

46:10B-22

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 64

NJSA: 46:10B-22 (“New Jersey Home Ownership Security Act of 2002”)

BILL NO: A75 (Substituted for S198/1200/1540/2051)

SPONSOR: Ahearn and others

DATE INTRODUCED: May 9, 2002

COMMITTEE: **ASSEMBLY:** Senior Issues

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 13, 2003

SENATE: March 20, 2003

DATE OF APPROVAL: May 1, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (4th reprint enacted)

(Amendments during

passage denoted by asterisks)

A75

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

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: Yes [2-27-2003 \(Senate\)](#)
[3-13-2003 \(Assembly\)](#)

LEGISLATIVE FISCAL ESTIMATE: No

S198/1200/1540/2051

[SPONSOR'S STATEMENT \(S198\)](#): (Begins on page 11 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(S1200\)](#): (Begins on page 10 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(S1540\)](#): (Begins on page 10 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(S2051\)](#): (Begins on page 14 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE:

No

FINAL VERSION (Senate Committee Substitute):

Yes

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Trenton bill on predatory lending signed", 5-2-2003 New York Times, p.B2

"Legislation gets tough with predatory lenders", 5-2-2003 Star Ledger, p.55

"NJ outlaws predatory lending, fees", 5-2-2003 Burlington County Times, p.B1

"State Outlaws predatory lending", 5-2-2003 Home News, p.A3

"Lending law signed", 5-2-2003 Asbury Park Press , pB8

"Governor signs law to ban predatory loan practices", 5-2-2003 Courier-News p.A3

P.L. 2003, CHAPTER 64, *approved May 1, 2003*
Assembly, No. 75 (*Fourth Reprint*)

1 AN ACT prohibiting certain abusive lending practices and
2 supplementing Title 46 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Home Ownership Security Act of 2002."

9

10 2. The Legislature finds and declares that:

11 a. Abusive mortgage lending has become an increasing problem in
12 this State, exacerbating the loss of equity in homes and causing an
13 increase in the number of foreclosures in recent years. One of the
14 most common forms of abusive lending is the making of loans that are
15 equity-based, rather than income-based. The financing of points and
16 fees in these loans provides immediate income to the originator and
17 encourages the repeated refinancing of home loans. The lender's
18 ability to sell loans reduces the incentive to ensure that the homeowner
19 can afford the payments of the loan. As long as there is sufficient
20 equity in the home, an abusive lender benefits even if the borrower is
21 unable to make the payments and is forced to refinance. In addition,
22 the financing of high points and fees causes the loss of precious equity
23 in each refinancing and often leads to foreclosure.

24 b. Abusive lending has threatened the viability of many
25 communities and caused decreases in home ownership. While the
26 marketplace appears to operate effectively for conventional mortgages,
27 too many homeowners find themselves victims of overreaching lenders
28 who provide loans with unnecessarily high costs and terms that are
29 unnecessary to secure repayment of the loan.

30 c. As competition and self-regulation have not eliminated the
31 abusive terms from loans secured by a consumer's home, the consumer
32 protection provisions of this act are necessary to encourage lending at
33 reasonable rates with reasonable terms.

34

35 3. As used in this act:

36 ¹["Benchmark rate" is the interest rate which the borrower can

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASI committee amendments adopted June 6, 2002.

² Senate SCM committee amendments adopted December 12, 2002.

³ Senate floor amendments adopted February 27, 2003.

⁴ Assembly floor amendments adopted March 13, 2003.

1 reduce by paying bona fide discount points; this rate shall not exceed
2 the weekly average yield of United States Treasury securities having
3 a maturity of five years, on the 15th day of the month immediately
4 preceding the month in which the loan is made, plus four percentage
5 points.]¹

6 ²"Affiliate" means any company that controls, is controlled by, or
7 is under the common control with any company, as set forth in
8 12 U.S.C. s.1841 et seq.²

9 "Bona fide discount points" means loan discount points which are:

10 (1) Knowingly paid by the borrower;

11 (2) Paid for the express purpose of ¹[lowering the benchmark rate;

12 (3) In fact]¹ reducing ¹, and which result in a reduction of,¹ the

13 interest rate or time-price differential applicable to the loan ¹[from an
14 interest rate which does not exceed the benchmark rate]¹;

15 ³(3) In fact reducing the interest rate or time-price differential
16 applicable to the loan from an interest rate which does not exceed the
17 conventional mortgage rate for a home loan secured by a first lien, by
18 more than two percentage points, or for a home loan secured by a
19 junior lien, by more than three and one half percentage points;³ and

20 ¹[(4)] ³[(3)¹] (4)³ Recouped within the first ¹[four] five¹ years of
21 the scheduled loan payments. Loan discount points will be considered
22 to be recouped within the first ¹[four] five¹ years of the scheduled
23 loan payments if the reduction in the interest rate that is achieved by
24 the payment of the loan discount points reduces the interest charged
25 on the scheduled payments such that the borrower's dollar amount of
26 savings in interest over the first ¹[four] five¹ years is equal to or
27 exceeds the dollar amount of loan discount points paid by the
28 borrower.

29 "Borrower" means any natural person obligated to repay the loan,
30 including a coborrower, cosigner, or guarantor.

31 ¹"Commissioner" means the Commissioner of Banking and
32 Insurance.¹

33 ²"Conventional mortgage rate" means the most recently published
34 annual yield on conventional mortgages published by the Board of
35 Governors of the Federal Reserve System, as published in Statistical
36 Release H.15 or any publication that may supersede it, as of the
37 applicable time set forth in 12 C.F.R. 226.32(a)(1)(I).²

38 ³"Conventional prepayment penalty" means any prepayment penalty
39 or fee that may be collected or charged in a home loan, and that is
40 authorized by law other than by this act, provided the home loan (1)
41 does not have an annual percentage rate that exceeds the conventional
42 mortgage rate by more than two percentage points; and (2) does not
43 permit any prepayment fees or penalties that exceed two percent of the
44 amount prepaid.³

45 ²"Covered home loan" means a home loan in which:

46 (1) The total points and fees payable in connection with the loan,

1 excluding³ either a conventional prepayment penalty or³ not more than
2 two bona fide discount points, exceed 4 percent of the total loan
3 amount, or 4.5 percent of the total loan amount if the total loan
4 amount is \$40,000 or less, and³ [4.25] 4.5³ percent of the total loan
5 amount if the loan is³ [a purchase money loan]³ insured by the
6 Federal Housing Administration or guaranteed by the federal
7 Department of Veterans Affairs; or

8 (2) The home loan is such that it is considered a high-cost home
9 loan under this act.²

10 "Creditor" means a person who extends consumer credit that is
11 subject to a finance charge or is payable by written agreement in more
12 than four installments, and to whom the obligation is payable at any
13 time. ¹Creditor shall also mean any person brokering a home loan,
14 which shall include any person who directly or indirectly solicits,
15 processes, places, or negotiates home loans for others or who closes
16 home loans which may be in the person's own name with funds
17 provided by others and which loans are thereafter assigned to the
18 person providing the funding of such loans, provided that creditor shall
19 not include a person who is an attorney providing legal services² to the
20 borrower² or² [an insurance producer with title insurance authority]
21 a person or entity holding an individual or organization insurance
22 producer license in the line of title insurance or a title insurance
23 company, as defined by subsection c. of section 1 of P.L.1975, c.106
24 (C.17:46B-1), or any officer, director or employee thereof,² providing
25 services in the closing of a home loan² who is not also funding the
26 home loan and is not an affiliate of the creditor² ⁴or an assignee that
27 is subject to the provisions of section 6 of this act⁴.

28 "Department" means the Department of Banking and Insurance.¹

29 "High-cost home loan" means a home loan for which the principal
30 amount of the loan does not exceed \$350,000, which amount shall be
31 adjusted annually to include the last published increase of the housing
32 component of the national Consumer Price Index, New York-
33 Northeastern New Jersey Region, in which the terms of the loan meet
34 or exceed one or more of the thresholds as defined in this section.

35 "Home loan" means ²[a loan] an extension of credit primarily for
36 personal, family or household purposes², including an open-end credit
37 plan, other than a reverse mortgage transaction, in which the loan is
38 secured by:

39 (1) A mortgage or deed of trust on real estate in this State upon
40 which there is located or there is to be located a one to six family
41 dwelling which is or will be occupied by a borrower as the borrower's
42 principal dwelling; or

43 (2) A security interest in a manufactured home which is or will be
44 occupied by a borrower as the borrower's principal dwelling.

45 ²"Manufactured home" means a structure, transportable in one or
46 more sections, which in the traveling mode is eight body feet or more

1 in width or 40 body feet or more in length or, when erected on site is
2 320 or more square feet and which is built on a permanent chassis and
3 designed to be used as a dwelling with a permanent foundation when
4 erected on land secured in conjunction with the real property on which
5 the manufactured home is located and connected to the required
6 utilities and includes the plumbing, heating, air-conditioning and
7 electrical systems contained therein; except that such term shall
8 include any structure which meets all the requirements of this
9 paragraph except the size requirements and with respect to which the
10 manufacturer voluntarily files a certification required by the Secretary
11 of the United States Department of Housing and Urban Development
12 and complies with the standards established under the federal National
13 Manufactured Housing Construction and Safety Standards Act of
14 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental
15 property or second homes or manufactured homes when not secured
16 in conjunction with the real property on which the manufactured home
17 is located.²

18 "Points and fees" means:

19 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
20 interest or the time-price differential;

21 (2) All charges listed in 15 U.S.C. s.1605(e);

22 (3) All compensation paid directly or indirectly to a mortgage
23 broker, including a broker that originates a loan in its own name in a
24 table-funded transaction;

25 (4) The cost of all premiums financed by the creditor, directly or
26 indirectly for any credit life, credit disability, credit unemployment or
27 credit property insurance, or any other life or health insurance, or any
28 payments financed by the creditor directly or indirectly for any debt
29 cancellation or suspension agreement or contract, except that
30 insurance premiums calculated and paid on a monthly basis shall not
31 be considered financed by the creditor;

32 (5) The maximum prepayment fees and penalties that may be
33 charged or collected under the terms of the loan documents; ¹[and]¹

34 (6) All prepayment fees or penalties that are ²[charged to]
35 incurred by² the borrower if the loan refinances a previous loan made
36 ³or currently held³ by the same creditor or an affiliate of the
37 creditor¹[.]; and¹

38 (7) For open-end loans, the points and fees are calculated by
39 adding the total ²points and² fees ²[charged at] known at or before²
40 closing ²[plus the maximum additional fees which can be charged
41 pursuant to the loan documents during the term of the loan], including
42 the maximum prepayment penalties which may be charged or collected
43 under the terms of the loan documents ⁴if prepayment penalties are
44 authorized by law other than by this act⁴, plus the minimum additional
45 fees the borrower would be required to pay to draw down an amount
46 equal to the total credit line².

1 ¹"Points and fees" shall not include the following ²items²: ²title
 2 insurance premiums and fees, charges and premiums paid to a person
 3 or entity holding an individual or organization insurance producer
 4 license in the line of title insurance or a title insurance company, as
 5 defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-
 6 1);² taxes, filing fees, and recording and other charges and fees paid
 7 or to be paid to public officials for determining the existence of or for
 8 perfecting, releasing, or satisfying a security interest; and ³reasonable³
 9 fees paid to a person other than a creditor or an affiliate of the creditor
 10 or to the mortgage broker or an affiliate of the mortgage broker for
 11 the following ³, provided that the conditions in 12 C.F.R. s.226.4(c)(7)
 12 are met³: fees for tax payment services; fees for flood certification;
 13 fees for pest infestation and flood determinations; appraisal fees; fees
 14 for inspections performed prior to closing; fees for credit reports; fees
 15 for surveys; attorneys' fees; notary fees; escrow charges; ²[title
 16 insurance premiums;]² and fire and flood insurance premiums,
 17 provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.¹

18 "Rate" means ²[the interest rate charged on the home loan, based
 19 on an annual simple interest yield] that annual percentage rate for the
 20 loan calculated at closing based on the points and fees set forth in this
 21 act and according to the provisions of 15 U.S.C. s. 1601 et seq. and
 22 the regulations promulgated thereunder by the Federal Reserve
 23 Board².

24 "Threshold" means any one of the following ³[three] two³ items,
 25 as defined:

26 (1) "Rate threshold" means the annual percentage rate of the loan
 27 at the time the loan is consummated such that the loan is considered
 28 a "mortgage" under section 152 of the federal "Home Ownership and
 29 Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C.
 30 s.1602(aa)), and the regulations promulgated by the Federal Reserve
 31 Board, including 12 C.F.R. s.226.32, without regard to whether the
 32 loan transaction is or may be a "residential mortgage transaction," as
 33 defined in 12 C.F.R. s.226.2(a)(24) ⁴[²less]⁴ ³[1.25] ⁴[1.0³
 34 percentage]⁴ ³[points] ⁴[point³ for a loan secured by a first lien or
 35 a loan secured by a junior lien²]⁴ .

36 (2) "Total points and fees threshold" means that the total points
 37 and fees payable by the borrower at or before the loan closing,
 38 excluding ³either a conventional prepayment penalty or³ up to two
 39 bona fide discount points, exceed:

40 (a) 5% of the total loan amount if the total loan amount is
 41 ²[\$20,000] \$40,000² or more; or

42 (b) the lesser of ²[8%] 6%² of the total loan amount or \$1,000, if
 43 the total loan amount is less than \$20,000 ², and 6% if the total loan
 44 amount is \$20,000 or more but less than \$40,000² ¹]; provided, the
 45 following discount points and prepayment fees shall be excluded from

1 the calculation of the total points and fees payable by the borrower:

2 (I) Up to and including two bona fide loan discount points payable
 3 by the borrower in connection with the loan transaction, but only] ³ [.
 4 except that] ³ ² [two] ³ [no² bona fide discount points shall] ³ ² [not] ²
 5 ³ [be excluded] ¹ ² from the calculations in either subparagraph (a) or (b)
 6 of this paragraph ² if the interest rate from which the loan's interest rate
 7 will be discounted] ³ ¹ [does not exceed, by more than one percentage
 8 point, the required net yield for a 90-day standard mandatory delivery
 9 commitment for a reasonably comparable loan from either the Federal
 10 National Mortgage Association or the Federal Home Loan Mortgage
 11 Corporation, whichever is greater;

12 (ii) Up to and including one bona fide loan discount point payable
 13 by the borrower in connection with the loan transaction, but only if the
 14 interest rate from which the loan's interest rate will be discounted does
 15 not exceed, by more than two percentage points, the required net yield
 16 for a 90-day standard mandatory delivery commitment for a reasonably
 17 comparable loan from either the Federal National Mortgage
 18 Association or the Federal Home Loan Mortgage Corporation,
 19 whichever is greater] ³ [is such that it² exceeds the] ³ ² [average
 20 weekly yield of United States Treasury securities having a maturity of
 21 10 years, on the 15th day of the month immediately preceding the
 22 month in which the loan is made, plus four percentage points ¹]
 23 ³ [conventional mortgage rate for a home loan secured by a first lien,
 24 by more than two percentage points, or for a home loan secured by a
 25 junior lien, by more than three and one half percentage points ²] ³.

26 ² [(3) "Prepayment penalty threshold" means the home loan
 27 agreement permits the lender to charge or collect] ² ¹ [payment
 28 penalties or] ² [prepayment ¹ penalties more than 30 months after the
 29 loan closing or which exceed, in the aggregate, more than 2% of the
 30 amount prepaid.] ²

31 "Total loan amount" means the principal of the loan minus those
 32 points and fees as defined in this section that are included in the
 33 principal amount of the loan. For open-end loans, the total ² loan ²
 34 amount shall be calculated using the total line of credit allowed under
 35 the home loan.

36

37 4. a. No creditor making a home loan shall finance, directly or
 38 indirectly, any credit life, credit disability, credit unemployment or
 39 credit property insurance, or any other life or health insurance, or any
 40 payments directly or indirectly for any debt cancellation or suspension
 41 agreement or contract, except that insurance premiums or debt
 42 cancellation or suspension fees calculated and paid on a monthly basis
 43 shall not be considered financed by the creditor.

44 b. No creditor shall engage in the unfair act or practice of
 45 "flipping" a ³ [covered ²] ³ home loan. "Flipping" ² [a loan is the

1 making of] occurs when a creditor makes² a covered² home loan to
2 a borrower that refinances an existing home loan that was
3 consummated within the prior 60 months² when the new loan does not
4 have reasonable, tangible net benefit to the borrower considering all
5 of the circumstances, including the terms of both the new and
6 refinanced loans, the economic and noneconomic circumstances, the
7 purpose of the loan,² the cost of the new loan, and the borrower's
8 circumstances. ²[The commissioner may promulgate regulations to
9 implement the provisions of this section.¹]² In addition, the following
10 home loan refinancings shall be presumed to be flipping if:

11 (1) The primary tangible benefit to the borrower is an interest rate
12 lower than the interest rate on a debt satisfied or refinanced in
13 connection with the home loan, and it will take more than four years
14 for the borrower to recoup the costs of the points and fees and other
15 closing costs through savings resulting from the lower interest rate; or

16 (2) The new loan refinances an existing home loan that is a special
17 mortgage originated, subsidized, or guaranteed by or through a state,
18 tribal or local government, or nonprofit organization, which either
19 bears a below-market interest rate at the time the loan was originated,
20 or has nonstandard payment terms beneficial to the borrower, such as
21 payments that vary with income or are limited to a percentage of
22 income, or where no payments are required under specified conditions,
23 and where, as a result of refinancing, the borrower will lose one or
24 more of the benefits of the special mortgage.

25 ²Without limiting the foregoing, it is hereby declared that
26 ³subsection b. of³ this section shall create no presumption that any
27 home loan that is not a covered home loan or a high-cost home loan,
28 and any refinancing outside the durational limits set forth above, is not
29 unconscionable, and it is hereby further declared that ³subsection b.
30 of ³ this section shall create no presumption that any home loan that
31 is not a covered home loan or a high-cost home loan, and any
32 refinancing outside the durational limits set forth above, shall not
33 constitute an unlawful practice under P.L.1960, c.39 (C.56:8-1 et
34 seq.), based on ³[the]³ factors ³including those ³set forth in
35 ³subsection b. of ³ this section ³alone³ or ³in conjunction with³ any
36 other circumstances.²

37 c. No creditor shall recommend or encourage default on an existing
38 loan or other debt prior to and in connection with the closing or
39 planned closing of a home loan that refinances all or any portion of
40 that existing loan or debt.

41 d. No creditor shall charge a late payment fee in relation to a home
42 loan except according to the following rules:

43 (1) The late payment fee may not be in excess of ¹[4%] 5%¹ of the
44 amount of the payment past due.

45 (2) The fee may only be assessed by a payment past due for
46 15 days or more.

1 (3) The fee may not be charged more than once with respect to a
2 single late payment. If a late payment fee is deducted from a payment
3 made on the loan, and such deduction causes a subsequent default on
4 a subsequent payment, no late payment fee may be imposed for such
5 default. If a late payment fee has been once imposed with respect to
6 a particular late payment, no such fee shall be imposed with respect to
7 any future payment which would have been timely and sufficient, but
8 for the previous default.

9 (4) No fee shall be charged unless the creditor notifies the
10 borrower within 45 days following the date the payment was due that
11 a late payment fee has been imposed for a particular late payment. No
12 late payment fee may be collected from any borrower if the borrower
13 informs the creditor that nonpayment of an installment is in dispute
14 and presents proof of payment within 45 days of receipt of the
15 creditor's notice of the late fee.

16 (5) The creditor shall treat each and every payment as posted on
17 the same date as it was received by the creditor, servicer, creditor's
18 agent, or at the address provided to the borrower by the creditor,
19 servicer, or the creditor's agent for making payments.

20 e. No home loan shall contain a provision that permits the creditor,
21 in its sole discretion, to accelerate the indebtedness. This provision
22 does not prohibit acceleration of the loan in good faith due to the
23 borrower's failure to abide by the material terms of the loan.

24 f. No creditor shall charge a fee for informing or transmitting to
25 any person the balance due to pay off a home loan or to provide a
26 release upon prepayment. Payoff balances shall be provided within
27 seven business days after the request.

28
29 5. A high-cost home loan shall be subject to the following
30 additional limitations and prohibited practices:

31 a. No high-cost home loan shall contain a scheduled payment that
32 is more than twice as large as the average of earlier scheduled
33 payments. This provision shall not apply when the payment schedule
34 is adjusted to the seasonal or irregular income of the borrower.

35 b. No high-cost home loan shall include payment terms under
36 which the outstanding principal balance will increase at any time over
37 the course of the loan because the regular periodic payments do not
38 cover the full amount of interest due.

39 c. No high-cost home loan shall contain a provision that increases
40 the interest rate after default. This provision ²[does] shall² not apply
41 to interest rate changes in a variable rate loan otherwise consistent
42 with the provisions of the loan documents, provided the change in the
43 interest rate is not triggered by the event of default or the acceleration
44 of the indebtedness.

45 d. No high-cost home loan shall include terms under which more
46 than two periodic payments required under the loan are consolidated

1 and paid in advance from the loan proceeds provided to the borrower.
2 e. ²[No high-cost home loan shall be subject to a mandatory
3 arbitration clause that]² ¹[limits in any way the right of the borrower
4 to seek relief through the judicial process for any and all claims and
5 defenses the borrower may have against the creditor, broker, or other
6 party involved in the loan transaction] ²[is oppressive, unfair,
7 unconscionable, or substantially in derogation of the rights of
8 borrowers. Arbitration clauses that comply with the standards set
9 forth in the Statement of Principles of the National Consumer Dispute
10 Advisory Committee in effect as of the effective date of this act shall
11 be presumed not to violate this subsection. The borrower shall have
12 the exclusive option to require arbitration concerning any claims or
13 defenses relating to high-cost home loans¹] Without regard to
14 whether a borrower is acting individually or on behalf of others
15 similarly situated, any provision of a high-cost home loan agreement
16 that allows a party to require a borrower to assert any claim or defense
17 in a forum that is less convenient, more costly, or more dilatory for the
18 resolution of a dispute than a judicial forum established in this State if
19 the borrower may otherwise properly bring a claim or defense or limits
20 in any way any claim or defense the borrower may have is
21 unconscionable and void².

22 f. ¹A creditor shall not make a high-cost home loan unless the
23 creditor has given the following notice, or substantially similar notice,
24 in writing, to the borrower, acknowledged in writing and signed by the
25 borrower not later than the time the notice is required under the notice
26 provision contained in 12 C.F.R. s.226.31(c).

27

28

NOTICE TO BORROWER

29

30 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE
31 TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD
32 SHOP AROUND AND COMPARE LOAN RATES AND FEES.
33 MORTGAGE LOAN RATES AND CLOSING COSTS AND
34 FEES VARY BASED ON MANY FACTORS, INCLUDING
35 YOUR PARTICULAR CREDIT AND FINANCIAL
36 CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE
37 LOAN-TO-VALUE REQUESTED AND THE TYPE OF
38 PROPERTY THAT WILL SECURE YOUR LOAN. THE
39 LOAN RATE AND FEES COULD ALSO VARY BASED ON
40 WHICH CREDITOR OR BROKER YOU SELECT.

41

42 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
43 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR
44 HOME. YOU COULD LOSE YOUR HOME AND ANY
45 MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR
46 PAYMENT OBLIGATIONS UNDER THE LOAN.

1 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND
2 A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR
3 OTHER EXPERIENCED FINANCIAL ADVISOR
4 REGARDING THE RATE, FEES AND PROVISIONS OF
5 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A
6 LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY
7 CONTACTING THE NEW JERSEY DEPARTMENT OF
8 BANKING AND INSURANCE.

9
10 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
11 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED
12 THIS DISCLOSURE OR HAVE SIGNED A LOAN
13 APPLICATION.

14
15 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
16 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL
17 CREDITORS PROVIDE ESCROW SERVICES FOR THESE
18 PAYMENTS. YOU SHOULD ASK YOUR CREDITOR
19 ABOUT THESE SERVICES.

20
21 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
22 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU
23 SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR
24 REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

25
26 g.¹ A creditor shall not make a high-cost home loan ¹to a borrower
27 who finances points and fees in connection with a high-cost home
28 loan¹ without first receiving certification from a ¹third-party nonprofit
29 credit¹ counselor, approved by the United States Department of
30 Housing and Urban Development ¹and the Department of Banking and
31 Insurance¹, that the borrower has received counseling on the
32 advisability of the loan transaction ²or completing another substantial
33 requirement developed by the department².

34 ¹[g.] ²[h.¹ A creditor shall not make a high-cost home loan
35 without due regard to repayment ability. A creditor shall not make a
36 high-cost home loan unless the creditor reasonably believes at the time
37 the loan is consummated that one or more of the borrowers, when
38 considered individually or collectively, will be able to make the
39 scheduled payments to repay the obligation, based upon a
40 consideration of their current and expected income, current
41 obligations, employment status and other financial resources, other
42 than the borrower's equity in the dwelling which secures repayment of
43 the loan. A borrower shall be presumed to be able to make the
44 scheduled payments to repay the obligation if, at the time the loan is
45 consummated, the borrower's total monthly debts, including amounts
46 owed under the loan, do not exceed 50% of the borrower's monthly

1 gross income as verified by the credit application, the borrower's
2 financial statement, a credit report, financial information provided to
3 the creditor by or on behalf of the borrower, or any other reasonable
4 means. Notwithstanding the foregoing, no presumption of inability to
5 make the scheduled payments to repay the obligation shall arise solely
6 from the fact that, at the time the loan is consummated, the borrower's
7 total monthly debts, including amounts owed under the loan, exceed
8 50% of the borrower's monthly gross income.]² ¹[A creditor who
9 follows the residual income guidelines established in 38 C.F.R.
10 s.36.4337(e) and VA Form 26-6393 shall benefit from a rebuttable
11 presumption that the creditor made the loan with due regard to
12 repayment ability.]¹

13 ¹[h.] ²[i.] ¹ h.² A creditor shall not pay a contractor under a
14 home-improvement contract from the proceeds of a high-cost home
15 loan, unless the instrument is payable to the borrower or jointly to the
16 borrower and the contractor, or, at the election of the borrower,
17 through a third-party escrow agent in accordance with terms
18 established in a written agreement signed by the borrower, the
19 creditor, and the contractor prior to the disbursement.

20 ¹[i.] ²[j.] ¹ i.² A creditor shall not charge a borrower any fees or
21 other charges to modify, renew, extend, or amend a high-cost home
22 loan or to defer any payment due under the terms of a high-cost home
23 loan.

24 ¹[j.] ²[k.] ¹ j.² A creditor shall not charge a borrower points and
25 fees in connection with a high-cost home loan if the proceeds of the
26 high-cost home loan are used to refinance an existing high-cost home
27 loan held by the same creditor as note holder.

28 ¹[k.] ²[l.] ¹ k.² Notwithstanding any other law to the contrary, a
29 creditor making a high-cost home loan that has the legal right to
30 foreclose shall use the judicial foreclosure procedures of this State so
31 long as the property securing the loan is located in this State.
32 ¹[Notwithstanding any other law to the contrary, the borrower shall
33 have the right to assert in that proceeding the nonexistence of a default
34 and any other claim or defense to acceleration and foreclosure,
35 including any based on any violations of this act, though those claims
36 or defenses shall not be deemed compulsory counterclaims.]

37 ²[m.] ¹ l.² No creditor making a high-cost home loan shall directly
38 or indirectly finance points and fees in excess of 2% of the total loan
39 amount.¹

40

41 6. a. Notwithstanding any other law to the contrary, if a home loan
42 was made, arranged, or assigned by a person selling either a
43 manufactured home, or home improvements to the dwelling of a
44 borrower², or was made by or through a creditor to whom the
45 borrower was referred by such seller², the borrower may assert all

1 affirmative claims and any defenses that the borrower may have against
2 the seller or home-improvement contractor ⁴limited to amounts
3 required to reduce or extinguish the borrower's liability under the
4 home loan, plus the total amount paid by the borrower in connection
5 with the transaction, plus amounts required to recover costs, including
6 reasonable attorney's fees⁴ against the creditor, any assignee ²[,] or²
7 holder, ²[or servicer,]² in any capacity.

