rates prescribed by the Federal  
22 Reserve Bank of New York and the Federal Reserve Bank of  
23 Philadelphia, the advance rate as prescribed by the Federal Home  
24 Loan Bank of New York, the availability of funds for loans,  
25 studies and statistics published by the Federal Home Loan Bank  
26 Board and other agencies of the United States and of this State,  
27 and such other factors and bases for determination as the com-  
28 missioner and the board may deem pertinent. The rate established  
29 by any such regulation shall reasonably reflect prevailing market  
30 conditions, regionally and nationally, based upon the studies,  
31 statistics and factors considered, and shall remain in force until  
32 such time as such regulation is rescinded or such rate is increased  
33 or decreased by a subsequent regulation. Any such regulation  
34 shall have prospective effect only.

35 c. The special advisory board herein provided for shall consist  
36 of the Commissioner of Banking and Insurance, who shall be ex-  
37 officio chairman of the board, and 5 members appointed by the  
38 Governor with the advice and consent of the Senate. Any ap-  
39 pointed member of the board may be removed from office by the  
40 Governor whenever, in his judgment, the public interest may so  
41 require. Each of the 5 appointed members shall have had, at the  
42 time of his appointment, practical experience in consumer financing  
43 or fields so related thereto as to qualify each as an authority for  
44 the purpose of advising the Commissioner of Banking and Insur-  
45 ance regarding the interest which may be taken for any secondary  
46 mortgage loan. At no time shall there be more than a single  
47 representative on the board from any one institution or group of  
48 institutions.

49 d. Each member of the board shall hold office for a term of 2  
50 years, and thereafter until his successor is appointed and has  
51 qualified, subject to removal by the Governor pursuant to the

52 preceding provision. Members of the board shall be eligible for  
53 reappointment in the same manner as the initial appointment of  
54 members of the board as provided for heretofor. Any vacancies  
55 in the board shall be filled for the unexpired portion of the term  
56 in the same manner as for a full term.

57 e. The members of the special advisory board shall serve without  
58 compensation, but shall be reimbursed for their actual and neces-  
59 sary expenses in attending meetings of the board. All claims for  
60 reimbursement shall be submitted in the form and manner pre-  
61 scribed for like claims of the Commissioner of Banking and In-  
62 surance.

63 f. The board shall meet at least semiannually, at such times and  
64 places in the State as it may determine. The commissioner may  
65 call such other meetings as he may deem necessary, and he shall  
66 call a meeting when requested by 2 or more members of the board.  
67 At least 3 days notice of every meeting shall be given to each mem-  
68 ber of the board personally, or by mail, telephone, or telegraph.  
69 Four members of the board shall constitute a quorum.

70 g. The special advisory board shall elect a secretary who may be  
71 an employee of the Department of Banking and Insurance but who  
72 shall receive no extra compensation for serving as secretary. The  
73 secretary shall keep an accurate record of all meetings of the board  
74 and shall perform such other duties as may be prescribed by the  
74A board.

75 h. For the purpose of discharging its duties, the board shall  
76 have access to all relevant records in the Department of Banking  
77 and Insurance, including reports and confidential communications,  
78 but each member of the board shall treat all information so ob-  
79 tained as confidential and shall not reveal any such information  
80 to any person other than another member of the board.

81 i. No member of the board, including the Commissioner of  
82 Banking and Insurance, shall be personally liable for any act done  
83 or omitted in connection with the performance of his duties under  
84 this act.

85 j. At the initial meeting of the special advisory board, the mem-  
86 bers shall agree, by majority vote, to the procedure by which rec-  
87 ommendations will be made to the commissioner concerning the  
88 interest rate to be established pursuant to this act.

1 12. A secondary mortgage loan licensee shall:

2 a. Maintain at least one licensed place of business in this State.

3 b. Conspicuously display his license at each licensed place of  
4 business.

5 c. Keep on file with the commissioner a corporate surety bond  
6 in the principal sum of \$5,000.00. Said bond shall be in the form



7 required by the commissioner and shall be issued by a surety com-  
8 pany authorized to transact business in this State. The bond shall  
9 run to the State and shall be conditioned that the licensee will com-  
10 ply with the provisions of this act. The aggregate liability of the  
11 surety on the bond shall in no event exceed the amount of said bond.

12 d. Maintain a net worth of \$50,000.00 at all times.

13 e. Maintain at his place of business in this State an original or  
14 true copy of the following instruments, documents, accounts, books  
15 and records:

16 (1) Promissory note evidencing each borrower's secondary  
17 mortgage loan indebtedness.

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

21 (3) Credit life and accident and health insurance policy or a  
22 certificate of insurance where such insurance is obtained in ac-  
23 cordance with section 16 of this act.

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

25 (5) Appraisal or search, where utilized.

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

29 (7) Individual file in which the borrower's application for a loan  
30 and any correspondence, including collection letters, memoran-  
31 dums, notes or any other written information pertaining to the bor-  
32 rower's account, shall be kept.

33 (8) General ledger, cash receipts and disbursements register,  
34 check book, canceled checks and such other accounts, books or  
35 records as shall be required by the commissioner in order to as-  
36 certain whether the licensee has been conducting his secondary  
37 mortgage loan business in full compliance with the provisions of  
38 this act.

39 All of the aforementioned instruments, documents, accounts,  
40 books and records shall be kept separate and apart from the rec-  
41 ords of any other business conducted by the licensee and shall be  
42 preserved and kept available for investigation or examination by  
43 the commissioner for at least 2 years after a secondary mortgage  
44 loan has been paid in full. The provisions of this section shall not  
45 apply to any instrument, document, account, book or record which  
46 is assigned, sold or transferred to another secondary mortgage  
47 loan licensee nor shall the 2-year requirement apply to an instru-  
48 ment or document which must be returned to the borrower at the  
49 time a secondary mortgage loan is paid in full.

50 f. Annually, before February 1, file a report with the commis-  
51 sioner which shall set forth such information as the commissioner  
52 shall require concerning the business conducted as a licensee during  
53 the preceding calendar year. The report shall be in writing, under  
54 oath and on a form provided by the commissioner.

55 g. Be subject to an examination by the commissioner, at least  
56 once a year, at which time the commissioner shall have free access,  
57 during regular business hours, to the licensee's place or places of  
58 business in this State and to all instruments, documents, accounts,  
59 books and records which pertain to the licensee's secondary mort-  
60 gage loan business. The cost of any such examination shall be  
61 borne by the licensee.

62 h. In the event a borrower's application for a secondary mort-  
63 gage loan is denied, notify the borrower, in writing, of said denial  
64 and, provided further, the name of any such borrower or a list of  
65 any such borrowers shall not be referred by the licensee, in any  
66 manner whatsoever, to any other lender, retail seller of personal  
67 property or services or to any other person, whether in this or any  
67A other State.

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

70 j. Give to the borrower, without charge, a copy of every instru-  
71 ment, document or other writing the borrower signs.

72 k. Give to the borrower, without charge, written evidence of  
73 credit life and accident and health insurance, if any, in accordance  
74 with regulations promulgated by the commissioner pursuant to  
75 chapter 169, P. L. 1958.

76 l. Give to the borrower, without charge, at the time a secondary  
77 mortgage loan is made, a closing statement which itemizes the in-  
78 dividual amounts disbursed to or on behalf of the borrower, in-  
79 cluding, but not limited to, the premium for credit life and accident  
80 and health insurance, if any, the total amount of the funds so dis-  
81 bursed, the amount of the interest charge, total amount of the loan,  
82 the amount, number and due date of the installment payments and  
83 the interest charge expressed as an annual percentage rate.

84 m. When a payment is made in cash on account of a secondary  
85 mortgage loan, give to the borrower, without charge, at the time  
86 such payment is actually received, a written receipt which shall  
87 show the name and address of the licensee, the name and address  
88 of the borrower, account number or other identification mark or  
89 symbol, date, amount paid and the unpaid balance of the account  
90 prior to and after the cash payment.

91 n. Upon written request from the borrower, give or forward to  
 92 the borrower, without charge, within 5 days from the date of re-  
 93 ceipt of such request, a written statement of the borrower's ac-  
 94 count which shall show the dates and amounts of all installment  
 95 payments credited to the borrower's account, the dates, amounts  
 96 and an explanation of all other charges or credits to the account  
 97 and the unpaid balance thereof. A licensee shall not be required  
 98 to furnish more than 2 such statements in any 12-month period.

99 o. When a secondary mortgage loan is paid in full:

100 (1) Refund to the borrower, in accordance with regulations  
 101 promulgated by the commissioner pursuant to chapter 169, P. L.  
 102 1958, any unearned portion of the premium for credit life and acci-  
 103 dent and health insurance, if a premium for such insurance was  
 104 disbursed on behalf of the borrower at the time the secondary mort-  
 105 gage loan was originally made.

106 (2) Stamp or write on the face of the promissory note evidenc-  
 107 ing the borrower's secondary mortgage loan indebtedness "Paid  
 108 in Full" or "Cancelled," the date paid and the name and address  
 109 of the licensee and, within 10 days, return the promissory note to  
 110 the borrower.

111 (3) Release, at the expense of the licensee, any lien on real  
 112 property and cancel the same of record and, at the time the promis-  
 113 sory note evidencing the borrower's secondary mortgage loan in-  
 114 debtedness is returned, deliver to the borrower such good and suf-  
 115 ficient assignments, releases or any other certificate, instrument  
 116 or document as may be necessary to vest the borrower with com-  
 117 plete evidence of title, insofar as the applicable secondary mort-  
 118 gage loan is concerned, to the real property.

1 13. A secondary mortgage loan licensee shall not:

2 a. Transact any business subject to the provisions of this  
 3 act under any other name or at any other location except that  
 4 designated in his license. For the purpose of this section, the  
 5 transaction of business includes, but is not limited to, the signing  
 6 of any instrument, document or any other form by the borrower,  
 7 except that a borrower's application for a secondary mort-  
 8 gage loan need not be signed in the office of the licensee.

9 A licensee who changes his name or place of business shall  
 10 immediately notify the commissioner who shall issue a certificate  
 11 to the licensee, which shall specify the licensee's new name or  
 12 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  
17 by a retail seller, who, in connection with such referral, has re-  
18 quired the borrower to purchase personal property or services  
19 or has 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 accept  
22 an advance deposit prior to the time a secondary mortgage loan is  
23 closed.
- 24 f. Make a secondary mortgage loan until such time as the licensee  
25 has obtained:
- 26 (1) A written statement signed by the borrower that the holder  
27 of every other existing mortgage on the real property offered as  
28 security for the secondary mortgage loan has declined to make a  
29 loan in the desired amount or;
- 30 (2) A written statement signed by the borrower that the terms  
31 offered by the holder of every other existing mortgage on the real  
32 property offered as security for the secondary mortgage loan are  
33 not acceptable to the borrower.
- 34 g. Require or accept from a borrower any collateral or security  
35 for a secondary mortgage loan other than a mortgage, indenture or  
36 any other similar instrument or document which creates a lien  
37 upon any real property.
- 38 h. Contract for, charge, receive or collect directly or indirectly,  
39 any of the following in connection with a secondary mortgage loan:  
40 a charge for appraisal service; search; broker's or finder's fee;  
41 commission; discount; expense; examination fee; fine; interest;  
42 penalty; points; premium, or any other thing of value other than the  
43 charges authorized by this act, except the expenses incurred on  
44 actual sale of the real property in foreclosure proceedings or upon  
45 the entry of judgment, which are otherwise authorized by law.
- 46 i. Assign, sell or transfer a secondary mortgage loan to a person  
47 other than another secondary mortgage loan licensee.
- 48 j. Solicit business through any other person by paying, directly  
49 or indirectly, for such business referred to the licensee by any such  
50 person.
- 51 k. Solicit business, directly or indirectly, for any other licensee,  
52 lender, retail seller of personal property or services or for any other  
53 person, whether in this or any other State.
- 54 l. Advertise, cause to be advertised or otherwise solicit whether  
55 orally, in writing, by telecast, by broadcast or in any other manner:

56 (1) That he is licensed by, or that his business is under the  
57 supervision of, the State of New Jersey or the Department of Bank-  
58 ing and Insurance, except that a licensee may advertise that he is  
59 "licensed pursuant to the Secondary Mortgage Loan Act"; pro-  
60 vided, however, that for the purpose of raising capital, no such  
61 advertisement shall be permitted if it is to be used in connection  
62 with a public solicitation for such funds.

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

65 (3) The word "bank" or any term inferring that the licensee is  
66 or is associated with a bank.

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

69 (5) Any statement or representation which is false, misleading  
70 or deceptive and, provided further, a written or other visual adver-  
71 tisement shall include the licensee's name, address and telephone  
72 number in this State and the phrase "Secondary Mortgage Loans"  
73 in 10-point bold type or larger.

1 14. Every borrower shall have the right to be represented by  
2 an attorney of his own choosing at the time a secondary mortgage  
3 loan is closed and shall be advised of such right, in writing, at least  
4 4 days prior to the execution of the secondary mortgage loan.

1 15. A borrower shall not be required to pay, directly or indirectly,  
2 to a licensee or any other person, a broker's or finder's fee, com-  
3 mission, discount, points or premium for obtaining, procuring or  
4 the placing of a secondary mortgage loan.

