

ASSEMBLY, No. 3816

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2009

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

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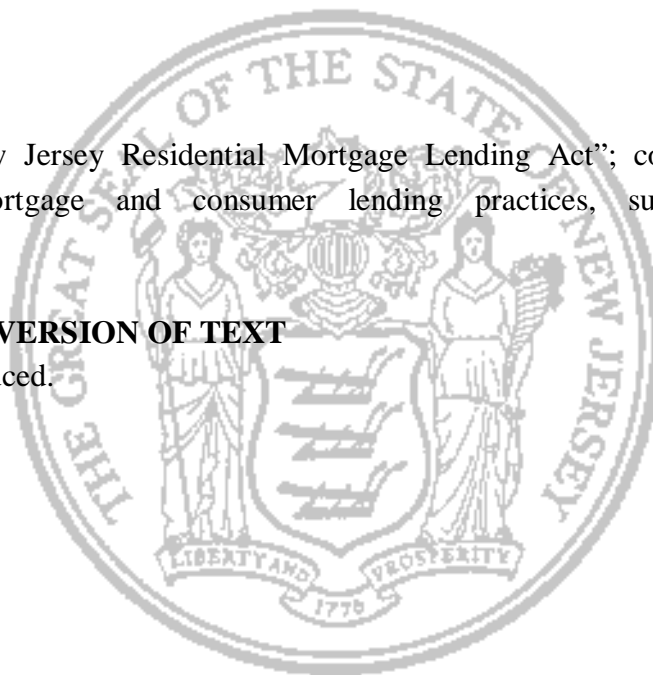
**Assemblymen Coutinho, Vas, Assemblywoman Greenstein, Assemblymen
Conners, Conaway, Assemblywoman Riley, Assemblymen Scalera,
Moriarty, Assemblywomen Wagner, Voss, Senators Buono, Lesniak,
Madden and Beck**

SYNOPSIS

The “New Jersey Residential Mortgage Lending Act”; concerns certain licensed mortgage and consumer lending practices, supervision and enforcement.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/17/2009)

1 AN ACT concerning certain licensed lending activities,
2 supplementing P.L.1996, c.157 (C.17:11C-1 et seq.), and
3 revising various parts of the statutory law.

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

7
8 1. (New section) Sections 1 through 39 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) shall be known and may
10 be cited as the “New Jersey Residential Mortgage Lending Act.”

11
12 2. (New section) The Legislature finds and declares that the
13 activities of residential mortgage lenders and residential mortgage
14 brokers, previously licensed in New Jersey as mortgage bankers,
15 correspondent mortgage bankers, mortgage brokers, and secondary
16 lenders in the secondary mortgage loan business, and mortgage loan
17 originators, previously registered in this State as mortgage
18 solicitors, and the origination or offering of financing for residential
19 real property, have a direct, valuable and immediate impact upon
20 the State’s consumers, economy, neighborhoods and communities,
21 and the housing and real estate industry. The Legislature also finds
22 and declares that accessibility to mortgage credit is vital to the
23 State’s citizens.

24 The Legislature further finds and declares that it is essential for
25 the protection of the citizens and the stability of the economy that
26 reasonable standards for licensing and regulation of the business
27 practices of residential mortgage lenders, brokers, and mortgage
28 loan originators, formerly established under the “New Jersey
29 Licensed Lenders Act,” sections 1 through 49 of P.L.1996, c.157
30 (C.17:11C-1 et seq.), be modernized, particularly in response to
31 new licensing and business practice standards set forth under the
32 federal “Secure and Fair Enforcement for Mortgage Licensing Act
33 of 2008,” title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.); and
34 that the obligations of these licensees to consumers in connection
35 with originating or making residential mortgage loans are of such
36 importance as to warrant updating the State’s regulation of the
37 mortgage lending process.

38 Thus, the Legislature finds and declares that the intent of this act,
39 the “New Jersey Residential Mortgage Lending Act,” is to protect
40 consumers seeking mortgage loans and to ensure that the mortgage
41 lending industry operates without unfair, deceptive, and fraudulent
42 practices by establishing, in coordination with the provisions of the
43 federal “Secure and Fair Enforcement for Mortgage Licensing Act
44 of 2008” and the Nationwide Mortgage Licensing System and
45 Registry, a revised system of licensing, supervision and

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

Matter underlined thus is new matter.

1 enforcement, and by providing the Department of Banking and
2 Insurance and its commissioner broad administrative authority to
3 oversee the operation of the mortgage lending industry in this State.
4

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

6 "Borrower" means any individual applying for a loan from a
7 licensee licensed under this act, whether or not the loan is granted,
8 and any individual who has actually obtained a loan.

9 "Business licensee" means a corporation, association, joint
10 venture, partnership, limited liability company, limited liability
11 partnership, sole proprietorship, or any other legal entity, however
12 organized, permitted under the laws of this State, that is licensed as
13 a residential mortgage lender or residential mortgage broker, or that
14 should be so licensed.

15 "Clerical or support duties" means and includes: (1) the receipt,
16 collection, distribution, and analysis of information common for the
17 processing or underwriting of a residential mortgage loan; or (2)
18 communicating with a borrower to obtain the information necessary
19 for the processing or underwriting of a residential mortgage loan, to
20 the extent that the communication does not include offering or
21 negotiating loan rates or terms, or counseling borrowers about loan
22 rates or terms. However, the term "clerical or support duties" does
23 not include making representations to the public, through
24 advertising or other means of communicating or providing
25 information, such as through the use of business cards, stationary,
26 brochures, signs, rate lists, or other promotional items, indicating
27 that a person can or will perform any of the activities of a licensee
28 under this act or of a person exempt from licensure pursuant to
29 section 5 of this act.

30 "Closed-end loan" with respect to a secondary mortgage loan
31 means a mortgage loan pursuant to which the business licensee
32 advances a specified amount of money and the borrower agrees to
33 repay the principal and interest in substantially equal installments
34 over a stated period of time, except that: (1) the amount of the final
35 installment payment may be substantially greater than the previous
36 installments if the term of the loan is at least 36 months, or under 36
37 months if the remaining term of the first residential mortgage loan
38 is under 36 months; or (2) the amount of the installment payments
39 may vary as a result of the change in the interest rate as permitted
40 by this act.

41 "Commissioner" means the Commissioner of Banking and
42 Insurance.

43 "Controlling interest" means ownership, control or interest of
44 25% or more of the business licensee or applicant.

45 "Correspondent mortgage lender" means a residential mortgage
46 lender who: (1) in the regular course of business, does not hold any
47 mortgage loans in its portfolio, or service mortgage loans, for more
48 than 90 days; and (2) has shown to the department's satisfaction an

1 ability to fund mortgage loans through warehouse agreements, table
2 funding agreements or otherwise.

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

4 "Depository institution" means "depository institution" as
5 defined in section 3 of the "Federal Deposit Insurance Act,"
6 Pub.L.81-797 (12 U.S.C. s.1813), and also means any credit union.

7 "Federal banking agency" means the Board of Governors of the
8 Federal Reserve System, the Comptroller of the Currency, the
9 Director of the Office of Thrift Supervision, the National Credit
10 Union Administration, or the Federal Deposit Insurance
11 Corporation, or any of their successor agencies.

12 "Immediate family member" means a spouse, domestic partner
13 as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), partner in a
14 civil union couple as defined in section 2 of P.L.2006, c.103
15 (C.37:1-29), parent, stepparent, grandparent, sibling, stepsibling,
16 child, stepchild, and grandchild, as related by blood or by law.

17 "Individual" means a natural person.

18 "Individual licensee" means a natural person licensed as a
19 qualified individual licensee for a residential mortgage lender or
20 residential mortgage broker, or a mortgage loan originator.

21 "Licensee" means a legal entity or natural person who is licensed
22 under this act, or who should be so licensed.

23 "Loan processor" or "loan underwriter" means an individual who
24 performs clerical or support duties as an employee, at the direction
25 of and subject to the supervision and instruction of a licensee under
26 this act or a person exempt from licensure.

27 "Mortgage loan originator" means any individual, not exempt
28 under section 5 of this act and licensed pursuant to the provisions of
29 this act, and any individual who should be licensed pursuant to the
30 provisions of this act, who for compensation or gain, or in the
31 expectation of compensation or gain, either directly or indirectly
32 takes a residential mortgage loan application, or offers or negotiates
33 terms of a residential mortgage loan. However, the term "mortgage
34 loan originator" does not mean an individual:

35 (1) who is a qualified individual licensee for a residential
36 mortgage banker or residential mortgage broker;

37 (2) engaged solely as a loan processor or underwriter, except as
38 provided in section 4 of this act; or

39 (3) engaged solely in extensions of credit relating to timeshare
40 plans, as defined in section 101(53D) of title 11, United States Code
41 (11 U.S.C. s.101(53D)).

42 "Nationwide Mortgage Licensing System and Registry" means
43 the mortgage licensing system developed and maintained by the
44 Conference of State Bank Supervisors and the American
45 Association of Residential Mortgage Regulators, or their
46 successors, and utilized for licensing and registering residential
47 mortgage lenders and residential mortgage brokers as business
48 licensees in accordance with this act, and residential mortgage

1 lenders and brokers as qualified individual licensees and mortgage
2 loan originators as required pursuant to the federal "Secure and Fair
3 Enforcement for Mortgage Licensing Act of 2008," title V of
4 Pub.L.110-289 (12U.S.C. s.5101 et seq.).

5 "Nontraditional mortgage product" means any mortgage product
6 other than a 30-year fixed rate residential mortgage loan.

7 "Open-end loan" means a secondary mortgage loan made by a
8 residential mortgage lender pursuant to a written agreement with the
9 borrower whereby:

10 (1) The lender may permit the borrower to obtain advances of
11 money from the lender from time to time or the lender may advance
12 money on behalf of the borrower from time to time as directed by
13 the borrower;

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

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

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

23 "Person" means an individual, sole proprietor, association, joint
24 venture, partnership, limited partnership association, limited
25 liability company, corporation, trust, or any other group of
26 individuals however organized.

27 "Primary market" means the market wherein residential
28 mortgage loans are originated between a residential mortgage lender
29 and a borrower, whether or not through a residential mortgage
30 broker or other conduit, and shall not include the sale or acquisition
31 of a residential mortgage loan after the mortgage loan is closed.

32 "Qualified individual licensee" means an individual licensed as a
33 residential mortgage lender or residential mortgage broker, who is
34 required to be licensed under this act as a condition for a person to
35 be issued or hold a license as a business licensee, whereby the
36 individual: (1) meets, at a minimum, the licensing criteria
37 applicable to a mortgage loan originator; and (2) is an officer,
38 director, partner, owner, or principal of the business licensee.

39 "Registered mortgage loan originator" means any individual
40 who:

41 (1) is a mortgage loan originator and an employee of:

42 (a) a depository institution;

43 (b) a subsidiary that is (i) owned and controlled by a depository
44 institution and (ii) regulated by a federal banking agency; or

45 (c) an institution regulated by the Farm Credit Administration
46 established by section 5.7 of the "Farm Credit Act of 1971,"
47 Pub.L.92-181 (12U.S.C. s.2241), or its successor; and

1 (2) is registered with, and maintains a unique identifier through,
2 the Nationwide Mortgage Licensing System and Registry.

3 "Residential mortgage broker" means any person, not exempt
4 under section 5 of this act and licensed pursuant to the provisions of
5 this act, and any person who should be licensed pursuant to the
6 provisions of this act, who for compensation or gain, or in the
7 expectation of compensation or gain, either directly or indirectly
8 takes a residential mortgage loan application for others, or
9 negotiates, places or sells for others, or offers to take an application
10 for, negotiate, place or sell, residential mortgage loans in the
11 primary market for others. The term "residential mortgage broker"
12 also means an individual who is a qualified individual licensee for a
13 residential mortgage broker.

14 "Residential mortgage lender" means any person, not exempt
15 under section 5 of this act and licensed pursuant to the provisions of
16 this act, and any person who should be licensed pursuant to the
17 provisions of this act, who for compensation or gain, or in the
18 expectation of compensation or gain, either directly or indirectly
19 takes a residential mortgage loan application, or offers, negotiates,
20 originates, or acquires residential mortgage loans in the primary
21 market. The term "residential mortgage lender" also means: (1)
22 with respect to a business licensee, a correspondent mortgage
23 lender, unless the provisions of this act clearly indicate otherwise;
24 and (2) with respect to an individual licensee, an individual who is a
25 qualified individual licensee for a residential mortgage lender.

26 "Residential mortgage loan" means any loan primarily for
27 personal, family, or household purposes that is secured by a
28 mortgage, deed of trust, or other equivalent consensual security
29 interest on a dwelling, as defined in section 103(v) of the Truth in
30 Lending Act, Pub.L.90-321 (15U.S.C. s.1602(v)), or residential real
31 estate upon which is constructed or intended to be constructed a
32 dwelling.

33 "Residential real estate" means any real property located in this
34 State, upon which is constructed or intended to be constructed a
35 dwelling as defined in section 103(v) of the Truth in Lending Act,
36 Pub.L.90-321 (15U.S.C. s.1602(v)).

37 "Secondary mortgage loan" means a loan made to an individual,
38 association, joint venture, partnership, limited partnership
39 association, limited liability company, trust, or any other group of
40 individuals, however organized, except a corporation, which is
41 secured in whole or in part by a lien upon any interest in real
42 property, including but not limited to shares of stock in a
43 cooperative corporation, created by a security agreement, including
44 a mortgage, indenture, or any other similar instrument or document,
45 which real property is subject to one or more prior mortgage liens
46 and on which there is erected a structure containing a one, two,
47 three, or four family dwelling, as defined in section 103(v) of the
48 Truth in Lending Act, Pub.L.90-321 (1 U.S.C. s.1602(v)), a portion

1 of which structure may be used for nonresidential purposes, except
2 that the following loans shall not be subject to the provisions of this
3 act: (1) a loan which is to be repaid in 90 days or less; (2) a loan
4 which is taken as security for a home repair contract executed in
5 accordance with the provisions of the "Home Repair Financing
6 Act," P.L.1960, c.41 (C.17:16C-62 et seq.); or (3) a loan which is
7 the result of the private sale of a dwelling, if title to the dwelling is
8 in the name of the seller and the seller has resided in that dwelling
9 for at least one year, if the buyer is purchasing that dwelling for his
10 own residence and, if the buyer, as part of the purchase price,
11 executes a secondary mortgage in favor of the seller.

12 "Unique identifier" means a number or other identifier for a
13 mortgage loan originator or a qualified individual licensee as a
14 residential mortgage lender or residential mortgage broker, assigned
15 by protocols established by the Nationwide Mortgage Licensing
16 System and Registry.

17

18 4. (New section) Except as provided under section 5 of this
19 act, beginning no later than July 31, 2010, or a later date approved
20 by the Secretary of the United States Department of Housing and
21 Urban Development pursuant to the provisions of section 1508 of
22 the federal "Secure and Fair Enforcement for Mortgage Licensing
23 Act of 2008," Pub.L.110-289 (12U.S.C. s.5107), the licensing
24 requirements under this act shall be as follows:

25 a. For residential mortgage lenders and residential mortgage
26 brokers, as business licensees:

27 (1) No person shall act as a residential mortgage lender or
28 broker without first obtaining a license under this act, except that a
29 person licensed as a residential mortgage lender may act as a
30 broker, if proper disclosure is made. The department shall issue
31 licenses which specify whether a business licensee is licensed as a
32 residential mortgage lender or broker.

33 (2) No person shall be issued or hold a license as a residential
34 mortgage lender or residential mortgage broker unless one officer,
35 director, partner, owner or principal is a qualified individual
36 licensee of that same type sought or held. The commissioner may,
37 by regulation, require a licensed residential mortgage lender or
38 broker to employ additional qualified individual licensees to
39 properly supervise the business licensee in its branch offices. If a
40 qualified individual licensee allows his license to lapse or for some
41 other reason is no longer affiliated with the business licensee, the
42 business licensee shall notify the commissioner within 10 days, and
43 shall appoint another qualified individual licensee within 90 days or
44 a longer period as permitted by the commissioner.

45 (3) No person licensed as a mortgage banker, correspondent
46 mortgage banker, mortgage broker, or secondary lender under the
47 provisions of the "New Jersey Licensed Lenders Act," sections 1
48 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the

1 effective date of its reform and re-titling as the “New Jersey
2 Consumer Finance Licensing Act” pursuant to P.L. , c. (C.)
3 (pending before the Legislature as this bill), shall continue to
4 engage in any activities for which a license was previously issued,
5 and henceforth act as a residential mortgage lender or residential
6 mortgage broker without first obtaining a license under this act.

7 b. For residential mortgage lenders and residential mortgage
8 brokers, as qualified individual licensees:

9 (1) No individual shall act as a qualified individual licensee for
10 a residential mortgage lender or residential mortgage broker without
11 first obtaining a license under this act. A qualified individual
12 licensee licensed as a residential mortgage lender or broker may act
13 as a mortgage loan originator.

14 (2) No individual licensee for a mortgage banker, correspondent
15 mortgage banker, mortgage broker, or secondary lender under the
16 provisions of the “New Jersey Licensed Lenders Act,” sections 1
17 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the
18 effective date of its reform and re-titling as the “New Jersey
19 Consumer Finance Licensing Act” pursuant to P.L. , c. (C.)
20 (pending before the Legislature as this bill), shall continue to
21 engage in any activities for which a license was previously issued,
22 and henceforth act as a qualified individual licensee without first
23 obtaining a license under this act.

24 c. For mortgage loan originators:

25 (1) (a) No individual shall act as a mortgage loan originator
26 without first obtaining a license under this act.

27 (b) No individual, except as provided in paragraph (2) of this
28 subsection, shall be issued or hold a license as a mortgage loan
29 originator unless employed as an originator by one, and not more
30 than one, business licensee, and is subject to the direct supervision
31 and control of that licensee.

32 (2) No loan processor or underwriter who is an independent
33 contractor shall act as a loan processor or underwriter without first
34 obtaining a mortgage loan originator license under this act.

35 (3) No individual registered as a mortgage solicitor under the
36 provisions of the “New Jersey Licensed Lenders Act,” sections 1
37 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the
38 effective date of its reform and re-titling as the “New Jersey
39 Consumer Finance Licensing Act” pursuant to P.L. , c. (C.)
40 (pending before the Legislature as this bill), shall continue to
41 engage in any activities for which a registration was previously
42 issued, and henceforth act as a mortgage loan originator without
43 first obtaining a license under this act.

44

45 5. (New section) The requirements of this act shall not apply
46 to:

47 a. Depository institutions; but subsidiaries and service
48 corporations of these institutions shall not be exempt.

1 b. A registered mortgage loan originator that is registered
2 under the federal "Secure and Fair Enforcement for Mortgage
3 Licensing Act of 2008," title V of Pub.L.110-289 (12U.S.C. s.5101
4 et seq.).

5 c. A licensed attorney who negotiates the terms of a residential
6 mortgage loan on behalf of a client as an ancillary matter to the
7 attorney's representation of the client, unless the attorney is
8 compensated by a residential mortgage lender, residential mortgage
9 broker, or mortgage loan originator.

10 d. A person licensed as a real estate broker or salesperson
11 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a
12 residential mortgage lender or residential mortgage broker. Any
13 person holding a license under this act as a residential mortgage
14 lender or broker shall be exempt from the licensing and other
15 requirements of R.S.45:15-1 et seq. in the performance of those
16 functions authorized by this act.