8 b. ¹[Notwithstanding any other law to the contrary, the remedies
9 provided by this act apply to the creditor, any director, officer,
10 employee, or controlling stockholder of, or agent for, a creditor who
11 personally participated in the making or approving of a high-cost home
12 loan, and any other persons to whom this act applies and who violated
13 the requirements of this act.]¹ ²[Any] Notwithstanding any other
14 provision of law, any² person who purchases or is otherwise assigned
15 a high-cost home loan shall be subject to all affirmative claims and any
16 defenses with respect to the loan that the borrower could assert
17 against the original creditor or broker of the loan ²; provided that this
18 subsection shall not apply if the purchaser or assignee demonstrates,
19 by a preponderance of the evidence, that a reasonable person
20 exercising reasonable due diligence could not determine that the
21 mortgage was a high-cost home loan. It shall be presumed that a
22 purchaser or assignee has exercised such due diligence if the purchaser
23 or assignee demonstrates by a preponderance of the evidence that it:
24 (1) ⁴[maintains] has in place at the time of the purchase or
25 assignment of the loan,⁴ policies that expressly prohibit its purchase or
26 acceptance of assignment of any high-cost home loan; (2) requires by
27 contract that a seller or assignor of home loans to the purchaser or
28 assignee represents and warrants to the purchaser or assignee that
29 ⁴either (a)⁴ it will not sell or assign any high-cost home loan to the
30 purchaser or assignee⁴ or (b) that the seller or assignor is a beneficiary
31 of a representation and warranty from a previous seller or assignor to
32 that effect⁴ ; and (3) exercises reasonable due diligence at the time of
33 purchase or assignment of home loans or within a reasonable period
34 of time thereafter intended by the purchaser or assignee to prevent the
35 purchaser or assignee from purchasing or taking assignment of any
36 high-cost home loan².

37 c. Notwithstanding any other law to the contrary, ²[a borrower in
38 default more than 60 days or in foreclosure may assert a violation of
39 this act by way of offset:

40 (1) As an original action;

41 (2) As a defense or counterclaim to an action to collect amounts
42 owed; or

43 (3) To obtain possession of the home secured by the home loan]
44 but limited to amounts required to reduce or extinguish the borrower's
45 liability under the home loan plus amounts required to recover costs
46 including reasonable attorney's fees, a borrower acting only in an

1 individual capacity may assert against the creditor or any subsequent
 2 holder or assignee of the home loan:

3 (1) within six years of the closing of a covered home loan, a
 4 violation of ⁴[section 4, subsection d. of this section, section 8]⁴
 5 ³[and] ⁴[or³ section 12 of]⁴ this act in connection with the loan as an
 6 original action ^{4,4} or as a defense, claim or counterclaim after an
 7 action to collect on the home loan or foreclose on the collateral
 8 securing the home loan has been initiated or the debt arising from the
 9 home loan has been accelerated or the home loan has become 60 days
 10 in default; and

11 (2) at any time during the term of ³[the] a high-cost home³ loan
 12 after an action to collect on the home loan or foreclose on the
 13 collateral securing the home loan has been initiated or the debt arising
 14 from the home loan has been accelerated or the home loan has become
 15 60 days in default, ³[a violation of this act in connection with a high-
 16 cost home loan as a defense, claim or counterclaim; or]³ any defense,
 17 claim or counterclaim ³[in connection with a high-cost home²]³.

18 d. ²[¹Notwithstanding any other law to the contrary, the borrower
 19 shall have the right to assert in a foreclosure proceeding the
 20 nonexistence of a default and any other claim or defense to
 21 acceleration and foreclosure, including any claim based on any
 22 violations of this act, though those claims or defenses shall not be
 23 deemed compulsory counterclaims.

24 e.]² ¹It is a violation of this act for any person, in bad faith, to
 25 attempt to avoid the application of this act by:

26 (1) Dividing any loan transaction into separate parts; or

27 (2) Any other such subterfuge, with the intent of evading the
 28 provisions of this act.

29 ²e. Nothing in this section shall be construed to limit the
 30 substantive rights, remedies or procedural rights ³, including, but not
 31 limited to, recoupment rights under the common law, ³ available to a
 32 borrower against any creditor, assignee or holder under any other law.
 33 The limitations on assignee liability in subsection b. of this section
 34 shall not apply to the assignee liability in subsection a., c. and d. of this
 35 section.²

36

37 ¹7. a. The department shall conduct examinations and investigations
 38 and issue subpoenas and orders to enforce the provisions of this act
 39 with respect to a person licensed or subject to the provision of the
 40 "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et
 41 seq.).

42 b. The department shall examine any instrument, document,
 43 account, book, record, or file of a person originating or brokering a
 44 high-cost home loan under this act. The department shall recover the
 45 cost of examinations from the person. A person originating or
 46 brokering high-cost home loans shall maintain its records in a manner

1 that will facilitate the department in determining whether the person
2 is complying with the provisions of this act and the regulations
3 promulgated thereunder. The department shall require the submission
4 of reports by persons originating or brokering high-cost home loans
5 which shall set forth such information as the department shall require
6 by regulation.

7 c. In the event that a person fails to comply with a subpoena for
8 documents or testimony issued by the department, the department may
9 request an order from a court of competent jurisdiction requiring the
10 person to produce the requested information.

11 d. If the department determines that a person has violated the
12 provisions of this act, the department may do any combination of the
13 following that it deems appropriate:

14 (1) Impose a civil penalty of up to \$10,000 for each offense, 40%
15 of which penalty shall be dedicated for and used by the department for
16 consumer education through nonprofit organizations which can
17 establish to the satisfaction of the department that they have sufficient
18 experience in credit counseling and financial education. In determining
19 the penalty to be assessed, the commissioner shall consider the
20 following criteria: whether the violation was willful; whether the
21 violation was part of a pattern and practice; the amount of the loan;
22 the points and fees charged; the financial condition of the violator; and
23 other relevant factors. The department may require the person to pay
24 investigative costs, if any.

25 (2) Suspend, revoke, or refuse to renew any license issued by the
26 department.

27 (3) Prohibit or permanently remove an individual responsible for
28 a violation of this act from working in his present capacity or in any
29 other capacity related to activities regulated by the department.

30 (4) Order a person to cease and desist any violation of this act and
31 to make restitution for actual damages to borrowers.

32 (5) Pending completion of an investigation or any formal
33 proceeding instituted pursuant to this act, if the commissioner finds
34 that the interests of the public require immediate action to prevent
35 undue harm to borrowers, the commissioner may enter an appropriate
36 temporary order to be effective immediately and until entry of a final
37 order. The temporary emergent order may include: a temporary
38 suspension of the creditor's authority to make high-cost home loans
39 under this act; a temporary cease and desist order; a temporary
40 prohibition against a creditor transacting high-cost home loan business
41 in this State, or such other order relating to high-cost home loans as
42 the commissioner may deem necessary to prevent undue harm to
43 borrowers pending completion of an investigation or formal
44 proceeding. Orders issued pursuant to this section shall be subject to
45 an application to vacate upon two days' notice, and a preliminary
46 hearing on the temporary emergent order shall be held, in any event,

1 within five days after it is issued, in accordance with the provisions of
 2 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 3 seq.).

4 (6) Impose such other conditions as the department deems
 5 appropriate.

6 e. Any person aggrieved by a decision of the department and who
 7 has a direct interest in the decision may appeal the decision of the
 8 department to the commissioner. The appeal shall be conducted in
 9 accordance with the provisions of the "Administrative Procedure Act,"
 10 P.L.1968, c.410 (C.52:14B-1 et seq.).

11 f. The department may maintain an action for an injunction or other
 12 process against any person to restrain and prevent the person from
 13 engaging in any activity violating this act.

14 g. A decision of the commissioner shall be a final order of the
 15 department and shall be enforceable in a court of competent
 16 jurisdiction. The department shall publish the final adjudication issued
 17 in accordance with this section, subject to redaction or modification
 18 to preserve confidentiality.

19 h. The provisions of this section shall not limit the authority of the
 20 Attorney General or the Public Advocate as established pursuant to
 21 P.L. _____, c. _____ (C. _____) (now before the Legislature as Assembly
 22 Committee Substitute for Assembly Bill Nos. 345 and 2341) from
 23 instituting or maintaining any action within the scope of their
 24 respective authority with respect to the practices prohibited under this
 25 act.¹

26
 27 ¹[7.] §. ¹a. Any violation of this act constitutes an unlawful
 28 practice under P.L.1960, c.39 (C.56:8-1 et seq.). ²Any borrower may
 29 seek damages under the provisions of section 7 of P.L.1971, c.247
 30 (C.56:8-19) or subparagraph (a) of paragraph (1) of subsection b. of
 31 this section, but not both.²

32 b. ²[In addition to penalties under that law, including¹, but not
 33 limited to,¹ any moneys or property ordered to be paid pursuant to
 34 section 2 of P.L.1966, c.39 (C.56:8-14) or section 3 of P.L.1971,
 35 c.247 (C.56:8-15)] Except as provided in subsection a. of this section
 36 ⁴and, where applicable, subject to any limitation on the amounts
 37 recoverable against a holder or assignee pursuant to section 6 of this
 38 act⁴, in addition to the remedies available to a borrower under
 39 P.L.1960, c.39 (C.56:8-1 et seq.) and without limiting those
 40 remedies²:

41 (1) Any person found by a preponderance of the evidence to have
 42 ³[²materially²]³ violated this act shall be liable to the borrower for the
 43 following:

44 (a) ³[Statutory] For material violations, statutory³ damages equal
 45 to the finance charges agreed to in the home loan agreement, plus ³up
 46 to³ 10% of the amount financed ¹[.]:¹

1 (b) Punitive damages, when the violation was malicious or reckless
2 ²in appropriate circumstances as determined by the fact-finder² ; and

3 (c) Costs and reasonable attorneys' fees.

4 (2) A borrower may be granted injunctive, declaratory, and such
5 other equitable relief as the court deems appropriate in an action to
6 enforce compliance with this act.

7 (3) ¹[The intentional violation of this act, or regulation hereunder,
8 renders the home loan agreement void, and the creditor shall have no
9 right to collect, receive, or retain any principal, interest, or other
10 charges whatsoever with respect to the loan, and the borrower may
11 recover any payments made under the agreement.

12 (4)]¹ ²[The right of rescission granted under 15 U.S.C. s.1601 et
13 seq. for violations of that law and all other remedies provided
14 hereunder shall be available to a borrower by way of recoupment
15 against a party foreclosing on the home loan or collecting on the loan,
16 at any time during the term of the loan.]²

17 ¹[(5)] ²[(4)]¹² The remedies provided in this section are not
18 intended to be the exclusive remedies available to a borrower, nor
19 must the borrower exhaust any administrative remedies provided under
20 this act or any other applicable law before proceeding under this
21 section.

22 c. ²[Any person, including members, officers, and directors of the
23 creditor, who knowingly violates this act is guilty of a disorderly
24 persons offense and, on conviction, is subject to a fine not exceeding
25 \$1,000, or to imprisonment not exceeding six months, or both.

26 d.]² A creditor in a home loan who, when acting in good faith, fails
27 to comply with the provisions of this act, will not be deemed to have
28 violated this section if the creditor establishes that either:

29 (1) Within ¹[30] ⁴⁵¹ days of the loan closing, ²[and prior to
30 receiving any notice from the borrower of the compliance failure,]²
31 the creditor has made appropriate restitution to the borrower, and
32 appropriate adjustments are made to the loan; or

33 (2) Within ¹[60] ⁹⁰¹ days of the loan closing and prior to
34 receiving any notice from the borrower of the compliance failure, and
35 the compliance failure was not intentional and resulted from a bona
36 fide error notwithstanding the maintenance of procedures reasonably
37 adopted to avoid such errors, the borrower is notified of the
38 compliance failure, appropriate restitution is made to the borrower,
39 and appropriate adjustments are made to the loan.

40 Examples of bona fide errors include clerical, calculation, computer
41 malfunction and programming, and printing errors. An error of legal
42 judgment with respect to a person's obligations under this section is
43 not a bona fide error.

44 ²[e.] d.² ³[¹Notwithstanding any provision of this act to the
45 contrary, a broker, who is a creditor, shall be liable for any violation

1 of this act by any party involved in a home loan transaction that he
2 brokered.

3 ²[f.] e.²]³ ¹The remedies provided in this section are cumulative.

4
5 ¹[8. The rights conferred by this act are independent of and in
6 addition to any other rights under other laws.]

7 9. The rights, remedies, and prohibitions accorded by the
8 provisions of this act are hereby declared to be in addition to and
9 cumulative of any other right, remedy, or prohibition accorded by the
10 common law or statutes ²of the United States or² of this State, and
11 nothing herein shall be construed to deny, abrogate, or impair any such
12 common law or statutory right, remedy, or prohibition.¹ ²Without
13 limiting the foregoing, the rights, remedies and prohibitions accorded
14 by the provisions of this act are hereby further declared to create no
15 presumption that any home loan or any term in a home loan is not
16 unconscionable, whether or not the home loan or loan term, alone or
17 in conjunction with other terms of the loan, violates the provisions of
18 this act.²

19
20 ¹[9.] 10.¹ The law of the state in which the property is located
21 shall be applied to all transactions governed by this act regardless of
22 where those transactions originated. This act shall apply to all loans
23 made or entered into after the effective date of this act.

24
25 ¹[10.] 11.¹ The Director of the Division of Banking in the
26 Department of Banking and Insurance, in consultation with the
27 Director of the Division of Consumer Affairs ²and the Division of Civil
28 Rights² in the Department of Law and Public Safety, shall develop and
29 implement a program of consumer counseling and awareness designed
30 to inform the public about the methods by which predatory creditors
31 impose unconscionable and noncompetitive fees and charges as part of
32 complex home mortgage transactions, to protect the public from
33 incurring those fees and charges, and otherwise to encourage the
34 informed and responsible use of credit.

35
36 ²12. Notwithstanding any provision of this act to the contrary, a
37 mortgage broker shall be liable under the provisions of this act only for
38 acts performed by the mortgage broker in the course of providing
39 mortgage brokering services. However, a mortgage broker may be
40 held liable for acts performed by the mortgage broker outside the
41 scope of mortgage brokering services if the acts are related to the
42 purchasing or the making of a home loan and are otherwise prohibited
43 under this act.²

44
45 ²13. No municipality, county or political subdivision thereof, shall
46 enact an ordinance or resolution or promulgate any rules or

1 regulations relating to this act. The provisions of any ordinance or
2 resolution or rules or regulations of any municipality or county relative
3 to abusive home loan lending practices are superseded by the
4 provisions of this act.²

5
6 ¹[11.] ²[12.¹] 14.² The Commissioner of Banking and Insurance
7 shall promulgate regulations pursuant to the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to
9 effectuate the provisions of ²subsections f. and g. of section 5 and
10 section 11 of² this act ¹except that prior to the effective date of this
11 act the commissioner may take those actions and promulgate those
12 regulations necessary to implement ²[the] these² provisions ²[of this
13 act¹]².

14
15 ¹[12.] ²[13.¹] 15.² This act shall take effect on the ²[90th]
16 210th² day following enactment ²and shall apply to home loans closed
17 on and after that date, except that section 14 shall take effect
18 immediately² ³, and except that a loan in existence on the effective
19 date of this act and which meets the definition of home loan in this act
20 shall be a home loan for the purposes of subsection b. of section 4 of
21 this act³.

22
23
24
25
26 _____
"New Jersey Home Ownership Security Act of 2002."

ASSEMBLY, No. 75

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MAY 9, 2002

Sponsored by:

Assemblyman MATT AHEARN

District 38 (Bergen)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman CRAIG A. STANLEY

District 28 (Essex)

Co-Sponsored by:

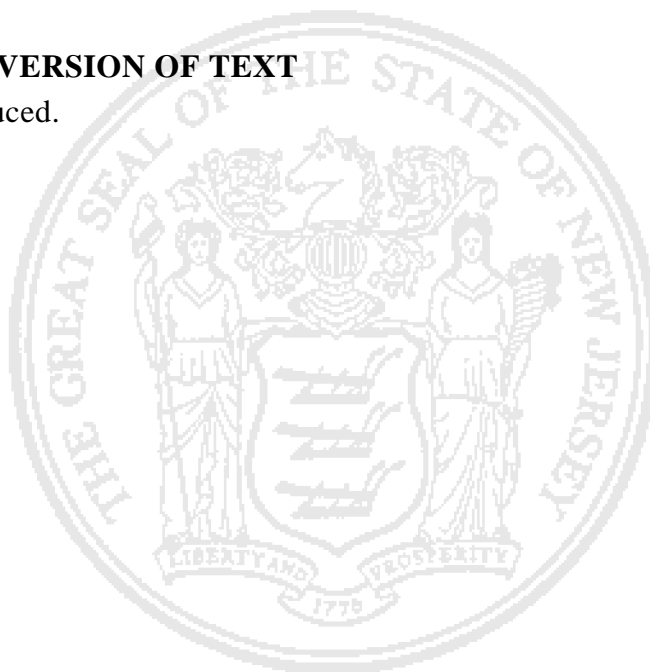
Assemblymen Impreveduto and R.Smith

SYNOPSIS

"New Jersey Home Ownership Security Act of 2002."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/7/2002)

1 AN ACT prohibiting certain abusive lending practices and
2 supplementing Title 46 of the Revised Statutes.

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

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Home Ownership Security Act of 2002."

9
10 2. The Legislature finds and declares that:

11 a. Abusive mortgage lending has become an increasing problem in
12 this State, exacerbating the loss of equity in homes and causing an
13 increase in the number of foreclosures in recent years. One of the
14 most common forms of abusive lending is the making of loans that are
15 equity-based, rather than income-based. The financing of points and
16 fees in these loans provides immediate income to the originator and
17 encourages the repeated refinancing of home loans. The lender's
18 ability to sell loans reduces the incentive to ensure that the homeowner
19 can afford the payments of the loan. As long as there is sufficient
20 equity in the home, an abusive lender benefits even if the borrower is
21 unable to make the payments and is forced to refinance. In addition,
22 the financing of high points and fees causes the loss of precious equity
23 in each refinancing and often leads to foreclosure.

24 b. Abusive lending has threatened the viability of many
25 communities and caused decreases in home ownership. While the
26 marketplace appears to operate effectively for conventional mortgages,
27 too many homeowners find themselves victims of overreaching lenders
28 who provide loans with unnecessarily high costs and terms that are
29 unnecessary to secure repayment of the loan.

30 c. As competition and self-regulation have not eliminated the
31 abusive terms from loans secured by a consumer's home, the consumer
32 protection provisions of this act are necessary to encourage lending at
33 reasonable rates with reasonable terms.

34
35 3. As used in this act:

36 "Benchmark rate" is the interest rate which the borrower can reduce
37 by paying bona fide discount points; this rate shall not exceed the
38 weekly average yield of United States Treasury securities having a
39 maturity of five years, on the 15th day of the month immediately
40 preceding the month in which the loan is made, plus four percentage
41 points.

42 "Bona fide discount points" means loan discount points which are:

- 43 (1) Knowingly paid by the borrower;
44 (2) Paid for the express purpose of lowering the benchmark rate;
45 (3) In fact reducing the interest rate or time-price differential
46 applicable to the loan from an interest rate which does not exceed the

1 benchmark rate; and

2 (4) Recouped within the first four years of the scheduled loan
3 payments. Loan discount points will be considered to be recouped
4 within the first four years of the scheduled loan payments if the
5 reduction in the interest rate that is achieved by the payment of the
6 loan discount points reduces the interest charged on the scheduled
7 payments such that the borrower's dollar amount of savings in interest
8 over the first four years is equal to or exceeds the dollar amount of
9 loan discount points paid by the borrower.

10 "Borrower" means any natural person obligated to repay the loan,
11 including a coborrower, cosigner, or guarantor.

12 "Creditor" means a person who extends consumer credit that is
13 subject to a finance charge or is payable by written agreement in more
14 than four installments, and to whom the obligation is payable at any
15 time.

16 "High-cost home loan" means a home loan for which the principal
17 amount of the loan does not exceed \$350,000, which amount shall be
18 adjusted annually to include the last published increase of the housing
19 component of the national Consumer Price Index, New York-
20 Northeastern New Jersey Region, in which the terms of the loan meet
21 or exceed one or more of the thresholds as defined in this section.

22 "Home loan" means a loan, including an open-end credit plan, other
23 than a reverse mortgage transaction, in which the loan is secured by:

24 (1) A mortgage or deed of trust on real estate in this State upon
25 which there is located or there is to be located a one to six family
26 dwelling which is or will be occupied by a borrower as the borrower's
27 principal dwelling; or

28 (2) A security interest in a manufactured home which is or will be
29 occupied by a borrower as the borrower's principal dwelling.

30 "Points and fees" means:

31 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
32 interest or the time-price differential;

33 (2) All charges listed in 15 U.S.C. s.1605(e);

34 (3) All compensation paid directly or indirectly to a mortgage
35 broker, including a broker that originates a loan in its own name in a
36 table-funded transaction;

37 (4) The cost of all premiums financed by the creditor, directly or
38 indirectly for any credit life, credit disability, credit unemployment or
39 credit property insurance, or any other life or health insurance, or any
40 payments financed by the creditor directly or indirectly for any debt
41 cancellation or suspension agreement or contract, except that
42 insurance premiums calculated and paid on a monthly basis shall not
43 be considered financed by the creditor;

44 (5) The maximum prepayment fees and penalties that may be
45 charged or collected under the terms of the loan documents; and

46 (6) All prepayment fees or penalties that are charged to the

1 borrower if the loan refinances a previous loan made by the same
2 creditor or an affiliate of the creditor.

3 (7) For open-end loans, the points and fees are calculated by
4 adding the total fees charged at closing plus the maximum additional
5 fees which can be charged pursuant to the loan documents during the
6 term of the loan.

7 "Rate" means the interest rate charged on the home loan, based on
8 an annual simple interest yield.

9 "Threshold" means any one of the following three items, as defined:

10 (1) "Rate threshold" means the annual percentage rate of the loan
11 at the time the loan is consummated such that the loan is considered
12 a "mortgage" under section 152 of the federal "Home Ownership and
13 Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C.
14 s.1602(aa)), and the regulations promulgated by the Federal Reserve
15 Board, including 12 C.F.R. s.226.32, without regard to whether the
16 loan transaction is or may be a "residential mortgage transaction," as
17 defined in 12 C.F.R. s.226.2(a)(24).

18 (2) "Total points and fees threshold" means that the total points
19 and fees payable by the borrower at or before the loan closing,
20 excluding up to two bona fide discount points, exceed:

21 (a) 5% of the total loan amount if the total loan amount is \$20,000
22 or more; or

23 (b) the lesser of 8% of the total loan amount or \$1,000, if the total
24 loan amount is less than \$20,000; provided, the following discount
25 points and prepayment fees shall be excluded from the calculation of
26 the total points and fees payable by the borrower:

27 (i) Up to and including two bona fide loan discount points payable
28 by the borrower in connection with the loan transaction, but only if the
29 interest rate from which the loan's interest rate will be discounted does
30 not exceed, by more than one percentage point, the required net yield
31 for a 90-day standard mandatory delivery commitment for a reasonably
32 comparable loan from either the Federal National Mortgage
33 Association or the Federal Home Loan Mortgage Corporation,
34 whichever is greater;

35 (ii) Up to and including one bona fide loan discount point payable
36 by the borrower in connection with the loan transaction, but only if the
37 interest rate from which the loan's interest rate will be discounted does
38 not exceed, by more than two percentage points, the required net yield
39 for a 90-day standard mandatory delivery commitment for a reasonably
40 comparable loan from either the Federal National Mortgage
41 Association or the Federal Home Loan Mortgage Corporation,
42 whichever is greater.

43 (3) "Prepayment penalty threshold" means the home loan
44 agreement permits the lender to charge or collect payment penalties or
45 penalties more than 30 months after the loan closing or which exceed,
46 in the aggregate, more than 2% of the amount prepaid.

1 "Total loan amount" means the principal of the loan minus those
2 points and fees as defined in this section that are included in the
3 principal amount of the loan. For open-end loans, the total amount
4 shall be calculated using the total line of credit allowed under the
5 home loan.

6

7 4. a. No creditor making a home loan shall finance, directly or
8 indirectly, any credit life, credit disability, credit unemployment or
9 credit property insurance, or any other life or health insurance, or any
10 payments directly or indirectly for any debt cancellation or suspension
11 agreement or contract, except that insurance premiums or debt
12 cancellation or suspension fees calculated and paid on a monthly basis
13 shall not be considered financed by the creditor.

14 b. No creditor shall engage in the unfair act or practice of
15 "flipping" a home loan. "Flipping" a loan is the making of a home loan
16 to a borrower that refinances an existing home loan when the new loan
17 does not have reasonable, tangible net benefit to the borrower
18 considering all of the circumstances, including the terms of both the
19 new and refinanced loans, the cost of the new loan, and the borrower's
20 circumstances. In addition, the following home loan refinancings shall
21 be presumed to be flipping if:

22 (1) The primary tangible benefit to the borrower is an interest rate
23 lower than the interest rate on a debt satisfied or refinanced in
24 connection with the home loan, and it will take more than four years
25 for the borrower to recoup the costs of the points and fees and other
26 closing costs through savings resulting from the lower interest rate; or

27 (2) The new loan refinances an existing home loan that is a special
28 mortgage originated, subsidized, or guaranteed by or through a state,
29 tribal or local government, or nonprofit organization, which either
30 bears a below-market interest rate at the time the loan was originated,
31 or has nonstandard payment terms beneficial to the borrower, such as
32 payments that vary with income or are limited to a percentage of
33 income, or where no payments are required under specified conditions,
34 and where, as a result of refinancing, the borrower will lose one or
35 more of the benefits of the special mortgage.

36 c. No creditor shall recommend or encourage default on an existing
37 loan or other debt prior to and in connection with the closing or
38 planned closing of a home loan that refinances all or any portion of
39 that existing loan or debt.

40 d. No creditor shall charge a late payment fee in relation to a home
41 loan except according to the following rules:

42 (1) The late payment fee may not be in excess of 4% of the amount
43 of the payment past due.

44 (2) The fee may only be assessed by a payment past due for
45 15 days or more.

1 (3) The fee may not be charged more than once with respect to a
2 single late payment. If a late payment fee is deducted from a payment
3 made on the loan, and such deduction causes a subsequent default on
4 a subsequent payment, no late payment fee may be imposed for such
5 default. If a late payment fee has been once imposed with respect to
6 a particular late payment, no such fee shall be imposed with respect to
7 any future payment which would have been timely and sufficient, but
8 for the previous default.

9 (4) No fee shall be charged unless the creditor notifies the
10 borrower within 45 days following the date the payment was due that
11 a late payment fee has been imposed for a particular late payment. No
12 late payment fee may be collected from any borrower if the borrower
13 informs the creditor that nonpayment of an installment is in dispute
14 and presents proof of payment within 45 days of receipt of the
15 creditor's notice of the late fee.

16 (5) The creditor shall treat each and every payment as posted on
17 the same date as it was received by the creditor, servicer, creditor's
18 agent, or at the address provided to the borrower by the creditor,
19 servicer, or the creditor's agent for making payments.

20 e. No home loan shall contain a provision that permits the creditor,
21 in its sole discretion, to accelerate the indebtedness. This provision
22 does not prohibit acceleration of the loan in good faith due to the
23 borrower's failure to abide by the material terms of the loan.

24 f. No creditor shall charge a fee for informing or transmitting to
25 any person the balance due to pay off a home loan or to provide a
26 release upon prepayment. Payoff balances shall be provided within
27 seven business days after the request.

28
29 5. A high-cost home loan shall be subject to the following
30 additional limitations and prohibited practices:

31 a. No high-cost home loan shall contain a scheduled payment that
32 is more than twice as large as the average of earlier scheduled
33 payments. This provision shall not apply when the payment schedule
34 is adjusted to the seasonal or irregular income of the borrower.

35 b. No high-cost home loan shall include payment terms under
36 which the outstanding principal balance will increase at any time over
37 the course of the loan because the regular periodic payments do not
38 cover the full amount of interest due.

39 c. No high-cost home loan shall contain a provision that increases
40 the interest rate after default. This provision does not apply to interest
41 rate changes in a variable rate loan otherwise consistent with the
42 provisions of the loan documents, provided the change in the interest
43 rate is not triggered by the event of default or the acceleration of the
44 indebtedness.

45 d. No high-cost home loan shall include terms under which more
46 than two periodic payments required under the loan are consolidated

1 and paid in advance from the loan proceeds provided to the borrower.

2 e. No high-cost home loan shall be subject to a mandatory
3 arbitration clause that limits in any way the right of the borrower to
4 seek relief through the judicial process for any and all claims and
5 defenses the borrower may have against the creditor, broker, or other
6 party involved in the loan transaction.

7 f. A creditor shall not make a high-cost home loan without first
8 receiving certification from a counselor, approved by the United States
9 Department of Housing and Urban Development, that the borrower
10 has received counseling on the advisability of the loan transaction.