1 16. A borrower shall not be compelled to purchase credit life or  
2 accident and health insurance in connection with a secondary mort-  
3 gage loan. If, however, the borrower elects to obtain such insurance,  
4 he shall, in a separate instrument, consent thereto, in writing, and,  
5 provided further:

6 a. The insurance shall be obtained in accordance with chapter  
7 169, P. L. 1958, and the regulations promulgated by the commis-  
8 sioner pursuant thereto.

9 b. For the purpose of this section, the word "debtor" as defined  
10 in chapter 169, P. L. 1958, means, if more than one person is  
11 obligated for the payment of a secondary mortgage loan, the person  
12 whose signature appears on the first line provided for the signa-  
13 tures of borrowers on a promissory note evidencing the borrower's  
14 indebtedness, said person to be the only person for whom such  
15 insurance is obtained.

16 c. The premium for any such insurance shall be deducted from

17 the amount of the secondary mortgage loan requested by the  
18 borrower.

19 d. Nothing in this act or in any other law of this State shall  
20 prohibit a licensee or any employee, affiliate, subsidiary, or as-  
21 sociate of said licensee, from collecting the premium or identifiable  
22 charge for insurance permitted by this act and from receiving or  
23 retaining any dividend, or any other gain or advantage resulting  
24 from such insurance; subject, however, to the authority of the  
25 commissioner to promulgate such rules and regulations with regard  
26 to such dividend, gain or advantage as he may deem necessary,  
27 including the authority to reduce the rate of interest to be charged  
28 by a particular licensee to borrowers in consideration of the benefit  
29 to said licensee from such dividend, gain or advantage.

1 17. Notwithstanding any agreement between a licensee and a  
2 borrower to the contrary, a borrower shall not be required to pay  
3 a penalty fee for prepaying a secondary mortgage loan in full prior  
4 to maturity.

1 18. An instrument evidencing a secondary mortgage loan shall:

2 a. Be in the form of a promissory note which shall be identifiable  
3 by the use of the words "Secondary Mortgage Loan" printed  
4 prominently, in 14-point bold type or larger, centered and at the  
5 top of the promissory note and, directly underneath, in 8-point bold  
6 type or larger, the statement, "This promissory note is subject to  
7 the provisions of the Secondary Mortgage Loan Act."

8 b. Provide for the payment, in full, of the total amount of the  
9 secondary mortgage loan in substantially equal payment periods,  
10 measured in terms of weeks or months, and installment payment  
11 amounts, except that the initial payment period may be deferred  
12 for 60 days and, provided further, when appropriate for the pur-  
13 pose of facilitating payment in accordance with the borrower's  
14 intermittent income, a promissory note may provide an installment  
15 schedule which reduces or omits payments over any period or  
16 periods of time during which period or periods the borrower's  
17 income is reduced or suspended, and the final installment may be  
18 \$1.00 more or less than the amount of all other regular installment  
19 payments.

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

22A

**"NOTICE TO BORROWER**

23 Read this promissory note before you sign.

24 Do not sign this promissory note if it contains blank spaces.

25 This promissory note is secured by a secondary mortgage on your  
26 real property.”

27 d. Be completed in full before it is signed by the borrower. In  
28 the event that it is unnecessary to fill in a blank space provided  
29 for in any instrument, the figure -0-, a dash, line or the word “none”  
30 shall be inserted in such blank space.

1 19. No writing of any kind executed in connection with a second-  
2 ary mortgage loan shall contain:

3 a. An agreement whereby the borrower waives any rights  
4 accruing to him under the provisions of this act or any other law  
5 of this State.

6 b. A power of attorney to confess judgment or any other power  
7 of attorney.

8 c. An assignment of or order for the payment of any salary,  
9 wages, commissions or any other compensation for services, or any  
10 part thereof, earned or to be earned.

11 d. An agreement to pay any amount other than the unpaid balance  
12 of the promissory note or any other charge authorized by this act.

13 e. A provision relieving the licensee from liability for any claim,  
14 or from any legal remedy, which the borrower may have against  
15 said licensee under the terms of the promissory note.

16 f. A provision whereby the borrower waives any right of action  
17 against the licensee, a subsequent holder or any person acting on  
18 the licensee’s or holder’s behalf for any illegal act committed in  
19 the collection of payments under the promissory note.

20 g. An acceleration clause under which the unpaid balance of the  
21 promissory note not yet matured or any part thereof may be  
22 declared due and payable because the licensee or subsequent holder  
23 deems himself to be insecure.

1 20. A promissory note may provide for the payment of attorney  
2 fees in the event it becomes necessary to refer the promissory note  
3 to an attorney for collection; provided, however, that any such  
4 provision shall be void and unenforceable unless:

5 a. The promissory note is referred to an attorney authorized to  
6 practice law in this State.

7 b. The attorney to whom the promissory note is referred is not  
8 a partner, officer, director or employee, whether salaried or commis-  
9 sioned, of the licensee.

10 c. Suit is actually filed by the attorney to whom the promissory  
11 note is referred and subsequently decided in favor of the licensee,  
12 in which event such attorney fees shall not exceed 15% of the first  
13 \$500.00, 10% of the next \$500.00 and 5% of any excess amount due  
14 and owing under the promissory note and, provided further that at

15 least 15 days prior to the commencement of the suit, the licensee  
16 or his attorney shall send to the borrower, by certified or registered  
17 mail, return receipt, at his last known address, a statement of his  
18 intention to sue, which statement shall also specify the amount of  
19 principal, interest and any other charge due and owing to the  
20 licensee.

21 d. In any proceeding to satisfy a judgment by the sale of the  
22 real property securing a secondary mortgage loan, a credit for the  
23 fair market value of such property shall be afforded to the borrower.

1 21. The commissioner shall have authority to:

2 a. Make, enforce, alter, modify, amend, or repeal rules and  
3 regulations to effectuate the purposes of this act and to establish  
4 and maintain ethical, fair, equitable and honest business standards  
5 for persons who are subject to any provision of this act.

6 b. Examine any instrument, document, account, book, record or  
7 file of a licensee or any other person, or make such other investiga-  
8 tions as he shall deem necessary to administer the provisions of  
9 this act.

10 c. Conduct administrative hearings on any matter pertaining to  
11 this act, issue subpoenas to compel the attendance of witnesses and  
12 the production of instruments, documents, accounts, books and  
13 records at any such hearing, which may be retained by the commis-  
14 sioner until the completion of all proceedings in connection with  
15 which they were produced, and administer oaths and affirmations to  
16 any person whose testimony is required. In the event a person fails  
17 to comply with a subpoena issued by the commissioner or to testify  
18 on any matter concerning which he may be lawfully interrogated, on  
19 application by the commissioner, the Superior Court may issue an  
20 order requiring the attendance of such person, the production of  
21 instruments, documents, accounts, books or records or the giving  
22 of testimony.

1 22. A licensee may surrender his license to the commissioner by  
2 delivering his license to the commissioner with written notice that  
3 the license is being voluntarily surrendered but such an action by a  
4 licensee shall not affect the licensee's civil or criminal liability for  
5 acts committed prior to the date on which the license was sur-  
6 rendered.

1 23. a. The commissioner may suspend, revoke or refuse to renew  
2 any license issued pursuant to this act after giving 10 days written  
3 notice forwarded to the licensee's principal place of business, by  
4 registered or certified mail, return receipt, stating the contemplated  
5 action and the reason therefor, if he shall find, after the licensee has  
6 had an opportunity to be heard, that the licensee has:



7 (1) Made any material misstatement in his application.

8 (2) Misrepresented, deceived, concealed, suppressed, omitted or  
9 otherwise failed to disclose any information required to be stated  
10 or furnished to a borrower under the provisions of this act or any  
11 other law of this State.

12 (3) Failed to comply with or violated any provision of this act  
13 or any rule or regulation promulgated by the commissioner pursuant  
14 thereto.

15 (4) Failed to perform a written agreement with a borrower.

16 (5) Otherwise demonstrated a lack of financial responsibility,  
17 unworthiness, bad faith or dishonesty.

18 The hearing and notice provisions of this section shall not apply  
19 in the event the licensee is a corporation if the licensee's cor-  
20 porate charter is voided in accordance with the provisions of any  
21 law of this or any other State, in which event the commissioner may  
22 suspend or revoke the license forthwith.

23 b. The commissioner may subsequently reinstate a license which  
24 has been suspended or revoked or renew a license which he had  
25 previously refused to renew if the condition which warranted the  
26 original action has been corrected, and he has reason to believe that  
27 such condition is not likely to occur again and that the licensee is  
28 worthy of such reinstatement.

1 24. The provisions of this act shall apply to any secondary  
2 mortgage loan:

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

6 b. Made or executed within this State.

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

1 25. Any obligation on the part of a borrower arising out of a  
2 secondary mortgage loan shall be void and unenforceable unless  
3 such secondary mortgage loan was executed in full compliance  
4 with the provisions of this act.

1 26. a. Any person who engages in the secondary mortgage loan  
2 business in this State without having first obtained a license as  
3 required by section 3 of this act shall be liable for a penalty of not  
4 more than \$1,000.00 for each offense. For the purpose of this sub-  
5 section, each loan made without a license shall constitute a separate  
6 offense.

7 b. Any person, including any licensee or any partner, officer,  
8 director or employee, whether salaried or commissioned, of such li-  
9 censee, or any other person representing a licensee, whether di-

10 rectly or indirectly, who violates any provision of this act or any  
 11 rule or regulation promulgated in connection therewith, shall be  
 12 liable for a penalty, in addition to all other penalties or forfeitures  
 13 imposed by this or any other law, of not more than \$1,000.00 for  
 14 each offense. Any person who shall aid or abet such a violation shall  
 15 be equally liable for such a penalty as may be imposed upon a princi-  
 16 pal violator. For the purpose of this subsection, a violation of any  
 17 section of this act or any rule or regulation promulgated by the  
 18 commissioner pursuant thereto shall constitute a separate offense.  
 19 The commissioner, in his discretion, is hereby authorized and em-  
 20 powered to compromise and settle any claim for a penalty under  
 21 this subsection for an amount that appears appropriate and equit-  
 22 able under all of the circumstances.

23 c. The penalties provided for in this section, if not voluntarily  
 24 paid to the commissioner, shall be collected in a civil action brought  
 25 in the name of the commissioner pursuant to the provisions of the  
 26 Penalty Enforcement Law, L. 1948, chapter 253, 1 et seq., Revised  
 27 Statutes 2A:58-1 et seq.

1 27. a. Nothing contained in this act shall be construed to impair  
 2 or affect any rights of a borrower, civil or criminal liabilities of a  
 3 licensee or administrative proceedings by the commissioner which  
 4 hereafter may arise as the result of a secondary mortgage loan  
 5 made under chapter 91, P. L. 1965, and, provided further, nothing  
 6 contained in this act shall be construed to impair or affect an obliga-  
 7 tion of a borrower for a secondary mortgage loan executed prior  
 8 to the effective date of this act, provided such secondary mortgage  
 9 loan was lawfully executed in accordance with the provisions of  
 10 chapter 91, P. L. 1965.

11 b. A licensee licensed pursuant to the provisions of chapter 91,  
 12 P. L. 1965, on the date this act takes effect shall continue as a  
 13 licensee under this act for the year ending December 31, 1970, at  
 14 which time the licensee shall renew his license under the provisions  
 15 of this act, if the licensee intends to continue to engage in the  
 16 secondary mortgage loan business.

1 28. Nothing contained in this act shall be construed or inter-  
 2 preted as an expansion or restriction of the existing powers of a  
 3 State or National bank, savings bank, State or Federal savings and  
 4 loan association or insurance company to engage in the secondary  
 5 mortgage loan business, provided such business is otherwise au-  
 6 thorized and regulated by law in which event the provisions of this  
 7 act shall not apply to any such financial institution.

1 29. If any provision or section of this act or any provision or  
 2 section of any subsequent amendments or supplements to this act

3 shall be held to be unconstitutional, said provision or section shall  
 4 be excised and the remainder of the provisions and sections of  
 5 the act as amended or supplemented shall be and remain valid with  
 6 the same effect as if said provision or section so held to be uncon-  
 7 stitutional had never been a part of the act.

1 30. "An act to define and regulate secondary mortgage loans,"  
 2 approved June 9, 1965 (P. L. 1965, c. 91) is repealed.

1 31. This act shall take effect on the sixtieth day following the  
 2 date on which it is enacted.

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### STATEMENT

This bill embodies a total revision of the Secondary Mortgage Loan Act of 1965. Any differences in specific statutory language between this revision and the predecessor Act are not indicative of a legislative intent as to the construction and interpretation of the Act of 1965. The changes made, instead, represent an accommodation to the total revision of the law. Therefore, the changes embodied herein should not affect any existing court proceedings concerning the interpretation and construction of the Secondary Mortgage Loan Act of 1965, or any such proceedings which may be subsequently filed based on that Act.

This revision incorporates provisions which were found necessary as a result of the investigations and hearings conducted by the Department of Banking and Insurance and the Office of the Attorney General, wherein certain secondary mortgage loan licensees were called upon to show cause why their licenses should not be suspended or revoked for activities in violation of the Act of 1965.