17 e. Any employer, other than a residential mortgage lender, who
18 provides residential mortgage loans to his employees as a benefit of
19 employment which are at an interest rate which is not in excess of
20 the usury rate in existence at the time the loan is made, as
21 established in accordance with the law of this State, and on which
22 the borrower has not agreed to pay, directly or indirectly, any
23 charge, cost, expense or any fee whatsoever, other than that interest.

24 f. The State of New Jersey or a municipality, or any agency or
25 instrumentality thereof, which, in accordance with a housing
26 element that has received substantive certification from the Council
27 on Affordable Housing pursuant to the "Fair Housing Act,"
28 P.L.1985, c.222 (C.52:27D-301 et seq.), or in fulfillment of a
29 regional contribution agreement with a municipality that has
30 received a certification, employs or proposes to employ municipally
31 generated funds, funds obtained through any State or federal
32 subsidy, or funds acquired by the municipality under a regional
33 contribution agreement, to finance the provision of affordable
34 housing by extending loans or advances, the repayment of which is
35 secured by a lien, subordinate to any prior lien, upon the property
36 that is to be rehabilitated.

37 g. Any individual who offers or negotiates terms of a
38 residential mortgage loan:

39 (1) with or on behalf of an immediate family member; or

40 (2) secured by a dwelling that served as the individual's
41 residence.

42
43 6. (New section) Beginning no later than July 31, 2010, or a
44 later date approved by the Secretary of the United States
45 Department of Housing and Urban Development pursuant to the
46 provisions of section 1508 of the federal "Secure and Fair
47 Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289
48 (12U.S.C. s.5107), the commissioner shall begin issuing licenses for

1 business licensees as residential mortgage lenders or residential
2 mortgage brokers under this act if the following conditions are met:

3 a. A completed application for a new license or for a renewal
4 of a license, submitted to the commissioner on the form, in the
5 manner, and with appropriate evidence in support of the application,
6 as required by this act and as may be prescribed by the
7 commissioner.

8 b. The submission to the commissioner of the name, address,
9 fingerprints and written consent for a criminal history record
10 background check to be performed on any officer, director, partner
11 or owner of a controlling interest of the person seeking licensure.
12 The commissioner is authorized to exchange fingerprint data with
13 and receive criminal history record information from the State
14 Bureau of Identification in the Division of State Police and the
15 Federal Bureau of Investigation consistent with applicable State and
16 federal laws, rules and regulations, for the purposes of facilitating
17 determinations concerning licensure eligibility for the person, based
18 upon any findings related to an officer, director, partner or owner.
19 The applicant shall bear the cost for the criminal history record
20 background check, including all costs of administering and
21 processing the check. The Division of State Police shall promptly
22 notify the commissioner in the event an officer, director, partner or
23 owner of the person, who was the subject of a criminal history
24 record background check pursuant to this section, is arrested for a
25 crime or offense in this State after the date the background check
26 was performed, whether the person is a prospective new licensee, or
27 subsequently, a current license holder.

28 c. A finding by the commissioner that the financial
29 responsibility, experience, character, and general fitness of the
30 person seeking licensure demonstrates that as a business licensee,
31 the person will operate honestly, fairly, and efficiently within the
32 purposes of this act.

33 d. A demonstration of an affiliated qualified individual licensee
34 for the applicant, as required by paragraph (2) of subsection a. of
35 section 4 of this act.

36 e. A demonstration of coverage by a surety bond as required by
37 section 13 of this act.

38 f. A demonstration of the tangible net worth requirements as
39 required by section 14 of this act.

40 g. The payment of any required fees under this act, as
41 established by the commissioner by regulation and payable to the
42 commissioner or, by arrangement of the commissioner, to the
43 Nationwide Mortgage Licensing System and Registry on behalf of
44 the commissioner, or as set forth by the nationwide system and
45 registry and payable to that nationwide system and registry.

46
47 7. (New section) Beginning no later than July 31, 2010, or a
48 later date approved by the Secretary of the United States

1 Department of Housing and Urban Development pursuant to the
2 provisions of section 1508 of the federal “Secure and Fair
3 Enforcement for Mortgage Licensing Act of 2008,” Pub.L.110-289
4 (12U.S.C. s.5107), the commissioner shall begin issuing licenses for
5 individual licensees under this act, utilizing the Nationwide
6 Mortgage Licensing System and Registry, or other entity designated
7 by that nationwide system and registry, as required or permitted by
8 the federal “Secure and Fair Enforcement for Mortgage Licensing
9 Act of 2008” and as otherwise deemed appropriate by the
10 commissioner to carry out the provisions of this act, if the following
11 conditions are met:

12 a. For mortgage loan originators:

13 (1) A completed application for a new license or for a renewal
14 of a license, submitted to the commissioner on the form, in the
15 manner, and with appropriate evidence in support of the application,
16 as required by this act and as may be prescribed by the
17 commissioner.

18 (2) A background check in connection with an application,
19 based upon information provided to and received from the Division
20 of State Police, and provided to and received from or through the
21 Nationwide Mortgage Licensing System and Registry, which does
22 not contain any disqualifying information as set forth in this
23 paragraph. The background check shall include a State criminal
24 history record background check based upon an exchange of
25 fingerprint data with the State Bureau of Identification in the
26 Division of State Police, for which the division shall promptly
27 notify the commissioner if the subject of the original criminal
28 history record background check is arrested for a crime or offense
29 in this State after the date the background check was performed,
30 and a check of both criminal and non-criminal information as
31 requested from and distributed to the Federal Bureau of
32 Investigation and any other governmental agency through the
33 Nationwide Mortgage Licensing System and Registry as follows:

34 (a) fingerprints, for submission to the Federal Bureau of
35 Investigation and any other governmental agency authorized to
36 receive this information for a state, federal, and international
37 criminal history record background check, to determine whether the
38 individual has been convicted of, or plead guilty or nolo contendere
39 to, a felony in a domestic court, which in this State includes any
40 crime of the fourth degree or higher punishable by a term of
41 imprisonment of more than one year, or in a foreign or military
42 court:

43 (i) during the seven-year period preceding the filing of the
44 application, except that a conviction under this sub-subparagraph
45 which is pardoned shall not be considered disqualifying
46 information; or

47 (ii) at any time preceding the filing of the application, if the
48 felony involved an act of fraud, dishonesty, a breach of trust, or

1 money laundering, except that a conviction under this sub-
2 subparagraph which is pardoned shall not be considered
3 disqualifying information; and

4 (b) personal history and experience, collected in a form
5 prescribed by the Nationwide Mortgage Licensing System and
6 Registry, and with the permission of the applicant, in order for that
7 nationwide system and registry and the commissioner to obtain:

8 (i) an independent credit report from a consumer reporting
9 agency described in section 603(p) of the Fair Credit Reporting Act,
10 Pub.L.91-508 (15U.S.C. s.1681a(p)), for use in making a
11 determination of character and fitness pursuant to paragraph (3) of
12 this subsection; and

13 (ii) information related to any administrative, civil or criminal
14 findings by any governmental jurisdiction, to determine whether the
15 individual had a mortgage loan originator license revoked in any
16 governmental jurisdiction, except that a subsequent, formal vacation
17 of a revocation shall not be considered disqualifying information.

18 (3) A determination of character and fitness, based upon the
19 information related to personal history and experience obtained
20 pursuant to subparagraph (b) of paragraph (2) of this subsection and
21 other available sources, whereby the applicant has demonstrated
22 financial responsibility, character, and general fitness as to
23 command the confidence of the community and to warrant a
24 determination that as a mortgage loan originator the applicant will
25 operate honestly, fairly, and efficiently within the purposes of this
26 act. For purposes of this paragraph, an applicant has demonstrated
27 not to be financially responsible if the applicant has shown a
28 disregard in the management of the applicant's own financial
29 condition, which may include, but is not limited to:

30 (a) current outstanding judgments, except judgments solely as a
31 result of medical expenses;

32 (b) current outstanding tax liens or other government liens and
33 filings;

34 (c) foreclosures during the three-year period preceding the filing
35 of the application; or

36 (d) a pattern of seriously delinquent accounts during the three-
37 year period preceding the filing of the application.

38 (4) A demonstration of employment by one, and not more than
39 one, business licensee as required by paragraph (1) of subsection c.
40 of section 4 of this act.

41 (5) The completion of any pre-licensing education requirements
42 as set forth in section 9 of this act.

43 (6) The successful passage of a qualified written test based upon
44 the testing requirements as set forth in section 10 of this act.

45 (7) The completion of any continuing education requirements, if
46 applicable, as set forth in section 11 of this act.

47 (8) A registration with the Nationwide Mortgage Licensing
48 System and Registry as required by section 12 of this act.

1 (9) A demonstration of coverage by a surety bond as required by
2 section 13 of this act.

3 (10)The payment of any required fees under this act, as
4 established by the commissioner by regulation and payable to the
5 commissioner or, by arrangement of the commissioner, to the
6 Nationwide Mortgage Licensing System and Registry on behalf of
7 the commissioner, or as set forth by the nationwide system and
8 registry and payable to that nationwide system and registry.

9 b. For residential mortgage lenders and residential mortgage
10 brokers, as qualified individual licensees:

11 (1) A completed application for a new license or for a renewal
12 of a license as a qualified licensed individual for a residential
13 mortgage lender or broker, submitted to the commissioner on the
14 form, in the manner, and with appropriate evidence in support of the
15 application, whereby the applicant follows the licensing procedure
16 and meets the licensing criteria applicable to a mortgage loan
17 originator, as set forth in subsection a. of this section, except that
18 the applicant shall not request or be issued a separate license as a
19 mortgage loan originator under that subsection.

20 (2) A determination with respect to any stricter or additional
21 licensing requirements that the commissioner may, by regulation,
22 establish.

23 (3) The payment of any required fees under this act, as
24 established by the commissioner by regulation and payable to the
25 commissioner or, by arrangement of the commissioner, to the
26 Nationwide Mortgage Licensing System and Registry on behalf of
27 the commissioner, or as set forth by the nationwide system and
28 registry and payable to that nationwide system and registry.

29

30 8. (New section) a. An applicant for a new license or for a
31 renewal of a license to be a residential mortgage lender or
32 residential mortgage broker, as a business licensee:

33 (1) Shall pay to the commissioner at the time of the application
34 a nonrefundable application fee, as established by the commissioner
35 through regulation, not to exceed \$2,800. The nonrefundable
36 application fee is required for each residential mortgage lender or
37 broker license issued, including for each branch office license of a
38 business licensee.

39 (2) Shall additionally pay to the Nationwide Mortgage Licensing
40 System and Registry any required fees as set forth by that
41 nationwide system and registry, or any commissioner's fees, which
42 by arrangement of the commissioner, are payable to the nationwide
43 system and registry on behalf of the commissioner.

44 b. An applicant for a new license or for a renewal of a license to
45 be a residential mortgage lender or residential mortgage broker, as a
46 qualified individual licensee:

1 (1) Shall pay to the commissioner at the time of the application
2 a nonrefundable application fee, as established by the commissioner
3 through regulation, not to exceed \$500.

4 (2) Shall additionally pay to the Nationwide Mortgage Licensing
5 System and Registry any required fees as set forth by that
6 nationwide system and registry, or any commissioner's fees, which
7 by arrangement of the commissioner, are payable to the nationwide
8 system and registry on behalf of the commissioner.

9 c. An applicant for a new license or for a renewal of a license to
10 be a mortgage loan originator:

11 (1) Shall pay to the commissioner at the time of the application
12 a nonrefundable application fee, as established by the commissioner
13 through regulation, not to exceed \$500. A mortgage loan
14 originator, other than a loan processor or underwriter who is an
15 independent contractor and subject to licensure pursuant to
16 paragraph (2) of subsection c. of section 4 of this act, who changes
17 the employment affiliation on his license, which affiliation is
18 required as a condition of licensure pursuant to paragraph (1) of
19 subsection c. of section 4 of this act, to a different business
20 licensee, shall be required to submit any documentation required by
21 regulation and pay another nonrefundable application fee.

22 (2) Shall additionally pay to the Nationwide Mortgage Licensing
23 System and Registry any required fees as set forth by that
24 nationwide system and registry, or any commissioner's fees, which
25 by arrangement of the commissioner, are payable to the nationwide
26 system and registry on behalf of the commissioner.

27
28 9. (New section) a. An applicant for a new license as a
29 mortgage loan originator or a qualified individual licensee shall
30 complete, as a pre-licensing requirement, at least 20 hours of
31 education from an educational course provided by an educational
32 course provider, reviewed and approved by the Nationwide
33 Mortgage Licensing System and Registry, based upon reasonable
34 standards established by that nationwide system and registry.

35 (1) Pursuant to the reasonable standards established by the
36 nationwide system and registry, an approved educational course
37 provider may include the employer or affiliated business licensee of
38 the applicant, or an entity which is affiliated with the applicant by
39 an agency contract, or any subsidiary or affiliate of the applicant's
40 employer, affiliated business licensee, or affiliated entity.

41 (2) Pursuant to the reasonable standards established by the
42 nationwide system and registry, an approved educational course
43 may be offered at any location and by any means, including live
44 classroom instruction, prepared group or individual coursework, or
45 the Internet.

46 b. The approved educational course shall include at a minimum,
47 but not be limited to:

48 (1) 3 hours of instruction on federal statutes and regulations;

1 (2) 3 hours of instruction on ethics, including instruction on
2 fraud, consumer protection, and fair licensing issues; and

3 (3) 2 hours of training related to lending standards for the
4 nontraditional mortgage product marketplace.

5 c. Any pre-licensing educational requirements of another state,
6 reviewed and approved by the Nationwide Mortgage Licensing
7 System and Registry, and completed by an applicant for licensure in
8 that state pursuant to the provisions of the federal "Secure and Fair
9 Enforcement for Mortgage Licensing Act of 2008," title V of
10 Pub.L.110-289 (12 U.S.C. s.5101 et seq.), shall be accepted by the
11 commissioner from the applicant as credit towards completion of
12 the reviewed and approved pre-licensing educational requirements
13 of this section for licensure in this State.

14

15 10. (New section) a. (1) An applicant for a new license as a
16 mortgage loan originator or a qualified individual licensee shall
17 pass, as a pre-licensing requirement, a qualified written test,
18 developed by the Nationwide Mortgage Licensing System and
19 Registry, and administered by a test provider approved by the
20 nationwide system and registry, based upon reasonable standards
21 established by that nationwide system and registry. Pursuant to the
22 reasonable standards established by the nationwide system and
23 registry, a qualified written test may be administered at any
24 location, including the location of the employer or affiliated
25 business licensee of the applicant, or any subsidiary or affiliate of
26 the applicant's employer or affiliated business licensee, or any
27 entity with which the applicant holds an exclusive arrangement to
28 engage in the business of a residential mortgage lender, residential
29 mortgage broker, or mortgage loan originator.

30 (2) In addition to an applicant for a new license, an applicant for
31 a license reinstatement after failing to maintain a valid license for a
32 period of five years or longer shall be required to pass a qualified
33 written test as set forth in this section as a requirement for the
34 license reinstatement.

35 b. The qualified written test shall adequately measure the
36 applicant's knowledge and comprehension in appropriate subject
37 areas, which shall include at a minimum, but not be limited to:

38 (1) federal and State statutes and regulations pertaining to
39 mortgage origination;

40 (2) other federal and State statutes and regulations, including
41 those pertaining to fraud, consumer protection, fair lending issues,
42 and the nontraditional mortgage marketplace; and

43 (3) ethics.

44 c. An applicant shall only be considered to have passed the
45 qualified written test if the applicant achieves a test score of not less
46 than 75 percent correct answers to the test questions.

47 d. An applicant may take the qualified written test up to three
48 consecutive times in order to successfully pass and qualify for

1 licensure. The applicant shall not take a subsequent, consecutive
2 test until at least 30 calendar days next following the applicant's
3 preceding test date. If the applicant fails to pass the qualified
4 written test after three consecutive attempts, the applicant shall not
5 be permitted to retake the test for a period of at least six months
6 from the applicant's last preceding test date.

7
8 11. (New section) a. An applicant for a renewal of a license as a
9 mortgage loan originator or a qualified individual licensee, shall
10 complete, as a requirement for the license renewal, at least 12 hours
11 of education from one or more continuing educational courses
12 provided by a continuing educational course provider, reviewed and
13 approved by the Nationwide Mortgage Licensing System and
14 Registry, based upon reasonable standards established by that
15 nationwide system and registry.

16 (1) Pursuant to the reasonable standards established by the
17 nationwide system and registry, an approved continuing educational
18 course provider may include the employer or affiliated business
19 licensee of the individual licensee, or an entity which is affiliated
20 with the individual licensee by an agency contract, or any
21 subsidiary or affiliate of the individual licensee's employer,
22 affiliated business licensee, or affiliated entity.

23 (2) Pursuant to the reasonable standards established by the
24 nationwide system and registry, an approved continuing educational
25 course may be offered at any location and by any means, including
26 live classroom instruction, prepared group or individual
27 coursework, or the Internet.

28 b. The approved continuing educational course shall include at a
29 minimum, but not be limited to:

30 (1) 3 hours of instruction on federal statutes and regulations;

31 (2) 2 hours of instruction on ethics, including instruction on
32 fraud, consumer protection, and fair licensing issues; and

33 (3) 2 hours of training related to lending standards for the
34 nontraditional mortgage product marketplace.

35 c. (1) Except as set forth by the commissioner in regulation
36 consistent with this act and the provisions of the federal "Secure
37 and Fair Enforcement for Mortgage Licensing Act of 2008," title V
38 of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), a licensed mortgage
39 loan originator, or a licensed residential mortgage lender or
40 residential mortgage broker as a qualified individual licensee, may
41 only receive credit for an approved continuing educational course:

42 (a) in the calendar year in which the licensee takes the course;
43 and

44 (b) that is not the same approved course already taken in that
45 calendar year or the immediately preceding calendar year.

46 (2) A licensed mortgage loan originator, residential mortgage
47 lender or broker, who is an approved instructor of an approved
48 continuing educational course, may receive credit towards the

1 individual licensee's own continuing educational requirements set
2 forth in this section at the rate of two hours of credit for every one
3 hour of the approved continuing educational course taught.

4 (3) If a licensed mortgage loan originator, residential mortgage
5 lender or broker subsequently becomes unlicensed, the individual
6 licensee shall complete the continuing educational requirements set
7 forth in this section for the last calendar year in which the
8 individual was licensed as a requirement for a license reinstatement.

9 d. Any continuing educational requirements of another state,
10 reviewed and approved by the Nationwide Mortgage Licensing
11 System and Registry, and completed by an applicant for a license
12 renewal in that state pursuant to the provisions of the federal
13 "Secure and Fair Enforcement for Mortgage Licensing Act of
14 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), shall be
15 accepted by the commissioner from an applicant as credit towards
16 completion of the reviewed and approved continuing educational
17 requirements of this section for a license renewal in this State.

18

19 12. (New section) a. An applicant for an initial license or for a
20 renewal of a license as a mortgage loan originator or a qualified
21 individual licensee shall, as a licensing requirement, be registered
22 and assigned a unique identifier through the Nationwide Mortgage
23 Licensing System and Registry.

24 b. (1) In order to ensure compliance by an applicant with this
25 registration requirement, the commissioner shall utilize, as required
26 or permitted by the "Safe and Fair Enforcement for Mortgage
27 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101
28 et seq.) and as otherwise deemed appropriate by the commissioner,
29 the Nationwide Mortgage Licensing System and Registry.