11 g. A creditor shall not make a high-cost home loan without due
12 regard to repayment ability. A creditor shall not make a high-cost
13 home loan unless the creditor reasonably believes at the time the loan
14 is consummated that one or more of the borrowers, when considered
15 individually or collectively, will be able to make the scheduled
16 payments to repay the obligation, based upon a consideration of their
17 current and expected income, current obligations, employment status
18 and other financial resources, other than the borrower's equity in the
19 dwelling which secures repayment of the loan. A borrower shall be
20 presumed to be able to make the scheduled payments to repay the
21 obligation if, at the time the loan is consummated, the borrower's total
22 monthly debts, including amounts owed under the loan, do not exceed
23 50% of the borrower's monthly gross income as verified by the credit
24 application, the borrower's financial statement, a credit report,
25 financial information provided to the creditor by or on behalf of the
26 borrower, or any other reasonable means. Notwithstanding the
27 foregoing, no presumption of inability to make the scheduled payments
28 to repay the obligation shall arise solely from the fact that, at the time
29 the loan is consummated, the borrower's total monthly debts, including
30 amounts owed under the loan, exceed 50% of the borrower's monthly
31 gross income. A creditor who follows the residual income guidelines
32 established in 38 C.F.R. s.36.4337(e) and VA Form 26-6393 shall
33 benefit from a rebuttable presumption that the creditor made the loan
34 with due regard to repayment ability.

35 h. A creditor shall not pay a contractor under a home-improvement
36 contract from the proceeds of a high-cost home loan, unless the
37 instrument is payable to the borrower or jointly to the borrower and
38 the contractor, or, at the election of the borrower, through a third-
39 party escrow agent in accordance with terms established in a written
40 agreement signed by the borrower, the creditor, and the contractor
41 prior to the disbursement.

42 i. A creditor shall not charge a borrower any fees or other charges
43 to modify, renew, extend, or amend a high-cost home loan or to defer
44 any payment due under the terms of a high-cost home loan.

45 j. A creditor shall not charge a borrower points and fees in
46 connection with a high-cost home loan if the proceeds of the high-cost

1 home loan are used to refinance an existing high-cost home loan held
2 by the same creditor as note holder.

3 k. Notwithstanding any other law to the contrary, a creditor
4 making a high-cost home loan that has the legal right to foreclose shall
5 use the judicial foreclosure procedures of this State so long as the
6 property securing the loan is located in this State. Notwithstanding
7 any other law to the contrary, the borrower shall have the right to
8 assert in that proceeding the nonexistence of a default and any other
9 claim or defense to acceleration and foreclosure, including any based
10 on any violations of this act, though those claims or defenses shall not
11 be deemed compulsory counterclaims.

12

13 6. a. Notwithstanding any other law to the contrary, if a home loan
14 was made, arranged, or assigned by a person selling either a
15 manufactured home, or home improvements to the dwelling of a
16 borrower, the borrower may assert all affirmative claims and any
17 defenses that the borrower may have against the seller or home-
18 improvement contractor against the creditor, any assignee, holder, or
19 servicer, in any capacity.

20 b. Notwithstanding any other law to the contrary, the remedies
21 provided by this act apply to the creditor, any director, officer,
22 employee, or controlling stockholder of, or agent for, a creditor who
23 personally participated in the making or approving of a high-cost home
24 loan, and any other persons to whom this act applies and who violated
25 the requirements of this act. Any person who purchases or is
26 otherwise assigned a high-cost home loan shall be subject to all
27 affirmative claims and any defenses with respect to the loan that the
28 borrower could assert against the original creditor or broker of the
29 loan.

30 c. Notwithstanding any other law to the contrary, a borrower in
31 default more than 60 days or in foreclosure may assert a violation of
32 this act by way of offset:

33 (1) As an original action;

34 (2) As a defense or counterclaim to an action to collect amounts
35 owed; or

36 (3) To obtain possession of the home secured by the home loan.

37 d. It is a violation of this act for any person, in bad faith, to
38 attempt to avoid the application of this act by:

39 (1) Dividing any loan transaction into separate parts; or

40 (2) Any other such subterfuge, with the intent of evading the
41 provisions of this act.

42

43 7. a. Any violation of this act constitutes an unlawful practice
44 under P.L.1960, c.39 (C.56:8-1 et seq.).

45 b. In addition to penalties under that law, including any moneys or
46 property ordered to be paid pursuant to section 2 of P.L.1966, c.39

1 (C.56:8-14) or section 3 of P.L.1971, c.247 (C.56:8-15):

2 (1) Any person found by a preponderance of the evidence to have
3 violated this act shall be liable to the borrower for the following:

4 (a) Statutory damages equal to the finance charges agreed to in the
5 home loan agreement, plus 10% of the amount financed.

6 (b) Punitive damages, when the violation was malicious or
7 reckless; and

8 (c) Costs and reasonable attorneys' fees.

9 (2) A borrower may be granted injunctive, declaratory, and such
10 other equitable relief as the court deems appropriate in an action to
11 enforce compliance with this act.

12 (3) The intentional violation of this act, or regulation hereunder,
13 renders the home loan agreement void, and the creditor shall have no
14 right to collect, receive, or retain any principal, interest, or other
15 charges whatsoever with respect to the loan, and the borrower may
16 recover any payments made under the agreement.

17 (4) The right of rescission granted under 15 U.S.C. s.1601 et seq.
18 for violations of that law and all other remedies provided hereunder
19 shall be available to a borrower by way of recoupment against a party
20 foreclosing on the home loan or collecting on the loan, at any time
21 during the term of the loan.

22 (5) The remedies provided in this section are not intended to be the
23 exclusive remedies available to a borrower, nor must the borrower
24 exhaust any administrative remedies provided under this act or any
25 other applicable law before proceeding under this section.

26 c. Any person, including members, officers, and directors of the
27 creditor, who knowingly violates this act is guilty of a disorderly
28 persons offense and, on conviction, is subject to a fine not exceeding
29 \$1,000, or to imprisonment not exceeding six months, or both.

30 d. A creditor in a home loan who, when acting in good faith, fails
31 to comply with the provisions of this act, will not be deemed to have
32 violated this section if the creditor establishes that either:

33 (1) Within 30 days of the loan closing, and prior to receiving any
34 notice from the borrower of the compliance failure, the creditor has
35 made appropriate restitution to the borrower, and appropriate
36 adjustments are made to the loan; or

37 (2) Within 60 days of the loan closing and prior to receiving any
38 notice from the borrower of the compliance failure, and the
39 compliance failure was not intentional and resulted from a bona fide
40 error notwithstanding the maintenance of procedures reasonably
41 adopted to avoid such errors, the borrower is notified of the
42 compliance failure, appropriate restitution is made to the borrower,
43 and appropriate adjustments are made to the loan.

44 Examples of bona fide errors include clerical, calculation, computer
45 malfunction and programming, and printing errors. An error of legal
46 judgment with respect to a person's obligations under this section is

1 not a bona fide error.

2 e. The remedies provided in this section are cumulative.

3 8. The rights conferred by this act are independent of and in
4 addition to any other rights under other laws.

5

6 9. The law of the state in which the property is located shall be
7 applied to all transactions governed by this act regardless of where
8 those transactions originated. This act shall apply to all loans made or
9 entered into after the effective date of this act.

10

11 10. The Director of the Division of Banking in the Department of
12 Banking and Insurance, in consultation with the Director of the
13 Division of Consumer Affairs in the Department of Law and Public
14 Safety, shall develop and implement a program of consumer counseling
15 and awareness designed to inform the public about the methods by
16 which predatory lenders impose unconscionable and noncompetitive
17 fees and charges as part of complex home mortgage transactions, to
18 protect the public from incurring those fees and charges, and otherwise
19 to encourage the informed and responsible use of credit.

20

21 11. The Commissioner of Banking and Insurance shall promulgate
22 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
23 c.410 (C.52:14B-1 et seq.) necessary to effectuate the provisions of
24 this act.

25

26 12. This act shall take effect on the 90th day following enactment.

27

28

29

STATEMENT

30

31 This bill prohibits certain abusive lending practices commonly
32 known as "predatory lending," and directs the Department of Banking
33 and Insurance and the Division of Consumer Affairs to develop and
34 implement a program of consumer education to protect vulnerable
35 consumers against predatory lending practices.

36 Initially, the bill prohibits certain practices in conjunction with the
37 making of "high-cost home loans," which are defined as loans that
38 meet certain thresholds enumerated in the bill. For these loans, the bill
39 provides that the following practices are prohibited:

- 40 • financing of points or fees;
- 41 • certain balloon payments;
- 42 • negative amortization, meaning loan terms under which the loan
43 principal balance will increase over time;
- 44 • increase of the interest rate after default;
- 45 • requiring more than two advance payments;
- 46 • inclusion of a mandatory arbitration clause;

- 1 • lending without prior counseling for the borrower;
- 2 • lending without regard for the borrower's repayment ability;
- 3 • restriction on the payment to home improvement contractors out of
- 4 the loan proceeds;
- 5 • the charging of fees for modification or deferral of the loan; and
- 6 • provision for foreclosure other than by certain judicial procedures.

7 In addition, the bill prohibits certain abusive practices in the making
8 of certain home loans. A "home loan" is defined as a loan, including
9 an open-end credit plan, secured by a mortgage on real estate on
10 which one to six dwelling units are located or are to be located, or
11 secured by a security interest in a manufactured home, which is to be
12 used by the borrower as the borrower's principal dwelling.

13 Those prohibited practices with respect to home loans include the
14 following:

- 15 • financing of certain credit insurance premiums or debt cancellation
- 16 agreements;
- 17 • "flipping," or the refinancing of a loan and charging additional fees
- 18 with no tangible benefit to the borrower;
- 19 • recommending or encouraging default on an existing loan;
- 20 • charging of late payment fees other than in certain circumstances
- 21 enumerated in the bill;
- 22 • acceleration of the indebtedness at the creditor's sole discretion; and
- 23 • charging a fee for information concerning a borrower's payoff
- 24 balance.

25 Additionally, the bill provides for liability for all parties involved in
26 the making and maintenance of high-cost home loans.

27 Finally, the bill makes violations subject to the consumer fraud law
28 and provides for additional penalties, and provides an opportunity for
29 lenders to cure good faith errors.

ASSEMBLY SENIOR ISSUES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 75

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2002

The Assembly Senior Issues Committee reports favorably and with committee amendments Assembly Bill No. 75.

This bill prohibits certain abusive lending practices commonly known as "predatory lending," directs the Department of Banking and Insurance and the Division of Consumer Affairs to develop and implement a program of consumer education to protect vulnerable consumers against predatory lending practices, and provides that the department shall enforce the provisions of the bill.

The bill prohibits certain practices in conjunction with the making of "high-cost home loans," which are defined as loans that meet certain thresholds enumerated in the bill. For these loans, the bill provides that the following practices are prohibited:

- financing of points or fees in excess of 2% of the total loan amount;
- certain balloon payments;
- negative amortization, meaning loan terms under which the loan principal balance will increase over time;
- increase of the interest rate after default;
- consolidating more than two periodic payments to be paid in advance from the loan proceeds;
- inclusion of certain mandatory arbitration clauses;
- lending without prior written notice, acknowledged in writing and signed by the borrower within three business days prior to loan closing, as required by federal regulation, advising borrowers of the following: the importance of comparing and shopping for loans; the consequence of non-payment of obligations under the loan; the importance of consulting with an attorney and a qualified independent credit counselor or other experienced financial advisor regarding the overall terms the loan; receipt of the notice or the signing of a loan agreement does not obligate the applicant to complete the loan transaction; the responsibility to pay property taxes and homeowner's insurance and to ascertain whether the creditor provides escrow services for these payments; and that advice to ignore payments to existing creditors should not be accepted.

- lending to a borrower who finances points and fees, without first receiving certification from an approved third-party nonprofit credit counselor, that the borrower has received counseling on the loan transaction;
- lending without regard for the borrower's repayment ability;
- direct payment to home improvement contractors out of the loan proceeds;
- the charging of fees for modification or deferral of the loan; and
- foreclosure by means other than the judicial foreclosure procedures of this State.

In addition, the bill prohibits certain abusive practices in the making of certain home loans. A "home loan" is defined as a loan, including an open-end credit plan, secured by a mortgage on real estate on which one to six dwelling units are located or are to be located, or secured by a security interest in a manufactured home, which is to be used by the borrower as the borrower's principal dwelling.

Those prohibited practices with respect to home loans include the following:

- financing of certain credit insurance premiums or debt cancellation agreements;
- "flipping," or the refinancing of a loan and charging additional fees with no reasonable tangible net benefit to the borrower;
- recommending or encouraging default on an existing loan;
- charging late payment fees other than in certain circumstances enumerated in the bill;
- acceleration of the indebtedness at the creditor's sole discretion; and
- charging a fee for information concerning a borrower's payoff balance.

Additionally, the bill provides that a purchaser or assignee of a high-cost home loan is subject to any affirmative claims and defenses that could be asserted against the original creditor or broker of the loan.

As part of its enforcement abilities, the bill also provides that the Department of Banking and Insurance shall conduct examinations and investigations and issue subpoenas and orders to enforce the bill's provisions with respect to persons licensed under or subject to the "New Jersey Licensed Lenders Act," and requires the submission of reports by persons originating or brokering high-cost home loans as required by the department by regulation.

In the event that a person fails to comply with a subpoena issued by the department, the department may request a court order for the production of the requested information. Persons in violation of the bill's provisions, may be subject to the following:

- Ⓒ A civil penalty of up to \$10,000 for each offense, 40% of which would be dedicated for and used by the department for consumer

education through nonprofit organizations;

- C License suspension, revocation or nonrenewal;
- C Permanent removal of an individual responsible from working in his present capacity or in any other capacity related to activities regulated by the department.
- C An order to cease and desist any violation of this bill and to make restitution for actual damages to borrowers.

In addition, the bill provides that the commissioner may enter certain temporary orders to prevent undue harm to borrowers pending completion of any investigation or formal proceeding. These provisions would not limit the authority of either the Attorney General or the Public Advocate from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited under this bill.

Finally, the bill makes violations subject to the consumer fraud law and provides for a right of rescission in foreclosure actions, additional penalties, and an opportunity for lenders to cure good faith errors.

COMMITTEE AMENDMENTS:

Section 3 of the bill contains the bill's definitions which have been amended to:

- C delete the definition of "benchmark rate";
- C revise the definition of "bona fide discount points" to delete references to "benchmark rate," and change the time within which those points must be recouped from four to five years;
- C revise the definition of "creditor" to include any person brokering a home loan;
- C add definitions for "commissioner" and "department" to refer to the Commissioner and Department of Banking and Insurance, respectively;
- C revise the definition of "points and fees" to provide that points and fees shall not include the following: taxes, filing fees, and recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and fees paid to a person other than a creditor or an affiliate of the creditor or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; fees for credit reports; fees for surveys; attorneys' fees; notary fees; escrow charges; title insurance premiums; and fire and flood insurance premiums, provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.
- C revise the definition of "total points and fees threshold" to provide that, in determining that threshold, two bona fide loan discount points would not be excluded if the interest rate from which the

loan's interest rate will be discounted exceeds the average weekly yield of United States Treasury securities having a maturity of 10 years, on the 15th day of the month immediately preceding the month in which the loan is made, plus four percentage points; and
 C revise the definition of "prepayment penalty threshold" in paragraph (3) to provide that the home loan agreement permits the lender to charge or collect prepayment penalties, rather than payment penalties or penalties, more than 30 months after the loan closing or which exceed, in the aggregate, more than 2% of the amount prepaid.

Section 4 of the bill is amended to permit the commissioner to promulgate regulations concerning the reasonable, tangible net benefit to the borrower. The late payment fee rules for a home loan also have been amended to provide that the fee may not be in excess of 5%, instead of 4%, of the past due amount.

Section 5 of the bill concerns high-cost home loans and amends the mandatory arbitration provision in subsection e. to provide that no high-cost home loan would be subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable or substantially in derogation of the rights of consumers. The amendments also provide that arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee in effect as of the effective date of this bill would be presumed not to violate this provision. The borrower would have the exclusive option to require arbitration concerning any claims or defenses relating to high-cost home loans.

In addition, the amendments add a new subsection f. to section 5 of the bill to require a creditor to meet specific written notice requirements, which are to be acknowledged in writing and signed by the borrower, within three business days prior to loan closing as required by federal regulation.

Subsection g. of section 5, concerning credit counseling, is amended to refer to a borrower who finances points and fees in connection with a high-cost home loan. The amendments specify that the counselor would be a third-party nonprofit credit counselor, approved by the Department of Banking and Insurance as well as the United States Department of Housing and Urban Development.

Additional technical amendments to subsection h. delete language that had provided that a creditor who follows the residual income guidelines established in 38 C.F.R. s.36.4337(e) and VA Form 26-6393 would benefit from a rebuttable presumption that the creditor made the loan with due regard to repayment ability.

The amendments to section 5 also add a new subsection m. to provide that no creditor making a high-cost home loan shall directly or indirectly finance points and fees in excess of 2% of the total loan amount. In addition, the second sentence in subsection l. is moved to section 6 to clarify that remedies available in a foreclosure action

pursuant to New Jersey case law are not limited by the provisions of the bill.

Section 6 of the bill deletes language that would have made the remedies available under the bill applicable to the creditor, any director, officer, employee, or controlling stockholder of, or agent for, a creditor who personally participated in the making or approving of a high-cost home loan, and any other persons to whom the provisions of the bill would apply and who violated its provisions.

Section 7 is added by these amendments and describes the role of the department in carrying out and enforcing the provisions of the bill. Also, this section provides that the bill's provisions would not limit the authority of the Attorney General or the Public Advocate from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited under this bill.

Section 8 of the bill is amended to provide that the penalties available under the consumer fraud law, N.J.S.A.56:8-1 et seq., include, but are not limited to, any moneys or property ordered to be paid under N.J.S.A.56:8-14 or N.J.S.A.56:8-15. This section is also amended to delete paragraph (3) of subsection b., which had provided that the intentional violation of the bill or its regulations renders the home loan agreement void and the creditor would have had no right to collect, receive, or retain any principal, interest or other charges whatsoever with respect to the loan, and the borrower would have been able to recover any payments made under the agreement.

The good faith cure provision is amended to extend the time periods from 30 to 45 days and from 60 to 90 days for the creditor to cure good faith errors. The amendments also add language to provide that a broker would be liable for any violation of the bill by any party involved in a home loan transaction that he brokered.

Section 9 is added by these amendments and establishes that the rights, remedies and prohibitions under the bill are in addition to and cumulative of any other right, remedy or prohibition accorded by the common law or statutes of this State, and nothing in the bill shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

Section 12 amendments authorize the commissioner to take any necessary actions and to promulgate regulations prior to the effective date of the bill.

MINORITY STATEMENT

The Minority strongly supports anti-predatory lending legislation, which prohibits and restricts abusive practices in the making of home loans. We fully understand and advocate the need for legislation which combats predatory lending practices in which unscrupulous lenders push unsuspecting homeowners into loans with excessive

interest rates, hidden charges and fees. We agree that these lenders are nothing more than sophisticated loan sharks.

However, the minority firmly believes that this legislation, although well intentioned, will result in the sub-prime marketplace being grossly underserved, leaving consumers to obtain unsecured credit from a variety of very costly sources.

Sub-prime lender is commonly defined as a lender who makes loans to borrowers who have less than perfect credit history. As a result, they charge higher rates and fees than banks (conventional lenders) to offset borrowers' credit problems. Predatory lenders, however, systematically target individuals who are least able to pay back loans. We believe it is important to recognize the difference between these types of lenders, and not to take an approach that penalizes legitimate sub-prime lenders and the borrowers who benefit from their services.

Sub-prime lending is necessary to fill a niche in today's credit market. It serves consumers with bad or blemished credit histories who had previously been labeled not credit worthy to buy a home or to raise funds by refinancing their mortgage.

In good faith, the minority cannot support legislation which eliminates the legitimate and needed sub-prime market. We would suggest a more prudent and appropriate bill be crafted which addresses high cost loans; effectively curbs predatory practices while not restricting the options available to borrowers; creates a statewide standard for all lending institutions; ensures that the state charter remains a viable option for lending institutions; and focuses penalties for violations on lenders that demonstrate a pattern or practice of abusive behavior.

In addition to the above issues, the process by which the bill has come before this committee is cause for concern. The bill was properly referred to the Assembly Banking and Insurance Committee upon its introduction, and that committee's members participated in hours of testimony, questions, and discussion during two separate meetings on this bill. The third scheduled meeting was abruptly canceled, and it was immediately announced that the bill would be removed from that committee and sent instead to this one.

This unusual and arbitrary move is both a disservice to the General Assembly as an institution and an insult to the committee members and interested parties who have already invested so much time and effort in assuring proper deliberative consideration of such important legislation. Through their deliberations the members of the Banking and Insurance Committee have become intimately familiar with the bill's provisions and related issues; to either begin that long process anew in this committee, or abbreviate this committee's own deliberations in the name of expedience, defies common sense and good practice.

Whatever motivation that has led to this short-circuiting of the committee process should give way to the patience necessary to deal properly with such complex legislation, and to respect for the good-faith efforts of those who have participated in the consideration of this bill.

We strongly believe this bill, which makes many substantive changes that will significantly impact the banking and mortgage industry, should be returned to the Assembly Banking and Insurance Committee so that the committee can continue to discuss and craft a meaningful bill that is not completely prohibitive, and New Jersey residents can still benefit from many of the necessary loan products and terms available.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 75

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2002

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 75 (1R).

This bill, as amended by the committee, prohibits certain lending practices in regard to home loans, covered home loans and high cost home loans, directs the Department of Banking and Insurance, in consultation with the Divisions of Consumer Affairs and Civil Rights, to develop and implement a program of consumer education to protect vulnerable consumers against practices regarding high-cost home loans, and provides that the department and the Division of Consumer Affairs shall enforce the provisions of the bill.

This bill prohibits certain practices in the making of home mortgage loans. A "home loan" is defined as a loan, including an open-end credit plan, other than a reverse mortgage transaction, secured by a mortgage on real estate on which one to six dwelling units are located or are to be located, or secured by a security interest in a manufactured home, which is to be used by the borrower as the borrower's principal dwelling. Practices prohibited with respect to all home loans include the following:

- a. financing of certain credit insurance premiums or debt cancellation agreements;
- b. recommending or encouraging default on an existing mortgage loan;
- c. charging a late payment fee in excess of 5% of the amount of the payment due and other prohibitions enumerated in the bill;
- d. acceleration of the indebtedness at the creditor's sole discretion; and
- e. charging a fee for information concerning a borrower's payoff balance.

The bill also prohibits, in regard to covered home loans, "flipping," or the refinancing of a loan that was consummated within the prior 60 months and charging additional fees with no reasonable, tangible net benefit to the borrower.

In addition, the bill provides additional prohibitions to those above in conjunction with the making of "high-cost home loans," which are defined as loans that meet certain thresholds enumerated in the bill. For these high-cost home loans, the bill provides that the following practices are prohibited:

- a. certain balloon payments;
- b. negative amortization, meaning mortgage loan terms under which the loan principal balance will increase over time;
- c. increase of the interest rate after default;
- d. consolidating more than two periodic payments to be paid in advance from the loan proceeds;
- e. inclusion of a provision that allows a creditor to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum;
- f. lending without prior written notice, acknowledged in writing and signed by the borrower within three business days prior to loan closing, as required by federal regulation, advising borrowers of the following: the importance of comparing and shopping for loans; the consequence of non-payment of obligations under the loan; the importance of consulting with an attorney and a qualified independent credit counselor or other experienced financial advisor regarding the overall terms the loan; receipt of the notice or the signing of a loan agreement does not obligate the applicant to complete the loan transaction; the responsibility to pay property taxes and homeowner's insurance and to ascertain whether the creditor provides escrow services for these payments; and that advice to ignore payments to existing creditors should not be accepted;
- g. lending to a borrower who finances points and fees, without first receiving certification from an approved third-party nonprofit credit counselor, that the borrower has received counseling on the loan transaction or completing another substantial requirement developed by the department;
- h. direct payment to home improvement contractors out of the loan proceeds, instead the payment out of the loan proceeds must be to the borrower, jointly to the borrower and contractor, or a third-party escrow selected by the borrower;
- i. the charging of fees for modification or deferral of the loan;
- j. charging points and fees if the proceeds of a high-cost home loan are used to refinance an existing high-cost home loan held by the same creditor as note holder;
- k. foreclosure by means other than the judicial foreclosure procedures of this State; and
- l. financing points and fees in excess of 2% of the total high-cost home loan amount.

The bill provides that a purchaser or assignee of a high-cost home loan is subject to any affirmative claims and defenses that could be

asserted against the original creditor or broker of the loan unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. The bill requires a creditor to meet specific written notice requirements, which are to be acknowledged in writing and signed by the borrower, within three business days prior to loan closing as required by federal regulation.

As part of its enforcement abilities, the bill also provides that the Department of Banking and Insurance shall conduct examinations and investigations and issue subpoenas and orders to enforce the bill's provisions with respect to persons licensed under or subject to the "New Jersey Licensed Lenders Act," and requires the submission of reports by persons originating or brokering high-cost home loans as required by the department by regulation.

In the event that a person fails to comply with a subpoena issued by the department, the department may request a court order for the production of the requested information. Persons in violation of the bill's provisions, may be subject to the following:

- a. A civil penalty of up to \$10,000 for each offense, 40% of which would be dedicated for and used by the department for consumer education through nonprofit organizations;
- b. License suspension, revocation or nonrenewal;
- c. Permanent removal of an individual responsible from working in his present capacity or in any other capacity related to activities regulated by the department;
- d. An order to cease and desist any violation of this bill and to make restitution for actual damages to borrowers.

In addition, the bill provides that the commissioner may enter certain temporary orders to prevent undue harm to borrowers pending completion of any investigation or formal proceeding. These provisions would not limit the authority of either the Attorney General or the Public Advocate from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited under this bill.

The bill provides an opportunity for lenders to cure good faith errors.

Finally, the bill makes violations subject to the consumer fraud law and the penalties and enforcement provisions therein. In addition, a person who substantially violates the provisions of this bill is liable to the borrower for: statutory damages equal to the finance charges agreed to in the home loan agreement, plus 10% of the amount financed; punitive damages, when the violation was malicious or reckless and costs and reasonable attorneys' fees. The bill preempts any ordinance, resolution, rule or regulation of a municipality or county concerning abusive home loan lending practices.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 75

with Senate Floor Amendments
(Proposed By Senator LESNIAK)

ADOPTED: FEBRUARY 27, 2003

These amendments provide:

(1) that the points and fees threshold for FHA or VA loans apply to all such loans and not just to purchase money loans and that the threshold for these loans is 4.5 percent rather than 4.25 percent;

(2) that points and fees include all prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor;

(3) for a benchmark for determining bona fide discount points for both the covered and high-cost loan points and fees threshold;

(4) that the requirements of the flipping provision apply when any home loan is refinanced into a covered home loan;

(5) that the high-cost rate threshold is the HOEPA rate less 1.0 percent rather than less 1.25 percent;

(6) that reasonable fees for certain real estate transactions are not to be included in calculating points and fees under the bill;

(7) that in determining the threshold for a covered loan or the total points and fees threshold either a conventional prepayment penalty or not more than two bona fide discount points shall be excluded; and

(8) certain technical amendments.

STATEMENT TO
[Third Reprint]
ASSEMBLY, No. 75

with Assembly Floor Amendments
(Proposed By Assemblyman VAN DREW)

ADOPTED: MARCH 13, 2003

These amendments provide that the "rate threshold" in this bill will be identical to the rate threshold in the federal Home Ownership Equity Protection Act and make necessary technical modifications to the bill.

In addition, for the purposes of clarifying assignee liability, the amendments further provide that:

(1) the definition in the bill of "creditor" does not include an assignee subject to the assignee liability provisions of the bill;

(2) certain amounts related to home improvement and manufactured home loans recoverable by a borrower against a creditor, assignee or holder are limited to amounts required to reduce or extinguish the borrower's liability under a home loan plus the total amount paid by the borrower in connection with the transaction plus amounts required to recover costs including reasonable attorney's fees; and

(3) specifies the due diligence procedures a purchaser or assignee of a high-cost home loan must prove, by a preponderance of the evidence, in order to assert that the purchaser or assignee has limited liability for damages under the provisions of the bill. These changes, made in consultation with, and at the direction of leaders in the credit rating service industry, ensure that all non-high-cost loans covered under the bill that are made in this State will continue to be rated by the leading credit rating services.

