

17:10B-1

**LEGISLATIVE HISTORY CHECKLIST**  
Compiled by the NJ State Law Library

(Loan brokers--prohibit  
advance fees)

NJSA: 17:10B-1  
LAWS OF: 1992 CHAPTER: 66  
BILL NO: S575  
SPONSOR(S) Cafiero

DATE INTRODUCED: March 16, 1992

COMMITTEE: ASSEMBLY: ---  
SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: July 18, 1992  
SENATE: June 4, 1992

DATE OF APPROVAL: July 29, 1992

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

**FOLLOWING WERE PRINTED:**

REPORTS: No

HEARINGS: No

See newspaper clippings--attached  
KBG:pp

[FIRST REPRINT]

SENATE, No. 575

STATE OF NEW JERSEY

INTRODUCED MARCH 16, 1992

By Senator CAFIERO

1 AN ACT concerning loan brokers.

2

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

5 1. As used in this act:

6 "Advance fee" means any consideration which is assessed or  
7 collected <sup>1</sup>by a loan broker<sup>1</sup>, prior to the closing of a loan or  
8 <sup>1</sup>[securing] issuing<sup>1</sup> a credit card or <sup>1</sup>approving a<sup>1</sup> line of credit  
9 <sup>1</sup>[, by a loan broker]<sup>1</sup>.

10 "Borrower" means a person obtaining or desiring to obtain a  
11 loan of money, credit card or line of credit for personal, family  
12 or household use.

13 "Commissioner" means the Commissioner of Banking or his  
14 designee.

15 "Department" means the Department of Banking.

16 "Loan broker" means any person who:

17 (1) For or in expectation of consideration, arranges or offers  
18 to arrange or offers to fund for a borrower a loan of money,  
19 credit card, or line of credit;

20 (2) For or in expectation of consideration, assists or advises or  
21 offers to assist or advise a borrower in obtaining or attempting to  
22 obtain a loan of money, credit card or line of credit; or

23 (3) Holds himself out as a loan broker.

24 2. No loan broker shall:

25 a. Assess <sup>1</sup>[or],<sup>1</sup> collect <sup>1</sup>or hold<sup>1</sup> an advance fee <sup>1</sup>, directly or  
26 indirectly,<sup>1</sup> from <sup>1</sup>or on behalf of<sup>1</sup> a borrower to provide services  
27 as a loan broker;

28 b. Make or use any false or misleading representations or omit  
29 any material fact in the offer or sale of the services of a loan  
30 broker or <sup>1</sup>[engage] lender, whether real or purported;

31 c. Engage<sup>1</sup>, directly or indirectly, in any act that operates or  
32 would operate as fraud or deception upon any person in  
33 connection with the offer or sale of the services of a loan broker  
34 <sup>1</sup>or lender, whether real or purported<sup>1</sup>, notwithstanding the  
35 absence of reliance by the <sup>1</sup>[buyer] borrower<sup>1</sup>; or

36 <sup>1</sup>[c.] d.<sup>1</sup> Make <sup>1</sup>[or use]<sup>1</sup> any false or deceptive representation  
37 <sup>1</sup>[in its business dealings or]<sup>1</sup> to the department or conceal a  
38 material fact from the department.

39 3. a. The commissioner may make such investigations and  
40 examinations upon reasonable suspicion <sup>1</sup>[within or outside of this  
41 State]<sup>1</sup> as he deems necessary to determine whether a person has  
42 violated or is about to violate any provision of this act or any

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SCM committee amendments adopted June 1, 1992.

1 order, rule or regulation issued hereunder. For such purposes, he  
2 may investigate or examine the books, accounts, records,  
3 papers and other documents or matters of the person. He shall  
4 have the power to compel by subpoena the attendance of witnesses  
5 and the production of all relevant books, accounts, records,  
6 papers and other documents or matters relative to an  
7 examination or investigation and to administer oaths and  
8 affirmations to any person. The costs of each examination shall  
9 be borne by the person at the department's regular per diem rate  
10 for examinations of licensees. Examinations conducted under  
11 the provisions of this act shall be confidential except as required  
12 in the administration, enforcement and prosecution of violations  
13 under this act actions brought by the Attorney General, or  
14 pursuant to a court order.

15 b. If any person refuses to obey a subpoena, or to give  
16 testimony or to produce evidence, the commissioner may apply ex  
17 parte to any court having jurisdiction over that person for an  
18 order compelling the appearance of the witness before the  
19 commissioner to give testimony or to produce evidence as  
20 required thereby, or both.