One of the most significant changes is in the amount of money derived from the making of a secondary mortgage loan. This bill makes a significant departure from the present law by disallowing the receipt of any fees or charges by a licensee in connection with a secondary mortgage loan, other than interest allowable pursuant to the terms of this legislation. Experience has shown that a large percentage of licensees have consistently been receiving the maximum allowable fees and charges under the Act of 1965, in addition to the interest permitted thereunder. The allowance of specified fees and charges provided a method whereby licensees were able to circumvent the policy and spirit of the legislation, since the combination of fees and charges plus interest amounted to an effective interest rate charge far in excess of that contemplated by the Legislature. On loans under

\$1,000.00, the fees and charges combined with the interest allowed may be equivalent to an effective interest rate in excess of 50%. In general, calculation of fees, charges and interest on loans of \$2,000.00 or less establish that the total sum thereof paid by many borrowers is equivalent to an effective interest rate of 20 to 50%, depending upon the amount and term of the loan.

This bill corrects these abuses by establishing an interest rate which is commensurate with the risk involved in this type of loan and which takes into account the fact that no other fees and charges are permissible in connection therewith. The interest rate is established with a view toward assuring a reasonable profit to the licensee so that the money market in this area will not dry up. On the other hand, the rate is reasonable from the standpoint of the borrower involved. To assure that the rate continues to be adequate under the circumstances existing at any given time, the rate is made flexible to a maximum of 18% per year, by utilizing a procedure similar to that set forth in the amendment to the usury statute of 1968.

SENATE AMENDMENT TO  
**SENATE, No. 289**

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**STATE OF NEW JERSEY**

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ADOPTED FEBRUARY 2, 1970

Amend page 10, section 13, line 45, after the word "law", insert the following: "; provided, however, a licensee may require a borrower to pay a reasonable legal fee at the time of the execution of the secondary mortgage loan, provided any such legal fee shall represent a charge actually incurred in connection with said secondary mortgage loan and shall not be paid to a person except an attorney authorized to practice law in this State; provided, further, that such legal fee shall be evidenced by a statement from such attorney issued to the licensee".

SENATE, No. 289

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1970 SESSION

By Senators TANZMAN, BATEMAN and McDERMOTT

AN ACT supplementing Title 17 of the Revised Statutes, to define and regulate secondary mortgage loans and to repeal "An act to define and regulate secondary mortgage loans," approved June 9, 1965 (P. L. 1965, c. 91).

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

1 1. This act shall be known as the "Secondary Mortgage Loan  
2 Act."

1 2. As used in this act, the following words and terms shall have  
2 the following meanings unless the context otherwise requires:

3 a. "Secondary mortgage loan" means a loan made to an indi-  
4 vidual, association, joint venture, partnership, limited partnership,  
5 limited partnership association, or any other group of individuals  
6 however organized, except a corporation, which is secured in whole  
7 or in part by a lien upon any interest in real property created by  
8 a security agreement, including a mortgage, indenture, or any  
9 other similar instrument or document, which real property is sub-  
10 ject to one or more prior mortgage liens and which is used as a  
11 dwelling, including a dual purpose or combination type dwelling  
12 which is also used as a business or commercial establishment, and  
13 has accommodations for not more than 4 families, except that a  
14 loan which: (1) is to be repaid in 90 days or less; (2) is taken as  
15 security for a home repair contract executed in accordance with  
16 the provisions of chapter 41, P. L. 1960; (3) is at an interest rate  
17 which is not in excess of the usury rate in existence at the time  
18 the loan is made, as established in accordance with the law of this  
19 State, and on which loan the borrower has not agreed to pay, di-  
20 rectly or indirectly, any charge, cost, expense or any fee whatso-  
21 ever other than said interest; or (4) is the result of the private  
22 sale of a dwelling if title to the dwelling is in the name of the seller

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

23 and the seller has resided in said dwelling for at least one year if  
24 the buyer is purchasing said dwelling for his own residence and,  
25 as part of the purchase price, executes a secondary mortgage in  
26 favor of the seller; shall not be subject to the provisions of this act.

27 b. "Borrower" means any person applying for a secondary  
28 mortgage loan, whether or not the loan is granted, and any person  
29 who has actually obtained such a loan.

30 c. "Licensee" means a person who is required to be licensed by  
31 section 3 of this act.

32 d. "Person" means an individual, association, joint venture,  
33 partnership, limited partnership, limited partnership association,  
34 corporation or any other group of individuals however organized.

35 e. "Commissioner" means the Commissioner of Banking \*\*~~and~~  
36 Insurance]\*\* of New Jersey including his deputies, or any other sal-  
37 aried employee of the Department of Banking \*\*~~and~~  
38 Insurance]\*\* appointed or designated by the commissioner to perform the func-  
39 tions required for the administration or enforcement of this act.

1 3. No person shall engage in the secondary mortgage loan busi-  
2 ness in this State unless such person shall first obtain a license  
3 under this act. For the purpose of this act, a person is deemed to  
4 be engaged in the secondary mortgage loan business in this State  
5 if: (a) such person advertises, causes to be advertised, solicits,  
6 negotiates, offers to make or makes a secondary mortgage loan in  
7 this State, whether directly or by any person acting for his bene-  
8 fit; or (b) such person becomes the subsequent holder of a promis-  
9 sory note or mortgage, indenture or any other similar instrument  
10 or document received in connection with a secondary mortgage  
11 loan. A real estate broker licensed pursuant to the provisions of  
12 the law of this State or an attorney authorized to practice law in  
13 this State shall not be required to obtain a license to negotiate a  
14 secondary mortgage loan in the normal course of the business of  
15 a real estate broker or attorney.

1 4. a. An application for a secondary mortgage loan license shall  
2 be on a form provided by the commissioner. The application shall  
3 set forth the name and resident address of the applicant and, if  
4 the applicant is other than an individual or corporation, of each  
5 partner or member, and if the applicant is a corporation, of each  
6 officer, director and the registered agent. The application shall  
7 also set forth the address or addresses where the secondary mort-  
8 gage loan business is to be conducted in this State.

9 b. The application shall demonstrate that the applicant has  
10 liquid assets available for the purpose of making secondary mort-

11 gage loans and a net worth of at least \$50,000.00.

12 c. The application shall contain such other information as the  
13 commissioner shall require in order to carry out the purposes of  
14 this act.

15 d. If the applicant intends to conduct business under a trade  
16 name, a certified copy of the applicant's trade name certificate as  
17 required by the law of this State shall accompany the application.

18 e. If the applicant is a foreign corporation, said corporation  
19 shall be authorized to do business in this State in accordance  
20 with the law of this State regulating corporations.

21 f. Applicants for a secondary mortgage loan license shall file  
22 with the application an irrevocable consent, duly acknowledged,  
23 that suits and actions may be commenced against such licensee in  
24 the courts of this State by the service of process or any pleading  
25 upon the commissioner, in the usual manner provided for  
26 service of process and pleadings by the statutes and Court Rules  
27 of this State. Said consent shall provide that such service shall be  
28 as valid and binding as if service had been made personally upon  
29 the licensee in this State. In all cases where process or pleadings  
30 are served upon the commissioner pursuant to the provisions of  
31 this section, such process or pleadings shall be served in duplicate,  
32 one of which shall be filed in the office of the commissioner and  
33 the other shall be forwarded by the commissioner, by certified or  
34 registered mail, return receipt, to the last known principal place of  
35 business of the licensee to whom such process or pleadings is  
36 directed.

1 5. An applicant shall pay to the commissioner at the time the  
2 application is filed, and annually thereafter upon renewal, a li-  
3 cense fee of \$200.00 for his principal place of business and an  
4 additional \$50.00 for each branch office in this State.

1 6. Within 60 days after an application is received, the commis-  
2 sioner shall determine whether a license should be issued. The  
3 commissioner may refuse to issue a license for any reason for  
4 which he may suspend, revoke or refuse to renew a license as pro-  
5 vided for by section 23a of this act.

1 7. If the commissioner refuses to issue a license, he shall notify  
2 the applicant, in writing, of his denial, the reason therefor and of  
3 the applicant's right to request a hearing; provided, however, that  
4 no such request shall be binding on the commissioner unless the  
5 request is made, in writing, within 10 days after receipt of the com-  
6 missioner's notice. If the applicant requests a hearing, the com-  
7 missioner shall hold a hearing within 10 days after receipt of the



8 applicant's request, and within 20 days after the hearing he shall  
9 render a decision, in writing, which shall set forth his findings and  
10 conclusions, a copy of which shall be sent to the applicant. Regis-  
11 tered or certified mail, return receipt, shall be utilized by the com-  
12 missioner to transmit any notice or decision to the applicant,  
13 which shall be mailed to the applicant's principal place of business  
14 in this State, as set forth in the application. If the applicant does  
15 not request a hearing or if, after a hearing, the commissioner still  
16 refuses to issue a license to the applicant, the amount paid as a  
17 license fee shall be refunded to the applicant but the application  
18 and all supplemental schedules, instruments or documents filed  
19 with the application shall remain in the custody of the commis-  
20 sioner.

1 8. Each license issued by the commissioner shall specify:

2 a. The name and address of the licensee, the address so specified  
3 to be that of the licensee's principal place of business, or branch  
4 office, in this State.

5 b. The licensee's reference number, which may remain the same  
6 from year to year despite variations in annual license numbers  
7 which may result from the renewal of licenses by mechanical tech-  
8 niques.

9 c. Such other information as the commissioner shall require in  
10 order to carry out the purposes of this act.

1 9. A license issued by the commissioner shall:

2 a. Expire on December 31 of each year. No refund in the  
3 amount of the license fee shall be made if the license is issued for  
4 less than 12 months or if the license is voluntarily surrendered to  
5 or suspended or revoked by the commissioner prior to its expira-  
6 tion date.

7 b. Be invalid, in the event the licensee is a corporation, if the  
8 licensee's corporate charter is voided in accordance with the pro-  
9 visions of any law of this or any other State.

1 10. A license shall not be assignable or transferable by opera-  
2 tion of law or otherwise.

1 11. a. A licensee shall have authority to make a secondary  
2 mortgage loan, repayable in installments, and may charge, con-  
3 tract for and receive thereon interest at an annual percentage  
4 rate not exceeding 15%, computed by the actuarial method (United  
5 States rule) and; provided further, the Commissioner of Bank-  
6 ing **\*\*[and Insurance]\*\***, with the advice of a special advisory  
7 board constituted as hereinafter provided, may by regulation

8 adopted, amended and rescinded from time to time, provide that  
9 the interest which may be taken for any such loan shall be more  
10 than 15% per annum but not more than ~~\*\*[18%]\*\*~~ ~~\*\*[\*\*20%\*\*]\*\*~~  
11 ~~\*\*18%\*\*~~ per annum, as shall be prescribed in such regulation.

12 (1) No interest shall be paid, deducted, or received in advance.  
13 Interest shall not be compounded and shall be computed only on  
14 unpaid principal balances. For the purposes of computing in-  
15 terest, whether at the maximum rate or less, a month shall be con-  
16 sidered a calendar month and where a fraction of a month is in-  
17 volved a day shall be considered 1/30 of a month.

18 b. In making, amending, and rescinding regulations pursuant to  
19 the preceding provision, the Commissioner of Banking ~~\*\*[and In-  
20 surance]\*\*~~ and the special advisory board shall consider the general  
21 state of the economy, the discount rates prescribed by the Federal  
22 Reserve Bank of New York and the Federal Reserve Bank of  
23 Philadelphia, the advance rate as prescribed by the Federal Home  
24 Loan Bank of New York, the availability of funds for loans,  
25 studies and statistics published by the Federal Home Loan Bank  
26 Board and other agencies of the United States and of this State,  
27 and such other factors and bases for determination as the com-  
28 missioner and the board may deem pertinent. The rate established  
29 by any such regulation shall reasonably reflect prevailing market  
30 conditions, regionally and nationally, based upon the studies,  
31 statistics and factors considered, and shall remain in force until  
32 such time as such regulation is rescinded or such rate is increased  
33 or decreased by a subsequent regulation. Any such regulation  
34 shall have prospective effect only.

35 c. The special advisory board herein provided for shall consist  
36 of the Commissioner of Banking ~~\*\*[and Insurance]\*\*~~, who shall be  
37 ex-officio chairman of the board, and 5 members appointed by the  
38 Governor with the advice and consent of the Senate. Any ap-  
39 pointed member of the board may be removed from office by the  
40 Governor whenever, in his judgment, the public interest may so  
41 require. Each of the 5 appointed members shall have had, at the  
42 time of his appointment, practical experience in consumer financing  
43 or fields so related thereto as to qualify each as an authority for  
44 the purpose of advising the Commissioner of Banking ~~\*\*[and In-  
45 surance]\*\*~~ regarding the interest which may be taken for any  
46 secondary mortgage loan. At no time shall there be more than a  
47 single representative on the board from any one institution or  
48 group of institutions.

49 d. Each member of the board shall hold office for a term of 2  
50 years, and thereafter until his successor is appointed and has

51 qualified, subject to removal by the Governor pursuant to the  
 52 preceding provision. Members of the board shall be eligible for  
 53 reappointment in the same manner as the initial appointment of  
 54 members of the board as provided for heretofor. Any vacancies  
 55 in the board shall be filled for the unexpired portion of the term  
 56 in the same manner as for a full term.