Finally, the bill clarifies that any mention of prepayment penalties in the bill only refers to prepayment penalties currently authorized by law.

SENATE, No. 198

STATE OF NEW JERSEY
210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Co-Sponsored by:

Senators Singer, Cafiero, Bark, Bucco and Palaia

SYNOPSIS

Concerns predatory lending practices.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/28/2002)

1 AN ACT concerning predatory lending practices, amending P.L.1996,
2 c.157 and supplementing Title 46 of the Revised Statutes.

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

6
7 1. (New section) Sections 1 through 12 of this act shall be known
8 and may be cited as the "Consumer Protection from Predatory Lending
9 Practices Act."

10
11 2. (New section) The Legislature finds and declares that:

12 a. Unscrupulous mortgage lenders often engage in "predatory
13 lending," practices in which lenders make loans to borrowers with the
14 highest interest rates and fees possible. These practices generally take
15 advantage of vulnerable borrowers' inexperience and lack of
16 information, and involve deception, misrepresentation and fraud.

17 b. These lenders frequently solicit customers through telemarketing,
18 direct mail and home visits, promising lower monthly payments and
19 failing to disclose that the borrowers' costs will, in the long run, be
20 significantly inflated.

21 c. Predatory lending practices include: excessive points and loan
22 origination fees; additional and excessive "junk" fees for questionable
23 loan services, such as document preparation, underwriting and
24 processing; balloon payments; equity stripping; "flipping" loans to
25 generate more fees; and "packing" loans with overpriced extras.

26
27 3. (New section) For the purposes of sections 1 through 12 of this
28 act:

29 "Affiliate" means any company that controls, is controlled by, or is
30 under common control with another company, pursuant to the federal
31 "Bank Holding Company Act of 1956" (12 U.S.C.s.1841 et seq.).

32 "Annual percentage rate" means the annual percentage rate for a
33 loan calculated pursuant to the federal "Truth in Lending Act" (15
34 U.S.C.s.1601 et seq.), and the regulations promulgated by the Federal
35 Reserve Board.

36 "Bona fide loan discount points" means loan discount points
37 knowingly paid by a borrower for the purpose of reducing, and which
38 result in a reduction of, the interest rate or time-price differential
39 applicable to the loan, provided the amount of the interest rate
40 reduction purchased by the discount points is reasonably consistent
41 with established industry practices for mortgage market transactions.

42 "High cost home loan" means a loan, other than an open-end credit
43 plan or a reverse mortgage transaction, in which:

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

Matter underlined thus is new matter.

1 (1) The principal amount of the loan does not exceed the lesser of
2 the conforming loan size limit for a single-family dwelling as
3 established from time to time by the Federal National Mortgage
4 Association, or \$300,000;

5 (2) The borrower is a natural person;

6 (3) The debt is incurred by the borrower primarily for personal,
7 family, or household purposes;

8 (4) The loan is secured by a security interest or mortgage on real
9 estate upon which there is erected or to be erected a one to six family
10 dwelling; and

11 (5) The terms of the loan equal or exceed one or more of the
12 "thresholds," as that term is defined in this act.

13 "Points and fees" means:

14 (1) All items required to be disclosed under 12 C.F.R.s.226.4(a)
15 and 12 C.F.R.s.226.4(b), except interest or the time-price differential;

16 (2) All charges for items listed under 12 C.F.R.s.226.4(c)(7) for
17 which the lender receives direct or indirect compensation in
18 connection with the charge or the charge is paid to an affiliate of the
19 lender;

20 (3) All compensation paid directly by the borrower to a mortgage
21 broker not otherwise included in paragraph (1) or (2) of this definition;

22 (4) The maximum prepayment fees which may be charged or
23 collected under the terms of the loan documents.

24 "Points and fees" shall not include the following: taxes, filing fees,
25 recording and other charges and fees paid or to be paid to public
26 officials for determining the existence of or for perfecting, releasing,
27 or satisfying a security interest; and fees paid to a person other than a
28 lender or an affiliate of the lender or to the mortgage broker or an
29 affiliate of the mortgage broker for the following: fees for tax payment
30 services; fees for flood certification; fees for pest infestation and flood
31 determinations; appraisal fees; fees for inspections performed prior to
32 closing; credit reports; surveys; attorneys' fees; notary fees; escrow
33 charges; title insurance premiums and fire insurance and flood
34 insurance premiums; provided that the conditions in 12 C.F.R.
35 s.226.4(d)(2) are met.

36 "Thresholds" means:

37 (1) the annual percentage rate of the loan at the time the loan is
38 consummated such that the loan is considered a "mortgage" under
39 section 152 of the federal "Home Ownership and Equity Protection
40 Act of 1994," Pub. L.103-325 (15 U.S.C.s.1602(aa)), and the
41 regulations promulgated by the Federal Reserve Board, including 12
42 C.F.R.s.226.32, without regard to whether the loan transaction is or
43 may be a "residential mortgage transaction," as defined in 12 C.F.R.
44 s.226.2(a)(24); or

45 (2) the total points and fees payable by the borrower at or before
46 the loan closing exceed:

1 (a) 5% of the total loan amount if the total loan amount is \$20,000
2 or more; or

3 (b) the lesser of 8% of the total loan amount or \$1,000, if the total
4 loan amount is less than \$20,000; provided, the following discount
5 points and prepayment fees shall be excluded from the calculation of
6 the total points and fees payable by the borrower:

7 (i) Up to and including two bona fide loan discount points payable
8 by the borrower in connection with the loan transaction, but only if the
9 interest rate from which the loan's interest rate will be discounted does
10 not exceed, by more than one percentage point, the required net yield
11 for a 90-day standard mandatory delivery commitment for a reasonably
12 comparable loan from either the Federal National Mortgage
13 Association or the Federal Home Loan Mortgage Corporation,
14 whichever is greater;

15 (ii) Up to and including one bona fide loan discount point payable
16 by the borrower in connection with the loan transaction, but only if the
17 interest rate from which the loan's interest rate will be discounted does
18 not exceed, by more than two percentage points, the required net yield
19 for a 90-day standard mandatory delivery commitment for a reasonably
20 comparable loan from either the Federal National Mortgage
21 Association or the Federal Home Loan Mortgage Corporation,
22 whichever is greater.

23 "Total loan amount" means that term as used in 12 C.F.R.s.226.32,
24 and shall be calculated in accordance with the Federal Reserve Board's
25 Official Staff Commentary to that regulation.

26

27 4. (New section) A high cost home loan shall be subject to the
28 following limitations:

29 a. A high cost home loan shall not contain a provision which
30 permits the lender, in its sole discretion, to accelerate the
31 indebtedness. This provision shall not apply when repayment of the
32 loan has been accelerated by default, pursuant to a due-on-sale
33 provision, or pursuant to some other provision of the loan documents
34 unrelated to the payment schedule.

35 b. A high cost home loan shall not contain a scheduled payment
36 that is more than twice as large as the average of earlier scheduled
37 payments. This provision does not apply when the payment schedule
38 is adjusted to the seasonal or irregular income of the borrower.

39 c. A high cost home loan shall not contain a payment schedule with
40 regular periodic payments that cause the principal balance to increase.

41 d. A high cost home loan shall not contain a provision which
42 increases the interest rate after default. This provision does not apply
43 to interest rate changes in a variable rate loan otherwise consistent
44 with the provisions of the loan documents, provided the change in the
45 interest rate is not triggered by the event of default or the acceleration
46 of the indebtedness.

1 e. A high cost home loan shall not include terms under which more
2 than two periodic payments required under the loan are consolidated
3 and paid in advance from the loan proceeds provided to the borrower.

4 f. A lender shall not charge a borrower any fees to modify, renew,
5 extend or amend a high cost home loan or to defer any payment due
6 under the terms of a high cost home loan.

7
8 5. (New section) The following acts and practices shall be
9 prohibited in the making of a high cost home loan:

10 a. A lender shall not make a high cost home loan without first
11 receiving certification that the borrower has received counseling from
12 a credit counselor on the advisability of the loan transaction and the
13 appropriate loan for the borrower. The credit counselor shall be
14 approved by the United States Department of Housing and Urban
15 Development or the New Jersey Housing and Mortgage Finance
16 Agency and shall not be an employee of, or otherwise under contract
17 with, the lender or a mortgage broker involved in the transaction.

18 b. As used in this subsection, the term "obligor" refers to each
19 borrower, co-borrower, cosigner or guarantor obligated to repay a
20 loan. A lender shall not make a high cost home loan unless the lender
21 reasonably believes at the time the loan is consummated that one or
22 more of the obligors, when considered individually or collectively, will
23 be able to make the scheduled payments to repay the obligation, based
24 upon a consideration of their current and expected income, current
25 obligations, employment status and other financial resources, other
26 than the borrower's equity in the dwelling which secures repayment of
27 the loan. An obligor shall be presumed to be able to make the
28 scheduled payments to repay the obligation if, at the time the loan is
29 consummated, the obligor's total monthly debts, including amounts
30 owed under the loan, do not exceed 50% of the obligor's monthly
31 gross income as verified by the credit application, the obligor's
32 financial statement, a credit report, financial information provided to
33 the lender by or on behalf of the obligor, or any other reasonable
34 means. Notwithstanding the foregoing, no presumption of inability to
35 make the scheduled payments to repay the obligation shall arise solely
36 from the fact that, at the time the loan is consummated, the obligor's
37 total monthly debts, including amounts owed under the loan, exceed
38 50% of the obligor's monthly gross income.

39 c. In making a high cost home loan, a lender shall not directly or
40 indirectly finance any points and fees or any other charges payable to
41 third parties.

42 d. A lender shall not charge a borrower points and fees in
43 connection with a high cost home loan if the proceeds of the high cost
44 home loan are used to refinance an existing high cost home loan held
45 by the same lender as noteholder.

46 e. A lender shall not pay a contractor under a home improvement

1 contract from the proceeds of a high cost home loan, other than by an
2 instrument payable to the borrower or jointly to the borrower and the
3 contractor or, at the election of the borrower, through a third-party
4 escrow agent in accordance with terms established in a written
5 agreement signed by the borrower, the lender and the contractor prior
6 to the disbursement.

7

8 6. (New section) a. A lender in a high cost home loan who, when
9 acting in good faith, fails to comply with the provisions of sections 4
10 or 5 of this act, shall not be in violation of this act if the lender
11 establishes that either:

12 (1) Within 30 days of the loan closing and prior to the institution
13 of any action under this act, the borrower is notified of the
14 compliance failure, appropriate restitution is made, and necessary
15 adjustments are made to the loan, at the choice of the borrower, either
16 to make the high cost home loan satisfy the requirements of sections
17 4 and 5 of this act, or to change the terms of the loan in a manner
18 beneficial to the borrower so that the loan will no longer be considered
19 a high cost home loan subject to the provisions of this act; or

20 (2) The compliance failure was not intentional and resulted from
21 a bona fide error notwithstanding the maintenance of procedures
22 reasonably adapted to avoid such errors, and within 60 days after the
23 discovery of the compliance failure, and prior to the institution of any
24 action under this act or the receipt of written notice of the compliance
25 failure, the borrower is notified of the compliance failure, appropriate
26 restitution is made, and necessary adjustments are made to the loan,
27 at the choice of the borrower, either to make the high cost home loan
28 satisfy the requirements of sections 4 and 5 of this act, or to change
29 the terms of the loan in a manner beneficial to the borrower so that the
30 loan will no longer be considered a high cost home loan subject to the
31 provisions of this act.

32 b. An error of legal judgment with respect to a person's obligations
33 under this act is not a bona fide error.

34

35 7. (New section) a. If the principal amount of a loan is less than
36 \$300,000, a lender shall not charge or receive from any borrower, or
37 require in connection with that loan any borrower, directly or
38 indirectly, to pay, deliver, transfer, convey or otherwise confer upon
39 or for the benefit of the lender or any other person, firm, or
40 corporation, any sum of money, thing of value, or other consideration
41 other than that which is pledged as security or collateral to secure the
42 repayment of the full principal of the loan, together with fees and
43 interest provided for by the laws of this State.

44 b. The provisions of this section shall not prevent a borrower from
45 selling, transferring or conveying property other than security or
46 collateral to any person, firm, or corporation for a fair consideration

1 so long as the transaction is not made a condition or requirement for
2 any loan.

3 c. (1) Notwithstanding any provision of law to the contrary, a
4 lender may collect money from the borrower for the payment of bona
5 fide loan-related goods, products and services provided or to be
6 provided by third parties and taxes, filing fees, recording fees and
7 other charges and fees paid or to be paid to public officials.

8 (2) No third party shall charge or receive any unreasonable
9 compensation for loan-related goods, products, and services or any
10 compensation for which no loan-related goods and products are
11 provided or for which no or only nominal loan-related services are
12 performed. Loan-related goods, products and services include fees for
13 tax payment services, fees for flood certification, fees for pest-
14 infestation determinations, mortgage brokers' fees, appraisal fees,
15 inspection fees, environmental assessment fees, fees for credit report
16 services, assessments, costs of upkeep, surveys, attorneys' fees, notary
17 fees, escrow charges and insurance premiums, including, for example,
18 fire, title, life, accident and health, disability, unemployment, flood and
19 mortgage insurance.

20 d. Notwithstanding any provision of law to the contrary, a lender
21 may receive the proceeds from any insurance policy where loss occurs
22 under the terms of the policy.

23 e. This section shall not apply to any corporation licensed as a
24 "small business investment company" under 15 U.S.C.s.662 et seq.,
25 nor shall it apply to the sale or purchase of convertible debentures, nor
26 to the sale or purchase of any debt security with accompanying
27 warrants, nor to the sale or purchase of other securities through an
28 organized securities exchange.

29

30 8. (New section) a. A home mortgage loan shall be subject to the
31 provisions of this section if:

32 (1) The borrower is a natural person;

33 (2) The loan is incurred primarily for personal, family or household
34 purposes; and

35 (3) The loan is secured by a mortgage on real property upon which
36 there is erected or is to be erected a one to six family dwelling.

37 b. Notwithstanding the provisions of any other law to the contrary,
38 a lender may charge a deferral fee incidental to the deferment of a
39 mortgage loan if the deferral fee satisfies the following conditions:

40 (1) The deferral fee is charged pursuant to an agreement that states
41 the amount of the fee; is made at the time the subject deferral is
42 requested or granted; and, if the agreement concerns a payment that
43 is 15 days past due or more at the time of the agreement, is in writing
44 and signed by at least one of the borrowers. An agreement shall be
45 considered a signed writing if the lender received a facsimile or
46 computer-generated message from at least one of the borrowers

1 confirming or otherwise accepting the agreement; and

2 (2) The deferral fee does not exceed the greater of 5% of the
3 payment deferred or \$50, multiplied by the number of complete
4 months in the deferral period, which period is the period during which
5 no payment is required or made, as measured from the date on which
6 the deferred payment otherwise would have been due to the date on
7 which the next payment is due under the terms of the deferral
8 agreement.

9 c. If a deferral fee has been charged previously with respect to a
10 particular payment, no deferral fee may be charged with respect to any
11 future payment that would have been timely but for the previous
12 deferral.

13 d. If a deferral fee is charged pursuant to a deferral agreement, a
14 late fee may be charged with respect to the payment deferred under
15 that agreement only if the amount deferred is not paid when due under
16 the terms of the deferral agreement and no new deferral agreement is
17 entered into with respect to that payment.

18

19 9. (New section) a. For purposes of this section, the term
20 "consumer home loan" means a loan in which:

21 (1) the borrower is a natural person;

22 (2) the debt is incurred by the borrower primarily for personal,
23 family, or household purposes; and

24 (3) the loan is secured by a mortgage on real property upon which
25 there is erected or to be erected a one to six family dwelling.

26 b. Notwithstanding any other provision of law to the contrary, it
27 shall be unlawful for any lender in a consumer home loan to finance,
28 directly or indirectly, any credit life, disability or unemployment
29 insurance, or any other life or health insurance premiums, except that
30 insurance premiums calculated and paid on a monthly basis shall not
31 be considered financed by the lender.

32 c. A lender shall not knowingly or intentionally engage in the unfair
33 act or practice of flipping a consumer home loan. For the purposes of
34 this section, "flipping" is the making of a consumer home loan to a
35 borrower which refinances an existing consumer home loan when the
36 new loan does not have a reasonable, tangible net benefit to the
37 borrower considering all of the circumstances, including the terms of
38 both the new and refinanced loans, the cost of the new loan, and the
39 borrower's circumstances. The provisions of this subsection shall apply
40 regardless of whether the interest rate, points, fees and charges paid
41 or payable by the borrower in connection with the refinancing exceed
42 those thresholds as defined in section 3 of this act.

43 d. A lender shall not recommend or encourage default on an
44 existing loan or other debt prior to and in connection with the closing
45 or planned closing of a consumer home loan that refinances all or any
46 portion of that existing loan or debt.

1 e. In any suit instituted by a borrower who alleges that the
2 defendant violated this section, reasonable attorneys' fees may be
3 awarded to the attorney representing the prevailing party, upon a
4 finding that:

5 (1) The party charged with the violation has willfully engaged in
6 the act or practice, and there was unwarranted refusal by that party to
7 fully resolve the matter which constitutes the basis of the suit; or

8 (2) The party instituting the action knew, or should have known,
9 that the action was frivolous and malicious.

10 f. This section establishes specific consumer protections in
11 consumer home loans in addition to other consumer protections that
12 may be otherwise available by law.

13
14 10. (New section) a. Except as provided in section 6 of this act,
15 a violation of any of the provisions of sections 1 through 9 of this act
16 shall be a violation of N.J.S.2C:21-19 and an "unlawful practice"
17 under the consumer fraud law, P.L.1960, c.39 (C.56:8-1 et seq.).

18 b. The provisions of sections 1 through 9 of this act shall apply to
19 any person who in bad faith attempts to avoid the application of
20 sections 1 through 9 of this act by:

21 (1) the structuring of a loan transaction as an open-end credit plan
22 for the purpose and with the intent of evading the provisions of
23 sections 1 through 9 of this act;

24 (2) dividing any loan transaction into separate parts for the purpose
25 and with the intent of evading the provisions of sections 1 through 9
26 of this act; or

27 (3) any other subterfuge.

28 c. The Attorney General, the Commissioner of Banking and
29 Insurance, or any party to a high cost home loan may enforce the
30 provisions of sections 1 through 9 of this act. Any person seeking
31 damages or penalties under the provisions of sections 1 through 9 of
32 this act may recover under P.L.1960, c.39 (C.56:8-1 et seq.).

33
34 11. (New section) The Director of the Division of Banking in the
35 Department of Banking and Insurance, in consultation with the
36 Director of the Division of Consumer Affairs in the Department of
37 Law and Public Safety, shall develop and implement a program of
38 consumer counseling and awareness designed to inform the public
39 about the methods by which predatory lenders impose unconscionable
40 and noncompetitive fees and charges as part of complex home
41 mortgage transactions, to protect the public from incurring such fees
42 and charges, and otherwise to encourage the informed and responsible
43 use of credit.

44
45 12. The Commissioner of Banking and Insurance shall promulgate

1 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
2 c.410 (C.52:14B-1 et seq.) necessary to effectuate the provisions of
3 this act.

4
5 13. Section 23 of P.L.1996, c.157 (C.17:11C-23) is amended to
6 read as follows:

7 23. a. Notwithstanding the provisions of any other law, a person
8 licensed as a mortgage banker or correspondent mortgage banker,
9 incidental to the origination, processing and closing of a mortgage loan
10 transaction, shall have the right to charge only the following fees: (1)
11 credit report fee; (2) appraisal fee; (3) application fee; (4) commitment
12 fee; (5) warehouse fee; (6) fees necessary to reimburse the mortgage
13 banker for charges imposed by third parties; and (7) discount points,
14 but only to the extent that the discount points are for the purpose of
15 reducing and, in fact, result in a bona fide reduction of the interest rate
16 or time-price differential of the mortgage loan.

17 b. Notwithstanding the provisions of any other law, a person
18 licensed as a mortgage broker, incidental to the brokering of a first
19 mortgage loan transaction, shall have the right to charge only the
20 following fees: (1) application fee; and (2) discount points, but only to
21 the extent that the discount points are for the purpose of reducing and,
22 in fact, result in a bona fide reduction of the interest rate or time-price
23 differential of the mortgage loan.

24 c. No person licensed as a mortgage banker, correspondent
25 mortgage banker or mortgage broker may charge any fee either not
26 expressly authorized by this section or authorized by the commissioner
27 by regulation.

28 d. For the purposes of this section, "bona fide reduction of the
29 interest rate or time-price differential of the mortgage loan" means :

30 (1) if the mortgage banker's or broker's most recently advertised
31 mortgage loan rate includes discount points, the paying of those points
32 will result in the advertised mortgage loan rate; or

33 (2) if the mortgage banker's or broker's most recently advertised
34 mortgage loan rate does not include discount points, the paying of
35 discount points will result in a mortgage loan rate below the advertised
36 rate.

37 (cf: P.L.1999, c.250, s.3)

38

39 14. This act shall take effect on the 90th day following enactment,
40 but the Commissioner of Banking and Insurance may take any
41 anticipatory administrative action in advance of that date as necessary
42 for implementation of the act.

STATEMENT

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This bill prohibits certain lending practices commonly known as "predatory lending," and directs the Department of Banking and Insurance and the Division of Consumer Affairs to develop and implement a program of consumer counseling to protect against predatory lending practices.

The bill defines "high cost home loan" as any home loan that reaches or exceeds one of two threshold conditions: (1) the percentage rate of the loan is such that the loan is considered a "mortgage" under the federal Home Ownership and Equity Protection Act of 1994; or (2) the total points and fees payable by the borrower exceed certain amounts or percentages of the loan amount. The bill makes high cost home loans subject to several limitations, including prohibiting the lender from: retaining unilateral power to accelerate the indebtedness; charging balloon payments; creating a negative amortization payment schedule; automatically increasing the interest rate after default; charging advance payments from the loan proceeds; and charging modification or deferral fees. In addition, the bill prohibits lenders from making high cost home loans without first providing for home ownership counseling and determining that the prospective borrower will be able to make the scheduled payments, and restricts the fees and home improvement contracts that lenders of these loans may impose. The bill makes violations of these prohibitions and limitations subject to both the criminal usury law and the consumer fraud law.

The bill also limits the fees that a lender may charge upon deferment of a home mortgage loan.

For loans under \$300,000, the bill also prohibits a lender from charging additional amounts or requiring additional consideration beyond that which is pledged as security or collateral to secure the repayment of the full principal of the loan.

The bill establishes additional protections for "consumer home loans," including a prohibition on the practice of "flipping," which is defined as making a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have a reasonable, tangible net benefit to the borrower.

Additionally, the bill amends current law to limit the charging of discount points by mortgage bankers or brokers, at the closing of a loan, to those points that will result in an actual reduction of the interest rate or time-price differential of the loan to a rate at or below the rate most recently advertised by the mortgage banker or broker.

SENATE, No. 1200

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 25, 2002

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator LEONARD LANCE

District 23 (Warren and Hunterdon)

Co-Sponsored by:

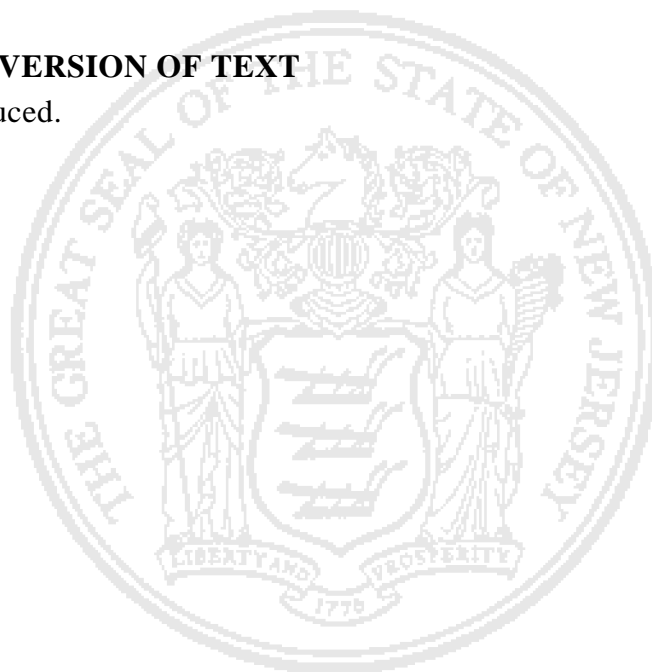
Senators Matheussen, Adler, Bennett, Martin, Palaia, Turner, Ciesla, Caffero, McNamara, Sweeney, Furnari, Vitale, Codey, Connors, Bagger, Singer, Bucco, Girgenti, B.Smith, James and Charles

SYNOPSIS

The "Home Loan Protection Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/1/2002)

1 AN ACT prohibiting certain abusive lending practices, amending
2 P.L.1996, c.157 and supplementing Title 46 of the Revised
3 Statutes.

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "Home Loan Protection Act."

10

11 2. (New section) The Legislature finds and declares that abusive
12 mortgage lending has become an increasing problem in this State,
13 exacerbating the loss of equity in homes and causing the number of
14 foreclosures to increase in recent years. One of the most common
15 forms of abusive lending is the making of loans that are equity-based,
16 rather than income-based. The financing of points and fees in these
17 loans provides immediate income to the originator and encourages
18 lenders to repeatedly refinance home loans. The lender's ability to sell
19 loans reduces the incentive to ensure that the homeowner can afford
20 the payments of the loan. As long as there is sufficient equity in the
21 home, an abusive lender benefits even if the borrower is unable to
22 make the payments and is forced to refinance. The financing of high
23 points and fees causes the loss of precious equity in each refinancing
24 and often leads to foreclosure.

25 Abusive lending has threatened the viability of many communities
26 and caused decreases in home ownership. While the marketplace
27 appears to operate effectively for conventional mortgages, too many
28 homeowners find themselves victims of overreaching lenders who
29 provide loans with unnecessarily high costs and terms that are
30 unnecessary to secure repayment of the loan. The Legislature finds
31 and declares that as competition and self-regulation have not
32 eliminated the abusive terms from home-secured loans, the consumer
33 protection provisions of this act are necessary to encourage lending at
34 reasonable rates with reasonable terms.

35

36 3. (New section) As used in this act:

37 "Benchmark rate" is the interest rate which the borrower can reduce
38 by paying bona fide discount points; this rate shall not exceed the
39 weekly average yield of United States Treasury securities having a
40 maturity of five years, on the 15th day of the month immediately
41 preceding the month in which the loan is made, plus four percentage
42 points.

43 "Bona fide discount points" means loan discount points which are:

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

Matter underlined thus is new matter.

1 (1) Knowingly paid by the borrower;
2 (2) Paid for the express purpose of lowering the benchmark rate;
3 (3) In fact reducing the interest rate or time-price differential
4 applicable to the loan from an interest rate which does not exceed the
5 benchmark rate; and

6 (4) Recouped within the first four years of the scheduled loan
7 payments. Loan discount points will be considered to be recouped
8 within the first four years of the scheduled loan payments if the
9 reduction in the interest rate that is achieved by the payment of the
10 loan discount points reduces the interest charged on the scheduled
11 payments such that the borrower's dollar amount of savings in interest
12 over the first four years is equal to or exceeds the dollar amount of
13 loan discount points paid by the borrower.

14 "Borrower" means any natural person obligated to repay the loan,
15 including a coborrower, cosigner, or guarantor.

16 "Creditor" means a person who extends consumer credit that is
17 subject to a finance charge or is payable by written agreement in more
18 than four installments, and to whom the obligation is payable at any
19 time.

20 "High-cost home loan" means a home loan in which the terms of the
21 loan meet or exceed one or more of the thresholds as defined in this
22 section.

23 "Home loan" means a loan, including an open-end credit plan, other
24 than a reverse mortgage transaction, where the loan is secured by:

25 (1) A mortgage or deed of trust on real estate in this State upon
26 which there is located or there is to be located a one to six family
27 dwelling which is or will be occupied by a borrower as the borrower's
28 principal dwelling; or

29 (2) A security interest in a manufactured home which is or will be
30 occupied by a borrower as the borrower's principal dwelling.