30 (2) The commissioner is authorized, through regulation, to
31 coordinate the registration of an applicant through the nationwide
32 system and registry with the State licensing of the applicant under
33 this act, on any matters deemed necessary by the commissioner for
34 participation in that nationwide system and registry, including but
35 not limited to:

36 (a) background checks, including a criminal history record
37 background check, a check of administrative and civil records, and
38 a credit history check as set forth in section 7 of this act, and
39 concerning any other information deemed necessary by the
40 nationwide system and registry;

41 (b) setting or resetting of license renewal dates, and requirements
42 for amending or surrendering a license;

43 (c) reporting requirements as set forth pursuant to section 35 of
44 this act; and

45 (d) payment of any required fees, as established by the
46 commissioner and payable to the commissioner or to the nationwide
47 system and registry on behalf of the commissioner, and as set forth

1 by the nationwide system and registry and payable to that
2 nationwide system and registry.

3 (3) The commissioner shall, in order to participate in the
4 nationwide system and registry, regularly report violations of this
5 act by an applicant or licensee, as well as information concerning
6 enforcement actions on those violations, along with any other
7 relevant information, to the nationwide system and registry, in a
8 manner and frequency established by that nationwide system and
9 registry.

10 (4) The commissioner shall, in order to participate in the
11 nationwide system and registry, establish by regulation a process by
12 which an applicant or current licensee may request access to the
13 applicant's or licensee's information or material provided to,
14 received from, or collected by the nationwide system and registry,
15 and a process by which that applicant or licensee may correct,
16 amend or delete information or material disputed as incorrect or
17 incomplete.

18 (5) Except as provided under section 1512 of the federal "Secure
19 and Fair Enforcement for Mortgage Licensing Act of 2008,"
20 Pub.L.110-289 (12 U.S.C. s.5111), any requirement under federal
21 or State law, including P.L.1963, c.73 (C.47:1A-1 et seq.),
22 regarding the privacy or confidentiality of any information or
23 material provided to, received from, or collected by the nationwide
24 system and registry, and any privilege arising under federal or State
25 law, including any rules of court, with respect to the information or
26 material, shall continue to apply after the information or material
27 has been provided to, received from, or collected by the nationwide
28 system and registry. The privacy, confidentiality, or privilege shall
29 also continue to apply with respect to the sharing of the information
30 or material, pursuant to procedures set forth by the nationwide
31 system and registry, with any federal banking agency or other
32 federal agency with mortgage industry oversight authority, or any
33 state agency with mortgage industry oversight authority. This
34 paragraph shall not apply to any information or material relating to
35 the employment history of, and publicly adjudicated disciplinary or
36 enforcement actions against, an applicant or licensee that is
37 included in the nationwide system and registry for access by the
38 public, based upon reasonable standards established by the
39 nationwide system and registry.

40 (a) In order to ensure the application of privacy, confidentiality,
41 and privilege protections to information and material as set forth in
42 this paragraph, the commissioner may enter into any necessary
43 arrangement with the nationwide system and registry, other federal
44 or state agency, the Conference of State Bank Supervisors or its
45 successor organization, or other organization representing a federal
46 or state agency, regarding information and material the
47 commissioner shares, and information and materials shared with the
48 commissioner.

1 (b) The information and material subject to privacy,
2 confidentiality, or privilege protections as set forth in this
3 paragraph, notwithstanding any provisions of P.L.1963, c.73
4 (C.47:1A-1 et seq.) or any other State law concerning open records
5 to the contrary, shall not be subject to:

6 (i) disclosure under any federal or State law governing the
7 disclosure to the public of information or material held by an officer
8 or agency of the federal government or any state; or

9 (ii) subpoena or discovery, or admission into evidence, in any
10 private civil action or administrative process, except with respect to
11 any privacy, confidentiality, or privilege held by the nationwide
12 system and registry connected to an applicant's or licensee's
13 information or material that the applicant or licensee gives
14 permission to waive, in whole or in part.

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

33
34 14. (New section) a. (1) Each applicant for a business license
35 as a residential mortgage lender shall demonstrate that it has
36 tangible net worth of at least \$250,000, except that an applicant for
37 a business license as a correspondent mortgage lender shall
38 demonstrate that it has a tangible net worth of at least \$150,000.
39 Each applicant for a business license as a residential mortgage
40 broker shall demonstrate that it has tangible net worth of at least
41 \$50,000.

42 (2) Each licensed residential mortgage lender that is a business
43 licensee shall maintain at all times tangible net worth of at least
44 \$250,000, except that a correspondent mortgage lender that is a
45 business licensee shall maintain at all times tangible net work of at
46 least \$150,000. Each licensed residential mortgage broker that is a
47 business licensee shall maintain at all times tangible net worth of at
48 least \$50,000.

1 (3) The commissioner may by regulation:

2 (a) define the term "tangible net worth";

3 (b) establish standards for determining compliance with the
4 tangible net worth requirements of this section; and

5 (c) determine any remedial action, as authorized pursuant to
6 section 20 of this act, including suspension of a license, for failure
7 to comply with these tangible net worth requirements.

8 b. The commissioner may, by regulation, require that a
9 business licensee demonstrate to the satisfaction of the
10 commissioner that it has adequate means to fund loans through lines
11 of credit, or otherwise.

12

13 15. (New section) a. A residential mortgage lender or
14 residential mortgage broker that is a business licensee may maintain
15 a branch office or offices. The business licensee shall obtain a
16 license for each branch office in this State and each branch office
17 outside this State from which the licensee has direct contact with
18 New Jersey consumers regarding origination or brokering.

19 b. The commissioner shall issue a branch office license for a
20 residential mortgage lender or broker if:

21 (1) The business licensee has submitted a completed branch
22 office application form, which includes any information required by
23 the commissioner concerning the branch office, and an application
24 fee pursuant to section 8 of this act;

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

27 (3) The application contains a certification that the office is
28 covered by the business licensee's surety bond, required of that
29 licensee pursuant to section 13 of this act.

30

31 16. (New section) a. Nothing in this act shall be construed to
32 require a business licensee that is licensed as a residential mortgage
33 lender or residential mortgage broker to maintain an office in this
34 State so long as it is qualified to do business here and has a
35 registered agent for service of process.

36 b. Whenever the business licensee changes the address of its
37 principal office or a branch office serving New Jersey consumers, it
38 shall file, as part of its notice of address change required pursuant to
39 paragraph (5) of subsection a. of section 17 of this act, any
40 documents required of it by regulation.

41

42 17. (New section) a. (1) The license for a residential mortgage
43 lender or residential mortgage broker, including a qualified
44 individual licensee, shall state the name of the business licensee and
45 the licensee's place or places of business, as applicable, and shall
46 contain any other information as the commissioner may require
47 pursuant to regulation. A license shall not be issued in a name
48 containing any words including "insured," "bonded," "guaranteed,"

1 "secured" and the like. Notwithstanding the provisions of section
2 18 of P.L.1948, c.67 (C.17:9A-18) or any other law to the contrary,
3 a licensed residential mortgage lender or broker may use the terms
4 "mortgage lender" or "mortgage broker," respectively, as part of the
5 licensee's name; a licensed residential mortgage lender may also use
6 the term "mortgage banker."

7 (2) The license of the business licensee shall be posted
8 conspicuously in the place or places of business of that licensee,
9 and the license of any qualified individual licensee shall be
10 maintained by that licensee and available for public inspection at
11 the licensee's place or places of business.

12 (3) A licensee or any other person shall not photocopy or
13 otherwise reproduce the license except for legitimate business
14 purposes.

15 (4) Licenses issued to a business licensee pursuant to this act
16 shall not be transferable or assignable, other than as provided by
17 section 19 of this act.

18 (5) No licensee shall change the name or address of the
19 licensee's place or places of business without notice to the
20 commissioner.

21 b. (1) The license for a mortgage loan originator shall state the
22 name of the originator's employing business licensee and the
23 licensee's place or places of business, as applicable, and shall
24 contain any other information as the commissioner may see fit to
25 require.

26 (2) The license shall be maintained by the licensee and available
27 for public inspection at the licensee's place or places of business.

28 (3) A licensee or any other person shall not photocopy or
29 otherwise reproduce the license except for legitimate business
30 purposes.

31 (4) No licensee shall change the name or address of the
32 licensee's place or places of business without notice to the
33 commissioner.

34

35 18. (New section) a. Each residential mortgage lender,
36 residential mortgage broker, and mortgage loan originator license
37 issued pursuant to this act shall expire in accordance with the
38 following schedule:

39 (1) for any license issued on or before July 31, 2010, or a later
40 date approved by the Secretary of the United States Department of
41 Housing and Urban Development pursuant to the provisions of
42 section 1508 of the federal "Secure and Fair Enforcement for
43 Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C.
44 s.5107), the license shall expire on December 31, 2010; and

45 (2) for any license issued on or after January 1, 2011, the license
46 shall expire annually on December 31 of the same year of issue.

47 However, the commissioner may modify this schedule pursuant
48 to regulation or order, based upon any later dates approved by the

1 Secretary of the United States Department of Housing and Urban
2 Development pursuant to the provisions of section 1508 of the
3 federal "Secure and Fair Enforcement for Mortgage Licensing Act
4 of 2008," Pub.L.110-289 (12U.S.C. s.1507), providing a temporary
5 deadline extension with respect to complying with the licensing
6 requirements for states established pursuant to the provisions of the
7 federal "Secure and Fair Enforcement for Mortgage Licensing Act
8 of 2008," title V of Pub.L.110-289 (12U.S.C. s.5101 et seq.).

9 b. (1) Consistent with the provisions of subsection a. of this
10 section, the license of any person failing to satisfy the standards for
11 license renewal set forth in sections 6 through 15 of this act shall
12 expire. However, the commissioner may adopt regulations
13 concerning procedures for a person with an expired license to
14 obtain a reinstatement of that license, which in the case of a
15 formerly licensed individual shall be consistent with any expired
16 license reinstatement standards established by the Nationwide
17 Mortgage Licensing System and Registry.

18 (2) The commissioner may by regulation provide for the license
19 of a residential mortgage lender or residential mortgage broker, if a
20 qualified individual licensee, to continue in existence in an inactive
21 status for a specified period of time.

22 c. A licensee may surrender any license, consistent with
23 paragraph (2) of subsection b. of section 12 of this act concerning
24 the coordination of license surrender with the Nationwide Mortgage
25 Licensing System and Registry, by delivering to the commissioner
26 written notice that the license is surrendered, along with the license,
27 but the surrender shall not affect the licensee's civil or criminal
28 liability for any act committed prior to the surrender.

29
30 19. (New section) Any sale or transfer of a controlling interest
31 in a residential mortgage lender or residential mortgage broker
32 applicant's or licensee's business shall be approved by the
33 commissioner prior to the transfer or sale, after the applicant or
34 business licensee has provided an application which contains a
35 written notice of the proposed sale or transfer to the commissioner.
36 The application shall list each officer, director, partner or owner to
37 receive a controlling interest as a result of the transfer or sale, and
38 each shall be subject to a criminal history record background check
39 as set forth in subsection b. of section 6 of this act as a condition for
40 the commissioner's approval of the transfer or sale. The
41 commissioner shall approve the transfer or sale unless the
42 commissioner determines, following an opportunity for a hearing,
43 that sufficient grounds exist to deny, revoke or suspend the
44 residential mortgage lender's or broker's license. The sale or
45 transfer shall be deemed approved if the commissioner does not
46 deny a completed application within 90 days after its receipt.

1 20. (New section) a. The commissioner's authority with respect
2 to issuing licenses shall include the following:

3 (1) The commissioner may access, receive and use any
4 information or material required of an applicant or licensee
5 pursuant to sections 6 through 15 of this act, or any other
6 information or material deemed relevant, to determine whether to
7 issue or renew a license, or revoke, suspend, or refuse to renew a
8 license.

9 (2) The commissioner may refuse to issue, and may revoke,
10 suspend, or refuse to renew, a residential mortgage lender or
11 residential mortgage broker license, including the license of a
12 qualified individual licensee or a branch office license, or a
13 mortgage loan originator license, or impose a penalty pursuant to
14 this act, if the commissioner finds, after notice and an opportunity
15 for a hearing in accordance with the "Administrative Procedure
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted
17 thereunder, that any person, applicant for or holder of the license
18 has:

19 (a) Violated any of the provisions of this act or any order, rule
20 or regulation made or issued pursuant to this act;

21 (b) Failed at any time to meet the requirements for licensure set
22 forth in sections 6 through 15 of this act, as applicable, or withheld
23 information or made a material misstatement in the application for
24 the license;

25 (c) Been convicted of an offense involving breach of trust, moral
26 turpitude or fraudulent or dishonest dealing, including but not
27 limited to the disqualifying criminal activities stated in paragraph
28 (2) of subsection a. of section 7 of this act, if applicable, or had a
29 final judgment entered against the person in a civil or administrative
30 action upon grounds of fraud, misrepresentation, deceit, or failure to
31 maintain books, accounts, records and other documents as required
32 by section 21 of this act;

33 (d) Failed to comply with any reporting requirements set forth
34 pursuant to section 35 of this act;

35 (e) Become insolvent;

36 (f) Demonstrated unworthiness, incompetence, bad faith or
37 dishonesty in the transaction of business as a licensee; or

38 (g) Engaged in any other conduct which would be deemed by the
39 commissioner to be the cause for denial, revocation, suspension, or
40 refusal of the license or license renewal.

41 (3) A license of a business licensee may be suspended, revoked,
42 or not renewed if any officer, director, partner, or owner of the
43 licensee has committed any act which would be cause for
44 suspending, revoking or not renewing a license if issued to that
45 person as an individual.

46 (4) If the license issued to a residential mortgage lender or
47 residential mortgage broker as a qualified individual licensee is
48 revoked or suspended, the affiliated license issued to the business

1 licensee shall also be revoked or suspended by the commissioner,
2 unless within the time fixed by the commissioner, in the case of a
3 partnership, the connection therewith of the offending qualified
4 individual licensee whose license has been revoked or suspended
5 shall be severed and that individual's interest in the partnership and
6 share in its activities brought to an end, or in the case of an
7 association, corporation, or other legal entity, the offending
8 qualified individual licensee whose license has been revoked or
9 suspended shall be discharged and shall have no further
10 participation in the legal entity's activities. In the case of an
11 offending qualified individual licensee who is an officer or director
12 of the corporation or other legal entity, that individual shall be
13 required to fully divest himself of all stock, bonds or other
14 corporate holdings.

15 b. The commissioner's authority with respect to oversight of
16 licensees, and enforcement of the activities regulated under this act,
17 shall include the following:

18 (1) The commissioner may access and examine books, accounts,
19 records and other documents maintained by a licensee pursuant to
20 section 21 of this act.

21 (2) The commissioner may conduct investigations or
22 examinations, which may include the subpoena of witnesses and
23 documents, pursuant to section 34 of this act.

24 (3) Whenever it appears to the commissioner that any person has
25 engaged, is engaged, or is about to engage in any practice or
26 transaction prohibited by this act, the commissioner may issue, in
27 accordance with the "Administrative Procedure Act," P.L.1968,
28 c.410 (C.52:14B-1 et seq.), a cease and desist order if the
29 commissioner determines it necessary. In addition to any other
30 remedy available, the commissioner may also bring a summary
31 action in a court of competent jurisdiction against a person, and any
32 other person concerned or in any way participating in or about to
33 participate in a practice or transaction in violation of this act, to
34 enjoin the person from continuing the practice or transaction
35 engaged, or from engaging in the practice or transaction, or doing
36 any act in furtherance towards engaging in the practice or
37 transaction.

38 (4) The commissioner may impose a civil penalty not exceeding
39 \$25,000 on any person for a violation of this act. Each violation of
40 this act, including any order, rule or regulation made or issued
41 pursuant to this act, shall constitute a separate offense.
42 Additionally, each violation of this act which constitutes a knowing
43 violation shall be considered a crime of the third degree.

44 (5) The commissioner may order that any person who has been
45 found to have knowingly violated any provision of this act, or of the
46 rules and regulations issued pursuant hereto, and has thereby caused
47 financial harm to consumers, be barred from acting as a residential
48 mortgage lender, residential mortgage broker, or mortgage loan

1 originator, or a stockholder, an officer, director, partner or other
2 owner, or an employee of a licensee, or act in any other capacity
3 pursuant to this act. Violations of this final order shall be
4 considered a crime of the third degree.

5 (6) The commissioner may order a person found to be in
6 violation of this act to make restitution to any person aggrieved by
7 the violation.

8 (7) The commissioner may order any other remedial action with
9 respect to a violation of this act as the commissioner deems
10 necessary.

11 c. The commissioner, in order to fulfill the activities
12 encompassed by the commissioner's authority set forth in this
13 section, may:

14 (1) Retain attorneys, accountants, or other professionals or
15 specialists as examiners, auditors, or investigators to conduct, or
16 assist with, any licensing activity, examination, or investigation;

17 (2) Utilize any public or privately available analytical system,
18 method, or software;

19 (3) Utilize any examination or investigative report prepared by
20 any federal banking agency or other federal agency, or any state
21 agency including another department, division, bureau, or office of
22 this State; and

23 (4) Enter into any necessary arrangement with a federal or state
24 agency, the Conference of State Bank Supervisors or its successor
25 organization, or other organization representing any federal or state
26 agency, in order to reduce the commissioner's regulatory burden by
27 sharing resources, including sharing information and materials
28 through the Nationwide Mortgage Licensing System and Registry in
29 accordance with subsection b. of section 12 of this act, and
30 following standardized or uniform methods or procedures.

31

32 21. (New section) a. Every residential mortgage lender,
33 residential mortgage broker, and mortgage loan originator shall
34 identify the place of business where those books, accounts, records
35 and other documents of the business conducted under the license, as
36 may be prescribed by the commissioner, are maintained, to enable
37 the commissioner to determine whether the business of the licensee
38 is being conducted in accordance with the provisions of this act and
39 the orders, rules and regulations issued hereunder.

40 b. Upon appropriate notice to the commissioner and if a change
41 in location of records is made, the commissioner shall be notified in
42 writing of the change within five business days of the change.

43 c. (1) Every licensee shall preserve all books, accounts, records
44 and other documents pertaining to its business, and keep them
45 available for examination by the commissioner, for at least three
46 years from the date of original entry, or a longer time as prescribed
47 by the commissioner by regulation.

48 (2) During any examination by the commissioner:

1 (a) The commissioner may control access to any books,
2 accounts, records or other documents by either taking possession of
3 the documents, or selecting a designee to be exclusively in charge
4 of the documents in the location where the documents are
5 maintained. During this period of controlled access, no person,
6 other than the licensee as provided in subparagraph (b) of this
7 paragraph, shall, or attempt to, alter, remove, abstract, mutilate,
8 destroy, or secrete any of the documents, except with the written
9 consent of the commissioner or pursuant to court order from a court
10 of competent jurisdiction.

11 (b) Unless the commissioner has reasonable grounds to believe
12 any books, accounts, records or other documents have been, or are
13 at risk of being, knowingly withheld, altered, removed, abstracted,
14 mutilated, destroyed, or secreted for the purpose of concealing a
15 violation of this act, the documents shall be accessible as necessary
16 for the licensee to continue to conduct business under the license.

17 d. A licensee may, upon approval of the commissioner, keep
18 records at a location, identified by the licensee, outside this State,
19 provided that the licensee shall make the records available in this
20 State upon request of the commissioner, or, at its option have the
21 records examined at its out-of-State location, for which it shall pay
22 the reasonable expenses of the commissioner for the examination.