21 4. a. The commissioner may order a loan broker to cease and  
22 desist whenever the commissioner determines that the loan  
23 broker has violated, is violating, or is about to violate any  
24 provision of this act, any rule or regulation or order  
25 promulgated by the commissioner pursuant thereto, any order  
26 issued by the commissioner, or any written agreement entered  
27 into with the commissioner.

28 b. The commissioner may, after a hearing affording notice  
29 and a reasonable opportunity to be heard, impose and collect an  
30 administrative fine against any person found to have violated any  
31 provision of this act, any rule or regulation or order  
32 promulgated by the commissioner pursuant thereto, any order  
33 issued by the commissioner, or any written agreement entered  
34 into with the commissioner, in an amount not to exceed \$5,000  
35 for each such violation.

36 5. a. Any person who violates any provision of this act shall be  
37 liable to a civil penalty [not to exceed \$5,000] of not more  
38 than \$7,500 for a first offense and not more than \$15,000 for the  
39 second and each subsequent offense, to be recovered in a  
40 summary proceeding under "the penalty enforcement law,"  
41 N.J.S.2A:58-1 et seq. [In addition, willful violations of this act  
42 shall be considered a crime of the third degree, punishable as  
43 specified in N.J.S.2C:43-3 and N.J.S.2C:43-6.] Each violation  
44 shall constitute a separate offense.

45 b. If the commissioner has reason to believe that any person  
46 has engaged, is engaged, or is about to engage in any act or  
47 practice prohibited by this act, the commissioner may, in addition  
48 to any other remedies he may have, bring a summary action in  
49 the name and on behalf of the State against the person to enjoin  
50 the person from engaging in any act or practice in violation of  
51 this act.

52 6. a. Any borrower injured by a violation of this act may bring  
53 an action for recovery of damages. Judgment shall be entered  
54 for actual damages, but in no case less than the amount paid by

1 the borrower to the loan broker, plus reasonable attorneys' fees  
2 and costs.

3 b. The remedies provided under this act are in addition to any  
4 other procedures or remedies for any violation or conduct  
5 provided for in any other law.

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

19 8. The commissioner may, pursuant to the "Administrative  
20 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
21 and regulations as he deems necessary in the administration of  
22 this act.

23 9. This act shall take effect immediately.

24  
25  
26  
27

28 Prohibits certain persons from taking advance fees for loans.

1 companies.

2 8. The commissioner may, pursuant to the "Administrative  
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
4 and regulations as he deems necessary in the administration of  
5 this act.

6 9. This act shall take effect immediately.

7

8

9

#### STATEMENT

10

11 This bill prohibits certain persons, called loan brokers, from  
12 collecting advance fees from borrowers for arranging or assisting  
13 in obtaining a loan of money, credit card or line of credit for  
14 personal, family or household use. This prohibition does not apply  
15 to lenders in the State who are otherwise licensed to lend or  
16 practice, such as banks, insurance companies or attorneys.

17

18

19

20

21 Prohibits certain persons from taking advance fees for loans.

SENATE COMMERCE COMMITTEE

STATEMENT TO

**SENATE, No. 575**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 1, 1992

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 575.

This bill, as amended, provides for the regulation of loan brokers by the Department of Banking and prohibits loan brokers from collecting a fee in advance from borrowers for advising, arranging or assisting in obtaining a loan of money, the issuing of a credit card or approval of a line of credit for personal, family or household use. This bill also prohibits loan brokers from making or using any false or misleading representation or omitting any material fact in providing services as a loan broker; engaging in any act which operates as fraud or deception upon any person in connection with providing services as a loan broker; and making any false or deceptive representation to the department or concealing a material fact from the department.

The commissioner may make such investigations and examinations upon reasonable suspicion as he deems necessary to determine if a person has violated or is about to violate the provisions of this bill. The cost of such examinations would be borne by the person at the department's regular per diem rate for examination of licensees.

Whenever the commissioner determines that a loan broker has violated, is violating or is about to violate the provisions of this bill, he may order the loan broker to cease and desist or may bring a summary action in court to enjoin the loan broker from such violations. The bill also provides for an administrative penalty of not more than \$5,000 for each violation and for a court imposed penalty of not more than \$7,500 for a first violation and not more than \$15,000 for a subsequent violation.

The bill also provides that a borrower who is injured by a violation of the provisions of the bill may bring an action to recover damages, which damages shall not be less than the amount paid by the borrower to the loan broker, plus reasonable attorneys' fees and costs.

The prohibitions contained in the bill do not apply to lenders and certain others which are otherwise licensed or regulated, such as banks, insurance companies, certified public accountants and attorneys.