57 e. The members of the special advisory board shall serve without  
 58 compensation, but shall be reimbursed for their actual and neces-  
 59 sary expenses in attending meetings of the board. All claims for  
 60 reimbursement shall be submitted in the form and manner pre-  
 61 scribed for like claims of the Commissioner of Banking **\*\*[and In-**  
 62 **surance]\*\***.

63 f. The board shall meet at least semiannually, at such times and  
 64 places in the State as it may determine. The commissioner may  
 65 call such other meetings as he may deem necessary, and he shall  
 66 call a meeting when requested by 2 or more members of the board.  
 67 At least 3 days notice of every meeting shall be given to each mem-  
 68 ber of the board personally, or by mail, telephone, or telegraph.  
 69 Four members of the board shall constitute a quorum.

70 g. The special advisory board shall elect a secretary who may be  
 71 an employee of the Department of Banking **\*\*[and Insurance]\*\***  
 72 but who shall receive no extra compensation for serving as secre-  
 73 tary. The secretary shall keep an accurate record of all meetings  
 74 of the board and shall perform such other duties as may be pre-  
 74A scribed by the board.

75 h. For the purpose of discharging its duties, the board shall  
 76 have access to all relevant records in the Department of Banking  
 77 **\*\*[and Insurance]\*\***, including reports and confidential com-  
 78 munications, but each member of the board shall treat all informa-  
 79 tion so obtained as confidential and shall not reveal any such in-  
 80 formation to any person other than another member of the board.

81 i. No member of the board, including the Commissioner of  
 82 Banking **\*\*[and Insurance]\*\***, shall be personally liable for any  
 83 act done or omitted in connection with the performance of his duties  
 84 under this act.

85 j. At the initial meeting of the special advisory board, the mem-  
 86 bers shall agree, by majority vote, to the procedure by which rec-  
 87 ommendations will be made to the commissioner concerning the  
 88 interest rate to be established pursuant to this act.

1 12. A secondary mortgage loan licensee shall:

2 a. Maintain at least one licensed place of business in this State.

3 b. Conspicuously display his license at each licensed place of  
 4 business.

5 c. Keep on file with the commissioner a corporate surety bond  
6 in the principal sum of \$5,000.00. Said bond shall be in the form  
7 required by the commissioner and shall be issued by a surety com-  
8 pany authorized to transact business in this State. The bond shall  
9 run to the State and shall be conditioned that the licensee will com-  
10 ply with the provisions of this act. The aggregate liability of the  
11 surety on the bond shall in no event exceed the amount of said bond.

12 d. Maintain a net worth of \$50,000.00 at all times.

13 e. Maintain at his place of business in this State an original or  
14 true copy of the following instruments, documents, accounts, books  
15 and records:

16 (1) Promissory note evidencing each borrower's secondary  
17 mortgage loan indebtedness.

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

21 (3) Credit life and accident and health insurance policy or a  
22 certificate of insurance where such insurance is obtained in ac-  
23 cordance with section 16 of this act.

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

25 (5) Appraisal or search, where utilized.

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

29 (7) Individual file in which the borrower's application for a loan  
30 and any correspondence, including collection letters, memoran-  
31 dums, notes or any other written information pertaining to the bor-  
32 rower's account, shall be kept.

33 (8) General ledger, cash receipts and disbursements register,  
34 check book, canceled checks and such other accounts, books or  
35 records as shall be required by the commissioner in order to as-  
36 certain whether the licensee has been conducting his secondary  
37 mortgage loan business in full compliance with the provisions of  
38 this act.

39 All of the aforementioned instruments, documents, accounts,  
40 books and records shall be kept separate and apart from the rec-  
41 ords of any other business conducted by the licensee and shall be  
42 preserved and kept available for investigation or examination by  
43 the commissioner for at least 2 years after a secondary mortgage  
44 loan has been paid in full. The provisions of this section shall not  
45 apply to any instrument, document, account, book or record which  
46 is assigned, sold or transferred to another secondary mortgage  
47 loan licensee nor shall the 2-year requirement apply to an instru-

48 ment or document which must be returned to the borrower at the  
49 time a secondary mortgage loan is paid in full.

50 f. Annually, before February 1, file a report with the commis-  
51 sioner which shall set forth such information as the commissioner  
52 shall require concerning the business conducted as a licensee during  
53 the preceding calendar year. The report shall be in writing, under  
54 oath and on a form provided by the commissioner.

55 g. Be subject to an examination by the commissioner, at least  
56 once a year, at which time the commissioner shall have free access,  
57 during regular business hours, to the licensee's place or places of  
58 business in this State and to all instruments, documents, accounts,  
59 books and records which pertain to the licensee's secondary mort-  
60 gage loan business. The cost of any such examination shall be  
61 borne by the licensee.

62 h. In the event a borrower's application for a secondary mort-  
63 gage loan is denied, notify the borrower, in writing, of said denial  
64 and, provided further, the name of any such borrower or a list of  
65 any such borrowers shall not be referred by the licensee, in any  
66 manner whatsoever, to any other lender, retail seller of personal  
67 property or services or to any other person, whether in this or any  
67A other State.

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

70 j. Give to the borrower, without charge, a copy of every instru-  
71 ment, document or other writing the borrower signs.

72 k. Give to the borrower, without charge, written evidence of  
73 credit life and accident and health insurance, if any, in accordance  
74 with regulations promulgated by the commissioner pursuant to  
75 chapter 169, P. L. 1958.

76 l. Give to the borrower, without charge, at the time a secondary  
77 mortgage loan is made, a closing statement which itemizes the in-  
78 dividual amounts disbursed to or on behalf of the borrower, in-  
79 cluding, but not limited to, the premium for credit life and accident  
80 and health insurance, if any, the total amount of the funds so dis-  
81 bursed, the amount of the interest charge, total amount of the loan,  
82 the amount, number and due date of the installment payments and  
83 the interest charge expressed as an annual percentage rate.

84 m. When a payment is made in cash on account of a secondary  
85 mortgage loan, give to the borrower, without charge, at the time  
86 such payment is actually received, a written receipt which shall  
87 show the name and address of the licensee, the name and address  
88 of the borrower, account number or other identification mark or

89 symbol, date, amount paid and the unpaid balance of the account  
90 prior to and after the cash payment.

91 n. Upon written request from the borrower, give or forward to  
92 the borrower, without charge, within 5 days from the date of re-  
93 ceipt of such request, a written statement of the borrower's ac-  
94 count which shall show the dates and amounts of all installment  
95 payments credited to the borrower's account, the dates, amounts  
96 and an explanation of all other charges or credits to the account  
97 and the unpaid balance thereof. A licensee shall not be required  
98 to furnish more than 2 such statements in any 12-month period.

99 o. When a secondary mortgage loan is paid in full:

100 (1) Refund to the borrower, in accordance with regulations  
101 promulgated by the commissioner pursuant to chapter 169, P. L.  
102 1958, any unearned portion of the premium for credit life and acci-  
103 dent and health insurance, if a premium for such insurance was  
104 disbursed on behalf of the borrower at the time the secondary mort-  
105 gage loan was originally made.

106 (2) Stamp or write on the face of the promissory note evidenc-  
107 ing the borrower's secondary mortgage loan indebtedness "Paid  
108 in Full" or "Cancelled," the date paid and the name and address  
109 of the licensee and, within 10 days, return the promissory note to  
110 the borrower.

111 (3) Release, at the expense of the licensee, any lien on real  
112 property and cancel the same of record and, at the time the promis-  
113 sory note evidencing the borrower's secondary mortgage loan in-  
114 debtedness is returned, deliver to the borrower such good and suf-  
115 ficient assignments, releases or any other certificate, instrument  
116 or document as may be necessary to vest the borrower with com-  
117 plete evidence of title, insofar as the applicable secondary mort-  
118 gage loan is concerned, to the real property.

1 13. A secondary mortgage loan licensee shall not:

2 a. Transact any business subject to the provisions of this  
3 act under any other name or at any other location except that  
4 designated in his license. For the purpose of this section, the  
5 transaction of business includes, but is not limited to, the signing  
6 of any instrument, document or any other form by the borrower,  
7 except that a borrower's application for a secondary mort-  
8 gage loan need not be signed in the office of the licensee.  
9 A licensee who changes his name or place of business shall  
10 immediately notify the commissioner who shall issue a certificate  
11 to the licensee, which shall specify the licensee's new name or  
12 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  
17 by a retail seller, who, in connection with such referral, has re-  
18 quired the borrower to purchase personal property or services  
19 or has 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 accept  
22 an advance deposit prior to the time a secondary mortgage loan is  
23 closed.
- 24 f. Make a secondary mortgage loan until such time as the licensee  
25 has obtained:
- 26 (1) A written statement signed by the borrower that the holder  
27 of every other existing mortgage on the real property offered as  
28 security for the secondary mortgage loan has declined to make a  
29 loan in the desired amount or;
- 30 (2) A written statement signed by the borrower that the terms  
31 offered by the holder of every other existing mortgage on the real  
32 property offered as security for the secondary mortgage loan are  
33 not acceptable to the borrower.
- 34 g. Require or accept from a borrower any collateral or security  
35 for a secondary mortgage loan other than a mortgage, indenture or  
36 any other similar instrument or document which creates a lien  
37 upon any real property.
- 38 h. Contract for, charge, receive or collect directly or indirectly,  
39 any of the following in connection with a secondary mortgage loan:  
40 a charge for appraisal service; search; broker's or finder's fee;  
41 commission; discount; expense; examination fee; fine; interest;  
42 penalty; points; premium, or any other thing of value other than the  
43 charges authorized by this act, except the expenses incurred on  
44 actual sale of the real property in foreclosure proceedings or upon  
45 the entry of judgment, which are otherwise authorized by law\* \*\***¶**;  
45A *provided, however, a licensee may require a borrower to pay a*  
45B *reasonable legal fee at the time of the execution of the secondary*  
45C *mortgage loan, provided any such legal fee shall represent a charge*  
45D *actually incurred in connection with said secondary mortgage loan*  
45E *and shall not be paid to a person except an attorney authorized to*  
45F *practice law in this State; provided, further, that such legal fee*  
45G *shall be evidenced by a statement from such attorney issued to the*  
45H *licensee\***¶**\*\* \*\*;* *provided, however, a licensee may require a bor-*  
45I *rower to pay a reasonable legal fee at the time of the execution of*  
45J *the secondary mortgage loan, provided any such legal fee shall*

45K *represent a charge actually incurred in connection with said*  
 45L *secondary mortgage loan and shall not be paid to a person except*  
 45M *an attorney authorized to practice law in this State; provided,*  
 45N *further, that such legal fee shall be evidenced by a statement from*  
 45O *such attorney issued to the licensee.\*\**

46 i. Assign, sell or transfer a secondary mortgage loan to a person  
 47 other than another secondary mortgage loan licensee.

48 j. Solicit business through any other person by paying, directly  
 49 or indirectly, for such business referred to the licensee by any such  
 50 person.

51 k. Solicit business, directly or indirectly, for any other licensee,  
 52 lender, retail seller of personal property or services or for any other  
 53 person, whether in this or any other State.

54 l. Advertise, cause to be advertised or otherwise solicit whether  
 55 orally, in writing, by telecast, by broadcast or in any other manner:

56 (1) That he is licensed by, or that his business is under the  
 57 supervision of, the State of New Jersey or the Department of Bank-  
 58 ing **\*\*[and Insurance]\*\***, except that a licensee may advertise that  
 59 he is "licensed pursuant to the Secondary Mortgage Loan Act";  
 60 provided, however, that for the purpose of raising capital, no such  
 61 advertisement shall be permitted if it is to be used in connection  
 62 with a public solicitation for such funds.

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

65 (3) The word "bank" or any term inferring that the licensee is  
 66 or is associated with a bank.

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

69 (5) Any statement or representation which is false, misleading  
 70 or deceptive and, provided further, a written or other visual adver-  
 71 tisement shall include the licensee's name, address and telephone  
 72 number in this State and the phrase "Secondary Mortgage Loans"  
 73 in 10-point bold type or larger.

1 14. Every borrower shall have the right to be represented by  
 2 an attorney of his own choosing at the time a secondary mortgage  
 3 loan is closed and shall be advised of such right, in writing, at least  
 4 4 days prior to the execution of the secondary mortgage loan.

1 15. A borrower shall not be required to pay, directly or indirectly,  
 2 to a licensee or any other person, a broker's or finder's fee, com-  
 3 mission, discount, points or premium for obtaining, procuring or  
 4 the placing of a secondary mortgage loan.

1 16. A borrower shall not be compelled to purchase credit life or  
 2 accident and health insurance in connection with a secondary mort-



3 gage loan. If, however, the borrower elects to obtain such insurance,  
4 he shall, in a separate instrument, consent thereto, in writing, and,  
5 provided further:

6 a. The insurance shall be obtained in accordance with chapter  
7 169, P. L. 1958, and the regulations promulgated by the commis-  
8 sioner pursuant thereto.