23

24 22. (New section) a. Every residential mortgage lender or
25 residential mortgage broker as qualified individual licensees, and
26 every mortgage loan originator licensee shall provide, in a
27 conspicuous manner, the unique identifier assigned to the licensee
28 through the Nationwide Mortgage Licensing System and Registry,
29 on all residential mortgage loan application forms, solicitations, and
30 advertisements, whether in print, broadcast, or electronically
31 transmitted, and on any other document established by regulation of
32 the commissioner. Every residential mortgage lender or broker as a
33 business licensee shall ensure the provision of the unique identifier
34 by its qualified individual licensees and mortgage loan originators
35 as required by this section.

36 b. No residential mortgage lender, residential mortgage broker,
37 or mortgage loan originator, whether a business or individual
38 licensee, shall transact business provided for under this act using
39 any name other than that named in the licensee's license, and if
40 applicable, using any unique identifier other than the individual
41 licensee's unique identifier assigned through the Nationwide
42 Mortgage Licensing System.

43

44 23. (New section) a. A borrower shall not be required to
45 purchase credit life or accident and health insurance or credit
46 involuntary unemployment insurance in connection with any
47 mortgage loan. If the borrower or borrowers consent thereto in

1 writing, a residential mortgage lender or residential mortgage
2 broker may obtain or provide:

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

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

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

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

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

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

35 NOTICE TO THE BORROWER

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

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

41

42 24. (New section) a. Notwithstanding the provisions of any
43 other law, a residential mortgage lender, incidental to the
44 origination, processing and closing of any mortgage loan
45 transaction, shall have the right to charge only the following fees:
46 (1) credit report fee; (2) appraisal fee; (3) application fee; (4)
47 commitment fee; (5) warehouse fee; (6) fees necessary to reimburse

1 the residential mortgage lender for charges imposed by third
2 parties; and (7) discount points.

3 b. Notwithstanding the provisions of any other law, a
4 residential mortgage broker, incidental to the brokering of any
5 mortgage loan transaction, shall have the right to charge only the
6 following fees: (1) application fee; and (2) discount points.

7 c. No residential mortgage lender or residential mortgage
8 broker may charge any fee either not expressly authorized by this
9 section or authorized by the commissioner by regulation.
10

11 25. (New section) The following practices shall be prohibited
12 and a violation of this act with respect to any mortgage loan:

13 a. No person shall use the word "mortgage" or similar word in
14 any advertising, sign, letterhead, business card, or like matter which
15 tends to represent that the person solicits, makes, brokers, or
16 negotiates mortgage loans unless licensed to act as a residential
17 mortgage lender, residential mortgage broker, or mortgage loan
18 originator under this act, or is exempt from licensure pursuant to
19 section 5 of this act.

20 b. No person shall obtain or attempt to obtain a license by fraud
21 or misrepresentation in order to act as a licensee under this act.

22 c. No person shall assist, or aide or abet a licensee with respect
23 to any licensed activities regulated by this act, unless properly
24 licensed under this act, or exempt from licensure pursuant to section
25 5 of this act.

26 d. No residential mortgage lender, residential mortgage broker,
27 or mortgage loan originator, whether a business or individual
28 licensee, shall make, advertise, print, display, publish, distribute,
29 electronically transmit, telecast or broadcast, or cause or permit to
30 be made, advertised, printed, displayed, published, distributed,
31 electronically transmitted, televised or broadcast, in any manner,
32 any statement or representation which is false, misleading or
33 deceptive.

34 e. No residential mortgage lender, residential mortgage broker,
35 or mortgage loan originator shall engage in any unfair or deceptive
36 practice toward any person, or directly or indirectly employ any
37 scheme, device, or artifice to defraud or mislead borrowers, lenders,
38 or any other person, including any action to misrepresent,
39 circumvent, or conceal the nature of any information or material
40 particular of any transaction, or to obtain the real property that is, or
41 intended to be, the security for the loan.

42 f. No residential mortgage lender, residential mortgage broker,
43 or mortgage loan originator shall advertise, solicit, or make, broker,
44 or negotiate a mortgage loan for a specific interest rate, points, or
45 other financing terms unless those terms are actually available at the
46 time of advertising, making, brokering, or negotiating the loan.

47 g. No residential mortgage lender, residential mortgage broker,
48 or mortgage loan originator shall make any statement or

1 representation that the licensee will provide "immediate approval"
2 of any mortgage loan application or "immediate closing" of a loan,
3 or will afford unqualified access to credit.

4 h. No residential mortgage lender, residential mortgage broker,
5 or mortgage loan originator shall fail to make any disclosures
6 concerning a mortgage loan as required by federal and State law,
7 including any order, rule or regulation made or issued pursuant to
8 that law.

9 i. No residential mortgage lender, residential mortgage broker,
10 or mortgage loan originator shall make any payment, threat, or
11 promise, directly or indirectly, to any person for the purposes of
12 influencing the independent judgment of the person in connection
13 with a mortgage loan, including to any appraiser of the real property
14 that is, or intended to be, the security for the loan for the purposes
15 of influencing the appraiser's judgment with respect to the value of
16 the property.

17 j. No residential mortgage lender, residential mortgage broker,
18 or mortgage loan originator shall, in connection with or incidental
19 to the making of any mortgage loan, require or permit a party to the
20 transaction to sign the loan agreement, promissory note, bond or
21 other mortgage instrument if it contains any blank space to be filled
22 in after it has been signed, except a blank space relating to
23 recording.

24 k. With respect to any commission, bonus or fee:

25 (1) No person shall pay or receive any commission, bonus, or
26 fee to or from any person not licensed under this act, or not exempt
27 from licensure pursuant to section 5 of this act, in connection with
28 soliciting, making, brokering, or negotiating any mortgage loan for
29 a borrower.

30 (2) A residential mortgage lender, residential mortgage broker,
31 or mortgage loan originator shall not solicit, make, broker, or
32 negotiate a contact with a borrower that provides in substance that
33 the licensee may earn a commission, bonus, or fee through "best
34 efforts" to obtain a mortgage loan, even though no loan is actually
35 consummated for the borrower.

36 l. No residential mortgage lender, residential mortgage broker,
37 or mortgage loan originator shall charge or exact directly or
38 indirectly from a borrower or any other person any commission,
39 bonus, fee, or charge not authorized by this act.

40 m. No residential mortgage lender or residential mortgage
41 broker shall fail to disburse funds in accordance with the licensee's
42 agreements, unless otherwise ordered by the commissioner or a
43 court of competent jurisdiction.

44 n. No residential mortgage lender or residential mortgage
45 broker shall fail to place in escrow, immediately upon receipt, any
46 money, fund, deposit, check, or draft entrusted to the licensee by
47 any person, in a manner approved by the commissioner, or to
48 deposit the funds in a trust or escrow account maintained by the

1 licensee with a depository institution, wherein the funds shall be
2 kept until the disbursement thereof is properly authorized.

3 o. If a residential mortgage lender or residential mortgage
4 broker provides loan proceeds to a closing agent for the purpose of
5 closing and settling a mortgage transaction, the licensee shall not
6 fail: (1) to present a certified check, cashier's check, teller's check
7 or bank check for the proceeds of the mortgage loan; (2) to arrange
8 an electronic fund transfer for the proceeds of the loan; or (3) to
9 provide for payment by cash to the closing agent at a reasonable
10 time and place prior to the time of the mortgage closing transaction.
11 The closing agent shall deposit the loan proceeds in a trust or
12 escrow account, which shall not be commingled with the agent's
13 own funds, and shall disburse the loan proceeds upon the closing or
14 settlement in accordance with the settlement documents. Nothing
15 contained in this subsection shall require the licensee to utilize a
16 closing agent, or prevent the licensee from directly disbursing loan
17 proceeds from the account of the licensee to the borrower and other
18 persons entitled to receive disbursements from the settlement if a
19 closing agent is not used. Nothing contained in this subsection shall
20 prevent the licensee from assessing a reasonable charge as set forth
21 by regulation of the commissioner to reflect the additional cost to
22 the licensee for the issuance of a certified, cashier's, teller's or bank
23 check or for arranging an electronic fund transfer. The reasonable
24 charge shall be fully disclosed at application, or at or prior to the
25 issuance of the loan commitment. In this subsection, a "bank
26 check" means a negotiable instrument drawn by a federal or state
27 chartered bank, savings bank or savings and loan association on
28 itself or on its account in another federal or state chartered bank,
29 savings bank or savings and loan association doing business in this
30 State; and a "teller's check" means a draft drawn by a bank on
31 another bank, or payable at or through a bank.

32 p. No residential mortgage lender, residential mortgage broker,
33 or mortgage loan originator shall fail without good cause to
34 truthfully account or deliver to any person any personal property,
35 money, fund, deposit, check, draft, mortgage, document or thing of
36 value, which is not the licensee's property, or which the licensee is
37 not in law or equity entitled to retain under the circumstances, at the
38 time which has been agreed upon, or is required by law, or, in the
39 absence of a fixed time, upon demand of the person entitled to the
40 accounting or delivery.

41

42 26. (New section) a. Notwithstanding the provisions of
43 R.S.31:1-1 or any other law to the contrary, a residential mortgage
44 lender may make a closed-end loan as a secondary mortgage loan,
45 and may charge, contract for, and receive thereon, interest at an
46 annual percentage rate agreed to by the licensee and the borrower.

47 b. The promissory note evidencing the closed-end loan may
48 provide for a variation in the interest rate in which adjustments to

1 the interest rate shall correspond directly to the movement of an
2 interest rate index which is readily available to and verifiable by the
3 borrower and is beyond the control of the licensee. If the note
4 provides for a variation in the interest rate, that fact shall be clearly
5 described in plain language, in at least eight-point bold face type on
6 the face of the note. If the note provides for a final payment which
7 is substantially greater than the previous installments, that fact,
8 together with a statement that the licensee is under no obligation to
9 refinance the loan, unless the licensee unconditionally obligates
10 itself to do so, shall be clearly disclosed in plain language, in at
11 least eight-point bold face type on the face of the note. No rate
12 increase or decrease shall take effect during the first six months of
13 the term of the loan. Thereafter, no rate increase or decrease shall
14 take effect unless at least 30 days prior to the effective date of that
15 increase or decrease, a written notice has been mailed or delivered
16 to the borrower that clearly and conspicuously describes the
17 increase or decrease, and unless at least six months have elapsed
18 without any increase in the rate.

19 c. Upon written request from the borrower, the licensee shall
20 give to the borrower, without charge, within five days from the date
21 of receipt of that request, a written statement of the borrower's
22 account, which shall show the dates and amounts of all installment
23 payments on the closed-end loan credited to the borrower's account,
24 the dates, amounts and explanation of all other charges or credits to
25 the account and the unpaid balance thereof. The licensee shall not
26 be required to furnish more than two statements pursuant to this
27 subsection in any 12-month period.

28

29 27. (New section) Notwithstanding the provisions of R.S.31:1-1
30 or any other law to the contrary, and subject to all applicable
31 provisions of this act, a licensed residential mortgage lender shall
32 have authority to make an open-end, secondary mortgage loan upon
33 the same terms and conditions permitted to banks, savings banks,
34 and savings and loan associations pursuant to State and federal
35 statutes and regulations promulgated thereunder, and may charge,
36 contract for, and receive thereon, interest at an annual percentage
37 rate agreed to by the licensee and the borrower, provided however,
38 that with respect to fees and other charges permitted in connection
39 with the open-end loan, the licensee shall be subject to the
40 provisions of this act.

41

42 28. (New section) An instrument evidencing a secondary
43 mortgage loan shall:

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

1 b. Provide for the payment, in full, of the total amount of the
2 secondary mortgage loan in substantially equal payment periods,
3 measured in terms of weeks or months, and, except as otherwise
4 permitted, substantially equal installment payment amounts, except
5 that the initial payment period may be deferred for 60 days, and,
6 provided further, when appropriate for the purpose of facilitating
7 payment in accordance with the borrower's intermittent income, a
8 promissory note or loan agreement may provide an installment
9 schedule which reduces or omits payments over any period of time
10 during which the borrower's income is reduced or suspended, and
11 the final installment may be \$1 more or less than the amount of all
12 other installment payments.

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

16 “NOTICE TO BORROWER

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

18 Do not sign this promissory note or loan agreement if it contains
19 blank spaces.

20 The promissory note or loan agreement is secured by a secondary
21 mortgage on your real property.”

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

26

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

29 a. A power of attorney to confess judgment;

30 b. An assignment of or order for the payment of any salary,
31 wages, commissions or any other compensation for services, or any
32 part thereof, earned or to be earned.

33 c. An agreement to pay any amount other than the unpaid
34 balance of the promissory note or loan agreement or any other
35 charge authorized by this act.

36 d. A provision relieving the residential mortgage lender or
37 residential mortgage broker from liability for any claim, or from
38 any legal remedy, which the borrower may have against the licensee
39 under the terms of the promissory note or loan agreement.

40 e. A provision whereby the borrower waives any right of action
41 against the licensee, a subsequent holder or any person acting on the
42 licensee's or holder's behalf for any illegal act committed in the
43 collection of payments under the promissory note or loan
44 agreement.

45 f. An acceleration clause under which the unpaid balance of the
46 promissory note or loan agreement not yet matured or any part
47 thereof may be declared due and payable because the licensee or
48 subsequent holder deems himself to be insecure.

1 30. (New section) a. A licensee acting as a residential mortgage
2 lender shall not contract for, charge, receive or collect directly or
3 indirectly, any of the following in connection with a secondary
4 mortgage loan: a broker's or finder's fee; commission; expense;
5 fine; penalty; premium; or any other thing of value other than the
6 charges authorized by this act; except the expenses incurred on
7 actual sale of the real property in foreclosure proceedings or upon
8 the entry of judgment, which are otherwise authorized by law;
9 except that:

10 (1) The licensee may charge and receive no more than three
11 discount points computed as a percentage of the principal amount of
12 the secondary mortgage loan and may add these discount points to
13 the principal balance of the loan, which discount points shall be
14 fully earned when the loan is made. The annual percentage rate
15 charged to the borrower, including the discount points, if any, shall
16 be subject to N.J.S.2C:21-19. As used in this paragraph, "discount
17 point" means one percent of the principal amount of the loan, and
18 "principal amount of the loan" means the total amount of credit
19 extended, including all loan closing fees, expenses or costs that are
20 financed, but excluding the discount points; and

21 (2) The licensee may require a borrower to pay a reasonable
22 legal fee at the time of the execution of the secondary mortgage
23 loan, provided that any legal fee shall represent a charge actually
24 incurred in connection with the secondary mortgage loan and shall
25 not be paid to any person other than an attorney authorized to
26 practice law in this State; provided further that the legal fee shall be
27 evidenced by a statement issued to the licensee from the attorney.

28 b. The licensee shall have authority to collect fees for title
29 examination, abstract of title, survey, title insurance, credit reports,
30 appraisals, and recording fees when those fees are actually paid by
31 the licensee to a third party for those services or purposes, and to
32 include those fees in the amount of the loan principal.

33 c. The licensee shall also have the authority to charge and
34 collect a returned check fee in an amount not to exceed \$20 which
35 the licensee may charge the borrower if a check of the borrower for
36 a secondary mortgage loan is returned to the licensee uncollected
37 due to insufficient funds in the borrower's account. The licensee
38 shall also have the authority to charge and collect a late charge in
39 any amount as may be provided in the promissory note or loan
40 agreement, but no late charge shall exceed 5% of the amount of
41 payment in default. Not more than one late charge shall be assessed
42 on any one payment in arrears.

43 d. The licensee shall not make any other charge or accept an
44 advance deposit prior to the time a secondary mortgage loan is
45 closed, except that the licensee may charge:

46 (1) An application fee for the secondary mortgage loan at
47 closing; and

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

3 e. A promissory note or loan agreement by the licensee may
4 provide for the payment of attorney fees in the event it becomes
5 necessary to refer the promissory note or loan agreement to an
6 attorney for collection; provided, however, that any attorney fees
7 provision shall be void and unenforceable unless:

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

10 (2) The attorney to whom the promissory note or loan agreement
11 is referred is not an officer, director, partner, owner, or employee,
12 whether salaried or commissioned, of the licensee; and

13 (3) Suit is actually filed by the attorney to whom the promissory
14 note or loan agreement is referred and subsequently decided in
15 favor of the licensee, in which event the attorney fees shall not
16 exceed 15% of the first \$500, 10% of the next \$500, and 5% of any
17 excess amount due and owing under the promissory note or loan
18 agreement, and provided further that at least 15 days prior to the
19 commencement of the suit, the licensee or his attorney shall send to
20 the borrower, by certified or registered mail, return receipt
21 requested, at the borrower's last known address, a statement of the
22 licensee's intention to sue, which statement shall also specify the
23 amount of principal, interest and any other charge due and owing to
24 the licensee.

25

26 31. (New section) a. If a residential mortgage lender charges or
27 collects interest, costs or other charges on a secondary mortgage
28 loan in excess of those permitted by this act, the licensee may
29 collect only the principal amount of the loan, and may not collect
30 interest, costs or other charges with respect to the loan. In addition,
31 a licensee who knowingly and willfully violates any provision of
32 this act shall also forfeit to the borrower three times any amount of
33 the interest, costs or other charges collected in excess of that
34 authorized by law.

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

- 1 32. (New section) A residential mortgage lender shall, in
2 connection with a secondary mortgage loan:
- 3 a. Give to the borrower, without charge, a copy of every
4 instrument, document or other writing the borrower signs, and
5 written evidence of any insurance obtained from the licensee
6 pursuant to section 23 of this act.
- 7 b. Give to the borrower, without charge, at the time the loan is
8 made, if a closed-end loan, and at the time of the first advance, if an
9 open-end loan, a closing statement which itemizes the individual
10 amounts disbursed to or on behalf of the borrower, including, but
11 not limited to, the premium for insurance, if any, the total amount
12 of funds so disbursed, the amount of the interest charge, total
13 amount of the loan, the amount, number and due date of the
14 installment payments and the interest charge expressed as an annual
15 percentage rate, as applicable.
- 16 c. In the event a borrower's application for the secondary
17 mortgage loan is denied, notify the borrower, in writing, of that
18 denial. The name of the denied borrower or a list of denied
19 borrowers shall not be referred by the licensee, in any manner
20 whatsoever, to any other lender, retail seller of personal property or
21 services, or to any other person, whether in this State or any other
22 state.
- 23 d. If the secondary mortgage loan is not consummated, return
24 all documents executed by or belonging to the borrower.
- 25 e. Whenever payment is made in cash on an account of the
26 secondary mortgage loan, give to the borrower, without charge, at
27 the time that payment is actually received, a written receipt which
28 shall show the name and address of the licensee, the name and
29 address of the borrower, account number or other identification
30 mark or symbol, date and amount paid.
- 31 f. When the loan, if a closed-end loan, is paid in full, or when
32 the loan, if an open-end loan, is paid in full and the borrower has
33 notified the licensee in writing to discontinue his account with the
34 licensee:
- 35 (1) Refund or credit to the borrower, in accordance with
36 regulations promulgated by the commissioner, any unearned portion
37 of the premium for any insurance, if a premium for the insurance
38 was disbursed on behalf of the borrower at the time the secondary
39 mortgage loan was originally made.
- 40 (2) Stamp or write on the face of the promissory note or loan
41 agreement evidencing the borrower's secondary mortgage loan
42 indebtedness "Paid in Full" or "Canceled," the date paid and the
43 name and address of the licensee and, within 45 days, return the
44 promissory note or loan agreement to the borrower.
- 45 (3) Release any lien on real property and cancel the same of
46 record pursuant to P.L.1975, c.137 (C.46:18-11.2 et seq.), and, at
47 the time the promissory note or loan agreement evidencing the
48 borrower's secondary mortgage loan indebtedness is returned,

1 deliver to the borrower any good and sufficient assignments,
2 releases or any other certificate, instrument or document as may be
3 necessary to vest the borrower with complete evidence of title,
4 insofar as the applicable secondary mortgage loan is concerned, to
5 the real property, except that the licensee may require the borrower
6 to pay any charge imposed upon the licensee by a county recording
7 officer to effect the cancellation or release.