31 "Points and fees" means:

32 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
33 interest or the time-price differential;

34 (2) All charges listed in 15 U.S.C. s.1605(e);

35 (3) All compensation paid directly or indirectly to a mortgage
36 broker, including a broker that originates a loan in its own name in a
37 table-funded transaction;

38 (4) The cost of all premiums financed by the creditor, directly or
39 indirectly for any credit life, credit disability, credit unemployment or
40 credit property insurance, or any other life or health insurance, or any
41 payments financed by the creditor directly or indirectly for any debt
42 cancellation or suspension agreement or contract, except that
43 insurance premiums calculated and paid on a monthly basis shall not
44 be considered financed by the creditor;

45 (5) The maximum prepayment fees and penalties that may be
46 charged or collected under the terms of the loan documents; and

1 (6) All prepayment fees or penalties that are charged to the
2 borrower if the loan refinances a previous loan made by the same
3 creditor or an affiliate of the creditor.

4 (7) For open-end loans, the points and fees are calculated by
5 adding the total fees charged at closing plus the maximum additional
6 fees which can be charged pursuant to the loan documents during the
7 term of the loan.

8 "Rate" means the interest rate charged on the home loan, based on
9 an annual simple interest yield.

10 "Threshold" means any one of the following three items, as defined:

11 (1) "Rate threshold" means:

12 (a) For a first lien mortgage loan, the trigger rate equals or exceeds
13 six percentage points over the weekly average yield on five year
14 United States Treasury securities;

15 (b) For a subordinate mortgage lien or a mortgage secured solely
16 by a security interest in a manufactured home, the trigger rate equals
17 or exceeds eight percentage points over the weekly average yield on
18 five year United States Treasury securities;

19 (c) The trigger rate is calculated as follows:

20 (i) For fixed-rate loans in which the interest rate will not vary
21 during the term of the loan, the trigger rate is the rate as of the date of
22 closing;

23 (ii) For loans in which the interest varies according to an index, the
24 trigger rate is the sum of the index rate as of the date of the loan
25 closing plus the maximum margin permitted at any time under the loan
26 agreement;

27 (iii) For all other loans in which the rate may vary at any time
28 during the term of the loan, the trigger rate is the maximum rate that
29 may be charged during the term of the loan.

30 (2) "Total points and fees threshold" means the following,
31 excluding up to two bona fide discount points:

32 (a) For loans in which the total loan amount is \$30,000 or more,
33 the total points and fees on the loan, paid by the borrower at or before
34 closing, exceed 3% of the total loan amount;

35 (b) For loans in which the total loan amount is less than \$30,000,
36 the total points and fees on the loan, paid by the borrower at or before
37 closing, exceed the lesser of \$900 or 6% of the total loan amount.

38 (3) "Prepayment penalty threshold" means the home loan
39 agreement permits the lender to charge or collect payment penalties or
40 penalties more than 30 months after the loan closing or which exceed,
41 in the aggregate, more than 2% of the amount prepaid.

42 "Total loan amount" means the principal of the loan minus those
43 points and fees as defined in this section that are included in the
44 principal amount of the loan. For open-end loans, the total amount
45 shall be calculated using the total line of credit allowed under the
46 home loan.

1 4. (New section) a. No creditor making a home loan shall finance,
2 directly or indirectly, any credit life, credit disability, credit
3 unemployment or credit property insurance, or any other life or health
4 insurance, or any payments directly or indirectly for any debt
5 cancellation or suspension agreement or contract, except that
6 insurance premiums or debt cancellation or suspension fees calculated
7 and paid on a monthly basis shall not be considered financed by the
8 creditor.

9 b. No creditor may engage in the unfair act or practice of "flipping"
10 a home loan. "Flipping" a loan is the making of a home loan to a
11 borrower that refinances an existing home loan when the new loan
12 does not have reasonable, tangible net benefit to the borrower
13 considering all of the circumstances, including the terms of both the
14 new and refinanced loans, the cost of the new loan, and the borrower's
15 circumstances. In addition, the following home loan refinancings shall
16 be presumed to be flipping if:

17 (1) The primary tangible benefit to the borrower is an interest rate
18 lower than the interest rate on a debt satisfied or refinanced in
19 connection with the home loan, and it will take more than four years
20 for the borrower to recoup the costs of the points and fees and other
21 closing costs through savings resulting from the lower interest rate; or

22 (2) The new loan refinances an existing home loan that is a special
23 mortgage originated, subsidized, or guaranteed by or through a state,
24 tribal or local government, or nonprofit organization, which either
25 bears a below-market interest rate at the time the loan was originated,
26 or has nonstandard payment terms beneficial to the borrower, such as
27 payments that vary with income or are limited to a percentage of
28 income, or where no payments are required under specified conditions,
29 and where, as a result of refinancing, the borrower will lose one or
30 more of the benefits of the special mortgage.

31 c. No creditor shall recommend or encourage default on an existing
32 loan or other debt prior to and in connection with the closing or
33 planned closing of a home loan that refinances all or any portion of
34 that existing loan or debt.

35 d. No creditor may charge a late payment fee except according to
36 the following rules:

37 (1) The late payment fee may not be in excess of 4% of the amount
38 of the payment past due.

39 (2) The fee may only be assessed by a payment past due for 15
40 days or more.

41 (3) The fee may not be charged more than once with respect to a
42 single late payment. If a late payment charge is deducted from a
43 payment made on the loan, and such deduction causes a subsequent
44 default on a subsequent payment, no late payment charge may be
45 imposed for such default. If a late payment charge has been once
46 imposed with respect to a particular late payment, no such charge shall

1 be imposed with respect to any future payment which would have been
2 timely and sufficient, but for the previous default.

3 (4) No fee may be charged unless the creditor notifies the borrower
4 within 45 days following the date the payment was due that a late
5 payment charge has been imposed for a particular late payment. No
6 late payment charge may be collected from any borrower if the
7 borrower informs the creditor that nonpayment of an installment is in
8 dispute and presents proof of payment within 45 days of receipt of the
9 creditor's notice of the late charge.

10 (5) The creditor shall treat each and every payment as posted on
11 the same date as it was received by the creditor, servicer, creditor's
12 agent, or at the address provided to the borrower by the creditor,
13 servicer, or the creditor's agent for making payments.

14 e. No home loan may contain a provision that permits the creditor,
15 in its sole discretion, to accelerate the indebtedness. This provision
16 does not prohibit acceleration of the loan in good faith due to the
17 borrower's failure to abide by the material terms of the loan.

18 f. No creditor may charge a fee for informing or transmitting to any
19 person the balance due to pay off a home loan or to provide a release
20 upon prepayment. Payoff balances shall be provided within a
21 reasonable time, but in any event no more than two business days after
22 the request.

23

24 5. (New section) A high-cost home loan shall be subject to the
25 following additional limitations and prohibited practices:

26 a. No creditor making a high-cost home loan shall directly or
27 indirectly finance any points or fees.

28 b. No high-cost home loan may contain a scheduled payment that
29 is more than twice as large as the average of earlier scheduled
30 payments. This provision does not apply when the payment schedule
31 is adjusted to the seasonal or irregular income of the borrower.

32 c. No high-cost home loan may include payment terms under which
33 the outstanding principal balance will increase at any time over the
34 course of the loan because the regular periodic payments do not cover
35 the full amount of interest due.

36 d. No high-cost home loan may contain a provision that increases
37 the interest rate after default. This provision does not apply to interest
38 rate changes in a variable rate loan otherwise consistent with the
39 provisions of the loan documents, provided the change in the interest
40 rate is not triggered by the event of default or the acceleration of the
41 indebtedness.

42 e. No high-cost home loan may include terms under which more
43 than two periodic payments required under the loan are consolidated
44 and paid in advance from the loan proceeds provided to the borrower.

45 f. No high-cost home loan may be subject to a mandatory
46 arbitration clause that limits in any way the right of the borrower to

1 seek relief through the judicial process for any and all claims and
2 defenses the borrower may have against the creditor, broker, or other
3 party involved in the loan transaction.

4 g. A creditor may not make a high-cost home loan without first
5 receiving certification from a counselor, approved by the United States
6 Department of Housing and Urban Development, that the borrower
7 has received counseling on the advisability of the loan transaction.

8 h. A creditor may not make a high-cost home loan without due
9 regard to repayment ability. A creditor who follows the debt-to-
10 income ratio listed in 38 C.F.R. s.36.4337(c)(1) and as defined in 38
11 C.F.R. s.36.4337(d) and follows the residual income guidelines
12 established in 38 C.F.R. s.36.4337(e) and VA Form 26-6393 shall
13 benefit from a rebuttable presumption that the creditor made the loan
14 with due regard to repayment ability.

15 i. A creditor may not pay a contractor under a home-improvement
16 contract from the proceeds of a high-cost home loan, unless:

17 (1) The creditor is presented with a signed and dated completion
18 certificate showing that the home improvements have been completed;
19 and

20 (2) The instrument is payable to the borrower or jointly to the
21 borrower and the contractor, or, at the election of the borrower,
22 through a third-party escrow agent in accordance with terms
23 established in a written agreement signed by the borrower, the
24 creditor, and the contractor prior to the disbursement.

25 j. A creditor may not charge a borrower any fees or other charges
26 to modify, renew, extend, or amend a high-cost home loan or to defer
27 any payment due under the terms of a high-cost home loan.

28 k. Notwithstanding any other law to the contrary, a creditor
29 making a high-cost home loan that has the legal right to foreclose shall
30 use the judicial foreclosure procedures of the state in which the
31 property securing the loan is located. Notwithstanding any other law
32 to the contrary, the borrower shall have the right to assert in that
33 proceeding the nonexistence of a default and any other claim or
34 defense to acceleration and foreclosure, including any based on any
35 violations of this act, though those claims or defenses shall not be
36 deemed compulsory counterclaims.

37
38 6. (New section) a. Notwithstanding any other law to the contrary,
39 where a home loan was made, arranged, or assigned by a person
40 selling either a manufactured home, or home improvements to the
41 dwelling of a borrower, the borrower may assert all affirmative claims
42 and any defenses that the borrower may have against the seller or
43 home-improvement contractor against the lender, any assignee, holder,
44 or servicer, in any capacity.

45 b. Notwithstanding any other law to the contrary, the remedies
46 provided by this act apply to the creditor, any director, officer,

1 employee, or controlling stockholder of, or agent for, a creditor who
2 personally participated in the making or approving of a high-cost home
3 loan, and any other persons to whom this act applies and who violated
4 the requirements of this act. Any person who purchases or is
5 otherwise assigned a high-cost home loan shall be subject to all
6 affirmative claims and any defenses with respect to the loan that the
7 borrower could assert against the original creditor or broker of the
8 loan.

9 c. Notwithstanding any other law to the contrary, a borrower in
10 default more than 60 days or in foreclosure may assert a violation of
11 this act by way of offset:

12 (1) As an original action;

13 (2) As a defense or counterclaim to an action to collect amounts
14 owed; or

15 (3) To obtain possession of the home secured by the home loan.

16 d. It is a violation of this act for any person, in bad faith, to
17 attempt to avoid the application of this act by:

18 (1) Dividing any loan transaction into separate parts; or

19 (2) Any other such subterfuge, with the intent of evading the
20 provisions of this act.

21

22 7. (New section) a. Any violation of this act constitutes an
23 unlawful practice under the consumer fraud law, P.L.1960, c.39
24 (C.56:8-1 et seq.).

25 b. In addition to penalties under the consumer fraud law, including
26 any moneys or property ordered to be paid pursuant to section 2 of
27 P.L.1966, c.39 (C.56:8-14) or section 3 of P.L.1971, c.247 (C.56:8-
28 15):

29 (1) Any person found by a preponderance of the evidence to have
30 violated this act shall be liable to the borrower for the following:

31 (a) Statutory damages equal to the finance charges agreed to in the
32 home loan agreement, plus 10% of the amount financed.

33 (b) Punitive damages, when the violation was malicious or
34 reckless; and

35 (c) Costs and reasonable attorneys' fees.

36 (2) A borrower may be granted injunctive, declaratory, and such
37 other equitable relief as the court deems appropriate in an action to
38 enforce compliance with this act.

39 (3) The intentional violation of this act, or regulation thereunder,
40 renders the home loan agreement void, and the creditor shall have no
41 right to collect, receive, or retain any principal, interest, or other
42 charges whatsoever with respect to the loan, and the borrower may
43 recover any payments made under the agreement.

44 (4) The right of rescission granted under 15 U.S.C. s.1601 et seq.
45 for violations of that law and all other remedies provided hereunder
46 shall be available to a borrower by way of recoupment against a party

1 foreclosing on the home loan or collecting on the loan, at any time
2 during the term of the loan.

3 (5) The remedies provided in this section are not intended to be the
4 exclusive remedies available to a borrower, nor must the borrower
5 exhaust any administrative remedies provided under this act or any
6 other applicable law before proceeding under this section.

7 c. Any person, including members, officers, and directors of the
8 creditor, who knowingly violates this act is guilty of a disorderly
9 persons offense and, on conviction, is subject to a fine not exceeding
10 \$1,000 or to imprisonment not exceeding six months, or both.

11 d. A creditor in a home loan who, when acting in good faith, fails
12 to comply with the provisions of this act, will not be deemed to have
13 violated this section if the creditor establishes that either:

14 (1) Within 30 days of the loan closing, and prior to receiving any
15 notice from the borrower of the compliance failure, the creditor has
16 made appropriate restitution to the borrower, and appropriate
17 adjustments are made to the loan; or

18 (2) Within 60 days of the loan closing and prior to receiving any
19 notice from the borrower of the compliance failure, and the
20 compliance failure was not intentional and resulted from a bona fide
21 error notwithstanding the maintenance of procedures reasonably
22 adopted to avoid such errors, the borrower is notified of the
23 compliance failure, appropriate restitution is made to the borrower,
24 and appropriate adjustments are made to the loan.

25 Examples of bona fide errors include clerical, calculation, computer
26 malfunction and programming, and printing errors. An error of legal
27 judgment with respect to a person's obligations under this section is
28 not a bona fide error.

29 e. The remedies provided herein are cumulative.

30

31 8. (New section) The rights conferred by this act are independent
32 of and in addition to any other rights under other laws.

33

34 9. (New section) The law of the state in which the property is
35 located shall be applied to all transactions governed by this act. This
36 act shall apply to all loans made or entered into after the effective date
37 of this act.

38

39 10. Section 23 of P.L.1996, c.157 (C.17:11C-23) is amended to
40 read as follows:

41 23. a. Notwithstanding the provisions of any other law, a person
42 licensed as a mortgage banker or correspondent mortgage banker,
43 incidental to the origination, processing and closing of a mortgage loan
44 transaction, shall have the right to charge only the following fees: (1)
45 credit report fee; (2) appraisal fee; (3) application fee; (4) commitment
46 fee; (5) warehouse fee; (6) fees necessary to reimburse the mortgage

1 banker for charges imposed by third parties; and (7) discount points,
2 but only to the extent that the discount points are for the purpose of
3 reducing and, in fact, result in a bona fide reduction of the interest rate
4 or time-price differential of the mortgage loan.

5 b. Notwithstanding the provisions of any other law, a person
6 licensed as a mortgage broker, incidental to the brokering of a first
7 mortgage loan transaction, shall have the right to charge only the
8 following fees: (1) application fee; and (2) discount points, but only to
9 the extent that the discount points are for the purpose of reducing and,
10 in fact, result in a bona fide reduction of the interest rate or time-price
11 differential of the mortgage loan.

12 c. No person licensed as a mortgage banker, correspondent
13 mortgage banker or mortgage broker may charge any fee either not
14 expressly authorized by this section or authorized by the commissioner
15 by regulation.

16 d. For the purposes of this section, "bona fide reduction of the
17 interest rate or time-price differential of the mortgage loan" means :

18 (1) if the mortgage banker's or broker's most recently advertised
19 mortgage loan rate includes discount points, the paying of those points
20 will result in the advertised mortgage loan rate; or

21 (2) if the mortgage banker's or broker's most recently advertised
22 mortgage loan rate does not include discount points, the paying of
23 discount points will result in a mortgage loan rate below the advertised
24 rate.

25 (cf: P.L.1999, c.250, s.3)

26
27 11. This act shall take effect on the 90th day following enactment.
28
29

30 STATEMENT

31
32 This bill prohibits certain abusive practices in the making of home
33 loans. "Home loans" are defined to include loans secured by a
34 mortgage on real estate on which one to six dwelling units are located
35 or are to be located, or secured by a security interest in a
36 manufactured home, which is to be used as a principal dwelling.

37 The bill prohibits the following practices in conjunction with these
38 home loans:

- 39 • the financing of insurance or debt cancellation agreements;
- 40 • "flipping," meaning the refinancing of a loan and charging of
41 additional fees with no tangible benefit to the borrower;
- 42 • the recommending of default on a loan;
- 43 • the charging of late fees other than in certain enumerated
44 circumstances;
- 45 • the use of a provision enabling the creditor to accelerate the
46 indebtedness at the creditor's sole discretion; and

1 • the charging of a fee to provide information concerning a
2 borrower's payoff balance.

3 In addition, the bill prohibits certain practices in conjunction with
4 the making of "high-cost home loans," which are defined as loans that
5 meet certain thresholds enumerated in the bill. For these loans, the
6 following practices also are prohibited:

- 7 • the financing of points or fees;
- 8 • the scheduling of certain balloon payments;
- 9 • negative amortization, meaning loan terms under which the loan
10 principal balance will increase over time;
- 11 • the increase of the loan's interest rate after default;
- 12 • the inclusion of more than two advance payments;
- 13 • the use of a mandatory arbitration clause;
- 14 • lending without prior counseling for the borrower;
- 15 • lending without regard for the borrower's repayment ability;
- 16 • the payment of a home improvement contractor out of the loan
17 proceeds, except under certain circumstances;
- 18 • the charging of fees for modification or deferral of the loan; and
- 19 • provision for foreclosure other than by certain judicial procedures.

20 Additionally, the bill provides for liability for all parties involved in
21 the making and maintenance of high-cost home loans.

22 Finally, the bill makes violations subject to the consumer fraud law
23 and provides for additional penalties, and provides an opportunity for
24 lenders to cure good faith errors.

SENATE, No. 1540

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 16, 2002

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Mercer)

Senator JOSEPH CONIGLIO

District 38 (Bergen)

SYNOPSIS

"New Jersey Home Ownership Security Act of 2002."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT prohibiting certain abusive lending practices and
2 supplementing Title 46 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Home Ownership Security Act of 2002."

9

10 2. The Legislature finds and declares that:

11 a. Abusive mortgage lending has become an increasing problem in
12 this State, exacerbating the loss of equity in homes and causing an
13 increase in the number of foreclosures in recent years. One of the
14 most common forms of abusive lending is the making of loans that are
15 equity-based, rather than income-based. The financing of points and
16 fees in these loans provides immediate income to the originator and
17 encourages the repeated refinancing of home loans. The lender's
18 ability to sell loans reduces the incentive to ensure that the homeowner
19 can afford the payments of the loan. As long as there is sufficient
20 equity in the home, an abusive lender benefits even if the borrower is
21 unable to make the payments and is forced to refinance. In addition,
22 the financing of high points and fees causes the loss of precious equity
23 in each refinancing and often leads to foreclosure.

24 b. Abusive lending has threatened the viability of many
25 communities and caused decreases in home ownership. While the
26 marketplace appears to operate effectively for conventional mortgages,
27 too many homeowners find themselves victims of overreaching lenders
28 who provide loans with unnecessarily high costs and terms that are
29 unnecessary to secure repayment of the loan.

30 c. As competition and self-regulation have not eliminated the
31 abusive terms from loans secured by a consumer's home, the consumer
32 protection provisions of this act are necessary to encourage lending at
33 reasonable rates with reasonable terms.

34

35 3. As used in this act:

36 "Benchmark rate" is the interest rate which the borrower can reduce
37 by paying bona fide discount points; this rate shall not exceed the
38 weekly average yield of United States Treasury securities having a
39 maturity of five years, on the 15th day of the month immediately
40 preceding the month in which the loan is made, plus four percentage
41 points.

42 "Bona fide discount points" means loan discount points which are:

- 43 (1) Knowingly paid by the borrower;
44 (2) Paid for the express purpose of lowering the benchmark rate;
45 (3) In fact reducing the interest rate or time-price differential
46 applicable to the loan from an interest rate which does not exceed the

1 benchmark rate; and

2 (4) Recouped within the first four years of the scheduled loan
3 payments. Loan discount points will be considered to be recouped
4 within the first four years of the scheduled loan payments if the
5 reduction in the interest rate that is achieved by the payment of the
6 loan discount points reduces the interest charged on the scheduled
7 payments such that the borrower's dollar amount of savings in interest
8 over the first four years is equal to or exceeds the dollar amount of
9 loan discount points paid by the borrower.

10 "Borrower" means any natural person obligated to repay the loan,
11 including a coborrower, cosigner, or guarantor.

12 "Creditor" means a person who extends consumer credit that is
13 subject to a finance charge or is payable by written agreement in more
14 than four installments, and to whom the obligation is payable at any
15 time.

16 "High-cost home loan" means a home loan for which the principal
17 amount of the loan does not exceed \$350,000, which amount shall be
18 adjusted annually to include the last published increase of the housing
19 component of the national Consumer Price Index, New York-
20 Northeastern New Jersey Region, in which the terms of the loan meet
21 or exceed one or more of the thresholds as defined in this section.

22 "Home loan" means a loan, including an open-end credit plan, other
23 than a reverse mortgage transaction, in which the loan is secured by:

24 (1) A mortgage or deed of trust on real estate in this State upon
25 which there is located or there is to be located a one to six family
26 dwelling which is or will be occupied by a borrower as the borrower's
27 principal dwelling; or

28 (2) A security interest in a manufactured home which is or will be
29 occupied by a borrower as the borrower's principal dwelling.

30 "Points and fees" means:

31 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
32 interest or the time-price differential;

33 (2) All charges listed in 15 U.S.C. s.1605(e);

34 (3) All compensation paid directly or indirectly to a mortgage
35 broker, including a broker that originates a loan in its own name in a
36 table-funded transaction;

37 (4) The cost of all premiums financed by the creditor, directly or
38 indirectly for any credit life, credit disability, credit unemployment or
39 credit property insurance, or any other life or health insurance, or any
40 payments financed by the creditor directly or indirectly for any debt
41 cancellation or suspension agreement or contract, except that
42 insurance premiums calculated and paid on a monthly basis shall not
43 be considered financed by the creditor;

44 (5) The maximum prepayment fees and penalties that may be
45 charged or collected under the terms of the loan documents; and

46 (6) All prepayment fees or penalties that are charged to the

1 borrower if the loan refinances a previous loan made by the same
2 creditor or an affiliate of the creditor.

3 (7) For open-end loans, the points and fees are calculated by
4 adding the total fees charged at closing plus the maximum additional
5 fees which can be charged pursuant to the loan documents during the
6 term of the loan.

7 "Rate" means the interest rate charged on the home loan, based on
8 an annual simple interest yield.

9 "Threshold" means any one of the following three items, as defined:

10 (1) "Rate threshold" means the annual percentage rate of the loan
11 at the time the loan is consummated such that the loan is considered
12 a "mortgage" under section 152 of the federal "Home Ownership and
13 Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C.
14 s.1602(aa)), and the regulations promulgated by the Federal Reserve
15 Board, including 12 C.F.R. s.226.32, without regard to whether the
16 loan transaction is or may be a "residential mortgage transaction," as
17 defined in 12 C.F.R. s.226.2(a)(24).

18 (2) "Total points and fees threshold" means that the total points
19 and fees payable by the borrower at or before the loan closing,
20 excluding up to two bona fide discount points, exceed:

21 (a) 5% of the total loan amount if the total loan amount is \$20,000
22 or more; or

23 (b) the lesser of 8% of the total loan amount or \$1,000, if the total
24 loan amount is less than \$20,000; provided, the following discount
25 points and prepayment fees shall be excluded from the calculation of
26 the total points and fees payable by the borrower:

27 (i) Up to and including two bona fide loan discount points payable
28 by the borrower in connection with the loan transaction, but only if the
29 interest rate from which the loan's interest rate will be discounted does
30 not exceed, by more than one percentage point, the required net yield
31 for a 90-day standard mandatory delivery commitment for a reasonably
32 comparable loan from either the Federal National Mortgage
33 Association or the Federal Home Loan Mortgage Corporation,
34 whichever is greater;

35 (ii) Up to and including one bona fide loan discount point payable
36 by the borrower in connection with the loan transaction, but only if the
37 interest rate from which the loan's interest rate will be discounted does
38 not exceed, by more than two percentage points, the required net yield
39 for a 90-day standard mandatory delivery commitment for a reasonably
40 comparable loan from either the Federal National Mortgage
41 Association or the Federal Home Loan Mortgage Corporation,
42 whichever is greater.

43 (3) "Prepayment penalty threshold" means the home loan
44 agreement permits the lender to charge or collect payment penalties or
45 penalties more than 30 months after the loan closing or which exceed,
46 in the aggregate, more than 2% of the amount prepaid.

1 "Total loan amount" means the principal of the loan minus those
2 points and fees as defined in this section that are included in the
3 principal amount of the loan. For open-end loans, the total amount
4 shall be calculated using the total line of credit allowed under the
5 home loan.

6
7 4. a. No creditor making a home loan shall finance, directly or
8 indirectly, any credit life, credit disability, credit unemployment or
9 credit property insurance, or any other life or health insurance, or any
10 payments directly or indirectly for any debt cancellation or suspension
11 agreement or contract, except that insurance premiums or debt
12 cancellation or suspension fees calculated and paid on a monthly basis
13 shall not be considered financed by the creditor.

14 b. No creditor shall engage in the unfair act or practice of
15 "flipping" a home loan. "Flipping" a loan is the making of a home loan
16 to a borrower that refinances an existing home loan when the new loan
17 does not have reasonable, tangible net benefit to the borrower
18 considering all of the circumstances, including the terms of both the
19 new and refinanced loans, the cost of the new loan, and the borrower's
20 circumstances. In addition, the following home loan refinancings shall
21 be presumed to be flipping if:

22 (1) The primary tangible benefit to the borrower is an interest rate
23 lower than the interest rate on a debt satisfied or refinanced in
24 connection with the home loan, and it will take more than four years
25 for the borrower to recoup the costs of the points and fees and other
26 closing costs through savings resulting from the lower interest rate; or

27 (2) The new loan refinances an existing home loan that is a special
28 mortgage originated, subsidized, or guaranteed by or through a state,
29 tribal or local government, or nonprofit organization, which either
30 bears a below-market interest rate at the time the loan was originated,
31 or has nonstandard payment terms beneficial to the borrower, such as
32 payments that vary with income or are limited to a percentage of
33 income, or where no payments are required under specified conditions,
34 and where, as a result of refinancing, the borrower will lose one or
35 more of the benefits of the special mortgage.

36 c. No creditor shall recommend or encourage default on an existing
37 loan or other debt prior to and in connection with the closing or
38 planned closing of a home loan that refinances all or any portion of
39 that existing loan or debt.

40 d. No creditor shall charge a late payment fee in relation to a home
41 loan except according to the following rules:

42 (1) The late payment fee may not be in excess of 4% of the amount
43 of the payment past due.

44 (2) The fee may only be assessed by a payment past due for 15
45 days or more.

46 (3) The fee may not be charged more than once with respect to a

1 single late payment. If a late payment fee is deducted from a payment
2 made on the loan, and such deduction causes a subsequent default on
3 a subsequent payment, no late payment fee may be imposed for such
4 default. If a late payment fee has been once imposed with respect to
5 a particular late payment, no such fee shall be imposed with respect to
6 any future payment which would have been timely and sufficient, but
7 for the previous default.

8 (4) No fee shall be charged unless the creditor notifies the
9 borrower within 45 days following the date the payment was due that
10 a late payment fee has been imposed for a particular late payment. No
11 late payment fee may be collected from any borrower if the borrower
12 informs the creditor that nonpayment of an installment is in dispute
13 and presents proof of payment within 45 days of receipt of the
14 creditor's notice of the late fee.

15 (5) The creditor shall treat each and every payment as posted on
16 the same date as it was received by the creditor, servicer, creditor's
17 agent, or at the address provided to the borrower by the creditor,
18 servicer, or the creditor's agent for making payments.

19 e. No home loan shall contain a provision that permits the creditor,
20 in its sole discretion, to accelerate the indebtedness. This provision
21 does not prohibit acceleration of the loan in good faith due to the
22 borrower's failure to abide by the material terms of the loan.

23 f. No creditor shall charge a fee for informing or transmitting to
24 any person the balance due to pay off a home loan or to provide a
25 release upon prepayment. Payoff balances shall be provided within
26 seven business days after the request.