9 b. For the purpose of this section, the word "debtor" as defined  
10 in chapter 169, P. L. 1958, means, if more than one person is  
11 obligated for the payment of a secondary mortgage loan, the person  
12 whose signature appears on the first line provided for the signa-  
13 tures of borrowers on a promissory note evidencing the borrower's  
14 indebtedness, said person to be the only person for whom such  
15 insurance is obtained.

16 c. The premium for any such insurance shall be deducted from  
17 the amount of the secondary mortgage loan requested by the  
18 borrower.

19 d. Nothing in this act or in any other law of this State shall  
20 prohibit a licensee or any employee, affiliate, subsidiary, or as-  
21 sociate of said licensee, from collecting the premium or identifiable  
22 charge for insurance permitted by this act and from receiving or  
23 retaining any dividend, or any other gain or advantage resulting  
24 from such insurance; subject, however, to the authority of the  
25 commissioner to promulgate such rules and regulations with regard  
26 to such dividend, gain or advantage as he may deem necessary,  
27 including the authority to reduce the rate of interest to be charged  
28 by a particular licensee to borrowers in consideration of the benefit  
29 to said licensee from such dividend, gain or advantage.

1 17. Notwithstanding any agreement between a licensee and a  
2 borrower to the contrary, a borrower shall not be required to pay  
3 a penalty fee for prepaying a secondary mortgage loan in full prior  
4 to maturity.

1 18. An instrument evidencing a secondary mortgage loan shall:  
2 a. Be in the form of a promissory note which shall be identifiable  
3 by the use of the words "Secondary Mortgage Loan" printed  
4 prominently, in 14-point bold type or larger, centered and at the  
5 top of the promissory note and, directly underneath, in 8-point bold  
6 type or larger, the statement, "This promissory note is subject to  
7 the provisions of the Secondary Mortgage Loan Act."

8 b. Provide for the payment, in full, of the total amount of the  
9 secondary mortgage loan in substantially equal payment periods,  
10 measured in terms of weeks or months, and installment payment  
11 amounts, except that the initial payment period may be deferred  
12 for 60 days and, provided further, when appropriate for the pur-

13 pose of facilitating payment in accordance with the borrower's  
 14 intermittent income, a promissory note may provide an installment  
 15 schedule which reduces or omits payments over any period or  
 16 periods of time during which period or periods the borrower's  
 17 income is reduced or suspended, and the final installment may be  
 18 \$1.00 more or less than the amount of all other regular installment  
 19 payments.

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

22A "NOTICE TO BORROWER

23 Read this promissory note before you sign.

24 Do not sign this promissory note if it contains blank spaces.

25 This promissory note is secured by a secondary mortgage on your  
 26 real property."

27 d. Be completed in full before it is signed by the borrower. In  
 28 the event that it is unnecessary to fill in a blank space provided  
 29 for in any instrument, the figure -0-, a dash, line or the word "none"  
 30 shall be inserted in such blank space.

1 19. No writing of any kind executed in connection with a second-  
 2 ary mortgage loan shall contain:

3 a. An agreement whereby the borrower waives any rights  
 4 accruing to him under the provisions of this act or any other law  
 5 of this State.

6 b. A power of attorney to confess judgment or any other power  
 7 of attorney.

8 c. An assignment of or order for the payment of any salary,  
 9 wages, commissions or any other compensation for services, or any  
 10 part thereof, earned or to be earned.

11 d. An agreement to pay any amount other than the unpaid balance  
 12 of the promissory note or any other charge authorized by this act.

13 e. A provision relieving the licensee from liability for any claim,  
 14 or from any legal remedy, which the borrower may have against  
 15 said licensee under the terms of the promissory note.

16 f. A provision whereby the borrower waives any right of action  
 17 against the licensee, a subsequent holder or any person acting on  
 18 the licensee's or holder's behalf for any illegal act committed in  
 19 the collection of payments under the promissory note.

20 g. An acceleration clause under which the unpaid balance of the  
 21 promissory note not yet matured or any part thereof may be  
 22 declared due and payable because the licensee or subsequent holder  
 23 deems himself to be insecure.

1 20. A promissory note may provide for the payment of attorney  
2 fees in the event it becomes necessary to refer the promissory note  
3 to an attorney for collection; provided, however, that any such  
4 provision shall be void and unenforceable unless:

5 a. The promissory note is referred to an attorney authorized to  
6 practice law in this State.

7 b. The attorney to whom the promissory note is referred is not  
8 a partner, officer, director or employee, whether salaried or commis-  
9 sioned, of the licensee.

10 c. Suit is actually filed by the attorney to whom the promissory  
11 note is referred and subsequently decided in favor of the licensee,  
12 in which event such attorney fees shall not exceed 15% of the first  
13 \$500.00, 10% of the next \$500.00 and 5% of any excess amount due  
14 and owing under the promissory note and, provided further that at  
15 least 15 days prior to the commencement of the suit, the licensee  
16 or his attorney shall send to the borrower, by certified or registered  
17 mail, return receipt, at his last known address, a statement of his  
18 intention to sue, which statement shall also specify the amount of  
19 principal, interest and any other charge due and owing to the  
20 licensee.

21 d. In any proceeding to satisfy a judgment by the sale of the  
22 real property securing a secondary mortgage loan, a credit for the  
23 fair market value of such property shall be afforded to the borrower.

1 21. The commissioner shall have authority to:

2 a. Make, enforce, alter, modify, amend, or repeal rules and  
3 regulations to effectuate the purposes of this act and to establish  
4 and maintain ethical, fair, equitable and honest business standards  
5 for persons who are subject to any provision of this act.

6 b. Examine any instrument, document, account, book, record or  
7 file of a licensee or any other person, or make such other investiga-  
8 tions as he shall deem necessary to administer the provisions of  
9 this act.

10 c. Conduct administrative hearings on any matter pertaining to  
11 this act, issue subpoenas to compel the attendance of witnesses and  
12 the production of instruments, documents, accounts, books and  
13 records at any such hearing, which may be retained by the commis-  
14 sioner until the completion of all proceedings in connection with  
15 which they were produced, and administer oaths and affirmations to  
16 any person whose testimony is required. In the event a person fails  
17 to comply with a subpoena issued by the commissioner or to testify  
18 on any matter concerning which he may be lawfully interrogated, on  
19 application by the commissioner, the Superior Court may issue an  
20 order requiring the attendance of such person, the production of

21 instruments, documents, accounts, books or records or the giving  
22 of testimony.

1 22. A licensee may surrender his license to the commissioner by  
2 delivering his license to the commissioner with written notice that  
3 the license is being voluntarily surrendered but such an action by a  
4 licensee shall not affect the licensee's civil or criminal liability for  
5 acts committed prior to the date on which the license was sur-  
6 rendered.

1 23. a. The commissioner may suspend, revoke or refuse to renew  
2 any license issued pursuant to this act after giving 10 days written  
3 notice forwarded to the licensee's principal place of business, by  
4 registered or certified mail, return receipt, stating the contemplated  
5 action and the reason therefor, if he shall find, after the licensee has  
6 had an opportunity to be heard, that the licensee has:

7 (1) Made any material misstatement in his application.

8 (2) Misrepresented, deceived, concealed, suppressed, omitted or  
9 otherwise failed to disclose any information required to be stated  
10 or furnished to a borrower under the provisions of this act or any  
11 other law of this State.

12 (3) Failed to comply with or violated any provision of this act  
13 or any rule or regulation promulgated by the commissioner pursuant  
14 thereto.

15 (4) Failed to perform a written agreement with a borrower.

16 (5) Otherwise demonstrated a lack of financial responsibility,  
17 unworthiness, bad faith or dishonesty.

18 The hearing and notice provisions of this section shall not apply  
19 in the event the licensee is a corporation if the licensee's cor-  
20 porate charter is voided in accordance with the provisions of any  
21 law of this or any other State, in which event the commissioner may  
22 suspend or revoke the license forthwith.

23 b. The commissioner may subsequently reinstate a license which  
24 has been suspended or revoked or renew a license which he had  
25 previously refused to renew if the condition which warranted the  
26 original action has been corrected, and he has reason to believe that  
27 such condition is not likely to occur again and that the licensee is  
28 worthy of such reinstatement.

1 24. The provisions of this act shall apply to any secondary  
2 mortgage loan:

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

6 b. Made or executed within this State.

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

1 25. Any obligation on the part of a borrower arising out of a  
2 secondary mortgage loan shall be void and unenforceable unless  
3 such secondary mortgage loan was executed in full compliance  
4 with the provisions of this act.

1 26. a. Any person who engages in the secondary mortgage loan  
2 business in this State without having first obtained a license as  
3 required by section 3 of this act shall be liable for a penalty of not  
4 more than \$1,000.00 for each offense. For the purpose of this sub-  
5 section, each loan made without a license shall constitute a separate  
6 offense.

7 b. Any person, including any licensee or any partner, officer,  
8 director or employee, whether salaried or commissioned, of such li-  
9 censee, or any other person representing a licensee, whether di-  
10 rectly or indirectly, who violates any provision of this act or any  
11 rule or regulation promulgated in connection therewith, shall be  
12 liable for a penalty, in addition to all other penalties or forfeitures  
13 imposed by this or any other law, of not more than \$1,000.00 for  
14 each offense. Any person who shall aid or abet such a violation shall  
15 be equally liable for such a penalty as may be imposed upon a princi-  
16 pal violator. For the purpose of this subsection, a violation of any  
17 section of this act or any rule or regulation promulgated by the  
18 commissioner pursuant thereto shall constitute a separate offense.  
19 The commissioner, in his discretion, is hereby authorized and em-  
20 powered to compromise and settle any claim for a penalty under  
21 this subsection for an amount that appears appropriate and equit-  
22 able under all of the circumstances.

23 c. The penalties provided for in this section, if not voluntarily  
24 paid to the commissioner, shall be collected in a civil action brought  
25 in the name of the commissioner pursuant to the provisions of the  
26 Penalty Enforcement Law, L. 1948, chapter 253, 1 et seq., Revised  
27 Statutes 2A:58-1 et seq.

1 27. a. Nothing contained in this act shall be construed to impair  
2 or affect any rights of a borrower, civil or criminal liabilities of a  
3 licensee or administrative proceedings by the commissioner which  
4 hereafter may arise as the result of a secondary mortgage loan  
5 made under chapter 91, P. L. 1965, and, provided further, nothing  
6 contained in this act shall be construed to impair or affect an obliga-  
7 tion of a borrower for a secondary mortgage loan executed prior  
8 to the effective date of this act, provided such secondary mortgage  
9 loan was lawfully executed in accordance with the provisions of  
10 chapter 91, P. L. 1965.

11 b. A licensee licensed pursuant to the provisions of chapter 91,  
12 P. L. 1965, on the date this act takes effect shall continue as a

13 licensee under this act for the year ending December 31, 1970, at  
14 which time the licensee shall renew his license under the provisions  
15 of this act, if the licensee intends to continue to engage in the  
16 secondary mortgage loan business.

1 28. **\*\***Nothing contained in this act shall be construed or inter-  
2 preted as an expansion or restriction of the existing powers of a  
3 State or National bank, savings bank, State or Federal savings and  
4 loan association or insurance company to engage in the secondary  
5 mortgage loan business, provided such business is otherwise au-  
6 thorized and regulated by law in which event the provisions of this  
7 act shall not apply to any such financial institution.**\*\*** *\*\*Nothing*  
8 *in this act shall be construed as expanding or restricting the powers*  
9 *otherwise conferred by law upon financial institutions, such as State*  
10 *and National banks, State and Federal savings and loan associa-*  
11 *tions, savings banks and insurance companies, to engage in the*  
12 *secondary mortgage business as defined in section 3, and no such*  
13 *financial institution, in exercising any power otherwise so conferred*  
14 *upon it, shall be subject to any provision of this act.\*\**

1 29. If any provision or section of this act or any provision or  
2 section of any subsequent amendments or supplements to this act  
3 shall be held to be unconstitutional, said provision or section shall  
4 be excised and the remainder of the provisions and sections of  
5 the act as amended or supplemented shall be and remain valid with  
6 the same effect as if said provision or section so held to be uncon-  
7 stitutional had never been a part of the act.

1 30. "An act to define and regulate secondary mortgage loans,"  
2 approved June 9, 1965 (P. L. 1965, c. 91) is repealed.

1 31. This act shall take effect on the sixtieth day following the  
2 date on which it is enacted.

ASSEMBLY AMENDMENTS TO

**SENATE, No. 289**

[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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ADOPTED APRIL 30, 1970

Amend page 2, section 2, line 35, omit "and".

Amend page 2, section 2, line 36, omit "Insurance".

Amend page 2, section 2, line 37, omit "and Insurance".

Amend page 4, section 11, line 6, omit "and Insurance".

Amend page 5, section 11, line 10, omit "18%", insert "20%".

Amend page 5, section 11, line 19, omit "and Insur-".

Amend page 5, section 11, line 20, omit "ance".

Amend page 5, section 11, line 36, omit "and Insurance".

Amend page 5, section 11, line 44, omit "and Insur-".

Amend page 5, section 11, line 45, omit "ance".

Amend page 6, section 11, line 61, omit "and In-".

Amend page 6, section 11, line 62, omit "surance".

Amend page 6, section 11, line 71, omit "and Insurance".