8

9 33. (New section) In addition to the prohibited practices set
10 forth pursuant to section 25 of this act for any mortgage loan, the
11 following shall be prohibited and a violation of this act with respect
12 to any secondary mortgage loan:

13 a. No residential mortgage lender shall, consistent with section
14 17 of this act, engage in any business regulated by this act under
15 any other name or at any other location except that designated in the
16 licensee's license. For the purpose of this subsection, the
17 transaction of business includes, but is not limited to, the signing of
18 any instrument, document or any other form by the borrower,
19 except that a borrower's application for a secondary mortgage loan
20 need not be signed in the office of the licensee and the loan need
21 not be closed at the office of the licensee, so long as it is closed in
22 New Jersey at the office of an attorney admitted to practice in this
23 State, or a licensed title company or producer.

24 b. No residential mortgage lender or residential mortgage broker
25 shall request that a borrower incorporate in connection with a
26 secondary mortgage loan, or aid or abet a scheme to incorporate a
27 borrower.

28 c. No residential mortgage lender shall make a secondary
29 mortgage loan which has been referred by a retail seller, who, in
30 connection with that referral, has required the borrower to purchase
31 personal property or services, or has indicated that the purchase is
32 necessary as a condition precedent for the loan.

33 d. No residential mortgage lender or residential mortgage broker
34 shall require or accept from a borrower any collateral or security for
35 a secondary mortgage loan other than a mortgage, indenture or any
36 other similar instrument or document which creates a lien upon any
37 real property or an interest in real property including, but not
38 limited to, shares of stock in a cooperative corporation.

39

40 34. (New section) a. The commissioner may investigate or
41 examine any residential mortgage lender, residential mortgage
42 broker, mortgage loan originator, or other person as the
43 commissioner deems necessary to determine compliance with this
44 act and the orders, rules and regulations issued hereunder. For
45 these purposes, the commissioner may examine the books, accounts,
46 records and other documents or matters of any licensee, maintained
47 pursuant to section 21 of this act, or other person. Each licensee
48 shall be subject to an examination by the commissioner, not more

1 than once in any 9-month period, unless the commissioner has
2 reason to believe that the licensee is not complying with the
3 provisions of this act or any rule or regulation promulgated
4 hereunder, or is not transacting business in accordance with law, in
5 which case the commissioner may conduct an examination at any
6 time. The commissioner shall have the power to compel by
7 subpoena the production of all relevant books, accounts, records
8 and other documents and materials relative to an examination or
9 investigation. Examinations conducted under the provisions of this
10 act shall be confidential; notwithstanding this confidentiality, the
11 examinations shall be subject to: (1) reporting and sharing
12 procedures established by the Nationwide Mortgage Licensing
13 System and Registry pursuant to subsection b. of section 12 of this
14 act; and (2) public disclosure as required in the administration,
15 enforcement and prosecution of violations under this act or pursuant
16 to court order. The cost of any investigation or examination shall
17 be borne by the licensee.

18 b. The commissioner or the commissioner's designee shall have
19 power to issue subpoenas to compel the attendance of witnesses and
20 the production of documents, papers, books, accounts, records and
21 other evidence before him in any matter over which he has
22 jurisdiction pursuant to this act, and to administer oaths and
23 affirmations to any person.

24 c. If any person shall refuse to obey a subpoena, or to give
25 testimony or to produce evidence as required thereby, the
26 commissioner may apply ex parte to any court having jurisdiction
27 over that person for an order compelling the appearance of the
28 witness before the commissioner to give testimony or to produce
29 evidence as required thereby, or both.

30
31 35. (New section) a. (1) Every residential mortgage lender and
32 residential mortgage broker shall annually file a report with the
33 commissioner, which shall set forth any information as the
34 commissioner shall require concerning the business conducted as a
35 licensee during the preceding calendar year. The report shall be
36 under oath and in a form and within the time specified by the
37 commissioner by regulation.

38 (2) Every residential mortgage lender and broker shall
39 additionally submit to the Nationwide Mortgage Licensing System
40 and Registry a mortgage call report of condition, in the form and
41 manner, and with any information, at any time as may be required
42 by that nationwide system and registry, and any other report to, or
43 through, the nationwide system and registry pursuant to an
44 arrangement for reporting and sharing information as set forth in
45 subsection b. of section 12 of this act.

46 b. Any negligently made false statement or knowing omission of
47 material fact in connection with any report or supporting
48 information filed with the commissioner, the nationwide mortgage

1 licensing system and registry, or through that nationwide mortgage
2 licensing system and registry with any federal or state agency, shall
3 be deemed a violation of this act.

4 c. A licensee that fails to make and file its annual report with the
5 commissioner, or any report with or through the nationwide system
6 and registry, in the form and within the time provided in this
7 section, shall be subject to a penalty payable to the commissioner of
8 not more than \$100 for each day's failure concerning the annual
9 report, and any penalty for a failure concerning a report to be filed
10 with or through the nationwide system and registry, payable to the
11 nationwide system and registry, and the commissioner, as
12 authorized pursuant to section 20 of this act, may revoke or suspend
13 the licensee's authority to do business in this State. The penalty
14 may be collected in a summary proceeding pursuant to the "Penalty
15 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
16 A warrant may issue in lieu of a summons.

17

18 36. (New section) Any agreement to waive any provision of this
19 act shall be unenforceable and void.

20

21 37. (New section) The provisions of this act shall apply to any
22 mortgage loan:

23 a. Advertised, caused to be advertised, solicited, negotiated,
24 offered, or otherwise transacted within this State, in whole or in
25 part, whether by the ultimate residential mortgage lender or any
26 other person;

27 b. Made or executed within this State; or

28 c. Which is secured by residential real estate located in this
29 State, notwithstanding the place of execution.

30

31 38. (New section) The failure of any person to comply with the
32 provisions of this act shall not affect the validity or enforceability
33 of any mortgage loan, and no person acquiring a mortgage loan
34 shall be required to ascertain if a residential mortgage lender has
35 made the loan in compliance with the provisions of this act.

36

37 39. The commissioner may issue and promulgate rules and
38 regulations, in accordance with the "Administrative Procedure Act,"
39 P.L.1968, c. 410 (C.52:14B-1 et seq.), necessary to effectuate the
40 provisions of this act.

41

42 40. Section 1 of P.L.1996, c.157 (C.17:11C-1) is amended to
43 read as follows:

44 1. Sections 1 through 49 of this act [shall be] , previously
45 known and [may be] cited as the "New Jersey Licensed Lenders
46 Act [.] ," shall be known and may be cited as the "New Jersey
47 Consumer Finance Licensing Act," on or after the effective date of

1 P.L. , c. (C.) (pending before the Legislature as this bill).
2 (cf: P.L.1996, c.157, s.1)

3

4 41. Section 2 of P.L.1996, c.157 (C.17:11C-2) is amended to
5 read as follows:

6 2. As used in this act:

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

11 "Borrower" means any **[person]** individual applying for a
12 consumer loan from a lender licensed under this act, whether or not
13 the loan is granted, and any **[person]** individual who has actually
14 obtained such a loan.

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

25 "Closed-end loan" with respect to a consumer loan**]** means a
26 consumer loan which meets the requirements of section 35 of
27 P.L.1996, c.157 (C.17:11C-35) and pursuant to which the licensee
28 advances a specified amount of money and the borrower agrees to
29 repay the principal and interest in substantially equal installments
30 over a stated period of time.

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

33 "Consumer lender" means a person licensed, or a person who
34 should be licensed, under P.L.1996, c.157 (C.17:11C-1 et al.) to
35 engage in the consumer loan business.

36 "Consumer loan" means a loan of \$50,000 or less made by a
37 consumer lender, payable in one or more installments, pursuant to
38 the terms of P.L.1996, c.157 (C.17:11C-1 et al.), and not a
39 residential mortgage loan as defined by section 3 of P.L. , c. (C.)
40 (pending before the Legislature as this bill).

41 "Consumer loan business" means the business of making loans of
42 money, credit, goods or things in action, which are to be used
43 primarily for personal, family or household purposes, in the amount
44 or value of \$50,000 or less and charging, contracting for, or
45 receiving a greater rate of interest, discount or consideration
46 therefor than the lender would be permitted by law to charge if he
47 were not a licensee hereunder, except as authorized by this act and
48 without first obtaining a license from the commissioner. Any

1 person directly or indirectly engaging in the business of soliciting
2 or taking applications for such loans of \$50,000 or less, or in the
3 business of negotiating or arranging or aiding the borrower or
4 lender in procuring or making such loans of \$50,000 or less, or in
5 the business of buying, discounting or **【indorsing】** endorsing notes,
6 or of furnishing, or procuring guarantee or security for
7 compensation in amounts of \$50,000 or less, shall be deemed to be
8 engaging in the consumer loan business.

9 **【"Commissioner" means the Commissioner of Banking and**
10 **Insurance.**

11 "Consumer lender" means a person licensed, or a person who
12 should be licensed, under this act to engage in the consumer loan
13 business.

14 "Consumer loan" means a loan of \$50,000 or less made by a
15 consumer lender, payable in one or more installments, pursuant to
16 the terms of this act, and not a first mortgage loan or a secondary
17 mortgage loan. **】**

18 "Controlling interest" means ownership, control or interest of
19 25% or more of the licensee or applicant.

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

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

27 "Depository institution" means a state or federally chartered
28 bank, savings bank, savings and loan association, building and loan
29 association or credit union, irrespective of whether the entity
30 accepts deposits.

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

34 **"Individual" means a natural person.**

35 "Licensee" means a person who is licensed under this act, or who
36 should be so licensed.

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

43 "Mortgage broker" means any person, not exempt under section
44 4 of this act and licensed pursuant to the provisions of this act, and
45 any person who should be licensed pursuant to the provisions of this
46 act, who for compensation or gain, or in the expectation of
47 compensation or gain, either directly or indirectly negotiates, places

1 or sells for others, or offers to negotiate, place or sell for others,
2 first mortgage loans in the primary market.】

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

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

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

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

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

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

23 【"Primary market" means the market wherein first mortgage
24 loans are originated between a lender and a borrower, whether or
25 not through a mortgage broker or other conduit, and shall not
26 include the sale or acquisition of a mortgage loan after a mortgage
27 loan is closed.】

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

30 【"Secondary lender" means a person licensed, or a person who
31 should be licensed, under this act to engage in the secondary
32 mortgage loan business.

33 "Secondary mortgage loan" means a loan made to an individual,
34 association, joint venture, partnership, limited partnership
35 association, limited liability company, trust, or any other group of
36 individuals, however organized, except a corporation, which is
37 secured in whole or in part by a lien upon any interest in real
38 property, including but not limited to shares of stock in a
39 cooperative corporation, created by a security agreement, including
40 a mortgage, indenture, or any other similar instrument or document,
41 which real property is subject to one or more prior mortgage liens
42 and on which there is erected a structure containing a one, two,
43 three, four, five or six dwelling units, a portion of which structure
44 may be used for nonresidential purposes, except that the following
45 loans shall not be subject to the provisions of this act: (1) a loan
46 which is to be repaid in 90 days or less; (2) a loan which is taken as
47 security for a home repair contract executed in accordance with the

1 provisions of the "Home Repair Financing Act," P.L.1960, c.41
2 (C.17:16C-62 et seq.); or (3) a loan which is the result of the private
3 sale of a dwelling, if title to the dwelling is in the name of the seller
4 and the seller has resided in that dwelling for at least one year, if
5 the buyer is purchasing that dwelling for his own residence and, if
6 the buyer, as part of the purchase price, executes a secondary
7 mortgage in favor of the seller.

8 "Secondary mortgage loan business" means advertising, causing
9 to be advertised, soliciting, negotiating, offering to make or making
10 a secondary mortgage loan in this State, whether directly or by any
11 person acting for his benefit.

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

21 (P.L.2001, c.294, s.1)

22

23 42. Section 3 of P.L.1996, c.157 (C.17:11C-3) is amended to
24 read as follows:

25 3. a. No person shall 【act as a mortgage banker or mortgage
26 broker, engage in the secondary mortgage loan business or】 engage
27 in 【the consumer loan】 business as a consumer lender or sales
28 finance company without first obtaining a license or licenses under
29 this act 【, except that a person licensed as a mortgage banker may
30 act as a mortgage broker or mortgage solicitor, and a person
31 licensed as a mortgage broker may act as a mortgage solicitor】.

32 b. The department shall issue licenses under this act which
33 specify whether a licensee may act as a 【mortgage banker or
34 mortgage broker, a secondary lender or a】 consumer lender or a
35 sales finance company. A licensee may not engage in a licensed
36 activity under 【the】 this act or the "Retail Installment Sales Act of
37 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), unless the license
38 issued by the department specifies that the licensee may engage in
39 that licensed activity.

40 c. 【No person shall act as a solicitor without first being
41 registered with the department.】 (Deleted by amendment, P.L. _____,
42 c.) (pending before the Legislature as this bill)

43 d. 【No corporation, partnership, association or any other entity
44 shall be issued or hold a license as a mortgage banker or broker or
45 secondary lender unless one officer or principal has an individual
46 license of that same type sought or held. The commissioner may,
47 by regulation, require a licensed mortgage banker or broker to

1 employ additional licensed individuals to properly supervise the
2 licensee and its branch offices. If the employed individual licensee
3 allows his license to lapse or for some other reason is no longer
4 affiliated with the employing licensee, the employing licensee shall
5 notify the commissioner within 10 days, and shall appoint another
6 licensed individual within 90 days or such longer period as
7 permitted by the commissioner. 】 (Deleted by amendment, P.L. ,
8 c.) (pending before the Legislature as this bill)
9 (cf: P.L.1996, c.157, s.3)

10

11 43. Section 7 of P.L.1996, c.157 (C.17:11C-7) is amended to
12 read as follows:

13 7. The commissioner shall issue a license under this act if the
14 following conditions are met:

15 a. **【A written】** An application for a new license or for a
16 renewal of a license shall be submitted to the commissioner on the
17 forms and in the manner, and accompanied by such evidence in
18 support of the application, as required by this act and as may be
19 prescribed by the commissioner, and shall be accompanied by the
20 required fees.

21 b. **【An individual applicant for a new license shall qualify by**
22 **examination, the content and form of which shall be approved by**
23 **the commissioner. The commissioner may designate an**
24 **independent testing service to prepare and administer the**
25 **examinations. In addition, the commissioner by regulation may**
26 **establish additional requirements for licensure as an individual,**
27 **including education and experience.】** (Deleted by amendment,
28 P.L. , c.) (pending before the Legislature as this bill)

29 c. If the commissioner finds that the financial responsibility,
30 experience, character, and general fitness of the applicant for a new
31 license or for a renewal of a license demonstrate that the business
32 will be operated honestly, fairly, and efficiently within the purposes
33 of this act, and if all other licensing requirements of this act and
34 regulations promulgated by the commissioner are met, the
35 commissioner shall issue the license of the type sought by the
36 applicant.

37 d. A person already holding a license under this act, or a
38 business license as a residential mortgage lender or residential
39 mortgage broker under the "New Jersey Residential Mortgage
40 Lending Act," sections 1 through 39 of P.L. , c. (C.)
41 (pending before the Legislature as this bill), may apply to the
42 commissioner to act as a consumer lender or as a sales finance
43 company pursuant to the "Retail Installment Sales Act of 1960,"
44 P.L.1960, c.40 (C.17:16C-1 et seq.), 【who is in full compliance
45 with this act, the "Retail Installment Sales Act of 1960," and the
46 regulations promulgated thereunder, as applicable, may apply to the
47 commissioner for a license to act as a mortgage banker or mortgage

1 broker, a secondary lender, a consumer lender or a sales finance
2 company, or any combination of these capacities for which the
3 person is not already licensed,] by filing with the commissioner an
4 abbreviated application containing the information which the
5 commissioner deems necessary when considering whether to license
6 that person for that specific [activity,] type of license along with an
7 application fee [, and the necessary additional license fee] for the
8 amount set forth in subsection e. of section 8 of P.L.1996, c.157
9 (C.17:11C-8).

10 e. Any [applicant for a license pursuant to this section and any
11 officer, director, partner or owner of a controlling interest of a
12 corporation or partnership] person filing for licensure shall submit
13 to the commissioner the [applicant's] name, address, fingerprints
14 and written consent for a criminal history record background check
15 to be performed on any officer, director, partner or owner of a
16 controlling interest of that person. The commissioner is authorized
17 to exchange fingerprint data with and receive criminal history
18 record information from the State Bureau of Identification in the
19 Division of State Police and the Federal Bureau of Investigation
20 consistent with applicable State and federal laws, rules and
21 regulations, for the purposes of facilitating determinations
22 concerning licensure eligibility for the person, based upon any
23 findings related to an officer, director, partner or owner. The
24 applicant shall bear the cost for the criminal history record
25 background check [, including all costs of administering and
26 processing the check]. The Division of State Police shall promptly
27 notify the commissioner in the event [a current holder of a license
28 or prospective applicant] an officer, director, partner or owner of
29 the person, who was the subject of a criminal history record
30 background check pursuant to this section, is arrested for a crime or
31 offense in this State after the date the background check was
32 performed, whether the person is a prospective new licensee, or
33 subsequently, a current license holder.

34 (cf: P.L.2003, c.199, s.10)

35

36 44. Section 8 of P.L.1996, c.157 (C.17:11C-8) is amended to
37 read as follows:

38 8. a. [Every application for an initial license shall be
39 accompanied by a nonrefundable application fee as set forth in
40 subsection d. of this section. When the applicant at the same time
41 seeks a license to engage in more than one activity, only one
42 application fee may be charged. With respect to a license fee
43 imposed prior to the implementation of the assessment pursuant to
44 P.L.2005, c.199 (C.17:1C-33 et al.), the license fee, as prescribed
45 by the commissioner by regulation, shall be based on the number of
46 the following activities in which the person is licensed to engage
47 under this act or the "Retail Installment Sales Act of 1960,"

1 P.L.1960, c.40 (C.17:16C-1 et seq.): a mortgage banker or mortgage
2 broker; a secondary lender; a consumer lender; or a sales finance
3 company. The fee for a biennial license or a renewal thereof shall
4 be set according to the following schedule:

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

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

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

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

13 Upon implementation of the assessment pursuant to P.L.2005,
14 c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed
15 or collected by the commissioner pursuant to this section. A license
16 shall run from the date of issuance to the end of a term of not less
17 than two years as set by the commissioner by regulation. **】** (Deleted
18 by amendment, P.L. , c.) (pending before the Legislature as this
19 bill)

20 b. (Deleted by amendment, P.L.2007, c.81).