27
28 5. A high-cost home loan shall be subject to the following
29 additional limitations and prohibited practices:

30 a. No high-cost home loan shall contain a scheduled payment that
31 is more than twice as large as the average of earlier scheduled
32 payments. This provision shall not apply when the payment schedule
33 is adjusted to the seasonal or irregular income of the borrower.

34 b. No high-cost home loan shall include payment terms under
35 which the outstanding principal balance will increase at any time over
36 the course of the loan because the regular periodic payments do not
37 cover the full amount of interest due.

38 c. No high-cost home loan shall contain a provision that increases
39 the interest rate after default. This provision does not apply to interest
40 rate changes in a variable rate loan otherwise consistent with the
41 provisions of the loan documents, provided the change in the interest
42 rate is not triggered by the event of default or the acceleration of the
43 indebtedness.

44 d. No high-cost home loan shall include terms under which more
45 than two periodic payments required under the loan are consolidated
46 and paid in advance from the loan proceeds provided to the borrower.

1 e. No high-cost home loan shall be subject to a mandatory
2 arbitration clause that limits in any way the right of the borrower to
3 seek relief through the judicial process for any and all claims and
4 defenses the borrower may have against the creditor, broker, or other
5 party involved in the loan transaction.

6 f. A creditor shall not make a high-cost home loan without first
7 receiving certification from a counselor, approved by the United States
8 Department of Housing and Urban Development, that the borrower
9 has received counseling on the advisability of the loan transaction.

10 g. A creditor shall not make a high-cost home loan without due
11 regard to repayment ability. A creditor shall not make a high-cost
12 home loan unless the creditor reasonably believes at the time the loan
13 is consummated that one or more of the borrowers, when considered
14 individually or collectively, will be able to make the scheduled
15 payments to repay the obligation, based upon a consideration of their
16 current and expected income, current obligations, employment status
17 and other financial resources, other than the borrower's equity in the
18 dwelling which secures repayment of the loan. A borrower shall be
19 presumed to be able to make the scheduled payments to repay the
20 obligation if, at the time the loan is consummated, the borrower's total
21 monthly debts, including amounts owed under the loan, do not exceed
22 50% of the borrower's monthly gross income as verified by the credit
23 application, the borrower's financial statement, a credit report,
24 financial information provided to the creditor by or on behalf of the
25 borrower, or any other reasonable means. Notwithstanding the
26 foregoing, no presumption of inability to make the scheduled payments
27 to repay the obligation shall arise solely from the fact that, at the time
28 the loan is consummated, the borrower's total monthly debts, including
29 amounts owed under the loan, exceed 50% of the borrower's monthly
30 gross income. A creditor who follows the residual income guidelines
31 established in 38 C.F.R. s.36.4337(e) and VA Form 26-6393 shall
32 benefit from a rebuttable presumption that the creditor made the loan
33 with due regard to repayment ability.

34 h. A creditor shall not pay a contractor under a home-improvement
35 contract from the proceeds of a high-cost home loan, unless the
36 instrument is payable to the borrower or jointly to the borrower and
37 the contractor, or, at the election of the borrower, through a third-
38 party escrow agent in accordance with terms established in a written
39 agreement signed by the borrower, the creditor, and the contractor
40 prior to the disbursement.

41 i. A creditor shall not charge a borrower any fees or other charges
42 to modify, renew, extend, or amend a high-cost home loan or to defer
43 any payment due under the terms of a high-cost home loan.

44 j. A creditor shall not charge a borrower points and fees in
45 connection with a high-cost home loan if the proceeds of the high-cost
46 home loan are used to refinance an existing high-cost home loan held

1 by the same creditor as note holder.

2 k. Notwithstanding any other law to the contrary, a creditor
3 making a high-cost home loan that has the legal right to foreclose shall
4 use the judicial foreclosure procedures of this State so long as the
5 property securing the loan is located in this State. Notwithstanding
6 any other law to the contrary, the borrower shall have the right to
7 assert in that proceeding the nonexistence of a default and any other
8 claim or defense to acceleration and foreclosure, including any based
9 on any violations of this act, though those claims or defenses shall not
10 be deemed compulsory counterclaims.

11

12 6. a. Notwithstanding any other law to the contrary, if a home loan
13 was made, arranged, or assigned by a person selling either a
14 manufactured home, or home improvements to the dwelling of a
15 borrower, the borrower may assert all affirmative claims and any
16 defenses that the borrower may have against the seller or home-
17 improvement contractor against the creditor, any assignee, holder, or
18 servicer, in any capacity.

19 b. Notwithstanding any other law to the contrary, the remedies
20 provided by this act apply to the creditor, any director, officer,
21 employee, or controlling stockholder of, or agent for, a creditor who
22 personally participated in the making or approving of a high-cost home
23 loan, and any other persons to whom this act applies and who violated
24 the requirements of this act. Any person who purchases or is
25 otherwise assigned a high-cost home loan shall be subject to all
26 affirmative claims and any defenses with respect to the loan that the
27 borrower could assert against the original creditor or broker of the
28 loan.

29 c. Notwithstanding any other law to the contrary, a borrower in
30 default more than 60 days or in foreclosure may assert a violation of
31 this act by way of offset:

32 (1) As an original action;

33 (2) As a defense or counterclaim to an action to collect amounts
34 owed; or

35 (3) To obtain possession of the home secured by the home loan.

36 d. It is a violation of this act for any person, in bad faith, to
37 attempt to avoid the application of this act by:

38 (1) Dividing any loan transaction into separate parts; or

39 (2) Any other such subterfuge, with the intent of evading the
40 provisions of this act.

41

42 7. a. Any violation of this act constitutes an unlawful practice
43 under P.L.1960, c.39 (C.56:8-1 et seq.).

44 b. In addition to penalties under that law, including any moneys or
45 property ordered to be paid pursuant to section 2 of P.L.1966, c.39
46 (C.56:8-14) or section 3 of P.L.1971, c.247 (C.56:8-15):

1 (1) Any person found by a preponderance of the evidence to have
2 violated this act shall be liable to the borrower for the following:

3 (a) Statutory damages equal to the finance charges agreed to in the
4 home loan agreement, plus 10% of the amount financed.

5 (b) Punitive damages, when the violation was malicious or
6 reckless; and

7 (c) Costs and reasonable attorneys' fees.

8 (2) A borrower may be granted injunctive, declaratory, and such
9 other equitable relief as the court deems appropriate in an action to
10 enforce compliance with this act.

11 (3) The intentional violation of this act, or regulation hereunder,
12 renders the home loan agreement void, and the creditor shall have no
13 right to collect, receive, or retain any principal, interest, or other
14 charges whatsoever with respect to the loan, and the borrower may
15 recover any payments made under the agreement.

16 (4) The right of rescission granted under 15 U.S.C. s.1601 et seq.
17 for violations of that law and all other remedies provided hereunder
18 shall be available to a borrower by way of recoupment against a party
19 foreclosing on the home loan or collecting on the loan, at any time
20 during the term of the loan.

21 (5) The remedies provided in this section are not intended to be the
22 exclusive remedies available to a borrower, nor must the borrower
23 exhaust any administrative remedies provided under this act or any
24 other applicable law before proceeding under this section.

25 c. Any person, including members, officers, and directors of the
26 creditor, who knowingly violates this act is guilty of a disorderly
27 persons offense and, on conviction, is subject to a fine not exceeding
28 \$1,000, or to imprisonment not exceeding six months, or both.

29 d. A creditor in a home loan who, when acting in good faith, fails
30 to comply with the provisions of this act, will not be deemed to have
31 violated this section if the creditor establishes that either:

32 (1) Within 30 days of the loan closing, and prior to receiving any
33 notice from the borrower of the compliance failure, the creditor has
34 made appropriate restitution to the borrower, and appropriate
35 adjustments are made to the loan; or

36 (2) Within 60 days of the loan closing and prior to receiving any
37 notice from the borrower of the compliance failure, and the
38 compliance failure was not intentional and resulted from a bona fide
39 error notwithstanding the maintenance of procedures reasonably
40 adopted to avoid such errors, the borrower is notified of the
41 compliance failure, appropriate restitution is made to the borrower,
42 and appropriate adjustments are made to the loan.

43 Examples of bona fide errors include clerical, calculation, computer
44 malfunction and programming, and printing errors. An error of legal
45 judgment with respect to a person's obligations under this section is
46 not a bona fide error.

1 e. The remedies provided in this section are cumulative.

2

3 8. The rights conferred by this act are independent of and in
4 addition to any other rights under other laws.

5

6 9. The law of the state in which the property is located shall be
7 applied to all transactions governed by this act regardless of where
8 those transactions originated. This act shall apply to all loans made or
9 entered into after the effective date of this act.

10

11 10. The Director of the Division of Banking in the Department of
12 Banking and Insurance, in consultation with the Director of the
13 Division of Consumer Affairs in the Department of Law and Public
14 Safety, shall develop and implement a program of consumer counseling
15 and awareness designed to inform the public about the methods by
16 which predatory lenders impose unconscionable and noncompetitive
17 fees and charges as part of complex home mortgage transactions, to
18 protect the public from incurring those fees and charges, and otherwise
19 to encourage the informed and responsible use of credit.

20

21 11. The Commissioner of Banking and Insurance shall promulgate
22 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
23 c.410 (C.52:14B-1 et seq.) necessary to effectuate the provisions of
24 this act.

25

26 12. This act shall take effect on the 90th day following enactment.

27

28

29

STATEMENT

30

31 This bill prohibits certain abusive lending practices commonly
32 known as "predatory lending," and directs the Department of Banking
33 and Insurance and the Division of Consumer Affairs to develop and
34 implement a program of consumer education to protect vulnerable
35 consumers against predatory lending practices.

36 Initially, the bill prohibits certain practices in conjunction with the
37 making of "high-cost home loans," which are defined as loans that
38 meet certain thresholds enumerated in the bill. For these loans, the bill
39 provides that the following practices are prohibited:

- 40 • financing of points or fees;
- 41 • certain balloon payments;
- 42 • negative amortization, meaning loan terms under which the loan
43 principal balance will increase over time;
- 44 • increase of the interest rate after default;
- 45 • requiring more than two advance payments;
- 46 • inclusion of a mandatory arbitration clause;

- 1 • lending without prior counseling for the borrower;
- 2 • lending without regard for the borrower's repayment ability;
- 3 • restriction on the payment to home improvement contractors out of
- 4 the loan proceeds;
- 5 • the charging of fees for modification or deferral of the loan; and
- 6 • provision for foreclosure other than by certain judicial procedures.

7 In addition, the bill prohibits certain abusive practices in the making
8 of certain home loans. A "home loan" is defined as a loan, including
9 an open-end credit plan, secured by a mortgage on real estate on
10 which one to six dwelling units are located or are to be located, or
11 secured by a security interest in a manufactured home, which is to be
12 used by the borrower as the borrower's principal dwelling.

13 Those prohibited practices with respect to home loans include the
14 following:

- 15 • financing of certain credit insurance premiums or debt cancellation
- 16 agreements;
- 17 • "flipping," or the refinancing of a loan and charging additional fees
- 18 with no tangible benefit to the borrower;
- 19 • recommending or encouraging default on an existing loan;
- 20 • charging of late payment fees other than in certain circumstances
- 21 enumerated in the bill;
- 22 • acceleration of the indebtedness at the creditor's sole discretion; and
- 23 • charging a fee for information concerning a borrower's payoff
- 24 balance.

25 Additionally, the bill provides for liability for all parties involved in
26 the making and maintenance of high-cost home loans.

27 Finally, the bill makes violations subject to the consumer fraud law
28 and provides for additional penalties, and provides an opportunity for
29 lenders to cure good faith errors.

SENATE, No. 2051

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED NOVEMBER 14, 2002

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen)

SYNOPSIS

Concerns regulation of lending practices; prohibits certain abusive and predatory lending practices.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the regulation of certain financial practices and
2 prohibiting certain abusive and predatory lending practices.

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

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Home Equity Protection Act."

9
10 2. The Legislative finds and declares that:

11 a. The subprime lending market is an important source of
12 affordable residential mortgage loans for citizens of this State who
13 have impaired credit or who otherwise may not qualify for such loans
14 in the prime or conventional market.

15 b. Most subprime mortgage lenders are ethical and provide
16 borrowers with fairly priced loans that contain reasonable terms.

17 c. Some mortgage brokers and lenders, however, purposefully
18 engage in patterns and practices of offering borrowers, particularly
19 vulnerable senior citizens and minorities, often in a deceptive or
20 misleading manner, overpriced subprime mortgage loans containing
21 unfair terms.

22 d. This act is intended to protect the citizens of this State by
23 adding new restrictions and safeguards that are targeted to prevent
24 such unfair and abusive lending practices without interfering with
25 legitimate subprime lending or curtailing mortgage credit availability
26 or increasing the cost of such credit.

27
28 3. As used in this act:

29 "Affiliate" means any entity that controls, is controlled by or is
30 under common control with another entity as determined pursuant to
31 the "Bank Holding Company Act of 1956," (12 U.S.C. s.1841 et seq.).

32 "Bona fide discount points" means loan discount points which are
33 paid by the borrower for the purpose of reducing the interest rate
34 applicable to the loan, and which will in fact result in a bona fide
35 reduction of the interest rate, provided the amount of the interest rate
36 reduction purchased by the discount points is reasonably consistent
37 with established industry norms and practices. For the purposes of
38 this act, it shall be presumed that a point is a bona fide discount point
39 if it reduces the interest rate by a minimum of 25 basis points provided
40 all other terms of the loan remain the same.

41 "Borrower" means each borrower, co-borrower, cosigner or
42 guarantor obligated to repay a covered loan.

43 "Bridge loan" means a loan with a maturity of less than 18 months
44 which only requires payments of interest until such time as the entire
45 unpaid balance is due and payable.

1 "Commissioner" means the Commissioner of Banking and
2 Insurance.

3 "Covered loan" means a consumer credit mortgage loan transaction,
4 other than an open-end credit plan or a reverse mortgage transaction,
5 involving property located within this State that is considered a
6 mortgage under section 103(aa) of the federal "Truth in Lending Act,"
7 (Pub. Law 90-321, 15 U.S.C. s.1602(aa)), and regulations adopted
8 pursuant thereto by the Federal Reserve Board, including
9 12 C.F.R.s.226.32, as amended from time to time, including the
10 official staff commentary, for which the original principal balance of
11 the loan is less than \$300,000, except that the threshold with regard
12 to points and fees specified under 15 U.S.C s. 1602(aa)(B)(i) shall be
13 six percent of the total loan amount for purposes of determining
14 whether the loan is a covered loan under this act. Not more than two
15 bona fide discount points shall be excluded from the amount of points
16 and fees under 15 U.S.C. s. 1602(aa)(B)(i) for purposes of
17 determining whether the loan is a covered loan under this act.

18 "Creditor" means a person considered a creditor pursuant to
19 12 C.F.R. s.226.2(a)(17).

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

21 "Gross income" means an borrower's gross income as set forth on
22 a credit application, the borrower's financial statement, a credit report,
23 financial information provided to the lender by or on behalf of the
24 borrower or as determined by any other reasonable means by a lender.

25 "Lender" means any creditor that in any 12-month period originates
26 at least one covered loan. The creditor to whom the covered loan is
27 initially payable, either on the face of the note or contract or by
28 agreement when there is no note or contract, shall be deemed to be the
29 lender.

30 "Mortgage broker" means a person required to be licensed pursuant
31 to the "New Jersey Licensed Lenders Act," P.L.1996, c.157
32 (C.17:11C-1 et seq.).

33 "Points and fees" means:

34 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
35 interest or the time-price differential,

36 (2) All direct compensation paid to mortgage brokers by
37 borrowers,

38 (3) All items, other than amounts held for future payment of taxes
39 and property insurance, listed in section 15 U.S.C. s. 1605(e), unless
40 the charge is bona fide, reasonable and competitive, and the creditor
41 receives no direct compensation in connection with the charge, and

42 (4) The cost of all premiums financed by the creditor, directly or
43 indirectly, for any credit life, credit disability, credit unemployment, or
44 any other life or health insurance provided by or through the creditor,
45 or any payments financed by the creditor directly or indirectly for any
46 debt cancellation or suspension agreement or contract provided by or

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1 through the creditor, except that insurance premiums paid on a
2 monthly basis shall not be considered financed by the creditor.

3 "Principal balance" means the amount of a promissory note secured
4 by a mortgage in a covered loan.

5 "Rate" means the interest rate charged on the covered loan, based
6 on an annual simple interest yield.

7 "Servicer" means a servicer as defined in section 6(i)(2) of the
8 "Real Estate Settlement Procedures Act of 1974," (Pub. Law 93-533,
9 12 U.S.C. s.2605(i)(2)).

10 "Total loan amount" means the principal of the covered loan minus
11 those points and fees that are included in the principal amount of the
12 loan.

13

14 4. The provisions of this act shall apply to:

15 a. Any covered loan secured by real property in this State which is
16 negotiated, offered or otherwise transacted within this State, in whole
17 or in part, whether by the ultimate lender or any other person, and
18 which is made or executed within this State, or notwithstanding the
19 place of execution, is secured by real property located in this State;
20 and

21 b. Any person who engages in the mortgage loan business in this
22 State.

23 Any person who purchases or is otherwise assigned a covered loan
24 shall be subject to all claims and defenses with respect to that loan that
25 the borrower could assert against the creditor of the covered loan,
26 only if the claim or defense asserted by the borrower is apparent on the
27 face of the documentation or disclosures required by this act.

28

29 5. a. No creditor making a covered loan shall finance, directly or
30 indirectly, any credit life, credit disability, credit unemployment, or any
31 other life or health insurance, or any payments directly or indirectly for
32 any debt cancellation or suspension agreement or contract, except that
33 insurance premiums or debt cancellation or suspension fees paid on a
34 monthly basis shall not be considered financed by the creditor.

35 b. No covered loan shall contract for a scheduled payment that is
36 more than twice as large as the average of earlier scheduled monthly
37 payments unless the larger payment becomes due and payable not less
38 than 180 months after the date of the loan. This prohibition does not
39 apply when the payment scheduled is adjusted to account for the
40 seasonal or irregular income of the borrower or if the purpose of the
41 loan is a bridge loan connected with or related to the acquisition or
42 construction of a dwelling intended to become the borrower's principal
43 dwelling.

44 c. No covered loan shall contain a call provision that permits the
45 lender, in its sole discretion, to accelerate the indebtedness. This
46 prohibition does not apply when repayment of the loan has been
47 accelerated:

- 1 (1) By default;
- 2 (2) Pursuant to a due-on-sale provision;
- 3 (3) If there is fraud or material misrepresentation by an borrower
- 4 in connection with the loan; or
- 5 (4) If there is any action or inaction by the borrower that adversely
- 6 affects the lender's security for the loan or any rights of the lender in
- 7 that security.
- 8 d. No creditor shall recommend or encourage default on an existing
- 9 loan or other debt prior to and in connection with the closing or
- 10 planned closing of a covered loan that refinances all or any portion of
- 11 that existing loan or debt.
- 12 e. No covered loan shall contract for a payment schedule with
- 13 regular periodic payments that cause the principal balance to increase.
- 14 This subsection shall not prohibit negative amortization as a
- 15 consequence of a temporary forbearance or restructure consented to
- 16 by the borrower.
- 17 f. No covered loan shall contract for any increase in the interest
- 18 rate as a result of a default. This provision shall not apply to periodic
- 19 interest rate changes in a variable rate loan otherwise consistent with
- 20 the provisions of the loan agreement, provided the change in the
- 21 interest rate is not occasioned by the event of default or permissible
- 22 acceleration of the indebtedness.
- 23 g. No covered loan shall include terms under which any periodic
- 24 payments required under the loan are paid in advance from the loan
- 25 proceeds.
- 26 h. The following limitation on prepayment fees on covered loans
- 27 shall apply:
 - 28 (1) A prepayment fee shall be permitted only during the first 36
 - 29 months after the date of execution of a covered loan and shall not
 - 30 exceed an amount of up to six months of interest based on the original
 - 31 principal balance at the interest rate of the covered loan, or 5% of the
 - 32 principal to be repaid, whichever is less.
 - 33 (2) A lender shall not include a prepayment fee in a covered loan
 - 34 unless it also makes available a loan without a prepayment fee and the
 - 35 loan with a prepayment fee is at a lower rate or points to the
 - 36 borrower.
 - 37 (3) No prepayment fee or penalty shall be charged on a refinancing
 - 38 of a covered loan with a covered loan if the covered loan being
 - 39 refinanced was made by or is owned by the refinancing lender or an
 - 40 affiliate at the time of the refinancing.
- 41 i. No creditor shall charge a late payment fee on a covered loan in
- 42 excess of 5% of the amount of the payment past due. The fee shall be
- 43 charged as follows:
 - 44 (1) The fee shall only be assessed by a payment past due for 15
 - 45 days or more.

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1 (2) The fee shall not be charged more than once with respect to a
2 single late payment.

3 (3) A late payment fee shall not be deducted from a payment made
4 on the loan if such deduction causes a default in the payment.

5 j. A lender shall not charge a borrower any unreasonable fees or
6 other charges to modify, renew, extend or amend a covered loan or to
7 defer any payment due under the terms of a covered loan. A fee in an
8 amount not to exceed \$150 for such purposes shall not be deemed to
9 be unreasonable.

10 k. The creditor shall treat each and every payment as posted on the
11 same date as it was received by the creditor, servicer, creditor's agent,
12 or at the address provided to the borrower by the creditor, servicer, or
13 the creditor's agent for making payments.

14 l. In connection with a covered loan, a lender shall not pay a yield
15 spread premium or any other compensation to a mortgage broker
16 representing the borrower, unless the broker has specified to the
17 borrower, in a writing, before performing any services for which the
18 borrower will be charged, what the amount of the broker's charges
19 will be for all activities and services in connection with the loan, and
20 a copy of such document, signed by the borrower, has been supplied
21 to the lender prior to the broker negotiating the loan with the lender.
22 Further, the writing given to the borrower shall disclose that if the
23 borrower does not pay the broker's fee as set forth in the writing, in
24 full at the closing, the lender may pay to the broker all or part of the
25 fee on behalf of the borrower, but that, in that event, the interest rate
26 on the loan may be increased by a specified amount based on the
27 amount paid by the lender. The amount of the increase in rate the
28 lender may charge, based on the amount actually paid by the lender to
29 the broker, shall be clearly specified in the writing given to the
30 borrower. In such a case, the lender shall not thereafter demand for
31 any yield spread premium, a larger interest rate increase than is
32 specified in the writing, nor shall the broker thereafter demand any
33 compensation in excess of the amount specified in the writing from
34 either the borrower or lender, nor shall the lender thereafter increase
35 the rate except in proportion to the amount of fee actually paid to the
36 broker.

37
38 6. a. A lender shall not make a covered loan unless the lender has
39 given the following notice, or a substantially similar notice, in writing,
40 to the borrower, acknowledged in writing and signed by the borrower
41 not later than the time the notice is required under the notice provision
42 contained in 12 CFR 226.31(c).

1 CONSUMER CAUTION AND
2 HOME OWNERSHIP COUNSELING NOTICE
3

4 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO
5 OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP
6 AROUND AND COMPARE LOAN RATES AND FEES.
7 MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES
8 VARY BASED ON MANY FACTORS, INCLUDING YOUR
9 PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES,
10 YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE
11 REQUESTED AND THE TYPE OF PROPERTY THAT WILL
12 SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD
13 ALSO VARY BASED ON WHICH LENDER OR BROKER YOU
14 SELECT.

15 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER
16 WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU
17 COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO
18 IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS
19 UNDER THE LOAN.

20 YOU SHOULD CONSULT A QUALIFIED INDEPENDENT
21 CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL
22 ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF
23 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF
24 QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING
25 THE NEW JERSEY DEPARTMENT OF BANKING AND
26 INSURANCE.

27 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
28 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED
29 THESE DISCLOSURES OR HAVE SIGNED A LOAN
30 APPLICATION.

31 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
32 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL
33 LENDERS PROVIDE ESCROW SERVICES FOR THESE
34 PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT
35 THESE SERVICES.

36 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
37 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD
38 NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR
39 PAYMENTS TO YOUR EXISTING CREDITORS.
40

41 b. A creditor or mortgage broker has met its obligation to provide
42 this disclosure if the borrower provides the creditor or broker with a
43 written and signed acknowledgment of receipt of a copy of the notice
44 set forth in this subsection, provided that such acknowledgment
45 contains the following statement, or substantially similar statement,
46 that it was signed not less than 48 hours after the borrower received
47 the notice, and that the borrower waives the right to counseling.

1 ACKNOWLEDGMENT OF RECEIPT OF COUNSELING NOTICE

2

3 By my signature below, I acknowledge that I received a copy of the
4 notice entitled CONSUMER CAUTION AND HOME OWNERSHIP
5 COUNSELING NOTICE on _____(date) and that I
6 have read it and that I have decided not to obtain credit counseling or
7 financial advice, and hereby waive my right to credit counseling and
8 financial advice for this loan.

9

10 _____(consumer signature) _____ (date)

11

12 c. The Department of Banking and Insurance shall maintain a list
13 of certified counselors and shall provide licensees with a phone number
14 to include in the notice required by subsection a. of this section.

15 d. A lender shall not engage in a pattern and practice of making
16 covered loans based on the borrower's collateral without regard to the
17 borrower's repayment ability, including, but not limited to, the
18 borrower's current and expected income, current obligations as
19 disclosed to the lender by the loan application and the borrower's
20 consumer credit report, employment status and other financial
21 resources other than the borrower's equity in the dwelling which
22 secures repayment of the loan. A borrower shall be presumed to be
23 able to make the scheduled payments to repay the obligation if, at the
24 time the covered loan is consummated, either (1) the borrower's
25 scheduled monthly payments as disclosed to the lender by the loan
26 application and the borrower's credit report, do not exceed 50% of the
27 borrower's monthly gross income, or (2) the creditor follows the
28 residual income guidelines established in 38 C.F.R. s. 36.4337(e) and
29 VA Form 26-6393. For purposes of determining monthly income, the
30 income of all borrowers shall be considered. No presumption shall
31 arise that a borrower is not able to make the scheduled payments if the
32 borrower's scheduled monthly payments exceed 50% of the borrower's
33 monthly gross income as determined pursuant to this subsection.

34 e. Except as otherwise provided in this act, a lender shall not
35 charge any points or fees in connection with a covered loan if the
36 proceeds of the covered loan are used to refinance an existing covered
37 loan made by or held by the lender, and the last financing was within
38 18 months of the current refinancing; provided, however, this
39 provision shall not prohibit a lender from charging points in connection
40 with any additional proceeds paid to or for the account of the
41 borrower in connection with the refinancing, provided that the points
42 and fees charged on the additional proceeds shall reflect the lender's
43 typical point and fee structure for covered loans. For purposes of this
44 subsection, "additional proceeds" means the amount over and above
45 the current principal balance of the existing covered loan, provided,
46 however, in the event the lender refunds all the points on the covered
47 loan being refinanced, the additional proceeds shall be the principal

1 balance of the new covered loan. A lender may refinance a covered
2 loan to the same borrower into a covered loan within 18 months of the
3 origination of the prior loan, provided that the refinancing reduces the
4 interest rate below that of the existing loan, and provided that the
5 amount by which the interest in the prior loan would have exceeded
6 the amount of interest charged in the new loan, over the first five years
7 of the new loan, exceeds the cost of refinancing.

8 Notwithstanding the provisions of this subsection, a lender may
9 refinance a covered loan to the same borrower into a covered loan
10 within 18 months of the origination of the prior loan, if the net
11 reduction in the borrower's total monthly payments on all debts
12 consolidated into the covered loan, over the first five years of the new
13 loan, is greater than the loan settlement charges payable by the
14 borrower for the refinancing.

15 f. A lender shall not pay a contractor under a home improvement
16 contract from the proceeds of a covered loan other than by an
17 instrument payable to the borrower or jointly to the borrower and the
18 contractor or, at the election of the borrower, through a third-party
19 escrow agent in accordance with terms established in a written
20 agreement signed by the borrower, the lender and the contractor prior
21 to the disbursement of funds to the contractor.

22 g. A lender shall not replace, refinance or consolidate a zero
23 interest rate or low-rate loan made by a governmental or nonprofit
24 lender with a covered loan within the first ten years of the zero interest
25 or low-rate loan, unless the lender is provided, prior to loan closing,
26 documentation by a counselor, approved by the United States
27 Department of Housing and Urban Development, or the lender who
28 originally made the mortgage, that the borrower has received
29 counseling in which the advantages and disadvantages or the
30 refinancing have been reviewed. For purposes of this subsection, a
31 "low-rate loan" means a loan that carries a current interest rate two
32 percentage points or more below the current yield on United States
33 treasury securities with a comparable maturity as of the 15th day of
34 the month preceding the month in which the application is received.