Amend page 6, section 11, line 77, omit "and Insurance".

Amend page 6, section 11, line 82, omit "and Insurance".

Amend page 10, section 13, line 45, omit " ;".

Amend page 10, section 13, lines 45A to 45H, omit in their entirety.

Amend page 11, section 13, line 58, omit "and Insurance".

Amend page 17, section 28, lines 1 to 7, omit in their entirety and insert a new paragraph as follows:

"Nothing in this act shall be construed as expanding or restricting the powers otherwise conferred by law upon financial institutions, such as State and National banks, State and Federal savings and loan associations, savings banks and insurance companies, to engage in the secondary mortgage business as defined in section 3, and no such financial institution, in exercising any power otherwise so conferred upon it, shall be subject to any provision of this act."

FURTHER ASSEMBLY AMENDMENTS TO

**SENATE, No. 289**

[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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ADOPTED MAY 4, 1970

Amend page 5, section 11, line 10, omit "20%", reinsert "18%".

Amend page 10, section 13, line 45H, reinsert " ; provided, however, a licensee may require a borrower to pay a reasonable legal fee at the time of the execution of the secondary mortgage loan, provided any such legal fee shall represent a charge actually incurred in connection with said secondary mortgage loan and shall not be paid to a person except an attorney authorized to practice law in this State; provided, further, that such legal fee shall be evidenced by a statement from such attorney issued to the licensee".



SENATE, No. 289

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1970 SESSION

By Senators TANZMAN, BATEMAN and McDERMOTT

AN ACT supplementing Title 17 of the Revised Statutes, to define and regulate secondary mortgage loans and to repeal "An act to define and regulate secondary mortgage loans," approved June 9, 1965 (P. L. 1965, c. 91).

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

1 1. This act shall be known as the "Secondary Mortgage Loan  
2 Act."

1 2. As used in this act, the following words and terms shall have  
2 the following meanings unless the context otherwise requires:

3 a. "Secondary mortgage loan" means a loan made to an indi-  
4 vidual, association, joint venture, partnership, limited partnership,  
5 limited partnership association, or any other group of individuals  
6 however organized, except a corporation, which is secured in whole  
7 or in part by a lien upon any interest in real property created by  
8 a security agreement, including a mortgage, indenture, or any  
9 other similar instrument or document, which real property is sub-  
10 ject to one or more prior mortgage liens and which is used as a  
11 dwelling, including a dual purpose or combination type dwelling  
12 which is also used as a business or commercial establishment, and  
13 has accommodations for not more than 4 families, except that a  
14 loan which: (1) is to be repaid in 90 days or less; (2) is taken as  
15 security for a home repair contract executed in accordance with  
16 the provisions of chapter 41, P. L. 1960; (3) is at an interest rate  
17 which is not in excess of the usury rate in existence at the time  
18 the loan is made, as established in accordance with the law of this  
19 State, and on which loan the borrower has not agreed to pay, di-  
20 rectly or indirectly, any charge, cost, expense or any fee whatso-  
21 ever other than said interest; or (4) is the result of the private  
22 sale of a dwelling if title to the dwelling is in the name of the seller

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

23 and the seller has resided in said dwelling for at least one year if  
24 the buyer is purchasing said dwelling for his own residence and,  
25 as part of the purchase price, executes a secondary mortgage in  
26 favor of the seller; shall not be subject to the provisions of this act.

27 b. "Borrower" means any person applying for a secondary  
28 mortgage loan, whether or not the loan is granted, and any person  
29 who has actually obtained such a loan.

30 c. "Licensee" means a person who is required to be licensed by  
31 section 3 of this act.

32 d. "Person" means an individual, association, joint venture,  
33 partnership, limited partnership, limited partnership association,  
34 corporation or any other group of individuals however organized.

35 e. "Commissioner" means the Commissioner of Banking \*\*~~and~~  
36 Insurance]\*\* of New Jersey including his deputies, or any other sal-  
37 aried employee of the Department of Banking \*\*~~and Insurance~~\*\*\*  
38 appointed or designated by the commissioner to perform the func-  
39 tions required for the administration or enforcement of this act.

1 3. No person shall engage in the secondary mortgage loan busi-  
2 ness in this State unless such person shall first obtain a license  
3 under this act. For the purpose of this act, a person is deemed to  
4 be engaged in the secondary mortgage loan business in this State  
5 if: (a) such person advertises, causes to be advertised, solicits,  
6 negotiates, offers to make or makes a secondary mortgage loan in  
7 this State, whether directly or by any person acting for his bene-  
8 fit; or (b) such person becomes the subsequent holder of a promis-  
9 sory note or mortgage, indenture or any other similar instrument  
10 or document received in connection with a secondary mortgage  
11 loan. A real estate broker licensed pursuant to the provisions of  
12 the law of this State or an attorney authorized to practice law in  
13 this State shall not be required to obtain a license to negotiate a  
14 secondary mortgage loan in the normal course of the business of  
15 a real estate broker or attorney.

1 4. a. An application for a secondary mortgage loan license shall  
2 be on a form provided by the commissioner. The application shall  
3 set forth the name and resident address of the applicant and, if  
4 the applicant is other than an individual or corporation, of each  
5 partner or member, and if the applicant is a corporation, of each  
6 officer, director and the registered agent. The application shall  
7 also set forth the address or addresses where the secondary mort-  
8 gage loan business is to be conducted in this State.

9 b. The application shall demonstrate that the applicant has  
10 liquid assets available for the purpose of making secondary mort-

11 gage loans and a net worth of at least \$50,000.00.

12 c. The application shall contain such other information as the  
13 commissioner shall require in order to carry out the purposes of  
14 this act.

15 d. If the applicant intends to conduct business under a trade  
16 name, a certified copy of the applicant's trade name certificate as  
17 required by the law of this State shall accompany the application.

18 e. If the applicant is a foreign corporation, said corporation  
19 shall be authorized to do business in this State in accordance  
20 with the law of this State regulating corporations.

21 f. Applicants for a secondary mortgage loan license shall file  
22 with the application an irrevocable consent, duly acknowledged,  
23 that suits and actions may be commenced against such licensee in  
24 the courts of this State by the service of process or any pleading  
25 upon the commissioner, in the usual manner provided for  
26 service of process and pleadings by the statutes and Court Rules  
27 of this State. Said consent shall provide that such service shall be  
28 as valid and binding as if service had been made personally upon  
29 the licensee in this State. In all cases where process or pleadings  
30 are served upon the commissioner pursuant to the provisions of  
31 this section, such process or pleadings shall be served in duplicate,  
32 one of which shall be filed in the office of the commissioner and  
33 the other shall be forwarded by the commissioner, by certified or  
34 registered mail, return receipt, to the last known principal place of  
35 business of the licensee to whom such process or pleadings is  
36 directed.

1 5. An applicant shall pay to the commissioner at the time the  
2 application is filed, and annually thereafter upon renewal, a li-  
3 cense fee of \$200.00 for his principal place of business and an  
4 additional \$50.00 for each branch office in this State.

1 6. Within 60 days after an application is received, the commis-  
2 sioner shall determine whether a license should be issued. The  
3 commissioner may refuse to issue a license for any reason for  
4 which he may suspend, revoke or refuse to renew a license as pro-  
5 vided for by section 23a of this act.

1 7. If the commissioner refuses to issue a license, he shall notify  
2 the applicant, in writing, of his denial, the reason therefor and of  
3 the applicant's right to request a hearing; provided, however, that  
4 no such request shall be binding on the commissioner unless the  
5 request is made, in writing, within 10 days after receipt of the com-  
6 missioner's notice. If the applicant requests a hearing, the com-  
7 missioner shall hold a hearing within 10 days after receipt of the

8 applicant's request, and within 20 days after the hearing he shall  
9 render a decision, in writing, which shall set forth his findings and  
10 conclusions, a copy of which shall be sent to the applicant. Regis-  
11 tered or certified mail, return receipt, shall be utilized by the com-  
12 missioner to transmit any notice or decision to the applicant,  
13 which shall be mailed to the applicant's principal place of business  
14 in this State, as set forth in the application. If the applicant does  
15 not request a hearing or if, after a hearing, the commissioner still  
16 refuses to issue a license to the applicant, the amount paid as a  
17 license fee shall be refunded to the applicant but the application  
18 and all supplemental schedules, instruments or documents filed  
19 with the application shall remain in the custody of the commis-  
20 sioner.

1 8. Each license issued by the commissioner shall specify:

2 a. The name and address of the licensee, the address so specified  
3 to be that of the licensee's principal place of business, or branch  
4 office, in this State.

5 b. The licensee's reference number, which may remain the same  
6 from year to year despite variations in annual license numbers  
7 which may result from the renewal of licenses by mechanical tech-  
8 niques.

9 c. Such other information as the commissioner shall require in  
10 order to carry out the purposes of this act.

1 9. A license issued by the commissioner shall:

2 a. Expire on December 31 of each year. No refund in the  
3 amount of the license fee shall be made if the license is issued for  
4 less than 12 months or if the license is voluntarily surrendered to  
5 or suspended or revoked by the commissioner prior to its expira-  
6 tion date.

7 b. Be invalid, in the event the licensee is a corporation, if the  
8 licensee's corporate charter is voided in accordance with the pro-  
9 visions of any law of this or any other State.

1 10. A license shall not be assignable or transferable by opera-  
2 tion of law or otherwise.

1 11. a. A licensee shall have authority to make a secondary  
2 mortgage loan, repayable in installments, and may charge, con-  
3 tract for and receive thereon interest at an annual percentage  
4 rate not exceeding 15%, computed by the actuarial method (United  
5 States rule) and; provided further, the Commissioner of Bank-  
6 ing **\*\*[and Insurance]\*\***, with the advice of a special advisory  
7 board constituted as hereinafter provided, may by regulation

8 adopted, amended and rescinded from time to time, provide that  
9 the interest which may be taken for any such loan shall be more  
10 than 15% per annum but not more than ~~\*\*[18%]\*\*~~ ~~\*\*[\*\*20%\*\*]\*\*~~  
11 ~~\*\*18%\*\*~~ per annum, as shall be prescribed in such regulation.

12 (1) No interest shall be paid, deducted, or received in advance.  
13 Interest shall not be compounded and shall be computed only on  
14 unpaid principal balances. For the purposes of computing in-  
15 terest, whether at the maximum rate or less, a month shall be con-  
16 sidered a calendar month and where a fraction of a month is in-  
17 volved a day shall be considered 1/30 of a month.

18 b. In making, amending, and rescinding regulations pursuant to  
19 the preceding provision, the Commissioner of Banking ~~\*\*[and In-~~  
20 ~~insurance]\*\*~~ and the special advisory board shall consider the general  
21 state of the economy, the discount rates prescribed by the Federal  
22 Reserve Bank of New York and the Federal Reserve Bank of  
23 Philadelphia, the advance rate as prescribed by the Federal Home  
24 Loan Bank of New York, the availability of funds for loans,  
25 studies and statistics published by the Federal Home Loan Bank  
26 Board and other agencies of the United States and of this State,  
27 and such other factors and bases for determination as the com-  
28 missioner and the board may deem pertinent. The rate established  
29 by any such regulation shall reasonably reflect prevailing market  
30 conditions, regionally and nationally, based upon the studies,  
31 statistics and factors considered, and shall remain in force until  
32 such time as such regulation is rescinded or such rate is increased  
33 or decreased by a subsequent regulation. Any such regulation  
34 shall have prospective effect only.

35 c. The special advisory board herein provided for shall consist  
36 of the Commissioner of Banking ~~\*\*[and Insurance]\*\*~~, who shall be  
37 ex-officio chairman of the board, and 5 members appointed by the  
38 Governor with the advice and consent of the Senate. Any ap-  
39 pointed member of the board may be removed from office by the  
40 Governor whenever, in his judgment, the public interest may so  
41 require. Each of the 5 appointed members shall have had, at the  
42 time of his appointment, practical experience in consumer financing  
43 or fields so related thereto as to qualify each as an authority for  
44 the purpose of advising the Commissioner of Banking ~~\*\*[and In-~~  
45 ~~insurance]\*\*~~ regarding the interest which may be taken for any  
46 secondary mortgage loan. At no time shall there be more than a  
47 single representative on the board from any one institution or  
48 group of institutions.

49 d. Each member of the board shall hold office for a term of 2  
50 years, and thereafter until his successor is appointed and has

51 qualified, subject to removal by the Governor pursuant to the  
 52 preceding provision. Members of the board shall be eligible for  
 53 reappointment in the same manner as the initial appointment of  
 54 members of the board as provided for heretofor. Any vacancies  
 55 in the board shall be filled for the unexpired portion of the term  
 56 in the same manner as for a full term.

57 e. The members of the special advisory board shall serve without  
 58 compensation, but shall be reimbursed for their actual and neces-  
 59 sary expenses in attending meetings of the board. All claims for  
 60 reimbursement shall be submitted in the form and manner pre-  
 61 scribed for like claims of the Commissioner of Banking \*\***[and In-**  
 62 **surance]**.\*\*

63 f. The board shall meet at least semiannually, at such times and  
 64 places in the State as it may determine. The commissioner may  
 65 call such other meetings as he may deem necessary, and he shall  
 66 call a meeting when requested by 2 or more members of the board.  
 67 At least 3 days notice of every meeting shall be given to each mem-  
 68 ber of the board personally, or by mail, telephone, or telegraph.  
 69 Four members of the board shall constitute a quorum.