21 c. **【**An applicant for a mortgage solicitor registration pursuant
22 to subsection c. of section 3 of P.L.1996, c.157 (C.17:11C-3) shall
23 be subject to a nonrefundable mortgage solicitor registration
24 application fee, not to exceed \$100 as established by the
25 commissioner by regulation. A solicitor who changes his
26 registration to a different licensee shall be required to submit a new
27 registration application and to pay another nonrefundable
28 application fee. **】** (Deleted by amendment, P.L. , c.) (pending
29 before the Legislature as this bill)

30 d. An applicant for a new license or for a renewal of a license
31 to be a consumer lender or a sales finance company shall pay to the
32 commissioner at the time of the **【initial】** application **【for a license】**
33 a nonrefundable application fee not to exceed the amounts specified
34 in this subsection. The nonrefundable application fee is also
35 required for each branch office license of a consumer lender or sales
36 finance company. The nonrefundable application fee shall be:

37 (1) For an application for one **【activity】** license, an application
38 fee not to exceed \$700;

39 (2) For an application for two **【activities】** licenses, an
40 application fee not to exceed \$1,000;

41 (3) **【**For an application for three activities, an application fee
42 not to exceed \$1,300; and **】** (Deleted by amendment, P.L. , c.)
43 (pending before the Legislature as this bill)

44 (4) **【**For an application for four activities, an application fee not
45 to exceed \$1,600. **】** (Deleted by amendment, P.L. , c.) (pending
46 before the Legislature as this bill)

1 e. A licensee that seeks to add an additional **[activity]** license
2 to an existing license held , which activity is regulated under the
3 “New Jersey Consumer Finance Licensing Act,” P.L.1996, c.157
4 (C.17:11C-1 et al.) or the "Retail Installment Sales Act of 1960,"
5 P.L.1960, c.40 (C.17:16C-1 et seq.), shall pay **[a]** an application
6 fee not to exceed \$300 per activity.

7 f. Fee amounts shall be prescribed by the commissioner by
8 regulation.

9 (cf: P.L.2007, c.81, s.7)

10
11 45. Section 9 of P.L.1996, c.157 (C.17:11C-9) is amended to
12 read as follows:

13 9. A **[licensee]** consumer lender or sales finance company may
14 maintain a branch office or offices. The licensee shall obtain a
15 license **[all]** for each branch **[offices]** office **[in this State and all**
16 **branch offices outside this State]** from which the licensee has direct
17 contact with New Jersey consumers regarding **[origination or**
18 **brokering]** any consumer loan business or sales finance company
19 business regulated under the “New Jersey Consumer Finance
20 Licensing Act,” P.L.1996, c.157 (C.17:11C-1 et al.) or the "Retail
21 Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.),
22 as appropriate.

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

24 (1) The licensee has submitted a completed branch office
25 application form, which includes any information required by the
26 commissioner concerning the branch office, and **[a branch]** an
27 application fee pursuant to the schedule provided in subsection d. of
28 section 8 of P.L.1996, c.157 (C.17:11C-8); and

29 (2) The application for the branch office demonstrates that the
30 office is in a suitable location **[; and]** .

31 (3) **[The application contains a certification that the office is**
32 **covered by the surety bond.]** (Deleted by amendment, P.L. , c.)
33 (pending before the Legislature as this bill)

34 c. (Deleted by amendment, P.L.2007, c.81).

35 (cf: P.L.2007, c.81, s.8)

36
37 46. Section 10 of P.L.1996, c.157 (C.17:11C-10) is amended to
38 read as follows:

39 10. a. The consumer lender or sales finance company license
40 shall state the name of the licensee and the licensee's place of
41 business or businesses, as applicable, and shall contain **[such]** any
42 other information as the commissioner may see fit to require. No
43 licensee shall transact business regulated by the “New Jersey
44 Consumer Finance Licensing Act,” P.L.1996, c.157 (C.17:11C-1 et
45 al.) or the "Retail Installment Sales Act of 1960," P.L.1960, c.40
46 (C.17:16C-1 et seq.) under any name other than that named in the
47 license.

- 1 b. The license shall be posted conspicuously in the place or
2 places of business of the licensee.
- 3 c. A licensee or any other person shall not photocopy or
4 otherwise reproduce the license except for legitimate business
5 purposes.
- 6 d. Licenses issued pursuant to this act or previously, the
7 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1
8 et seq.), shall not be transferable or assignable, other than as
9 provided by section 12 of this act.
- 10 e. No licensee shall change the name or address of the licensee's
11 place or places of business without notice to the commissioner.
12 (cf: P.L.1996, c.157, s.10)

13
14 47. Section 11 of P.L.1996, c.157 (C.17:11C-11) is amended to
15 read as follows:

16 11. a. (1) Each consumer lender or sales finance company
17 license issued pursuant to this act shall expire at the end of the
18 license period of not less than two years as set by the commissioner
19 by regulation.

20 (2) A licensee may surrender any license by delivering to the
21 commissioner written notice that the license is surrendered, along
22 with the license, and complying with any regulation set forth by the
23 commissioner concerning the license surrender, but the surrender
24 shall not affect the licensee's civil or criminal liability for an act
25 committed prior to the surrender.

26 b. (Deleted by amendment, P.L.2007, c.81).

27 c. [The commissioner may by regulation provide for individual
28 mortgage banker, mortgage broker and secondary lender licenses to
29 continue in existence in an inactive status for a specified period of
30 time.] (Deleted by amendment, P.L. , c.) (pending before the
31 Legislature as this bill)

32 d. Each mortgage banker, correspondent mortgage banker,
33 mortgage broker, and secondary lender license, and each mortgage
34 solicitor registration issued pursuant to the provisions of the "New
35 Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996,
36 c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform
37 and re-titling as the "New Jersey Consumer Finance Licensing Act"
38 pursuant to P.L. , c. (C.) (pending before the Legislature as
39 this bill), shall expire in accordance with the following schedule:

40 (1) For any license or registration issued before the effective
41 date of the "New Jersey Residential Mortgage Lending Act,"
42 sections 1 through 39 of P.L. , c. (C.) (pending before the
43 Legislature as this bill), the license or registration shall expire on
44 June 30, 2009.

45 (2) For any license or registration issued on or after July 1,
46 2009:

47 (a) the license or registration shall expire on July 31, 2010, or a
48 later date approved by the Secretary of the United States

1 Department of Housing and Urban Development pursuant to the
2 provisions of section 1508 of the federal “Secure and Fair
3 Enforcement for Mortgage Licensing Act of 2008,” Pub.L.110-289
4 (12U.S.C. s. 5107); and

5 (b) this date may be further modified by the commissioner
6 pursuant to regulation or order, based upon any later date approved
7 by the Secretary of the United States Department of Housing and
8 Urban Development pursuant to the provisions of section 1508 of
9 the federal “Secure and Fair Enforcement for Mortgage Licensing
10 Act of 2008,” Pub.L.110-289 (1 U.S.C. s.1507), providing a
11 temporary deadline extension with respect to complying with the
12 licensing requirements for states established pursuant to the
13 provisions of the federal “Secure and Fair Enforcement for
14 Mortgage Licensing Act of 2008,” title V of Pub.L.110-289 (12
15 U.S.C. s.5101 et seq.).

16 (3) Thereafter, the person licensed or registered shall only
17 continue to engage in any activities for which the license or
18 registration was previously issued if licensed under the “New Jersey
19 Residential Mortgage Lending Act,” sections 1 through 39 of
20 P.L. , c. (C.) (pending before the Legislature as this bill).
21 (cf: P.L.2007, c.81, s.9)

22
23 48. Section 12 of P.L.1996, c.157 (C.17:11C-12) is amended to
24 read as follows:

25 12. Any sale or transfer of a controlling interest in a consumer
26 lender or sales finance company licensee's or applicant's business
27 shall be approved by the commissioner prior to the transfer or sale,
28 after the licensee or applicant has provided an application which
29 contains a written notice of the proposed sale or transfer to the
30 commissioner. The application shall list each officer, director,
31 partner or owner to receive a controlling interest as a result of the
32 transfer or sale, and each shall be subject to a criminal history
33 record background check as set forth in subsection e. of section 7 of
34 P.L.1996, c.157 (C.17:11C-7) as a condition for the commissioner’s
35 approval of the transfer or sale. The commissioner shall approve the
36 transfer or sale unless the commissioner determines, following an
37 opportunity for a hearing, that sufficient grounds exist to deny,
38 revoke or suspend the license. The sale or transfer shall be deemed
39 approved if the commissioner does not deny **the** a completed
40 application within **[30]** 90 days after its receipt **[,** or 10 days when
41 the sale or transfer is to another licensee under this act. The
42 commissioner may charge such fee as set by regulation, not to
43 exceed \$200, for considering an application for a sale or transfer of
44 a controlling interest**].**

45 (cf: P.L.1996, c.157, s.12)

46
47 49. Section 17 of P.L.1996, c.157 (C.17:11C-17) is amended to
48 read as follows:

1 17. a. ~~【A licensee engaging in business as a mortgage banker~~
2 ~~or mortgage broker, a secondary lender or a consumer lender shall~~
3 ~~have and maintain a place of business in this State for the~~
4 ~~transaction of business.】~~ Nothing in this act or in the "Retail
5 Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.),
6 shall be construed to require ~~【an entity licensed as only】~~ a
7 consumer lender or a sales finance company to maintain 【a branch】
8 an office in this State so long as it is qualified to do business here
9 and has a registered agent for service of process.

10 b. ~~【If a licensee maintains a branch office or offices, one of the~~
11 ~~offices shall be designated as a principal office.】~~ (Deleted by
12 amendment, P.L. , c.) (pending before the Legislature as this
13 bill)

14 c. ~~【A licensee which】~~ Whenever the licensee changes the
15 address of its principal office or a branch office serving New Jersey
16 consumers, it shall file 【with the commissioner those】, as part of its
17 notice of address change required pursuant to subsection e. of
18 section 10 of P.L.1996, c.157 (C.17:11C-10), any documents
19 required of it by regulation 【, and shall pay an administrative fee
20 not in excess of \$100】.

21 (cf: P.L.1996, c.157, s.17)

22
23 50. Section 18 of P.L.1996, c.157 (C.17:11C-18) is amended to
24 read as follows:

25 18. The commissioner's authority with respect to issuing
26 consumer lender and sales finance company licenses, and with
27 respect to oversight of licensees and enforcement of the activities
28 regulated under the "New Jersey Consumer Finance Licensing Act"
29 shall include the following:

30 a. The commissioner may refuse to issue and may revoke,
31 suspend or refuse to renew a license, or impose a penalty pursuant
32 to this act, ~~【or refuse to register or rescind or revoke a solicitor~~
33 ~~registration,】~~ if the commissioner finds, after notice and an
34 opportunity for a hearing in accordance with the "Administrative
35 Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and any rules
36 adopted thereunder, that any person, applicant for or holder of the
37 license has:

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

40 (2) ~~【Withheld】~~ Failed at any time to meet the requirements for
41 licensure, or withheld information or made a material misstatement
42 in the application for the license;

43 (3) Been convicted of an offense involving breach of trust,
44 moral turpitude or fraudulent or dishonest dealing, or had a final
45 judgment entered against ~~【him】~~ the person in a civil or
46 administrative action upon grounds of fraud, misrepresentation, or
47 deceit, or failure to maintain books, accounts, records and other

- 1 documents as required by section 19 of P.L.1996, c.157 (C.17:11C-
2 19);
- 3 (4) Become insolvent, or failed to attain or maintain the required
4 net worth;
- 5 (5) Demonstrated unworthiness, incompetence, bad faith or
6 dishonesty in the transaction of business as a licensee; or
- 7 (6) Engaged in any other conduct which would be deemed by
8 the commissioner to be the cause for denial, revocation, suspension,
9 or refusal of the license or license renewal.
- 10 b. A license ~~of a corporation, partnership, association or other~~
11 ~~entity~~ may be suspended ~~or~~ , revoked , or not renewed by the
12 commissioner if any officer, director, partner, or ~~member~~ owner
13 of the licensee has committed any act which would be cause for
14 suspending ~~or~~ , revoking or not renewing a license if issued to
15 ~~him~~ that person as an individual.
- 16 c. If the license ~~issued to an individual~~ is ~~revoked or~~
17 suspended or revoked pursuant to subsection b. of this section, the
18 license ~~issued to the partnership, association, corporation or other~~
19 ~~entity~~ shall ~~also be revoked or suspended by the commissioner~~
20 remain suspended or revoked, unless within the time fixed by the
21 commissioner, in the case of a partnership, the connection therewith
22 of the ~~member whose license has been revoked~~ offending
23 individual shall be severed and that ~~member's~~ individual's
24 interest in the partnership and share in its activities brought to an
25 end, or in the case of an association, corporation, or other legal
26 entity, the offending ~~officer or director~~ individual shall be
27 discharged and shall have no further participation in ~~its activity~~
28 the legal entity's activities. ~~Officers and directors~~ In the case of
29 an offending individual who is an officer or director of the
30 corporation or other legal entity, that individual shall be required to
31 fully divest ~~themselves~~ himself of all stock, bonds or other
32 corporate holdings.
- 33 d. ~~The department may suspend or revoke the entire license of~~
34 ~~a person whose license is suspended or revoked for only one of its~~
35 ~~authorized licensed activities.] (Deleted by amendment, P.L. _____,~~
36 ~~c.) (pending before the Legislature as this bill)~~
- 37 e. ~~Any licensee may surrender any license by delivering to the~~
38 ~~commissioner written notice that the license is surrendered, along~~
39 ~~with the license, but the surrender shall not affect the licensee's civil~~
40 ~~or criminal liability for an act committed prior to the surrender.]~~
41 ~~(Deleted by amendment, P.L. _____, c.) (pending before the~~
42 ~~Legislature as this bill)~~
- 43 f. The commissioner may access and examine books, accounts,
44 records and other documents maintained by a consumer lender or
45 sales finance company licensee pursuant to section 19 of P.L.1996,
46 c.157 (C.17:11C-19).

1 g. The commissioner may conduct investigations, which may
2 include the subpoena of witnesses and documents, pursuant to
3 section 42 of P.L.1996, c.157 (C.17:11C-42).

4 h. Whenever it appears to the commissioner that any person has
5 engaged, is engaging, or is about to engage, in any practice or
6 transaction prohibited by the “New Jersey Consumer Finance
7 Licensing Act,” sections 1 through 49 of P.L.1996, c.157
8 (C.17:11C-1 et seq.), the commissioner may, in addition to any
9 other remedy available, bring a summary action in a court of
10 competent jurisdiction against the person, and any other person
11 concerned or in any way participating in or about to participate in a
12 practice or transaction in violation of the “New Jersey Consumer
13 Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157
14 (C.17:11C-1 et seq.), to enjoin the person from continuing the
15 practice or transaction engaged, or from engaging in the practice or
16 transaction, or doing any act in furtherance of engaging in the
17 practice or transaction.

18 i. The commissioner may impose a civil penalty not exceeding
19 \$25,000 on any person for a violation of the “New Jersey Consumer
20 Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157
21 (C.17:11C-1 et seq.). Each violation of the act, including any order,
22 rule or regulation made or issued pursuant to the act, shall
23 constitute a separate offense. Additionally, each violation which
24 constitutes a knowing violation shall be considered a crime of the
25 third degree.

26 j. The commissioner may order that any person who has been
27 found to have knowingly violated any provision of the “New Jersey
28 Consumer Finance Licensing Act,” sections 1 through 49 of
29 P.L.1996, c.157 (C.17:11C-1 et seq.), or of the rules and regulations
30 issued pursuant hereto, and has thereby caused financial harm to
31 consumers, be barred for a term not exceeding 10 years from acting
32 as a consumer lender or sales finance company, or a stockholder, or
33 an officer, director, partner or other owner, or an employee of a
34 consumer lender or sales finance company licensee, or act in any
35 other capacity pursuant to the “New Jersey Consumer Finance
36 Licensing Act,” sections 1 through 49 of P.L.1996, c.157
37 (C.17:11C-1 et seq.). Violations of this final order shall be
38 considered a crime of the third degree.

39 (cf: P.L.1996, c.157, s.18)

40
41 51. Section 19 of P.L.1996, c.157 (C.17:11C-19) is amended to
42 read as follows:

43 19. a. Every consumer lender or sales finance company licensee
44 shall [maintain, at] identify the place of business [in this State
45 designated in the license,] where those books, accounts, records
46 and other documents of the business conducted under the license, as
47 may be prescribed by the commissioner, are maintained, to enable
48 the commissioner to determine whether the business of the licensee

1 is being conducted in accordance with the provisions of this act and
2 the orders, rules and regulations issued hereunder.

3 b. [A licensee operating two or more licensed places of business
4 in this State shall maintain the records of all licensed places at any
5 one of the licensed places.] Upon appropriate notice to the
6 commissioner and if a change in location of records is made, the
7 commissioner shall be notified in writing of the change within five
8 business days of the change.

9 c. Every licensee shall preserve all books, accounts, records and
10 other documents pertaining to its business, and keep them available
11 for examination by the commissioner, for at least three years from
12 the date of original entry, or [such] a longer time as prescribed by
13 the commissioner by regulation.

14 d. A licensee may, upon approval of the commissioner, keep
15 records at a location, [designated] identified by the licensee,
16 outside this State, provided that the licensee shall make the records
17 available in this State upon request of the commissioner [, or, at its
18 option have the records examined at its out-of-State location and
19 shall pay the reasonable expenses of the commissioner for the
20 examination].

21 (cf: P.L.1996, c.157, s.19)

22

23 52. Section 21 of P.L.1996, c.157 (C.17:11C-21) is amended to
24 read as follows:

25 21. a. A borrower shall not be required to purchase credit life or
26 accident and health insurance or credit involuntary unemployment
27 insurance in connection with a [first mortgage loan, a secondary
28 mortgage loan or a] consumer loan. If the borrower or borrowers
29 consent thereto in writing, a licensee may obtain or provide:

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

33 (2) Credit involuntary unemployment insurance in accordance
34 with forms and rates filed and approved by the commissioner
35 pursuant to applicable regulations.

36 b. If a licensee obtains or provides any credit insurance for a
37 borrower or borrowers pursuant to subsection a. of this section, [a]
38 the licensee may deduct from the principal of a loan and retain an
39 amount equal to the premium lawfully charged by the insurance
40 company. The premium may be charged monthly in the case of an
41 [open-end loan or] open-end consumer loan. The amount so
42 deducted and retained shall not be considered a prohibited charge or
43 amount of any examination, service, brokerage, commission,
44 expense, fee or bonus or other thing or otherwise.

45 c. If a borrower or borrowers obtain [such] the credit
46 insurance from or through a licensee, the licensee shall show the
47 amount of the charge for the insurance and cause to be delivered to

1 the borrower or borrowers a copy of the policy, certificate or other
2 evidence of that insurance when the loan is made. Nothing in this
3 act shall prohibit the licensee from collecting the premium or
4 identifiable charge for insurance permitted by this section and from
5 receiving and retaining any dividend, or any other gain or advantage
6 resulting from that insurance.

7 d. [A licensee may require a borrower to demonstrate that the
8 property securing a first mortgage loan or secondary mortgage loan
9 is insured against damage or loss due to fire and other perils,
10 including those of extended coverage, for a term not to exceed the
11 term of the loan and in an amount not to exceed the amount of the
12 loan, together with the amount needed to satisfy all prior liens on
13 that property.

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

16 NOTICE TO THE BORROWER

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

19 IF PROPERTY INSURANCE IS REQUIRED, YOU MAY
20 SECURE INSURANCE FROM A COMPANY OR AGENT OF
21 YOUR OWN CHOOSING.] (Deleted by amendment, P.L. , c.)
22 (pending before the Legislature as this bill)

23 e. Incident to a consumer loan, a licensee may make available,
24 insurance covering direct or indirect damage or loss, by fire or other
25 perils, including those of extended coverage, to the personal
26 property of the borrower all or part of which is security for the loan.
27 The insurance shall be for an amount and term not to exceed the
28 total amount of payments and term of the loan.