35
36 7. a. Notwithstanding any other law to the contrary, a creditor
37 making a covered loan that has the legal right to foreclose shall use the
38 judicial foreclosure procedures of this State so long as the property
39 securing the loan is located in this State. Notwithstanding any other
40 law to the contrary, the borrower shall have the right to assert in that
41 proceeding the nonexistence of a default and any other claim or
42 defense to acceleration and foreclosure, including any based on any
43 violations of this act, though those claims or defenses shall not be
44 deemed compulsory counterclaims.

1 b. Notwithstanding any other provision of the foreclosure law of
2 this State to the contrary, if the mortgagee of a covered loan or an
3 affiliate of the mortgagee is the successful bidder at the foreclosure
4 sale as prescribed therein, and the mortgagee or its affiliate
5 subsequently resells the property to a third party within three years of
6 the foreclosure sale and that sale results in a surplus as defined in this
7 subsection, the surplus shall inure to the borrower and shall be
8 delivered to the borrower within 30 days of the conclusion of the sale.
9 A surplus shall result only after the mortgagee has deducted expenses
10 and costs of funds as follows:

11 (1) the loan balance due to the mortgagee as bid and accepted at
12 the foreclosure sale;

13 (2) all expenses permitted under the real property actions and
14 proceedings law of this State;

15 (3) all late charges, other fees and interest previously waived or
16 deferred by the mortgagee prior to foreclosure;

17 (4) all loan balance amounts previously waived prior to the
18 mortgagee's bid at the foreclosure sale;

19 (5) all interest which would have been earned by the mortgagee on
20 the loan agreement between the date title was transferred to the
21 mortgagee and the date title transferred to the third party purchaser of
22 the mortgagee's property;

23 (6) all amounts paid to the senior lienholders on the property,
24 including interest on such amounts, calculated by using the greater of
25 the prime rate at the date of title transfer to the mortgagee or the
26 judgment rate on that date; and

27 (7) any other reasonable expenses of the mortgagee with respect
28 to the property or the collection of the covered loan.

29 c. The mortgagee who purchases the property at foreclosure shall
30 have no duty to any mortgagor to improve the property, or to accept
31 or reject any purchase offer for the property or to otherwise maximize
32 the sale price of the property.

33

34 8. a. A lender or its servicer shall report at least annually both the
35 favorable and unfavorable payment history information of the
36 borrower on payments due to the lender on a covered loan to a
37 nationally recognized consumer credit reporting agency. This
38 subsection shall not prevent a lender or its servicer from agreeing with
39 the borrower not to report payment history information in the event of
40 a resolved or unresolved dispute with an borrower and shall not apply
41 to covered loans held or serviced by a lender for less than 90 days.

42 b. A lender shall verify on an annual basis that each mortgage
43 banker, mortgage broker, correspondent mortgage banker, lender or
44 secondary lender with whom it does business in connection with
45 covered loans holds, or is exempt from holding a current license, to do
46 business within this State.

47

- 1 9. a. The department shall conduct examinations and investigations
2 and issue subpoenas and orders to enforce the provisions of this act
3 with respect to a person licensed or subject to the provision of the
4 "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et
5 seq.) in accordance with such law.
- 6 b. If the department determines that a person has violated the
7 provisions of this act, the department may do any combination of the
8 following that it deems appropriate:
- 9 (1) Impose a civil penalty of up to the total settlement charges
10 payable by the borrower for each offense, 40% of which penalty shall
11 be dedicated for and used by the department for consumer education
12 through non-profit organizations which can establish to the satisfaction
13 of the department that they have sufficient experience in credit
14 counseling and financial education. In determining the penalty to be
15 assessed, the commissioner shall consider the following criteria:
16 whether the violation was willful; whether the violation was part of a
17 pattern and practice; the amount of the loan; the points and fees
18 charged; the financial condition of the violator; and other relevant
19 factors. The department may require the person to pay investigative
20 costs, if any.
- 21 (2) Suspend, revoke or refuse to renew any license issued by the
22 department.
- 23 (3) Prohibit or permanently remove an individual responsible for
24 a violation of this act from working in his present capacity or in any
25 other capacity related to activities regulated by the department.
- 26 (4) Order a person to cease and desist any violation of this act and
27 to make restitution for actual damages to borrowers.
- 28 (5) Pending completion of an investigation or any formal
29 proceeding instituted pursuant to this act, if the commissioner finds
30 that the interests of the public require immediate action to prevent
31 undue harm to consumers, the commissioner may enter an appropriate
32 temporary order to be effective immediately and until entry of a final
33 order. The temporary emergency order may include: a temporary
34 suspension of the lender's authority to make covered loans under this
35 act; a temporary cease and desist order; a temporary prohibition
36 against a lender transacting covered loan business in this State, or such
37 other order relating to covered loans as the commissioner may deem
38 necessary to prevent undue harm to consumers pending completion of
39 an investigation or formal proceeding. Orders issued pursuant to this
40 section shall be subject to an application to vacate upon two days'
41 notice, and a preliminary hearing on the temporary emergent order
42 shall be held, in any event, within five days after it is issued, in
43 accordance with the provisions of the "Administrative Procedure Act,"
44 P.L.1968, c.410 (C.52:14B-1 et seq.).
- 45 (6) Impose such other conditions as the department deems
46 appropriate.
- 47 c. Any person aggrieved by a decision of the department and who

1 has a direct interest in the decision may appeal the decision of the
2 department to the commissioner. The appeal shall be conducted in
3 accordance with the provisions of the "Administrative Procedure Act,"
4 P.L.1968, c.410 (C.52:14B-1 et seq.).

5 d. The department may maintain an action for an injunction or
6 other process against any person to restrain and prevent the person
7 from engaging in any activity violating this act.

8 e. A decision of the commissioner shall be a final order of the
9 department and shall be enforceable in a court of competent
10 jurisdiction. The department shall publish the final adjudication issued
11 in accordance with this section, subject to redaction or modification
12 to preserve confidentiality.

13 f. Any person aggrieved by a decision of the commissioner and
14 who has a direct interest in the decision may appeal the decision in
15 accordance with the Rules Governing the Courts of New Jersey.

16

17 10. a. If a lender purposefully engages in a pattern and practice of
18 material violations of this act, or knowingly or willfully violates a
19 material provision of this act with respect to a covered loan, then a
20 borrower may initiate a civil action to recover monetary damages.

21 b. For any material violation of this act, the court or arbitrator
22 may, in addition to any other appropriate legal or equitable relief,
23 award actual damages sustained by the borrower, punitive damages,
24 reasonable attorneys' fees, filing fees and other reasonable costs of
25 suit.

26 c. Persons engaged in the purchase, sale, assignment, securitization
27 or servicing of covered loans shall not be held liable for the action or
28 inactions of persons originating such loans.

29 d. No covered loan may be subject to a mandatory arbitration
30 clause that is oppressive, unfair, unconscionable, or substantially in
31 derogation of the rights of consumers. Arbitration clauses that comply
32 with the standards set forth in the Statement of Principles of the
33 National Consumer Dispute Advisory Committee in effect as of the
34 effective date of this act are deemed not to violate this subsection.
35 The borrower shall have the option to require arbitration concerning
36 any claims or defenses, except in foreclosure proceedings, relating to
37 covered loans.

38

39 11. The department may divulge documentary or other information
40 pertaining to enforcement of this act to federal or state banking
41 regulatory agencies as may be necessary or appropriate for the
42 enforcement of this act, as determined at the discretion of the
43 commissioner. The department may enter into such information
44 sharing agreements or other types of regulatory agreements with other
45 federal and state banking regulatory agencies as may be reasonably
46 necessary or appropriate for the enforcement of this act, as determined
47 at the discretion of the commissioner.

1 12. A lender in a covered loan, who, when acting in good faith,
2 fails to comply with this act, shall not be deemed to have violated this
3 act if the lender establishes that within 90 days of the discovery of the
4 error the borrower is notified of the compliance failure, appropriate
5 restitution is made, and whatever adjustments are necessary are made
6 to the loan to either make the covered loan satisfy the requirements of
7 this act, or change the terms of the loan in a manner beneficial to the
8 borrower so that the loan is no longer considered a covered loan
9 pursuant to the provisions of this act.

10
11 13. Prior to effective date of this act, the department shall establish
12 a toll-free hotline telephone number to receive consumer complaints
13 of abusive and predatory lending practices. The department shall
14 publish and promote this consumer complaint access telephone
15 number.

16
17 14. a. No municipality, or other political subdivision in this State,
18 shall enact or enforce ordinances, resolutions and regulations
19 pertaining to the residential mortgage lending activities of persons
20 who:

21 (1) Are subject to the jurisdiction of the department, including
22 activities subject to this act;

23 (2) Are subject to the jurisdiction or regulatory supervision of the
24 Board of Governors of the Federal Reserve System, the Office of the
25 Comptroller of the Currency, the Office of Thrift Supervision, the
26 National Credit Union Administration, the Federal Deposit Insurance
27 Corporation, the Federal Trade Commission or the United States
28 Department of Housing and Urban Development; or

29 (3) That originate, purchase, sell, assign, securitize or service
30 property interests or obligations created by financial transactions or
31 loans made, executed or originated by persons referred to in paragraph
32 (1) or (2) of this subsection or assist or facilitate such transactions.

33 The requirements of this subsection shall apply to all ordinances,
34 resolutions and regulations pertaining to financial or lending activities,
35 including any ordinances, resolutions or regulations disqualifying
36 persons from doing business with a political subdivision based upon
37 financial or lending activities or imposing reporting requirements or
38 any other obligations upon persons regarding financial or lending
39 activities.

40 b. Nothing in this act shall be deemed to limit the corporate powers
41 of incorporated institutions or their subsidiaries subject to the banking
42 laws of this State or to impose conditions, limitations or restrictions
43 upon the exercise of such powers contrary to the provisions of those
44 laws.

45 c. The provisions of this act shall be interpreted and applied to the
46 fullest extent practical in a manner consistent with applicable federal
47 laws and regulations, policies and orders of federal regulatory

1 agencies.

2

3 15. This act shall take effect on the 180th day after enactment and
4 shall apply with respect to loan applications received by a creditor on
5 or after that date.

6

7

8

STATEMENT

9

10 This bill prohibits certain lending practices in this State. The
11 provisions of the bill target lenders who purposefully engage in
12 patterns and practices of unfair treatment to vulnerable consumers,
13 particularly those in distressed urban areas.

14 The provisions of the bill apply to any mortgage loan for less than
15 \$300,000, which is negotiated, offered or otherwise transacted within
16 this State and any person who engages in the mortgage loan business
17 in this State.

18 The bill prohibits the following with respect to a covered loan:

- 19 C a scheduled payment that is more than twice as large as the average
20 of earlier scheduled monthly payments unless the balloon payment
21 comes due and payable not less than 15 years after the date of the
22 loan;
- 23 C inclusion of a call provision that permits the lender, in its sole
24 discretion, to accelerate the indebtedness;
- 25 C a payment schedule with regular periodic payments that cause the
26 principal balance to increase;
- 27 C any increase in the interest rate as a result of a default; and
- 28 C terms under which any periodic payments are paid in advance from
29 the loan proceeds.

30 The bill also establishes extensive limitations on the use of
31 prepayment fees, which include the following:

- 32 C only permitted during the first 36 months of a covered loan and
33 shall not exceed up to six months of interest based on original
34 principal amount of the loan or 5% of the amount prepaid
35 whichever is less;
- 36 C lender must make available a loan product without a prepayment
37 fee and the loan with the prepayment fee must be at a lower cost to
38 the borrower; and
- 39 C a prepayment fee is not permitted in a refinancing of a covered loan
40 refinanced by the same lender or the lender's affiliate.

41 The bill also imposes strict limitations on late payment fees. A
42 lender may not charge a late payment fee in excess of 5% of the
43 amount of the payment past due. In addition, with respect to late
44 payment fees, the bill provides for the following:

- 45 C waiver of the fee if it is established that its payment will prevent the
46 borrower from having the financial ability to make the following
47 month's payment;
- 48 C fee may only be assessed on a payment past due for 15 days or
49 more;
- 50 C fee may not be charged more than once with respect to a single late
51 payment;
- 52 C fee shall not be deducted from a payment made on the loan;

1 C notification to the borrower within 45 days following the date the
2 payment was due that a late payment fee has been imposed for a
3 particular late payment; and

4 C prohibits imposition of late payment fee if the borrower informs the
5 lender that nonpayment of an installment is in dispute and presents
6 proof of payment within 45 days of receipt of the notice.

7 The bill also provides that a lender may not charge a borrower any
8 fees or other charges to modify, renew, extend or amend a covered
9 loan or to defer any payment due under the terms of a covered loan.

10 The bill limits the use of yield spread premiums to amounts and rate
11 changes specified in writing by the mortgage broker before providing
12 services to the borrower, and limits rate changes to amounts actually
13 paid.

14 The bill requires that lenders provide certain notices to prospective
15 borrowers, and that receipt of those disclosures be acknowledged in
16 writing by the borrower.

17 The bill prohibits lenders from engaging in certain practices which
18 include the following: engaging in a pattern or practice of making
19 covered loans based on the consumer's collateral without regard to the
20 consumer's repayment ability; charging points in connection with a
21 covered loan if the proceeds of the covered loan are used to refinance
22 an existing covered loan made by or held by the lender and the last
23 financing was within 18 months of the current refinancing; replacing
24 or consolidating a zero interest rate or low-rate loan made by a
25 governmental or nonprofit lender with a covered loan within the first
26 ten years of the loan unless the current holder consents in writing;
27 paying a contractor under a home improvement contract from the
28 proceeds of a covered loan by any means other than to the borrower
29 or jointly to the borrower and the contractor or, through a third-party
30 escrow agent; and selling credit life, accident and health or
31 unemployment insurance on a prepaid single premium basis in
32 conjunction with a covered loan.

33 The bill also provides that in the event of a foreclosure of a covered
34 loan and the resale of the property to a third party by the mortgagee
35 or an affiliated party after buying the property at sheriff's sale, any
36 surplus from that sale shall be returned to the borrower within 30 days.

37 Under the bill, lenders or servicers are required to report, at least
38 quarterly, both the favorable and unfavorable payment history
39 information of borrowers on payments due to the lender on a covered
40 loan to a nationally recognized consumer credit reporting agency. In
41 addition, lenders are required to verify that each mortgage banker,
42 mortgage broker, correspondent mortgage banker, consumer lender or
43 secondary lender with whom it does business in connection with
44 covered loans holds a current license to do business within this State.

45 The bill requires the Department of Banking and Insurance to
46 establish and promote a toll-free hotline telephone number to receive
47 consumer complaints of abusive and predatory lending practices.

48 The bill authorizes the department to enforce the provisions of the
49 bill and impose various penalties, including monetary fines, for any
50 violations. The bill provides that 40% of the fines collected shall be
51 disseminated to non-profit organizations and used for consumer
52 financial education purposes.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 198, 1200, 1540 and 2051**

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2002

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 198, 1200, 1540 and 2051.

This bill, a Senate Committee Substitute for Senate, Nos. 198, 1200, 1540, and 2051, prohibits certain lending practices in regard to home loans, covered home loans and high cost home loans, directs the Department of Banking and Insurance, in consultation with the Divisions of Consumer Affairs and Civil Rights, to develop and implement a program of consumer education to protect vulnerable consumers against practices regarding high-cost home loans, and provides that the department and the Division of Consumer Affairs shall enforce the provisions of the bill.

This bill prohibits certain practices in the making of home mortgage loans. A "home loan" is defined as a loan, including an open-end credit plan, other than a reverse mortgage transaction, secured by a mortgage on real estate on which one to six dwelling units are located or are to be located, or secured by a security interest in a manufactured home, which is to be used by the borrower as the borrower's principal dwelling. Practices prohibited with respect to all home loans include the following:

- a. financing of certain credit insurance premiums or debt cancellation agreements;
- b. recommending or encouraging default on an existing mortgage loan;
- c. charging a late payment fee in excess of 5% of the amount of the payment due and other prohibitions enumerated in the bill;
- d. acceleration of the indebtedness at the creditor's sole discretion; and
- e. charging a fee for information concerning a borrower's payoff balance.

The bill also prohibits, in regard to covered home loans, "flipping," or the refinancing of a loan that was consummated within the prior 60 months and charging additional fees with no reasonable, tangible net benefit to the borrower.

In addition, the bill provides additional prohibitions to those above in conjunction with the making of "high-cost home loans," which are

defined as loans that meet certain thresholds enumerated in the bill. For these high-cost home loans, the bill provides that the following practices are prohibited:

- a. certain balloon payments;
- b. negative amortization, meaning mortgage loan terms under which the loan principal balance will increase over time;
- c. increase of the interest rate after default;
- d. consolidating more than two periodic payments to be paid in advance from the loan proceeds;
- e. inclusion of a provision that allows a creditor to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum;
- f. lending without prior written notice, acknowledged in writing and signed by the borrower within three business days prior to loan closing, as required by federal regulation, advising borrowers of the following: the importance of comparing and shopping for loans; the consequence of non-payment of obligations under the loan; the importance of consulting with an attorney and a qualified independent credit counselor or other experienced financial advisor regarding the overall terms the loan; receipt of the notice or the signing of a loan agreement does not obligate the applicant to complete the loan transaction; the responsibility to pay property taxes and homeowner's insurance and to ascertain whether the creditor provides escrow services for these payments; and that advice to ignore payments to existing creditors should not be accepted;
- g. lending to a borrower who finances points and fees, without first receiving certification from an approved third-party nonprofit credit counselor, that the borrower has received counseling on the loan transaction or completing another substantial requirement developed by the department;
- h. direct payment to home improvement contractors out of the loan proceeds, instead the payment out of the loan proceeds must be to the borrower, jointly to the borrower and contractor, or a third-party escrow selected by the borrower;
- i. the charging of fees for modification or deferral of the loan;
- j. charging points and fees if the proceeds of a high-cost home loan are used to refinance an existing high-cost home loan held by the same creditor as note holder;
- k. foreclosure by means other than the judicial foreclosure procedures of this State; and
- l. financing points and fees in excess of 2% of the total high-cost home loan amount.

The bill provides that a purchaser or assignee of a high-cost home loan is subject to any affirmative claims and defenses that could be asserted against the original creditor or broker of the loan unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising reasonable due diligence

could not determine that the mortgage was a high-cost home loan. The bill requires a creditor to meet specific written notice requirements, which are to be acknowledged in writing and signed by the borrower, within three business days prior to loan closing as required by federal regulation.

As part of its enforcement abilities, the bill also provides that the Department of Banking and Insurance shall conduct examinations and investigations and issue subpoenas and orders to enforce the bill's provisions with respect to persons licensed under or subject to the "New Jersey Licensed Lenders Act," and requires the submission of reports by persons originating or brokering high-cost home loans as required by the department by regulation.

In the event that a person fails to comply with a subpoena issued by the department, the department may request a court order for the production of the requested information. Persons in violation of the bill's provisions, may be subject to the following:

- a. A civil penalty of up to \$10,000 for each offense, 40% of which would be dedicated for and used by the department for consumer education through nonprofit organizations;
- b. License suspension, revocation or nonrenewal;
- c. Permanent removal of an individual responsible from working in his present capacity or in any other capacity related to activities regulated by the department;
- d. An order to cease and desist any violation of this bill and to make restitution for actual damages to borrowers.

In addition, the bill provides that the commissioner may enter certain temporary orders to prevent undue harm to borrowers pending completion of any investigation or formal proceeding. These provisions would not limit the authority of either the Attorney General or the Public Advocate from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited under this bill.

The bill provides an opportunity for lenders to cure good faith errors.

Finally, the bill makes violations subject to the consumer fraud law and the penalties and enforcement provisions therein. In addition, a person who substantially violates the provisions of this bill is liable to the borrower for: statutory damages equal to the finance charges agreed to in the home loan agreement, plus 10% of the amount financed; punitive damages, when the violation was malicious or reckless and costs and reasonable attorneys' fees. The bill preempts any ordinance, resolution, rule or regulation of a municipality or county concerning abusive home loan lending practices.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 198, 1200, 1540 and 2051

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED DECEMBER 12, 2002

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Senator BARBARA BUONO

District 18 (Middlesex)

Senator LEONARD LANCE

District 23 (Warren and Hunterdon)

Senator SHIRLEY K. TURNER

District 15 (Mercer)

Senator JOSEPH CONIGLIO

District 38 (Bergen)

Senator GERALD CARDINALE

District 39 (Bergen)

Senator BYRON M. BAER

District 37 (Bergen)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

Senator GARRY J. FURNARI

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

Senators Cafiero, Bark, Bucco, Palaia, Rice, Matheussen, Adler, Bennett, Martin, Ciesla, McNamara, Sweeney, Vitale, Codey, Connors, Bagger, Girgenti, B. Smith, James, Charles and Gill

SYNOPSIS

"New Jersey Home Ownership Security Act of 2002."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.

(Sponsorship Updated As Of: 2/28/2003)

1 **AN ACT** prohibiting certain abusive lending practices and
2 supplementing Title 46 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Home Ownership Security Act of 2002."

9

10 2. The Legislature finds and declares that:

11 a. Abusive mortgage lending has become an increasing problem in
12 this State, exacerbating the loss of equity in homes and causing an
13 increase in the number of foreclosures in recent years. One of the
14 most common forms of abusive lending is the making of loans that are
15 equity-based, rather than income-based. The financing of points and
16 fees in these loans provides immediate income to the originator and
17 encourages the repeated refinancing of home loans. The lender's
18 ability to sell loans reduces the incentive to ensure that the homeowner
19 can afford the payments of the loan. As long as there is sufficient
20 equity in the home, an abusive lender benefits even if the borrower is
21 unable to make the payments and is forced to refinance. In addition,
22 the financing of high points and fees causes the loss of precious equity
23 in each refinancing and often leads to foreclosure.

24 b. Abusive lending has threatened the viability of many
25 communities and caused decreases in home ownership. While the
26 marketplace appears to operate effectively for conventional mortgages,
27 too many homeowners find themselves victims of overreaching lenders
28 who provide loans with unnecessarily high costs and terms that are
29 unnecessary to secure repayment of the loan.

30 c. As competition and self-regulation have not eliminated the
31 abusive terms from loans secured by a consumer's home, the consumer
32 protection provisions of this act are necessary to encourage lending at
33 reasonable rates with reasonable terms.

34

35 3. As used in this act:

36 "Affiliate" means any company that controls, is controlled by, or
37 is under the common control with any company, as set forth in 12
38 U.S.C. s.1841 et seq.

39 "Bona fide discount points" means loan discount points which are:

40 (1) Knowingly paid by the borrower;

41 (2) Paid for the express purpose of reducing, and which result in
42 a reduction of, the interest rate or time-price differential applicable to
43 the loan; and

44 (3) Recouped within the first five years of the scheduled loan
45 payments. Loan discount points will be considered to be recouped
46 within the first five years of the scheduled loan payments if the

1 reduction in the interest rate that is achieved by the payment of the
2 loan discount points reduces the interest charged on the scheduled
3 payments such that the borrower's dollar amount of savings in interest
4 over the first five years is equal to or exceeds the dollar amount of
5 loan discount points paid by the borrower.

6 "Borrower" means any natural person obligated to repay the loan,
7 including a coborrower, cosigner, or guarantor.

8 "Commissioner" means the Commissioner of Banking and
9 Insurance.

10 "Conventional mortgage rate" means the most recently published
11 annual yield on conventional mortgages published by the Board of
12 Governors of the Federal Reserve System, as published in statistical
13 release H.15 or any publication that may supersede it, as of the
14 applicable time set forth in 12 C.F.R. 226.32(a)(1)(i).

15 "Covered home loan" means a home loan in which:

16 (1) The total points and fees payable in connection with the loan,
17 excluding not more than two bona fide discount points, exceed 4
18 percent of the total loan amount, or 4.5 percent of the total loan
19 amount if the total loan amount is \$40,000 or less, and 4.25 percent
20 of the total loan amount if the loan is a purchase money loan insured
21 by the Federal Housing Administration or guaranteed by the federal
22 Department of Veterans Affairs; or

23 (2) The home loan is such that it is considered a high-cost home
24 loan under this act.

25 "Creditor" means a person who extends consumer credit that is
26 subject to a finance charge or is payable by written agreement in more
27 than four installments, and to whom the obligation is payable at any
28 time. Creditor shall also mean any person brokering a home loan,
29 which shall include any person who directly or indirectly solicits,
30 processes, places, or negotiates home loans for others or who closes
31 home loans which may be in the person's own name with funds
32 provided by others and which loans are thereafter assigned to the
33 person providing the funding of such loans, provided that creditor shall
34 not include a person who is an attorney providing legal services to the
35 borrower or a person or entity holding an individual or organization
36 insurance producer license in the line of title insurance or a title
37 insurance company, as defined by subsection c. of section 1 of
38 P.L.1975, c.106 (C.17:46B-1), or any officer, director or employee
39 thereof, providing services in the closing of a home loan who is not
40 also funding the home loan and is not an affiliate of the creditor.

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

42 "High-cost home loan" means a home loan for which the principal
43 amount of the loan does not exceed \$350,000, which amount shall be
44 adjusted annually to include the last published increase of the housing
45 component of the national Consumer Price Index, New York-
46 Northeastern New Jersey Region, in which the terms of the loan meet

1 or exceed one or more of the thresholds as defined in this section.

2 "Home loan" means an extension of credit primarily for personal,
3 family or household purposes, including an open-end credit plan, other
4 than a reverse mortgage transaction, in which the loan is secured by:

5 (1) A mortgage or deed of trust on real estate in this State upon
6 which there is located or there is to be located a one to six family
7 dwelling which is or will be occupied by a borrower as the borrower's
8 principal dwelling; or

9 (2) A security interest in a manufactured home which is or will be
10 occupied by a borrower as the borrower's principal dwelling.

11 "Manufactured home" means a structure, transportable in one or
12 more sections, which in the traveling mode is eight body feet or more
13 in width or 40 body feet or more in length or, when erected on site is
14 320 or more square feet and which is built on a permanent chassis and
15 designed to be used as a dwelling with a permanent foundation when
16 erected on land secured in conjunction with the real property on which
17 the manufactured home is located and connected to the required
18 utilities and includes the plumbing, heating, air-conditioning and
19 electrical systems contained therein; except that such term shall
20 include any structure which meets all the requirements of this
21 paragraph except the size requirements and with respect to which the
22 manufacturer voluntarily files a certification required by the Secretary
23 of the United States Department of Housing and Urban Development
24 and complies with the standards established under the federal National
25 Manufactured Housing Construction and Safety Standards Act of
26 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental
27 property or second homes or manufactured homes when not secured
28 in conjunction with the real property on which the manufactured home
29 is located.

30 "Points and fees" means:

31 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
32 interest or the time-price differential;

33 (2) All charges listed in 15 U.S.C. s.1605(e);

34 (3) All compensation paid directly or indirectly to a mortgage
35 broker, including a broker that originates a loan in its own name in a
36 table-funded transaction;

37 (4) The cost of all premiums financed by the creditor, directly or
38 indirectly for any credit life, credit disability, credit unemployment or
39 credit property insurance, or any other life or health insurance, or any
40 payments financed by the creditor directly or indirectly for any debt
41 cancellation or suspension agreement or contract, except that
42 insurance premiums calculated and paid on a monthly basis shall not
43 be considered financed by the creditor;

44 (5) The maximum prepayment fees and penalties that may be
45 charged or collected under the terms of the loan documents;

46 (6) All prepayment fees or penalties that are incurred by the

1 borrower if the loan refinances a previous loan made by the same
2 creditor or an affiliate of the creditor; and

3 (7) For open-end loans, the points and fees are calculated by
4 adding the total points and fees known at or before closing, including
5 the maximum prepayment penalties which may be charged or collected
6 under the terms of the loan documents, plus the minimum additional
7 fees the borrower would be required to pay to draw down an amount
8 equal to the total credit line.

9 "Points and fees" shall not include the following items: title
10 insurance premiums and fees, charges and premiums paid to a person
11 or entity holding an individual or organization insurance producer
12 license in the line of title insurance or a title insurance company, as
13 defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-1);
14 taxes, filing fees, and recording and other charges and fees paid or to
15 be paid to public officials for determining the existence of or for
16 perfecting, releasing, or satisfying a security interest; and fees paid to
17 a person other than a creditor or an affiliate of the creditor or to the
18 mortgage broker or an affiliate of the mortgage broker for the
19 following: fees for tax payment services; fees for flood certification;
20 fees for pest infestation and flood determinations; appraisal fees; fees
21 for inspections performed prior to closing; fees for credit reports; fees
22 for surveys; attorneys' fees; notary fees; escrow charges; and fire and
23 flood insurance premiums, provided that the conditions in 12 C.F.R.
24 s.226.4(d)(2) are met.