70 g. The special advisory board shall elect a secretary who may be  
 71 an employee of the Department of Banking \*\***[and Insurance]**\*\*  
 72 but who shall receive no extra compensation for serving as secre-  
 73 tary. The secretary shall keep an accurate record of all meetings  
 74 of the board and shall perform such other duties as may be pre-  
 74A scribed by the board.

75 h. For the purpose of discharging its duties, the board shall  
 76 have access to all relevant records in the Department of Banking  
 77 \*\***[and Insurance]**\*\*, including reports and confidential com-  
 78 munications, but each member of the board shall treat all informa-  
 79 tion so obtained as confidential and shall not reveal any such in-  
 80 formation to any person other than another member of the board.

81 i. No member of the board, including the Commissioner of  
 82 Banking \*\***[and Insurance]**\*\*, shall be personally liable for any  
 83 act done or omitted in connection with the performance of his duties  
 84 under this act.

85 j. At the initial meeting of the special advisory board, the mem-  
 86 bers shall agree, by majority vote, to the procedure by which rec-  
 87 ommendations will be made to the commissioner concerning the  
 88 interest rate to be established pursuant to this act.

1 12. A secondary mortgage loan licensee shall:

2 a. Maintain at least one licensed place of business in this State.

3 b. Conspicuously display his license at each licensed place of  
 4 business.

5 c. Keep on file with the commissioner a corporate surety bond  
6 in the principal sum of \$5,000.00. Said bond shall be in the form  
7 required by the commissioner and shall be issued by a surety com-  
8 pany authorized to transact business in this State. The bond shall  
9 run to the State and shall be conditioned that the licensee will com-  
10 ply with the provisions of this act. The aggregate liability of the  
11 surety on the bond shall in no event exceed the amount of said bond.

12 d. Maintain a net worth of \$50,000.00 at all times.

13 e. Maintain at his place of business in this State an original or  
14 true copy of the following instruments, documents, accounts, books  
15 and records:

16 (1) Promissory note evidencing each borrower's secondary  
17 mortgage loan indebtedness.

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

21 (3) Credit life and accident and health insurance policy or a  
22 certificate of insurance where such insurance is obtained in ac-  
23 cordance with section 16 of this act.

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

25 (5) Appraisal or search, where utilized.

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

29 (7) Individual file in which the borrower's application for a loan  
30 and any correspondence, including collection letters, memoran-  
31 dum, notes or any other written information pertaining to the bor-  
32 rower's account, shall be kept.

33 (8) General ledger, cash receipts and disbursements register,  
34 check book, canceled checks and such other accounts, books or  
35 records as shall be required by the commissioner in order to as-  
36 certain whether the licensee has been conducting his secondary  
37 mortgage loan business in full compliance with the provisions of  
38 this act.

39 All of the aforementioned instruments, documents, accounts,  
40 books and records shall be kept separate and apart from the rec-  
41 ords of any other business conducted by the licensee and shall be  
42 preserved and kept available for investigation or examination by  
43 the commissioner for at least 2 years after a secondary mortgage  
44 loan has been paid in full. The provisions of this section shall not  
45 apply to any instrument, document, account, book or record which  
46 is assigned, sold or transferred to another secondary mortgage  
47 loan licensee nor shall the 2-year requirement apply to an instru-

48 ment or document which must be returned to the borrower at the  
49 time a secondary mortgage loan is paid in full.

50 f. Annually, before February 1, file a report with the commis-  
51 sioner which shall set forth such information as the commissioner  
52 shall require concerning the business conducted as a licensee during  
53 the preceding calendar year. The report shall be in writing, under  
54 oath and on a form provided by the commissioner.

55 g. Be subject to an examination by the commissioner, at least  
56 once a year, at which time the commissioner shall have free access,  
57 during regular business hours, to the licensee's place or places of  
58 business in this State and to all instruments, documents, accounts,  
59 books and records which pertain to the licensee's secondary mort-  
60 gage loan business. The cost of any such examination shall be  
61 borne by the licensee.

62 h. In the event a borrower's application for a secondary mort-  
63 gage loan is denied, notify the borrower, in writing, of said denial  
64 and, provided further, the name of any such borrower or a list of  
65 any such borrowers shall not be referred by the licensee, in any  
66 manner whatsoever, to any other lender, retail seller of personal  
67 property or services or to any other person, whether in this or any  
67A other State.

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

70 j. Give to the borrower, without charge, a copy of every instru-  
71 ment, document or other writing the borrower signs.

72 k. Give to the borrower, without charge, written evidence of  
73 credit life and accident and health insurance, if any, in accordance  
74 with regulations promulgated by the commissioner pursuant to  
75 chapter 169, P. L. 1958.

76 l. Give to the borrower, without charge, at the time a secondary  
77 mortgage loan is made, a closing statement which itemizes the in-  
78 dividual amounts disbursed to or on behalf of the borrower, in-  
79 cluding, but not limited to, the premium for credit life and accident  
80 and health insurance, if any, the total amount of the funds so dis-  
81 bursed, the amount of the interest charge, total amount of the loan,  
82 the amount, number and due date of the installment payments and  
83 the interest charge expressed as an annual percentage rate.

84 m. When a payment is made in cash on account of a secondary  
85 mortgage loan, give to the borrower, without charge, at the time  
86 such payment is actually received, a written receipt which shall  
87 show the name and address of the licensee, the name and address  
88 of the borrower, account number or other identification mark or



89 symbol, date, amount paid and the unpaid balance of the account  
90 prior to and after the cash payment.

91 n. Upon written request from the borrower, give or forward to  
92 the borrower, without charge, within 5 days from the date of re-  
93 ceipt of such request, a written statement of the borrower's ac-  
94 count which shall show the dates and amounts of all installment  
95 payments credited to the borrower's account, the dates, amounts  
96 and an explanation of all other charges or credits to the account  
97 and the unpaid balance thereof. A licensee shall not be required  
98 to furnish more than 2 such statements in any 12-month period.

99 o. When a secondary mortgage loan is paid in full:

100 (1) Refund to the borrower, in accordance with regulations  
101 promulgated by the commissioner pursuant to chapter 169, P. L.  
102 1958, any unearned portion of the premium for credit life and acci-  
103 dent and health insurance, if a premium for such insurance was  
104 disbursed on behalf of the borrower at the time the secondary mort-  
105 gage loan was originally made.

106 (2) Stamp or write on the face of the promissory note evidenc-  
107 ing the borrower's secondary mortgage loan indebtedness "Paid  
108 in Full" or "Cancelled," the date paid and the name and address  
109 of the licensee and, within 10 days, return the promissory note to  
110 the borrower.

111 (3) Release, at the expense of the licensee, any lien on real  
112 property and cancel the same of record and, at the time the promis-  
113 sory note evidencing the borrower's secondary mortgage loan in-  
114 debtedness is returned, deliver to the borrower such good and suf-  
115 ficient assignments, releases or any other certificate, instrument  
116 or document as may be necessary to vest the borrower with com-  
117 plete evidence of title, insofar as the applicable secondary mort-  
118 gage loan is concerned, to the real property.

1 13. A secondary mortgage loan licensee shall not:

2 a. Transact any business subject to the provisions of this  
3 act under any other name or at any other location except that  
4 designated in his license. For the purpose of this section, the  
5 transaction of business includes, but is not limited to, the signing  
6 of any instrument, document or any other form by the borrower,  
7 except that a borrower's application for a secondary mort-  
8 gage loan need not be signed in the office of the licensee.  
9 A licensee who changes his name or place of business shall  
10 immediately notify the commissioner who shall issue a certificate  
11 to the licensee, which shall specify the licensee's new name or  
12 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  
17 by a retail seller, who, in connection with such referral, has re-  
18 quired the borrower to purchase personal property or services  
19 or has 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 accept  
22 an advance deposit prior to the time a secondary mortgage loan is  
23 closed.

24 f. Make a secondary mortgage loan until such time as the licensee  
25 has obtained:

26 (1) A written statement signed by the borrower that the holder  
27 of every other existing mortgage on the real property offered as  
28 security for the secondary mortgage loan has declined to make a  
29 loan in the desired amount or;

30 (2) A written statement signed by the borrower that the terms  
31 offered by the holder of every other existing mortgage on the real  
32 property offered as security for the secondary mortgage loan are  
33 not acceptable to the borrower.

34 g. Require or accept from a borrower any collateral or security  
35 for a secondary mortgage loan other than a mortgage, indenture or  
36 any other similar instrument or document which creates a lien  
37 upon any real property.

38 h. Contract for, charge, receive or collect directly or indirectly,  
39 any of the following in connection with a secondary mortgage loan:  
40 a charge for appraisal service; search; broker's or finder's fee;  
41 commission; discount; expense; examination fee; fine; interest;  
42 penalty; points; premium, or any other thing of value other than the  
43 charges authorized by this act, except the expenses incurred on  
44 actual sale of the real property in foreclosure proceedings or upon  
45 the entry of judgment, which are otherwise authorized by law\* \*\***¶**;  
45A *provided, however, a licensee may require a borrower to pay a*  
45B *reasonable legal fee at the time of the execution of the secondary*  
45C *mortgage loan, provided any such legal fee shall represent a charge*  
45D *actually incurred in connection with said secondary mortgage loan*  
45E *and shall not be paid to a person except an attorney authorized to*  
45F *practice law in this State; provided, further, that such legal fee*  
45G *shall be evidenced by a statement from such attorney issued to the*  
45H *licensee\***¶**\*\* \*\*;* *provided, however, a licensee may require a bor-*  
45I *rower to pay a reasonable legal fee at the time of the execution of*  
45J *the secondary mortgage loan, provided any such legal fee shall*

45K *represent a charge actually incurred in connection with said*  
 45L *secondary mortgage loan and shall not be paid to a person except*  
 45M *an attorney authorized to practice law in this State; provided,*  
 45N *further, that such legal fee shall be evidenced by a statement from*  
 45O *such attorney issued to the licensee.\*\**

46 i. Assign, sell or transfer a secondary mortgage loan to a person  
 47 other than another secondary mortgage loan licensee.

48 j. Solicit business through any other person by paying, directly  
 49 or indirectly, for such business referred to the licensee by any such  
 50 person.

51 k. Solicit business, directly or indirectly, for any other licensee,  
 52 lender, retail seller of personal property or services or for any other  
 53 person, whether in this or any other State.

54 l. Advertise, cause to be advertised or otherwise solicit whether  
 55 orally, in writing, by telecast, by broadcast or in any other manner:

56 (1) That he is licensed by, or that his business is under the  
 57 supervision of, the State of New Jersey or the Department of Bank-  
 58 ing **\*\*[and Insurance]\*\***, except that a licensee may advertise that  
 59 he is "licensed pursuant to the Secondary Mortgage Loan Act";  
 60 provided, however, that for the purpose of raising capital, no such  
 61 advertisement shall be permitted if it is to be used in connection  
 62 with a public solicitation for such funds.

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

65 (3) The word "bank" or any term inferring that the licensee is  
 66 or is associated with a bank.

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

69 (5) Any statement or representation which is false, misleading  
 70 or deceptive and, provided further, a written or other visual adver-  
 71 tisement shall include the licensee's name, address and telephone  
 72 number in this State and the phrase "Secondary Mortgage Loans"  
 73 in 10-point bold type or larger.

1 14. Every borrower shall have the right to be represented by  
 2 an attorney of his own choosing at the time a secondary mortgage  
 3 loan is closed and shall be advised of such right, in writing, at least  
 4 4 days prior to the execution of the secondary mortgage loan.

1 15. A borrower shall not be required to pay, directly or indirectly,  
 2 to a licensee or any other person, a broker's or finder's fee, com-  
 3 mission, discount, points or premium for obtaining, procuring or  
 4 the placing of a secondary mortgage loan.

1 16. A borrower shall not be compelled to purchase credit life or  
 2 accident and health insurance in connection with a secondary mort-

3 gage loan. If, however, the borrower elects to obtain such insurance,  
4 he shall, in a separate instrument, consent thereto, in writing, and,  
5 provided further:

6 a. The insurance shall be obtained in accordance with chapter  
7 169, P. L. 1958, and the regulations promulgated by the commis-  
8 sioner pursuant thereto.

9 b. For the purpose of this section, the word "debtor" as defined  
10 in chapter 169, P. L. 1958, means, if more than one person is  
11 obligated for the payment of a secondary mortgage loan, the person  
12 whose signature appears on the first line provided for the signa-  
13 tures of borrowers on a promissory note evidencing the borrower's  
14 indebtedness, said person to be the only person for whom such  
15 insurance is obtained.

16 c. The premium for any such insurance shall be deducted from  
17 the amount of the secondary mortgage loan requested by the  
18 borrower.