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

31 NOTICE TO THE BORROWER

32 YOU ARE NOT REQUIRED TO PURCHASE PERSONAL
33 PROPERTY INSURANCE AS A CONDITION OF RECEIVING
34 THE CONSUMER LOAN. IF YOU DESIRE PERSONAL
35 PROPERTY INSURANCE YOU MAY SECURE INSURANCE
36 FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.

37 (cf: P.L.1999, c.250, s.2)

38

39 53. Section 32 of P.L.1996, c.157 (C.17:11C-32) is amended to
40 read as follows:

41 32. a. Notwithstanding the provisions of R.S.31:1-1 or any other
42 law to the contrary, every [licensee] consumer lender authorized to
43 engage in the consumer loan business may loan any sum of money
44 not exceeding \$50,000, repayable in an installment or installments,
45 and may charge, contract for, and receive thereon, interest at an
46 annual percentage rate or rates agreed to by the licensee and the
47 borrower.

1 b. A closed-end consumer loan contract may provide for a
2 variation in the interest rate in which adjustments to the interest rate
3 shall correspond directly to the movement of an interest rate index
4 which is readily available to and verifiable by the borrower and is
5 beyond the control of the lender. No increase during the entire loan
6 term shall result in an interest rate of more than 6% per annum over
7 the rate applicable initially, nor shall the rate be raised more than
8 3% per annum during any 12-month period. The lender shall not be
9 obligated to decrease the interest rate more than 6% over the term
10 of the loan, nor more than 3% per annum during any 12-month
11 period. If a rate increase is applied to the loan, the lender shall also
12 be obligated to adopt and implement uniform standards for
13 decreasing the rate. If the contract provides for the possibility of an
14 increase or decrease or both in the rate, that fact shall be clearly
15 described in plain language, in at least 8-point bold face type on the
16 face of the contract. No rate increase shall take effect unless (1) at
17 least 90 days prior to the effective date of the first such increase, or
18 30 days prior to the effective date of any subsequent increase, a
19 written notice has been mailed or delivered to the borrower that
20 clearly and conspicuously describes such increase, and (2) unless at
21 least 365 days have elapsed without any increase in the rate. Where
22 the loan contract so provides for an increase or decrease in the rate
23 of interest, the installments may vary in amount, notwithstanding
24 any other law to the contrary, except that if the rate increases, the
25 borrower may request, and the lender shall provide for, either an
26 increase in the amount of the installment payment or an extension
27 of the term of the loan, or some combination of an increase in the
28 amount of the installment payment and extension of the term.

29 c. An open-end loan agreement may provide that the lender
30 may at any time, or from time to time, change the terms of the
31 agreement, including the terms governing the periodic interest rate,
32 calculation of interest or the method of computing the required
33 amount of periodic installment payments, provided however, that:

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

36 (2) any change in the periodic interest rate shall correspond to
37 the movement of a market interest rate index specified in the
38 agreement which is readily verifiable by the borrower and beyond
39 the control of the lender;

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

46 (4) if the agreement provides for the possibility of a change in
47 any term of the agreement, including the rate, that fact shall be

1 clearly described in plain language, in at least 8-point bold face
2 type on the face of the written notice; and

3 (5) no change in any term of the agreement or of the index
4 specified in the agreement shall be effective unless: (a) at least 30
5 days prior to the effective date of the change, a written notice has
6 been mailed or delivered to the borrower that clearly and
7 conspicuously describes the change and the indebtedness to which it
8 applies, and states that the incurrence by the borrower or another
9 person authorized by him of any further indebtedness under the law
10 to which the agreement relates on or after the effective date of the
11 change specified in the notice shall constitute acceptance of the
12 change; and (b) either the borrower agrees in writing to the change
13 or the borrower or another person authorized by him incurs further
14 indebtedness on or after the effective date of the change stated in
15 that notice, which indebtedness may include outstanding balances.
16 Any borrower who fails to use the borrower's account or so to
17 indicate agreement to the change shall be permitted to pay the
18 outstanding unpaid indebtedness in the borrower's account in
19 accordance with the terms governing the open-end consumer loan
20 agreement without giving effect to the change.

21 d. The consumer lender shall notify each affected borrower in a
22 consumer loan agreement of any change in the manner set forth in
23 the closed-end and open-end agreement governing the plan and in
24 compliance with the requirements of the federal "Truth in Lending
25 Act," Pub.L.90-321 (15 U.S.C. s.1601 et seq.), and regulations
26 promulgated thereunder, as in effect from time to time, if
27 applicable.

28 e. The interest and periodic payments for consumer loans at
29 these rates shall be computed from the standard tables based on the
30 actuarial or annuity method which conforms to the so-called
31 "United States Rule of Partial Payments," which provides that
32 interest shall be calculated whenever a payment is made and the
33 payment shall be first applied to the payment of interest and if it
34 exceeds the interest due, the balance is to be applied to diminish
35 principal. If the payment is insufficient to pay the entire amount of
36 interest, the balance of interest due shall not be added to principal,
37 so as to produce interest thereon.

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

44 g. No consumer lender shall induce or permit any person nor
45 any husband and wife, jointly or severally, to become obligated,
46 directly or contingently or both, under more than one contract of a
47 consumer loan at the same time for the purpose of obtaining a
48 higher rate of interest than would otherwise be permitted by this

1 section. This prohibition shall not apply to any loan made pursuant
2 to any other law of this State.

3 (cf: P.L.2001, c.294, s.2)

4

5 54. Section 33 of P.L.1996, c.157 (C.17:11C-33) is amended to
6 read as follows:

7 33. a. In addition to the interest herein provided for on a
8 consumer loan, no further or other charge, or amount whatsoever
9 for any examination, service, brokerage, commission, expense, fee,
10 or bonus or other thing or otherwise shall be directly or indirectly
11 charged, contracted for, or received, except for any amount actually
12 paid by a licensee to a public official for the recording of a security
13 interest in connection with security given for the loan and: (1)
14 amounts for insurance obtained or provided by the licensee in
15 accordance with the provisions of this act; (2) on actual sale of the
16 security in foreclosure proceedings or upon the entry of judgment;
17 (3) a returned check fee in an amount not to exceed \$20, which the
18 licensee may charge the borrower if a check of the borrower is
19 returned to the licensee uncollected due to insufficient funds in the
20 borrower's account; and (4) an annual fee on open-end accounts
21 which may not exceed an amount equal to one percent of the line of
22 credit or \$50, whichever is less.

23 b. A consumer lender who violates or participates in the
24 violation of any provision of section 3, 19, ~~[20,]~~ 21, 34, 35 or 36,
25 or subsection a. of section 10, or subsection a., b., or c. of section
26 32, or subsection a. of this section, or subsection e. ~~[or],~~ f., g., or h.
27 of section 41 of this act, shall be guilty of a crime of the fourth
28 degree. A contract of a loan not invalid for any other reason, in the
29 making or collection of which any act shall have been done which
30 constitutes a crime of the fourth degree under this section, shall be
31 void and the lender shall have no right to collect or receive any
32 principal, interest or charges unless the act was the result of a good
33 faith error, including a good faith error made as a result of a
34 licensee's acting in conformity with a rule or regulation of the
35 commissioner which is later held to be invalid or in violation of any
36 provision of this act by a judgment of a court of competent
37 jurisdiction, and the licensee notifies the borrower of the error
38 within 90 days after discovering it and makes adjustments in the
39 account necessary to assure that the borrower will not be required to
40 pay any interest, costs, or other charges which aggregate in excess
41 of the charges permitted under this act. If any interest,
42 consideration or charges in excess of those permitted are charged,
43 contracted for or received, except as the result of a good faith error,
44 the consumer lender may collect only the principal amount of the
45 loan, and may not collect interest, costs or other charges with
46 respect to the loan. In addition, a consumer lender who knowingly
47 and willfully violates any provision of this act shall also forfeit to

1 the borrower three times any amount of the interest, costs or other
2 charges collected in excess of that authorized by law.

3 c. A consumer lender shall have no liability on a consumer loan
4 for an unintentional error if within 90 days after discovering an
5 error the licensee notifies the borrower of the error and makes
6 adjustments in the account as necessary to assure that the borrower
7 will not be required to pay any interest, costs or other charges
8 which aggregate in excess of the charges permitted under this act
9 for consumer loans. The discovery of an unintentional error within
10 the meaning of this section shall include an entry of a judgment by
11 a court of competent jurisdiction, holding that a rule or regulation
12 with which the consumer lender acted in conformity was invalid or
13 in violation of this act, and a consumer lender shall have no liability
14 for such unintentional error if the consumer lender takes the actions
15 required by this section upon discovery of such an error, within the
16 time stated therein following entry of such a judgment.

17 (cf: P.L.1996, c.157, s.33)

18

19 55. Section 34 of P.L.1996, c.157 (C.17:11C-34) is amended to
20 read as follows:

21 34. Every consumer lender, incident to a closed-end consumer
22 loan, shall:

23 a. Deliver to the borrower at the time a loan is made a statement
24 in the English language showing in clear and distinct terms the
25 amount and date of the loan and its maturity, the nature of the
26 security, if any, for the loan, the name and address of the borrower
27 and of the licensee, the payment schedule, the amount of interest
28 charges, and the annual percentage rate of interest;

29 b. Give to any borrower who makes a payment in cash a plain
30 and complete receipt for all payments made on account of the loan
31 at the time payments are made, specifying the amount applied to
32 interest and the amount, if any, applied to principal, and stating the
33 unpaid balance, if any of the loan;

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

38 d. Upon repayment of the loan in full, mark indelibly every
39 obligation and security signed by the borrower, or a copy thereof,
40 with the word "paid" or "canceled," and release, or give the
41 borrower evidence to release any mortgage, or security interest
42 which no longer secures an obligation to the licensee, restore any
43 pledge, cancel and return any note or a copy thereof, and cancel and
44 return any assignment or a copy thereof given to the licensee by the
45 borrower.

46 No consumer lender shall take any confession of judgment
47 incident to a closed-end consumer loan. No consumer lender shall,
48 incident to a closed-end consumer loan take any note, promise to

1 pay, or security that does not accurately disclose the amount of the
2 loan, the date of the loan, the payment schedule, the amount of
3 interest charges, and the annual percentage rate of interest, nor any
4 instrument in which blanks are left to be filled in after the loan is
5 made.

6 (cf: P.L.1996, c.157, s.34)

7

8 56. Section 36 of P.L.1996, c.157 (C.17:11C-36) is amended to
9 read as follows:

10 36. a. A licensee authorized to engage in the consumer loan
11 business may make open-end consumer loans and may contract for,
12 and receive thereon, interest at an annual percentage rate or rates
13 agreed to by the licensee and the borrower.

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

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

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

24 (2) By multiplying one-twelfth of each yearly rate by the
25 applicable portion of the average daily unpaid principal balance of
26 the account in the billing cycle, in which case the average daily
27 unpaid principal balance is the sum of the amount unpaid each day
28 during the cycle divided by the number of days in the cycle; or

29 (3) By converting each yearly rate to a daily rate and multiplying
30 that daily rate by the applicable portion of the average daily unpaid
31 principal balance of the account in the billing cycle, in which case
32 each daily rate is determined by dividing each yearly rate by 365,
33 and the average daily unpaid principal balance is the sum of the
34 amount unpaid each day during the cycle divided by the number of
35 days in the cycle.

36 d. For all of the above methods of computation, the billing cycle
37 shall be monthly and the unpaid principal balance on any day shall
38 be determined by adding to any balance unpaid as of the beginning
39 of that day all advances and other permissible amounts charged to
40 the borrower and deducting all payments and other credits made or
41 received that day.

42 e. In an open-end consumer loan, the borrower may at any time
43 pay all or any part of the unpaid balance in his account; or, if the
44 account is not in default, the borrower may pay the unpaid principal
45 balance in monthly installments, subject to the following minimum
46 payment requirements. Minimum monthly payments shall be in an
47 amount which would result in the full repayment of the initial loan
48 advance, exclusive of any interest, within the maximum term set

1 forth for other loans of the same amount in section 35 of this act,
2 except that the minimum payment for any initial advance not
3 exceeding \$2,500 shall be in an amount which would result in full
4 repayment of the initial loan advance within the maximum term of
5 48 months and 15 days. This minimum payment shall continue at
6 that amount until such time as an additional advance to the
7 borrower is made, other than for permitted charges, at which time
8 the minimum monthly payment shall be determined and shall be in
9 that amount which would result in the full repayment of the unpaid
10 principal balance of the loan, after the advance and including the
11 advance, within the maximum term set forth for the other loans of
12 the same amount, except that if the principal balance of the loan,
13 after the advance and including the advance, does not exceed
14 \$2,500, the minimum payment shall be in that amount which would
15 result in full repayment of the principal balance of the loan within
16 the maximum term of 48 months and 15 days. Minimum payments
17 after each subsequent advance shall be determined in the same
18 manner. No minimum payment shall exceed the amount required to
19 pay the balance in full, including unpaid interest and charges to
20 date.

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

25 (1) If credit life, disability or involuntary unemployment
26 insurance is provided pursuant to section 21 of P.L.1996, c.157
27 (C.17:11C-21) and if the insured dies or becomes disabled or
28 involuntarily unemployed when there is an outstanding open-end
29 loan indebtedness, the insurance shall be sufficient to pay the total
30 balance of the loan due on the date of the borrower's death in the
31 case of credit life insurance, all minimum payments which become
32 due on the loan during the covered period of disability in the case of
33 credit disability insurance or all covered minimum payments which
34 become due on the loan during the covered period of involuntary
35 unemployment in the case of involuntary unemployment insurance.
36 The additional charge for credit life insurance, credit disability
37 insurance or credit involuntary unemployment insurance shall be
38 calculated in each billing cycle by applying the current monthly
39 premium rate for that insurance, as determined by the
40 commissioner, to the unpaid balances in the borrower's account,
41 using any of the methods specified in subsection c. of this section
42 for the calculation of interest;

43 (2) No credit life, disability or involuntary unemployment
44 insurance written in connection with an open-end loan shall be
45 canceled by the licensee because of delinquency of the borrower in
46 the making of the required minimum payments on the loan unless
47 one or more of the payments is past due for a period of 90 days or
48 more; and the licensee shall advance to the insurer the amounts

1 required to keep the insurance in force during that period, which
2 amounts may be debited to the borrower's account.

3 g. A consumer lender may take a security interest in personal
4 property to secure an open-end consumer loan. Any security may
5 be retained until the open-end account is terminated, except that if
6 the security interest covers consumer goods, then within one month,
7 or within 10 days following written demand by the borrower, after
8 there is no outstanding balance in the account and no commitment
9 by the licensee to make advances, the licensee shall release the
10 security interest. If a security interest is taken, the open-end
11 consumer loan agreement shall state the nature and extent of that
12 security interest.

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

17 (cf: P.L.1996, c.157, s.36)

18

19 57. Section 37 of P.L.1996, c.157 (C.17:11C-37) is amended to
20 read as follows:

21 37. No licensee authorized to engage in the consumer loan
22 business shall directly or indirectly charge, contract for, or receive
23 any interest, discount, or consideration greater than **[he]** the
24 licensee would be permitted by law to charge if he were not a
25 licensee under this act upon the loan, use, or sale of credit, of the
26 amount or value of more than \$50,000. The foregoing prohibition
27 shall also apply to any licensee who permits any person, as
28 borrower or as **[indorser]** endorser, guarantor, or surety for any
29 borrower, or otherwise, to owe directly or contingently or both
30 under one or more loan contracts to the licensee at any time the sum
31 of more than \$50,000 for principal.

32 (cf: P.L.2001, c.294, s.3)

33

34 58. Section 41 of P.L.1996, c.157 (C.17:11C-41) is amended to
35 read as follows:

36 41. The following practices shall be prohibited and a violation
37 of the "New Jersey Consumer Finance Licensing Act," sections 1
38 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.):

39 a. No consumer lender shall make any loan upon security of any
40 assignment of or order for the payment of any salary, wages,
41 commissions or other compensation for services earned, or to be
42 earned, nor shall any such assignment or order be taken by a
43 licensee at any time in connection with any consumer loan, or for
44 the enforcement or repayment thereof, and any such assignment or
45 order hereafter so taken or given to secure any loan made by any
46 licensee under this act shall be void and of no effect.

- 1 b. No consumer lender shall take a lien upon real estate as
2 security for any consumer loan, except a lien created by law upon
3 the recording of a judgment.
- 4 c. No licensee shall conduct the consumer loan business within
5 any office, room, or place of business in which any other business is
6 solicited or engaged in, or in association or conjunction therewith,
7 except as may be authorized in writing by the commissioner.
- 8 d. Every multiple installment consumer loan contract, other
9 than an open-end consumer loan contract or a variable rate closed-
10 end consumer loan contract under subsection b. of section 32 of this
11 act, shall provide for repayment of principal and interest combined
12 in installments which shall be payable at approximately equal
13 periodic intervals of time and which shall be so arranged that no
14 installment is substantially greater in amount than any preceding
15 installment, except that the repayment schedule may reduce or omit
16 installments when necessary because of the seasonal nature of the
17 borrower's income.
- 18 e. No person, except as authorized by this act, shall directly or
19 indirectly charge, contract for, or receive any interest, discount, or
20 consideration greater than the lender would be permitted by law to
21 charge if he were not a licensee hereunder upon the loan, use, or
22 forbearance of money, goods, or things in action, or upon the loan,
23 use, or sale of credit of the amount of \$50,000 or less. This
24 prohibition shall apply to any person who, by any device,
25 subterfuge, or pretense, shall charge, contract for, or receive greater
26 interest, consideration, or charges than is authorized by this act for
27 the loan, use, or forbearance of money, goods, or things in action or
28 for the loan, use, or sale of credit.
- 29 f. No consumer loans of the amount or value of \$50,000 or less
30 for which a greater rate of interest, consideration, or charge than is
31 permitted by this act has been charged, contracted for, or received,
32 whenever made, shall be enforced in this State and any person [,
33 partnership, association or corporation] in any way participating
34 therein in this State shall be subject to the provisions of this act.
35 The foregoing shall not apply to loans legally made in any state
36 which then has in effect a regulatory small loan law similar in
37 principle to this act, but an action to enforce any loan made in any
38 state to a person then residing in this State may be maintained in
39 this State only if the amount of interest, discount, consideration or
40 other charge for that loan, demanded to be paid in the action, does
41 not exceed that permitted to a licensee authorized to engage in the
42 consumer loan business by this act for a loan of the same amount
43 repayable in the same manner.
- 44 g. No consumer lender shall make, advertise, print, display,
45 publish, distribute, electronically transmit, telecast or broadcast, in
46 any manner, any statement or representation which is false,
47 misleading or deceptive.

1 h. No consumer lender shall make any statement or
2 representation that the licensee will provide "immediate closing" of
3 a loan or will afford unqualified access to credit.