25 "Rate" means that annual percentage rate for the loan calculated at
26 closing based on the points and fees set forth in this act and according
27 to the provisions of 15 U.S.C. s. 1601 et seq. and the regulations
28 promulgated thereunder by the Federal Reserve Board.

29 "Threshold" means any one of the following three items, as
30 defined:

31 (1) "Rate threshold" means the annual percentage rate of the loan
32 at the time the loan is consummated such that the loan is considered
33 a "mortgage" under section 152 of the federal "Home Ownership and
34 Equity Protection Act of 1994," Pub.L.103-325 (15 U.S.C.
35 s.1602(aa)), and the regulations promulgated by the Federal Reserve
36 Board, including 12 C.F.R. s.226.32, without regard to whether the
37 loan transaction is or may be a "residential mortgage transaction," as
38 defined in 12 C.F.R. s.226.2(a)(24) less 1.25 percentage points for a
39 loan secured by a first lien or a loan secured by a junior lien.

40 (2) "Total points and fees threshold" means that the total points
41 and fees payable by the borrower at or before the loan closing,
42 excluding up to two bona fide discount points, exceed:

43 (a) 5% of the total loan amount if the total loan amount is \$40,000
44 or more; or

45 (b) the lesser of 6% of the total loan amount or \$1,000, if the total
46 loan amount is less than \$20,000, and 6% if the total loan amount is

1 \$20,000 or more but less than \$40,000, except that no bona fide
2 discount points shall be excluded from the calculations in either
3 subparagraph (a) or (b) of this paragraph if the interest rate from
4 which the loan's interest rate will be discounted is such that it exceeds
5 the conventional mortgage rate for a home loan secured by a first lien,
6 by more than two percentage points, or for a home loan secured by a
7 junior lien, by more than three and one half percentage points.

8 "Total loan amount" means the principal of the loan minus those
9 points and fees as defined in this section that are included in the
10 principal amount of the loan. For open-end loans, the total loan
11 amount shall be calculated using the total line of credit allowed under
12 the home loan.

13

14 4. a. No creditor making a home loan shall finance, directly or
15 indirectly, any credit life, credit disability, credit unemployment or
16 credit property insurance, or any other life or health insurance, or any
17 payments directly or indirectly for any debt cancellation or suspension
18 agreement or contract, except that insurance premiums or debt
19 cancellation or suspension fees calculated and paid on a monthly basis
20 shall not be considered financed by the creditor.

21 b. No creditor shall engage in the unfair act or practice of
22 "flipping" a covered home loan. "Flipping" occurs when a creditor
23 makes a covered home loan to a borrower that refinances an existing
24 home loan that was consummated within the prior 60 months when the
25 new loan does not have reasonable, tangible net benefit to the
26 borrower considering all of the circumstances, including the terms of
27 both the new and refinanced loans, the economic and noneconomic
28 circumstances, the purpose of the loan, the cost of the new loan, and
29 the borrower's circumstances. In addition, the following home loan
30 refinancings shall be presumed to be flipping if:

31 (1) The primary tangible benefit to the borrower is an interest rate
32 lower than the interest rate on a debt satisfied or refinanced in
33 connection with the home loan, and it will take more than four years
34 for the borrower to recoup the costs of the points and fees and other
35 closing costs through savings resulting from the lower interest rate; or

36 (2) The new loan refinances an existing home loan that is a special
37 mortgage originated, subsidized, or guaranteed by or through a state,
38 tribal or local government, or nonprofit organization, which either
39 bears a below-market interest rate at the time the loan was originated,
40 or has nonstandard payment terms beneficial to the borrower, such as
41 payments that vary with income or are limited to a percentage of
42 income, or where no payments are required under specified conditions,
43 and where, as a result of refinancing, the borrower will lose one or
44 more of the benefits of the special mortgage.

45 Without limiting the foregoing, it is hereby declared that this
46 section shall create no presumption that any home loan that is not a

1 covered home loan or a high-cost home loan, and any refinancing
2 outside the durational limits set forth above, is not unconscionable,
3 and it is hereby further declared that this section shall create no
4 presumption that any home loan that is not a covered home loan or a
5 high-cost home loan, and any refinancing outside the durational limits
6 set forth above, shall not constitute an unlawful practice under
7 P.L.1960, c.39 (C.56:8-1 et seq.), based on the factors set forth in this
8 section or any other circumstances.

9 c. No creditor shall recommend or encourage default on an
10 existing loan or other debt prior to and in connection with the closing
11 or planned closing of a home loan that refinances all or any portion of
12 that existing loan or debt.

13 d. No creditor shall charge a late payment fee in relation to a
14 home loan except according to the following rules:

15 (1) The late payment fee may not be in excess of 5% of the
16 amount of the payment past due.

17 (2) The fee may only be assessed by a payment past due for
18 15 days or more.

19 (3) The fee may not be charged more than once with respect to a
20 single late payment. If a late payment fee is deducted from a payment
21 made on the loan, and such deduction causes a subsequent default on
22 a subsequent payment, no late payment fee may be imposed for such
23 default. If a late payment fee has been once imposed with respect to
24 a particular late payment, no such fee shall be imposed with respect to
25 any future payment which would have been timely and sufficient, but
26 for the previous default.

27 (4) No fee shall be charged unless the creditor notifies the
28 borrower within 45 days following the date the payment was due that
29 a late payment fee has been imposed for a particular late payment. No
30 late payment fee may be collected from any borrower if the borrower
31 informs the creditor that nonpayment of an installment is in dispute
32 and presents proof of payment within 45 days of receipt of the
33 creditor's notice of the late fee.

34 (5) The creditor shall treat each and every payment as posted on
35 the same date as it was received by the creditor, servicer, creditor's
36 agent, or at the address provided to the borrower by the creditor,
37 servicer, or the creditor's agent for making payments.

38 e. No home loan shall contain a provision that permits the
39 creditor, in its sole discretion, to accelerate the indebtedness. This
40 provision does not prohibit acceleration of the loan in good faith due
41 to the borrower's failure to abide by the material terms of the loan.

42 f. No creditor shall charge a fee for informing or transmitting to
43 any person the balance due to pay off a home loan or to provide a
44 release upon prepayment. Payoff balances shall be provided within
45 seven business days after the request.

1 5. A high-cost home loan shall be subject to the following
2 additional limitations and prohibited practices:

3 a. No high-cost home loan shall contain a scheduled payment that
4 is more than twice as large as the average of earlier scheduled
5 payments. This provision shall not apply when the payment schedule
6 is adjusted to the seasonal or irregular income of the borrower.

7 b. No high-cost home loan shall include payment terms under
8 which the outstanding principal balance will increase at any time over
9 the course of the loan because the regular periodic payments do not
10 cover the full amount of interest due.

11 c. No high-cost home loan shall contain a provision that increases
12 the interest rate after default. This provision shall not apply to interest
13 rate changes in a variable rate loan otherwise consistent with the
14 provisions of the loan documents, provided the change in the interest
15 rate is not triggered by the event of default or the acceleration of the
16 indebtedness.

17 d. No high-cost home loan shall include terms under which more
18 than two periodic payments required under the loan are consolidated
19 and paid in advance from the loan proceeds provided to the borrower.

20 e. Without regard to whether a borrower is acting individually or
21 on behalf of others similarly situated, any provision of a high-cost
22 home loan agreement that allows a party to require a borrower to
23 assert any claim or defense in a forum that is less convenient, more
24 costly, or more dilatory for the resolution of a dispute than a judicial
25 forum established in this State if the borrower may otherwise properly
26 bring a claim or defense or limits in any way any claim or defense the
27 borrower may have is unconscionable and void.

28 f. A creditor shall not make a high-cost home loan unless the
29 creditor has given the following notice, or substantially similar notice,
30 in writing, to the borrower, acknowledged in writing and signed by the
31 borrower not later than the time the notice is required under the notice
32 provision contained in 12 C.F.R. s.226.31(c).

33

34

NOTICE TO BORROWER

35

36 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE
37 TO OBTAIN A LOAN AT A LOWER COST. YOU
38 SHOULD SHOP AROUND AND COMPARE LOAN RATES
39 AND FEES. MORTGAGE LOAN RATES AND CLOSING
40 COSTS AND FEES VARY BASED ON MANY FACTORS,
41 INCLUDING YOUR PARTICULAR CREDIT AND
42 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT
43 HISTORY, THE LOAN-TO-VALUE REQUESTED AND
44 THE TYPE OF PROPERTY THAT WILL SECURE YOUR
45 LOAN. THE LOAN RATE AND FEES COULD ALSO
46 VARY BASED ON WHICH CREDITOR OR BROKER YOU
47 SELECT.

1 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
2 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR
3 HOME. YOU COULD LOSE YOUR HOME AND ANY
4 MONEY YOU PUT INTO IT IF YOU DO NOT MEET
5 YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

6
7 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND
8 A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR
9 OTHER EXPERIENCED FINANCIAL ADVISOR
10 REGARDING THE RATE, FEES AND PROVISIONS OF
11 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A
12 LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY
13 CONTACTING THE NEW JERSEY DEPARTMENT OF
14 BANKING AND INSURANCE.

15
16 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
17 AGREEMENT MERELY BECAUSE YOU HAVE
18 RECEIVED THIS DISCLOSURE OR HAVE SIGNED A
19 LOAN APPLICATION.

20
21 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
22 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL
23 CREDITORS PROVIDE ESCROW SERVICES FOR THESE
24 PAYMENTS. YOU SHOULD ASK YOUR CREDITOR
25 ABOUT THESE SERVICES.

26
27 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
28 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU
29 SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR
30 REGULAR PAYMENTS TO YOUR EXISTING
31 CREDITORS.

32 g. A creditor shall not make a high-cost home loan to a borrower
33 who finances points and fees in connection with a high-cost home loan
34 without first receiving certification from a third-party nonprofit credit
35 counselor, approved by the United States Department of Housing and
36 Urban Development and the Department of Banking and Insurance,
37 that the borrower has received counseling on the advisability of the
38 loan transaction or completing another substantial requirement
39 developed by the department.

40 h. A creditor shall not pay a contractor under a home-
41 improvement contract from the proceeds of a high-cost home loan,
42 unless the instrument is payable to the borrower or jointly to the
43 borrower and the contractor, or, at the election of the borrower,
44 through a third-party escrow agent in accordance with terms
45 established in a written agreement signed by the borrower, the
46 creditor, and the contractor prior to the disbursement.

47 i. A creditor shall not charge a borrower any fees or other charges

1 to modify, renew, extend, or amend a high-cost home loan or to defer
2 any payment due under the terms of a high-cost home loan.

3 j. A creditor shall not charge a borrower points and fees in
4 connection with a high-cost home loan if the proceeds of the high-cost
5 home loan are used to refinance an existing high-cost home loan held
6 by the same creditor as note holder.

7 k. Notwithstanding any other law to the contrary, a creditor
8 making a high-cost home loan that has the legal right to foreclose shall
9 use the judicial foreclosure procedures of this State so long as the
10 property securing the loan is located in this State.

11 l. No creditor making a high-cost home loan shall directly or
12 indirectly finance points and fees in excess of 2% of the total loan
13 amount.

14

15 6. a. Notwithstanding any other law to the contrary, if a home
16 loan was made, arranged, or assigned by a person selling either a
17 manufactured home, or home improvements to the dwelling of a
18 borrower, or was made by or through a creditor to whom the
19 borrower was referred by such seller, the borrower may assert all
20 affirmative claims and any defenses that the borrower may have against
21 the seller or home-improvement contractor against the creditor, any
22 assignee or holder, in any capacity.

23 b. Notwithstanding any other provision of law, any person who
24 purchases or is otherwise assigned a high-cost home loan shall be
25 subject to all affirmative claims and any defenses with respect to the
26 loan that the borrower could assert against the original creditor or
27 broker of the loan; provided that this subsection shall not apply if the
28 purchaser or assignee demonstrates, by a preponderance of the
29 evidence, that a reasonable person exercising reasonable due diligence
30 could not determine that the mortgage was a high-cost home loan. It
31 shall be presumed that a purchaser or assignee has exercised such due
32 diligence if the purchaser or assignee demonstrates by a preponderance
33 of the evidence that it: (1) maintains policies that expressly prohibit
34 its purchase or acceptance of assignment of any high-cost home loan;
35 (2) requires by contract that a seller or assignor of home loans to the
36 purchaser or assignee represents and warrants to the purchaser or
37 assignee that it will not sell or assign any high-cost home loan to the
38 purchaser or assignee; and (3) exercises reasonable due diligence at
39 the time of purchase or assignment of home loans or within a
40 reasonable period of time thereafter intended by the purchaser or
41 assignee to prevent the purchaser or assignee from purchasing or
42 taking assignment of any high-cost home loan.

43 c. Notwithstanding any other law to the contrary, but limited to
44 amounts required to reduce or extinguish the borrower's liability under
45 the home loan plus amounts required to recover costs including
46 reasonable attorney's fees, a borrower acting only in an individual
47 capacity may assert against the creditor or any subsequent holder or

1 assignee of the home loan:

2 (1) within six years of the closing of a covered home loan, a
3 violation of section 4, subsection d. of this section, section 8 and
4 section 12 of this act in connection with the loan as an original action
5 or as a defense, claim or counterclaim after an action to collect on the
6 home loan or foreclose on the collateral securing the home loan has
7 been initiated or the debt arising from the home loan has been
8 accelerated or the home loan has become 60 days in default; and

9 (2) at any time during the term of the loan after an action to collect
10 on the home loan or foreclose on the collateral securing the home loan
11 has been initiated or the debt arising from the home loan has been
12 accelerated or the home loan has become 60 days in default, a
13 violation of this act in connection with a high-cost home loan as a
14 defense, claim or counterclaim; or any defense, claim or counterclaim
15 in connection with a high-cost home loan.

16 d. It is a violation of this act for any person, in bad faith, to
17 attempt to avoid the application of this act by:

18 (1) Dividing any loan transaction into separate parts; or

19 (2) Any other such subterfuge, with the intent of evading the
20 provisions of this act.

21 e. Nothing in this section shall be construed to limit the
22 substantive rights, remedies or procedural rights available to a
23 borrower against any creditor, assignee or holder under any other law.
24 The limitations on assignee liability in subsection b. of this section
25 shall not apply to the assignee liability in subsection a., c. and d. of this
26 section.

27
28 7. a. The department shall conduct examinations and investigations
29 and issue subpoenas and orders to enforce the provisions of this act
30 with respect to a person licensed or subject to the provision of the
31 "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et
32 seq.).

33 b. The department shall examine any instrument, document,
34 account, book, record, or file of a person originating or brokering a
35 high-cost home loan under this act. The department shall recover the
36 cost of examinations from the person. A person originating or
37 brokering high-cost home loans shall maintain its records in a manner
38 that will facilitate the department in determining whether the person
39 is complying with the provisions of this act and the regulations
40 promulgated thereunder. The department shall require the submission
41 of reports by persons originating or brokering high-cost home loans
42 which shall set forth such information as the department shall require
43 by regulation.

44 c. In the event that a person fails to comply with a subpoena for
45 documents or testimony issued by the department, the department may
46 request an order from a court of competent jurisdiction requiring the
47 person to produce the requested information.

1 d. If the department determines that a person has violated the
2 provisions of this act, the department may do any combination of the
3 following that it deems appropriate:

4 (1) Impose a civil penalty of up to \$10,000 for each offense, 40%
5 of which penalty shall be dedicated for and used by the department for
6 consumer education through nonprofit organizations which can
7 establish to the satisfaction of the department that they have sufficient
8 experience in credit counseling and financial education. In determining
9 the penalty to be assessed, the commissioner shall consider the
10 following criteria: whether the violation was willful; whether the
11 violation was part of a pattern and practice; the amount of the loan;
12 the points and fees charged; the financial condition of the violator; and
13 other relevant factors. The department may require the person to pay
14 investigative costs, if any.

15 (2) Suspend, revoke, or refuse to renew any license issued by the
16 department.

17 (3) Prohibit or permanently remove an individual responsible for
18 a violation of this act from working in his present capacity or in any
19 other capacity related to activities regulated by the department.

20 (4) Order a person to cease and desist any violation of this act and
21 to make restitution for actual damages to borrowers.

22 (5) Pending completion of an investigation or any formal
23 proceeding instituted pursuant to this act, if the commissioner finds
24 that the interests of the public require immediate action to prevent
25 undue harm to borrowers, the commissioner may enter an appropriate
26 temporary order to be effective immediately and until entry of a final
27 order. The temporary emergent order may include: a temporary
28 suspension of the creditor's authority to make high-cost home loans
29 under this act; a temporary cease and desist order; a temporary
30 prohibition against a creditor transacting high-cost home loan business
31 in this State, or such other order relating to high-cost home loans as
32 the commissioner may deem necessary to prevent undue harm to
33 borrowers pending completion of an investigation or formal
34 proceeding. Orders issued pursuant to this section shall be subject to
35 an application to vacate upon two days' notice, and a preliminary
36 hearing on the temporary emergent order shall be held, in any event,
37 within five days after it is issued, in accordance with the provisions of
38 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
39 seq.).

40 (6) Impose such other conditions as the department deems
41 appropriate.

42 e. Any person aggrieved by a decision of the department and who
43 has a direct interest in the decision may appeal the decision of the
44 department to the commissioner. The appeal shall be conducted in
45 accordance with the provisions of the "Administrative Procedure Act,"
46 P.L.1968, c.410 (C.52:14B-1 et seq.).

47 f. The department may maintain an action for an injunction or

1 other process against any person to restrain and prevent the person
2 from engaging in any activity violating this act.

3 g. A decision of the commissioner shall be a final order of the
4 department and shall be enforceable in a court of competent
5 jurisdiction. The department shall publish the final adjudication issued
6 in accordance with this section, subject to redaction or modification
7 to preserve confidentiality.

8 h. The provisions of this section shall not limit the authority of the
9 Attorney General or the Public Advocate as established pursuant to
10 P.L. , c. (C.) (now before the Legislature as Assembly
11 Committee Substitute for Assembly, Nos. 345 and 2341) from
12 instituting or maintaining any action within the scope of their
13 respective authority with respect to the practices prohibited under this
14 act.

15
16 8. a. Any violation of this act constitutes an unlawful practice
17 under P.L.1960, c.39 (C.56:8-1 et seq.). Any borrower may seek
18 damages under the provisions of section 7 of P.L.1971, c.247 (C.56:8-
19 19) or subparagraph (a) of paragraph (1) of subsection b. of this
20 section, but not both.

21 b. Except as provided in subsection a. of this section, in addition
22 to the remedies available to a borrower under P.L.1960, c.39 (C.56:8-
23 1 et seq.) and without limiting those remedies:

24 (1) Any person found by a preponderance of the evidence to have
25 materially violated this act shall be liable to the borrower for the
26 following:

27 (a) Statutory damages equal to the finance charges agreed to in
28 the home loan agreement, plus 10% of the amount financed;

29 (b) Punitive damages, when the violation was malicious or
30 reckless in appropriate circumstances as determined by the fact-finder;
31 and

32 (c) Costs and reasonable attorneys' fees.

33 (2) A borrower may be granted injunctive, declaratory, and such
34 other equitable relief as the court deems appropriate in an action to
35 enforce compliance with this act.

36 (3) The remedies provided in this section are not intended to be
37 the exclusive remedies available to a borrower, nor must the borrower
38 exhaust any administrative remedies provided under this act or any
39 other applicable law before proceeding under this section.

40 c. A creditor in a home loan who, when acting in good faith, fails
41 to comply with the provisions of this act, will not be deemed to have
42 violated this section if the creditor establishes that either:

43 (1) Within 45 days of the loan closing, the creditor has made
44 appropriate restitution to the borrower, and appropriate adjustments
45 are made to the loan; or

46 (2) Within 90 days of the loan closing and prior to receiving any
47 notice from the borrower of the compliance failure, and the

1 compliance failure was not intentional and resulted from a bona fide
2 error notwithstanding the maintenance of procedures reasonably
3 adopted to avoid such errors, the borrower is notified of the
4 compliance failure, appropriate restitution is made to the borrower,
5 and appropriate adjustments are made to the loan.

6 Examples of bona fide errors include clerical, calculation, computer
7 malfunction and programming, and printing errors. An error of legal
8 judgment with respect to a person's obligations under this section is
9 not a bona fide error.

10 d. Notwithstanding any provision of this act to the contrary, a
11 broker, who is a creditor, shall be liable for any violation of this act by
12 any party involved in a home loan transaction that he brokered.

13 e. The remedies provided in this section are cumulative.

14
15 9. The rights, remedies, and prohibitions accorded by the
16 provisions of this act are hereby declared to be in addition to and
17 cumulative of any other right, remedy, or prohibition accorded by the
18 common law or statutes of the United States or of this State, and
19 nothing herein shall be construed to deny, abrogate, or impair any such
20 common law or statutory right, remedy, or prohibition. Without
21 limiting the foregoing, the rights, remedies and prohibitions accorded
22 by the provisions of this act are hereby further declared to create no
23 presumption that any home loan or any term in a home loan is not
24 unconscionable, whether or not the home loan or loan term, alone or
25 in conjunction with other terms of the loan, violates the provisions of
26 this act.

27
28 10. The law of the state in which the property is located shall be
29 applied to all transactions governed by this act regardless of where
30 those transactions originated. This act shall apply to all loans made or
31 entered into after the effective date of this act.

32
33 11. The Director of the Division of Banking in the Department of
34 Banking and Insurance, in consultation with the Director of the
35 Division of Consumer Affairs and the Division of Civil Rights in the
36 Department of Law and Public Safety, shall develop and implement a
37 program of consumer counseling and awareness designed to inform the
38 public about the methods by which predatory creditors impose
39 unconscionable and noncompetitive fees and charges as part of
40 complex home mortgage transactions, to protect the public from
41 incurring those fees and charges, and otherwise to encourage the
42 informed and responsible use of credit.

43
44 12. Notwithstanding any provision of this act to the contrary, a
45 mortgage broker shall be liable under the provisions of this act only for
46 acts performed by the mortgage broker in the course of providing

1 mortgage brokering services. However, a mortgage broker may be
2 held liable for acts performed by the mortgage broker outside the
3 scope of mortgage brokering services if the acts are related to the
4 purchasing or the making of a home loan and are otherwise prohibited
5 under this act.

6

7 13. No municipality, county or political subdivision thereof, shall
8 enact an ordinance or resolution or promulgate any rules or
9 regulations relating to this act. The provisions of any ordinance or
10 resolution or rules or regulations of any municipality or county relative
11 to abusive home loan lending practices are superseded by the
12 provisions of this act.

13

14 14. The Commissioner of Banking and Insurance shall promulgate
15 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
16 c.410 (C.52:14B-1 et seq.) necessary to effectuate the provisions of
17 subsections f. and g. of section 5 and section 11 of this act except that
18 prior to the effective date of this act the commissioner may take those
19 actions and promulgate those regulations necessary to implement these
20 provisions.

21

22 15. This act shall take effect on the 210th day following enactment
23 and shall apply to home loans closed on and after that date, except that
24 section 14 shall take effect immediately.





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RELEASE: May 01, 2003

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McGreevey Signs Predatory Lending Bill to Protect New Jersey Consumers

(TRENTON) – Continuing his commitment to protecting New Jersey consumers, Governor James E. McGreevey today signed into law predatory lending legislation that will provide some of the strongest safeguards in the nation to stop homeowners from unjustly losing their homes and assets.

“Owning a home is the embodiment of the American dream,” said Governor McGreevey. “For decades, it has been our state's policy to encourage home ownership as a primary way to build personal wealth and ensure neighborhood stability. Predatory lending plays on these hopes and dreams. These dishonest lenders exploit the misfortune or naïveté of others with high interest rates, outrageous fees and unaffordable repayment terms.”

Predatory lending is the use of unfair and abusive mortgage lending practices that result in a borrower paying more through high fees or interest rates than the borrower's credit history warrants. Due to the complicated nature of mortgage transactions, it is often difficult for individuals to tell the difference between a legitimate and predatory loan.

“Today, I am proud to sign strong and effective pro-consumer legislation that will – once and for all - stamp out predatory lending in New Jersey,” said Governor McGreevey. “This bill is a major step forward to ensure that all New Jerseyans are protected from those who would rob them of what they have worked so hard to earn.”

The legislation provides the strongest safeguards related to “high-cost” loans in the entire nation. It prohibits financing of credit insurance, penalty interest rates, balloon payments and unfair arbitration standards. The bill ensures that victims of predatory lending are able to bring claims to defend themselves. It also provides the Attorney General’s Division of Consumer Affairs and the Department of Banking and Insurance with sound enforcement provisions to ensure that companies comply with the law.

“The Department of Banking and Insurance protects New Jersey consumers in the financial marketplace,” said Banking and Insurance Commissioner Holly C. Bakke. “This legislation gives us the tools to eliminate loan practices that hurt consumers while allowing us to promote the growth of lenders who provide loans that consumers truly need.”

“This legislation balances protection from predatory lending against preserving the availability of credit for millions of New Jersey residents,” said Governor McGreevey. “Responsible lenders provide much-needed access to credit and allow New Jersey residents to achieve their dreams. But, Predatory Lenders give them a bad name. This legislation ensures that responsible lenders will be able to continue to make legitimate loans.”

"The signing of this legislation does not come in haste," said Senator Barbara Buono, D-Middlesex. "Hours upon hours were spent crafting this bill in an effort to end years of misleading lending practices. I believe the end product sends New Jersey down the correct path of fairness and equity."

"Without setting such guidelines, lenders would continue to profit from exorbitant rates and unfair contracts, while decent, hardworking Americans fall into greater debt," said Senator Byron M. Baer, D-Bergen, Co-Chair of the Senate Commerce Committee. "This legislation doesn't come a minute too soon."

"Today represents a significant victory for all homeowners and home buyers in New Jersey, and especially for those on fixed incomes," said Senator Shirley Turner, D-Mercer. "This measure sends a clear message to predatory lenders who seek to rob residents of the equity in their homes: *You are not welcome at New Jersey's doorstep.*"

“Predatory lending practices have wiped out years of hard-earned equity built by the very people who can least afford to have their equity destroyed,” said Senator Joseph Coniglio, D-Bergen. “Lawmakers in New Jersey recognize the struggles involved in owning a home. From this day forward, these struggles will no longer

be compounded by greedy creditors."

"Predatory lenders push unsuspecting homeowners into loans with excessive interest rates, hidden charges and fees and absolutely unrealistic payment schedules," said Assemblyman Jeff Van Drew D-Cape May. "Mortgage financing scams are nothing short of legalized loan sharking and, alarmingly, they are on the rise. Many senior citizens are 'house rich and cash poor' - a financial situation that makes them easy prey for the exploitative practices of predatory lenders. Senior citizens who spent their lives to attain the American dream of home ownership should not have their golden years stolen away from them."

"Predatory lending has a damaging effect on poorer neighborhoods by undercutting revitalization efforts, undermining community stability and promoting poverty," said Assemblyman Craig Stanley D-Essex. "It's time to end reverse redlining - this new form of racial profiling. With this new law, we can put predatory lending in check and ensure that the American dream of home ownership does not become a nightmare for the needy and disenfranchised."

"Today's bill signing signals an end to unscrupulous predatory mortgage lending practices that preyed on the financially inexperienced, elderly, and poor," said Marilyn Askin AARP New Jersey State President. "The New Jersey law will serve as a model law for other states,"

Over the past year, the McGreevey Administration has been proactive in its efforts to fight for New Jersey's consumers, particularly with reforms to EZPass and its proposal to overhaul the Division of Motor Vehicles to make the agency more customer-friendly and secure. Governor McGreevey remains committed to establishing the strongest do-not-call list in the entire nation - so that New Jerseyans are not annoyed by unwanted telemarketing calls.

The administration has also proposed regulations to improve the overall quality of customer service to New Jersey's 2.5 million cable subscribers. And, the administration has signed rules applying the highest levels of protection to 15 bodies of water throughout the state - which provide drinking water to 3.5 million people.

(Photos and audio and video clips from Governor McGreevey's press conferences are available on the Governor's web page at

<http://www.state.nj.us/governor/>. *Links are located in the Governor's Newsroom section of the page.)*

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