19 d. Nothing in this act or in any other law of this State shall  
20 prohibit a licensee or any employee, affiliate, subsidiary, or as-  
21 sociate of said licensee, from collecting the premium or identifiable  
22 charge for insurance permitted by this act and from receiving or  
23 retaining any dividend, or any other gain or advantage resulting  
24 from such insurance; subject, however, to the authority of the  
25 commissioner to promulgate such rules and regulations with regard  
26 to such dividend, gain or advantage as he may deem necessary,  
27 including the authority to reduce the rate of interest to be charged  
28 by a particular licensee to borrowers in consideration of the benefit  
29 to said licensee from such dividend, gain or advantage.

1 17. Notwithstanding any agreement between a licensee and a  
2 borrower to the contrary, a borrower shall not be required to pay  
3 a penalty fee for prepaying a secondary mortgage loan in full prior  
4 to maturity.

1 18. An instrument evidencing a secondary mortgage loan shall:

2 a. Be in the form of a promissory note which shall be identifiable  
3 by the use of the words "Secondary Mortgage Loan" printed  
4 prominently, in 14-point bold type or larger, centered and at the  
5 top of the promissory note and, directly underneath, in 8-point bold  
6 type or larger, the statement, "This promissory note is subject to  
7 the provisions of the Secondary Mortgage Loan Act."

8 b. Provide for the payment, in full, of the total amount of the  
9 secondary mortgage loan in substantially equal payment periods,  
10 measured in terms of weeks or months, and installment payment  
11 amounts, except that the initial payment period may be deferred  
12 for 60 days and, provided further, when appropriate for the pur-

13 pose of facilitating payment in accordance with the borrower's  
 14 intermittent income, a promissory note may provide an installment  
 15 schedule which reduces or omits payments over any period or  
 16 periods of time during which period or periods the borrower's  
 17 income is reduced or suspended, and the final installment may be  
 18 \$1.00 more or less than the amount of all other regular installment  
 19 payments.

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

22A "NOTICE TO BORROWER

23 Read this promissory note before you sign.

24 Do not sign this promissory note if it contains blank spaces.

25 This promissory note is secured by a secondary mortgage on your  
 26 real property."

27 d. Be completed in full before it is signed by the borrower. In  
 28 the event that it is unnecessary to fill in a blank space provided  
 29 for in any instrument, the figure -0-, a dash, line or the word "none"  
 30 shall be inserted in such blank space.

1 19. No writing of any kind executed in connection with a second-  
 2 ary mortgage loan shall contain:

3 a. An agreement whereby the borrower waives any rights  
 4 accruing to him under the provisions of this act or any other law  
 5 of this State.

6 b. A power of attorney to confess judgment or any other power  
 7 of attorney.

8 c. An assignment of or order for the payment of any salary,  
 9 wages, commissions or any other compensation for services, or any  
 10 part thereof, earned or to be earned.

11 d. An agreement to pay any amount other than the unpaid balance  
 12 of the promissory note or any other charge authorized by this act.

13 e. A provision relieving the licensee from liability for any claim,  
 14 or from any legal remedy, which the borrower may have against  
 15 said licensee under the terms of the promissory note.

16 f. A provision whereby the borrower waives any right of action  
 17 against the licensee, a subsequent holder or any person acting on  
 18 the licensee's or holder's behalf for any illegal act committed in  
 19 the collection of payments under the promissory note.

20 g. An acceleration clause under which the unpaid balance of the  
 21 promissory note not yet matured or any part thereof may be  
 22 declared due and payable because the licensee or subsequent holder  
 23 deems himself to be insecure.

1 20. A promissory note may provide for the payment of attorney  
2 fees in the event it becomes necessary to refer the promissory note  
3 to an attorney for collection; provided, however, that any such  
4 provision shall be void and unenforceable unless:

5 a. The promissory note is referred to an attorney authorized to  
6 practice law in this State.

7 b. The attorney to whom the promissory note is referred is not  
8 a partner, officer, director or employee, whether salaried or commis-  
9 sioned, of the licensee.

10 c. Suit is actually filed by the attorney to whom the promissory  
11 note is referred and subsequently decided in favor of the licensee,  
12 in which event such attorney fees shall not exceed 15% of the first  
13 \$500.00, 10% of the next \$500.00 and 5% of any excess amount due  
14 and owing under the promissory note and, provided further that at  
15 least 15 days prior to the commencement of the suit, the licensee  
16 or his attorney shall send to the borrower, by certified or registered  
17 mail, return receipt, at his last known address, a statement of his  
18 intention to sue, which statement shall also specify the amount of  
19 principal, interest and any other charge due and owing to the  
20 licensee.

21 d. In any proceeding to satisfy a judgment by the sale of the  
22 real property securing a secondary mortgage loan, a credit for the  
23 fair market value of such property shall be afforded to the borrower.

1 21. The commissioner shall have authority to:

2 a. Make, enforce, alter, modify, amend, or repeal rules and  
3 regulations to effectuate the purposes of this act and to establish  
4 and maintain ethical, fair, equitable and honest business standards  
5 for persons who are subject to any provision of this act.

6 b. Examine any instrument, document, account, book, record or  
7 file of a licensee or any other person, or make such other investiga-  
8 tions as he shall deem necessary to administer the provisions of  
9 this act.

10 c. Conduct administrative hearings on any matter pertaining to  
11 this act, issue subpoenas to compel the attendance of witnesses and  
12 the production of instruments, documents, accounts, books and  
13 records at any such hearing, which may be retained by the commis-  
14 sioner until the completion of all proceedings in connection with  
15 which they were produced, and administer oaths and affirmations to  
16 any person whose testimony is required. In the event a person fails  
17 to comply with a subpoena issued by the commissioner or to testify  
18 on any matter concerning which he may be lawfully interrogated, on  
19 application by the commissioner, the Superior Court may issue an  
20 order requiring the attendance of such person, the production of

21 instruments, documents, accounts, books or records or the giving  
22 of testimony.

1 22. A licensee may surrender his license to the commissioner by  
2 delivering his license to the commissioner with written notice that  
3 the license is being voluntarily surrendered but such an action by a  
4 licensee shall not affect the licensee's civil or criminal liability for  
5 acts committed prior to the date on which the license was sur-  
6 rendered.

1 23. a. The commissioner may suspend, revoke or refuse to renew  
2 any license issued pursuant to this act after giving 10 days written  
3 notice forwarded to the licensee's principal place of business, by  
4 registered or certified mail, return receipt, stating the contemplated  
5 action and the reason therefor, if he shall find, after the licensee has  
6 had an opportunity to be heard, that the licensee has :

7 (1) Made any material misstatement in his application.

8 (2) Misrepresented, deceived, concealed, suppressed, omitted or  
9 otherwise failed to disclose any information required to be stated  
10 or furnished to a borrower under the provisions of this act or any  
11 other law of this State.

12 (3) Failed to comply with or violated any provision of this act  
13 or any rule or regulation promulgated by the commissioner pursuant  
14 thereto.

15 (4) Failed to perform a written agreement with a borrower.

16 (5) Otherwise demonstrated a lack of financial responsibility,  
17 unworthiness, bad faith or dishonesty.

18 The hearing and notice provisions of this section shall not apply  
19 in the event the licensee is a corporation if the licensee's cor-  
20 porate charter is voided in accordance with the provisions of any  
21 law of this or any other State, in which event the commissioner may  
22 suspend or revoke the license forthwith.

23 b. The commissioner may subsequently reinstate a license which  
24 has been suspended or revoked or renew a license which he had  
25 previously refused to renew if the condition which warranted the  
26 original action has been corrected, and he has reason to believe that  
27 such condition is not likely to occur again and that the licensee is  
28 worthy of such reinstatement.

1 24. The provisions of this act shall apply to any secondary  
2 mortgage loan :

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

6 b. Made or executed within this State.

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

1 25. Any obligation on the part of a borrower arising out of a  
2 secondary mortgage loan shall be void and unenforceable unless  
3 such secondary mortgage loan was executed in full compliance  
4 with the provisions of this act.

1 26. a. Any person who engages in the secondary mortgage loan  
2 business in this State without having first obtained a license as  
3 required by section 3 of this act shall be liable for a penalty of not  
4 more than \$1,000.00 for each offense. For the purpose of this sub-  
5 section, each loan made without a license shall constitute a separate  
6 offense.

7 b. Any person, including any licensee or any partner, officer,  
8 director or employee, whether salaried or commissioned, of such li-  
9 censee, or any other person representing a licensee, whether di-  
10 rectly or indirectly, who violates any provision of this act or any  
11 rule or regulation promulgated in connection therewith, shall be  
12 liable for a penalty, in addition to all other penalties or forfeitures  
13 imposed by this or any other law, of not more than \$1,000.00 for  
14 each offense. Any person who shall aid or abet such a violation shall  
15 be equally liable for such a penalty as may be imposed upon a princi-  
16 pal violator. For the purpose of this subsection, a violation of any  
17 section of this act or any rule or regulation promulgated by the  
18 commissioner pursuant thereto shall constitute a separate offense.  
19 The commissioner, in his discretion, is hereby authorized and em-  
20 powered to compromise and settle any claim for a penalty under  
21 this subsection for an amount that appears appropriate and equit-  
22 able under all of the circumstances.

23 c. The penalties provided for in this section, if not voluntarily  
24 paid to the commissioner, shall be collected in a civil action brought  
25 in the name of the commissioner pursuant to the provisions of the  
26 Penalty Enforcement Law, L. 1948, chapter 253, 1 et seq., Revised  
27 Statutes 2A :58-1 et seq.

1 27. a. Nothing contained in this act shall be construed to impair  
2 or affect any rights of a borrower, civil or criminal liabilities of a  
3 licensee or administrative proceedings by the commissioner which  
4 hereafter may arise as the result of a secondary mortgage loan  
5 made under chapter 91, P. L. 1965, and, provided further, nothing  
6 contained in this act shall be construed to impair or affect an obliga-  
7 tion of a borrower for a secondary mortgage loan executed prior  
8 to the effective date of this act, provided such secondary mortgage  
9 loan was lawfully executed in accordance with the provisions of  
10 chapter 91, P. L. 1965.

11 b. A licensee licensed pursuant to the provisions of chapter 91,  
12 P. L. 1965, on the date this act takes effect shall continue as a



13 licensee under this act for the year ending December 31, 1970, at  
14 which time the licensee shall renew his license under the provisions  
15 of this act, if the licensee intends to continue to engage in the  
16 secondary mortgage loan business.

1 28. **\*\*** [Nothing contained in this act shall be construed or inter-  
2 preted as an expansion or restriction of the existing powers of a  
3 State or National bank, savings bank, State or Federal savings and  
4 loan association or insurance company to engage in the secondary  
5 mortgage loan business, provided such business is otherwise au-  
6 thorized and regulated by law in which event the provisions of this  
7 act shall not apply to any such financial institution.] **\*\*** *\*\*Nothing*  
8 *in this act shall be construed as expanding or restricting the powers*  
9 *otherwise conferred by law upon financial institutions, such as State*  
10 *and National banks, State and Federal savings and loan associa-*  
11 *tions, savings banks and insurance companies, to engage in the*  
12 *secondary mortgage business as defined in section 3, and no such*  
13 *financial institution, in exercising any power otherwise so conferred*  
14 *upon it, shall be subject to any provision of this act.\*\**

1 29. If any provision or section of this act or any provision or  
2 section of any subsequent amendments or supplements to this act  
3 shall be held to be unconstitutional, said provision or section shall  
4 be excised and the remainder of the provisions and sections of  
5 the act as amended or supplemented shall be and remain valid with  
6 the same effect as if said provision or section so held to be uncon-  
7 stitutional had never been a part of the act.

1 30. "An act to define and regulate secondary mortgage loans,"  
2 approved June 9, 1965 (P. L. 1965, c. 91) is repealed.

1 31. This act shall take effect on the sixtieth day following the  
2 date on which it is enacted.

S-289

FROM THE OFFICE OF THE GOVERNOR

SEPTEMBER 24, 1970

FOR RELEASE:  
IMMEDIATE

Governor William T. Cahill has signed into law the Secondary Mortgage Loan Act (S 289).

In signing the measure, Cahill said that the new law is "consumer oriented and designed to provide greater state regulation to prevent abuses that have existed in the past."

He also noted that the law will resolve many of the administrative problems faced by the Department of Banking in the past.

The bill closely parallels Cahill's activities while a Congressman in proposing successful amendments to the Federal Truth in Lending Act.

The administration bill, sponsored by Senators Norman Tanzman (D., Middlesex), Raymond H. Bateman, (R., Somerset) and Frank X. McDermott (R., Union), eliminates closing fees as well as those for delinquency, extension, deferment and renewal.

Under the new law, secondary mortgage companies must have and maintain \$50,000 in liquid assets; post a \$5,000 surety bond with the State; and pay a license fee of \$200 for each principal office and \$25 for each branch office.

It also creates a special advisory board, with the Commissioner of Banking as an ex-officio member, and five members who have practical experience in consumer finance to be appointed by the Governor.

The new law sets the interest rate for these mortgages at 15 percent although the Commissioner of Banking can, with the advise of the Board, raise the rate to 18 percent.

In addition, greater State control will be effected through a provision which requires Mortgage Lending Companies to make annual reports

to the Department of Banking. And it also provides for annual examinations by the Department of Banking.

The new law takes effect in 60 days.

The Governor also signed into law S 792, sponsored by Senator Wayne Dumont, Jr., (R., Sussex) which provides for a special charter for the town of Hackettstown.

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