4 (cf: P.L.2001, c.294, s.6)

5
6 59. Section 42 of P.L.1996, c.157 (C.17:11C-42) is amended to
7 read as follows:

8 42. a. The commissioner may make such investigations and
9 examinations of any licensee or other person as the commissioner
10 deems necessary to determine compliance with this act and the
11 orders, rules and regulations issued hereunder. For these purposes,
12 the commissioner may examine the books, accounts, records and
13 other documents or matters of any licensee, maintained pursuant to
14 section 19 of P.L.1996, c.157 (C.17:11C-19), or other person. Each
15 licensee shall be subject to an examination by the commissioner,
16 not more than once in any 18-month period, unless the
17 commissioner has reason to believe that the licensee is not
18 complying with the provisions of this act or any rule or regulation
19 promulgated thereunder, or is not transacting business in
20 accordance with law, at which time the commissioner may conduct
21 an examination at any time. The commissioner shall have the
22 power to compel by subpoena the production of all relevant books,
23 accounts, records and other documents and materials relative to an
24 examination or investigation. Examinations conducted under the
25 provisions of this act shall be confidential except as required in the
26 administration, enforcement and prosecution of violations under
27 this act or pursuant to court order. **【The cost of the investigations**
28 **and examination shall be borne by the licensee.】**

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

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

41 (cf: P.L.1996, c.157, s.42)

42
43 60. Section 43 of P.L.1996, c.157 (C.17:11C-43) is amended to
44 read as follows:

45 43. A consumer lender or sales finance company licensee shall
46 annually file a report with the commissioner which shall set forth
47 such information as the commissioner shall require concerning the
48 business conducted as a licensee during the preceding calendar

1 year. The report shall be under oath and in a form and within the
2 time specified by the commissioner by regulation.

3 A licensee that fails to make and file its annual report in the form
4 and within the time provided in this section shall be subject to a
5 penalty of not more than \$100 for each day's failure, and the
6 commissioner, as authorized pursuant to section 18 of P.L.1996,
7 c.157 (C.17:11C-18) may revoke or suspend its authority to do
8 business in this State. The penalty may be collected in a summary
9 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
10 P.L.1999, c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu
11 of a summons.

12 (cf: P.L.2007, c.81, s.10)

13

14 61. Section 1 of P.L.1995, c.2 (C.17:10C-1) is amended to read
15 as follows:

16 1. There is created in the Department of Banking and Insurance
17 a **[Licensed Lenders]** Residential Mortgage and Consumer Finance
18 Advisory Board. The board shall consist of the Commissioner of
19 Banking and Insurance or his designee, who shall be ex officio the
20 chair of the board, and seven members to be appointed by the
21 Governor, with the advice and consent of the Senate, for a term of
22 three years. Each member shall hold office for the term of
23 appointment and until his successor is appointed and qualified. A
24 member is eligible to be reappointed to the board. A member
25 appointed to fill a vacancy occurring in the membership of the
26 board for any reason other than the expiration of the term shall have
27 a term of appointment for the unexpired term only. All vacancies
28 shall be filled in the same manner as the original appointment. Any
29 appointed member of the board may be removed from office by the
30 Governor, for cause, after a hearing and may be suspended by the
31 Governor pending the completion of the hearing. Appointed
32 members of the board shall serve without compensation, but shall
33 be reimbursed for necessary expenses incurred in the performance
34 of their duties as members. Action may be taken and motions and
35 resolutions may be adopted by the board at a board meeting by an
36 affirmative vote of not less than four members. Of the seven
37 appointed members, **[one]** two shall have had, at the time of
38 appointment, not less than five years of practical experience as a
39 licensed **[first]** residential mortgage lender located in the State of
40 New Jersey; **[one]** shall have had, at the time of appointment, not
41 less than five years of practical experience as a licensed secondary
42 mortgage lender located in the State of New Jersey; **]** one shall have
43 had, at the time of appointment, not less than five years of practical
44 experience as a licensed residential mortgage **[banker or]** broker
45 located in the State of New Jersey; one shall be a representative
46 from the licensed residential mortgage lending industry in the State
47 of New Jersey who is not a salaried officer, director, partner, owner,

1 principal, or employee of any licensed residential mortgage lender
2 **[, mortgage banker]** or broker; two shall have had, at the time of
3 appointment, not less than five years of practical experience as
4 lenders licensed for providing loans other than **[primary or**
5 **secondary]** residential mortgage loans; and one shall be a public
6 member who is not a salaried officer, director, partner, owner,
7 principal, or employee of any licensed lender **[, mortgage banker]**
8 or broker. At no time shall there be more than one representative
9 on the board from any one **[licensed]** residential mortgage lender **[,**
10 **mortgage banker]** or broker.

11 Notwithstanding any provisions of this section to the contrary,
12 the members of the board appointed by the Governor and serving on
13 the effective date of P.L. _____, c. (C. _____) (pending before the
14 Legislature as this bill) shall continue to serve until the expiration
15 of their respective terms, but a member of the board appointed or
16 reappointed by the Governor after the effective date of P.L. _____, c.
17 (C. _____) (pending before the Legislature as this bill) shall qualify
18 for membership pursuant to this section.

19 (cf: P.L.1995, c.2, s.1)

20

21 62. Section 2 of P.L.1995, c.2 (C.17:10C-2) is amended to read
22 as follows:

23 2. The board shall act as a resource to the commissioner by
24 developing and recommending to the commissioner ideas, programs
25 and tools to assist:

26 a. in the development of educational requirements for licensees;

27 b. licensed residential mortgage lenders, residential mortgage
28 **[bankers,]** brokers, and **[solicitors]** mortgage loan originators in
29 meeting the mortgage lending needs of consumers;

30 c. other **[licensed lenders]** consumer finance licensees in
31 meeting the lending needs of consumers; and

32 d. consumers in understanding and using:

33 (1) residential mortgage lending information and choosing from
34 available mortgage lending opportunities through licensed
35 residential mortgage lenders, residential mortgage **[bankers,]**
36 brokers, and **[solicitors]** mortgage loan originators in this State;
37 and

38 (2) consumer lending information and choosing from available
39 consumer lenders.

40 (cf: P.L.1995, c.2, s.2)

41

42 63. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to
43 read as follows:

44 2. For the purposes of this act:

45 "Assessment" means the assessment imposed pursuant to section
46 3 of this act for the special functions of the division as provided in
47 that section.

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

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

4 "Depository institution" means any entity holding a state charter
5 for a bank, savings bank, savings and loan association or credit
6 union, irrespective of whether the entity accepts deposits.

7 "Division" means the Division of Banking in the Department of
8 Banking and Insurance.

9 "Other financial entity" means a person who is licensed or
10 registered pursuant to: the ["New Jersey Licensed Lenders Act,"]
11 "New Jersey Consumer Finance Licensing Act," sections 1 through
12 49 of P.L.1996, c.157 (C.17:11C-1 et seq.); the "New Jersey
13 Residential Mortgage Lending Act," sections 1 through 39 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 other than a financial entity with respect to the payment of required
16 fees to the Nationwide Mortgage Licensing System and Registry as
17 set forth by that nationwide system and registry; "The Check
18 Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et
19 seq.); the "New Jersey Money Transmitters Act," P.L.1998, c.14
20 (C.17:15C-1 et seq.); the "Insurance Premium Finance Company
21 Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the "Retail Installment
22 Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.); the "Door-
23 to-Door Retail Installment Sales Act of 1968," P.L.1968, c.223
24 (C.17:16C-61.1 et seq.); the "Home Repair Financing Act,"
25 P.L.1960, c.41 [(C.17:16C-93 et seq.)] (C.17:16C-62 et seq.); the
26 "Door-to-Door Home Repair Sales Act of 1968," P.L.1968, c.224
27 (C.17:16C-95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); or the
28 "pawnbroking law," R.S.45:22-1 et seq.

29 "Nationwide Mortgage Licensing System and Registry" means
30 the mortgage licensing system developed and maintained by the
31 Conference of State Bank Supervisors and the American
32 Association of Residential Mortgage Regulators, or their
33 successors, and utilized in this State pursuant to the provisions of
34 the "New Jersey Residential Mortgage Lending Act," section 1
35 through 39 of P.L. , c. (C.) (pending before the Legislature
36 as this bill).

37 "Regulated entity" means a depository institution, other financial
38 entity or person chartered, licensed or registered by the Division of
39 Banking or who should be chartered, licensed or registered.

40 (cf: P.L.2005, c.199, s.2)

41

42 64. Section 13 of P.L.2005, c.199 (C.17:1C-45) is amended to
43 read as follows:

44 13. a. Notwithstanding any law or regulation to the contrary, a
45 regulated entity paying the amounts assessed to it in statements of
46 the assessment made pursuant to section 3 of this act shall be
47 exempt from all fees or charges imposed by the division pursuant to
48 any other provision of law or regulation, except for:

- 1 (1) charter fees;
- 2 (2) application fees for licenses;
- 3 (3) **【mortgage solicitor registration application fees;】** (Deleted
4 by amendment, P.L. , c.) (pending before the Legislature as this
5 bill)
- 6 (4) fees for entry by a foreign depository institution whether
7 from another state of the United States or from another country into
8 New Jersey for branch, trust or other activities;
- 9 (5) fees charged under the "Governmental Unit Deposit
10 Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);
- 11 (6) fees charged any entity not chartered, licensed or registered
12 by this State, including but not limited to activities conducted by
13 foreign banks pursuant to section 316 of P.L.1948, c.47 (C.17:9A-
14 316) or foreign associations pursuant to section 214 of P.L.1963,
15 c.144 (C.17:12B-214); and
- 16 (7) fees charged qualified corporations authorized pursuant to
17 section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either
18 registrar and transfer agent activities or activities permitted for
19 qualified educational institutions.
- 20 b. Nothing in this section shall exempt a regulated entity from
21 paying any fine or penalty imposed by the commissioner for a
22 violation of a statute or regulation.
- 23 c. Except as provided in paragraph (1) of subsection d. of
24 section 7 of the "New Jersey Home Ownership Security Act of
25 2002," P.L.2003, c.64 (C.46:10B-28), all fees, charges, fines and
26 penalties as described in subsections a. and b. of this subsection
27 shall be remitted to the State Treasurer for deposit into the General
28 Fund, and those fees, charges, fines and penalties shall not be part
29 of the assessment funding mechanism or considered in the
30 calculation pursuant to section 15 of this act.
31 (cf: P.L.2005, c.199, s.13)
- 32
- 33 65. Section 14 of P.L.2005, c.199 (C.17:1C-46) is amended to
34 read as follows:
- 35 14. a. The State Treasurer and the commissioner may adopt
36 rules and regulations, pursuant to the "Administrative Procedure
37 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the
38 purposes of this act.
- 39 b. Any regulation promulgated by the commissioner shall
40 describe the factors to be considered in computing the assessment.
41 In the case of depository institutions, the assessment shall consider
42 the following factors as appropriate: assets, deposits or shares, trust
43 funds under management and the supervisory rating of the
44 institution. In the case of licensees or registrants, the assessment
45 shall consider the following factors as appropriate: loan volume,
46 volume of money transmitted, number of transactions, volume of
47 checks cashed, number of licensee branches, number of
48 **【authorities】** license types held under the **【"New Jersey Licensed**

1 Lenders Act,"] "New Jersey Consumer Finance Licensing Act,"
2 sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.) or the
3 "New Jersey Residential Mortgage Lending Act," sections 1
4 through 39 of P.L. , c. (C.) (pending before the Legislature
5 as this bill), and the supervisory rating of the entity. In computing
6 the assessment for depository institutions, licensees or registrants,
7 the commissioner may consider those additional factors the
8 commissioner deems appropriate.

9 c. The general purpose of the computations to determine the
10 assessment shall be to distribute the financial burden proportionally
11 among the depository institutions and other financial entities it
12 charters, licenses and registers consistent with the division's
13 regulatory activities.

14 d. The commissioner shall provide for the orderly and fair
15 transition to assessments on existing charters, licensees and
16 registrants by promulgating rules and regulations and by
17 establishing administrative procedures that are reasonable,
18 necessary and consistent with this act.

19 e. The commissioner shall consider the impact of the
20 assessment on check cashers licensed pursuant to P.L.1993, c.383
21 (C.17:15A-30 et seq.), and may take any appropriate action
22 pursuant to the commissioner's authority to limit fees as provided in
23 section 14 of P.L.1993, c.383 (C.17:15A-43).

24 (cf: P.L.2005, c.199, s.14)

25

26 66. Section 15 of P.L.2005, c.199 (C.17:1C-47) is amended to
27 read as follows:

28 15. a. The total amount assessable to regulated entities in any
29 fiscal year for the assessment established by this act shall not
30 exceed the lesser of:

31 (1) the total amount of expenses incurred by the State in
32 connection with the administration of the special functions of the
33 division pursuant to section 3 of this act during the preceding fiscal
34 year as ascertained by the Director of the Division of Budget and
35 Accounting in the Department of the Treasury, on or before August
36 15 in each year, and certified to the commissioner by category; or

37 (2) .0001084 times the sum of (a) the average total assets for
38 State-chartered banks, savings banks, and savings and loan
39 associations for the preceding five calendar years' data, excluding
40 the two most recent calendar years plus (b) the average total loan
41 volume for residential mortgage loans closed by licensed residential
42 mortgage lenders or residential mortgage brokers pursuant to the
43 ["New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1
44 et seq.)] "New Jersey Residential Mortgage Lending Act," sections
45 1 through 39 of P.L. , c. (C.) (pending before the
46 Legislature as this bill) for the preceding five calendar years' data,
47 excluding the two most recent calendar years.

48 b. In calculating the assessments:

1 (1) Banks, savings banks and savings and loan associations shall
2 be given prorated credit for unused portions of assessment periods;
3 and

4 (2) Licensees shall be given prorated credit for unused portions
5 of licensing periods.

6 c. The department shall not issue an examination bill for an
7 examination that has not been completed by the date that the
8 regulated entity becomes subject to the assessment pursuant to the
9 provisions of this act. For the purposes of this act, the completion
10 of the examination shall not include the time to process and review
11 the examination report.

12 (cf: P.L.2007, c.81, s.3)

13

14 67. Section 3 of P.L.2007, c.258 (C.17:11D-3) is amended to
15 read as follows:

16 3. a. Any tax preparer offering, facilitating, or making refund
17 anticipation loans shall comply with the provisions of the ["New
18 Jersey Licensed Lenders Act,"] "New Jersey Consumer Finance
19 Licensing Act," sections 1 through 49 of P.L.1996, c.157
20 (C.17:11C-1 et seq.), N.J.S.2C:21-19, and R.S.31:1-1 et seq. The
21 interest rate for any loan shall include any rate, fee, charge,
22 consideration, or other thing of value received or retained by, or
23 credited to, the lender, directly or indirectly, for the loan or
24 forbearance.

25 b. At the time a tax preparer offers or facilitates a refund
26 anticipation loan to the client, the tax preparer shall provide, and
27 verbally explain, to the client the following statement, to be printed
28 in at least 14-point type:

29 NOTICE TO BORROWER

30 THIS IS A LOAN. THE ANNUAL PERCENTAGE RATE
31 (APR), BASED ON THE ESTIMATED PAYMENT PERIOD IS
32 (fill in estimated APR). YOUR TAX REFUND WILL BE USED
33 TO REPAY THE LOAN. AS A RESULT, THE AMOUNT OF
34 YOUR REFUND WILL BE REDUCED BY (fill in the
35 dollar amount) FOR FEES, INTEREST AND OTHER CHARGES.

36 AS AN ALTERNATIVE TO THIS LOAN, YOU CAN
37 RECEIVE YOUR FULL REFUND IN APPROXIMATELY TWO
38 WEEKS IF YOU FILE YOUR RETURN ELECTRONICALLY
39 AND THE INTERNAL REVENUE SERVICE WILL SEND YOUR
40 FULL REFUND TO YOUR BANK ACCOUNT.

41 c. If, under the terms of the refund anticipation loan, the client
42 is subject to additional interest when a refund is delayed, the
43 following statement shall also be included in the notice:

44 IF YOU CHOOSE TO TAKE THIS LOAN AND YOUR
45 REFUND IS DELAYED, YOU MAY HAVE TO PAY
46 ADDITIONAL INTEREST.

47 d. A tax preparer may use an alternative disclosure in lieu of
48 the disclosure set forth in subsections b. and c. provided that:

1 (1) the information provided to the taxpayer in the alternative
2 disclosure includes information substantially equivalent in scope
3 and content to the specific language set forth in subsections b. and
4 c.;

5 (2) the alternative disclosure includes a chart listing examples of
6 the refund anticipation loan fees and Annual Percentage Rates,
7 calculated using the guidelines established under the federal Truth
8 in Lending Act, title I of Pub.L.90-321 (15 U.S.C.s.1601 et seq.),
9 for loans of at least three different representative loan amounts; and

10 (3) the alternative disclosure includes a chart listing the
11 estimated timelines for the delivery of funds to the taxpayer under
12 various delivery methods, including Internal Revenue Service
13 mailed check, Internal Revenue Service direct deposit into a
14 taxpayer's preexisting bank account, and through a refund
15 anticipation loan.

16 (cf: P.L.2007, c.258, s.3)

17

18 68. Section 7 of P.L.2003, c.64 (C.46:10B-28) is amended to
19 read as follows:

20 7. a. The department shall conduct examinations and
21 investigations and issue subpoenas and orders to enforce the
22 provisions of this act with respect to a person licensed or subject to
23 the provisions of the ["New Jersey Licensed Lenders Act,"
24 P.L.1996, c.157 (C.17:11C-1 et seq.)] "New Jersey Residential
25 Mortgage Lending Act," sections 1 through 39 of P.L. _____, c.
26 (C. _____) (pending before the Legislature as this bill).

27 b. The department shall examine any instrument, document,
28 account, book, record, or file of a person originating or brokering a
29 high-cost home loan under this act. The department shall recover
30 the cost of examinations from the person. A person originating or
31 brokering high- cost home loans shall maintain its records in a
32 manner that will facilitate the department in determining whether
33 the person is complying with the provisions of this act and the
34 regulations promulgated thereunder. The department shall require
35 the submission of reports by persons originating or brokering high-
36 cost home loans which shall set forth such information as the
37 department shall require by regulation.

38 c. In the event that a person fails to comply with a subpoena
39 for documents or testimony issued by the department, the
40 department may request an order from a court of competent
41 jurisdiction requiring the person to produce the requested
42 information.

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

46 (1) Impose a civil penalty of up to \$10,000 for each offense,
47 40% of which penalty shall be dedicated for and used by the
48 department for consumer education through nonprofit organizations

1 which can establish to the satisfaction of the department that they
2 have sufficient experience in credit counseling and financial
3 education. In determining the penalty to be assessed, the
4 commissioner shall consider the following criteria: whether the
5 violation was willful; whether the violation was part of a pattern
6 and practice; the amount of the loan; the points and fees charged;
7 the financial condition of the violator; and other relevant factors.
8 The department may require the person to pay investigative costs, if
9 any.

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

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

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

17 (5) Pending completion of an investigation or any formal
18 proceeding instituted pursuant to this act, if the commissioner finds
19 that the interests of the public require immediate action to prevent
20 undue harm to borrowers, the commissioner may enter an
21 appropriate temporary order to be effective immediately and until
22 entry of a final order. The temporary emergent order may include:
23 a temporary suspension of the creditor's authority to make high-cost
24 home loans under this act; a temporary cease and desist order; a
25 temporary prohibition against a creditor transacting high-cost home
26 loan business in this State, or such other order relating to high-cost
27 home loans as the commissioner may deem necessary to prevent
28 undue harm to borrowers pending completion of an investigation or
29 formal proceeding. Orders issued pursuant to this section shall be
30 subject to an application to vacate upon two days' notice, and a
31 preliminary hearing on the temporary emergent order shall be held,
32 in any event, within five days after it is issued, in accordance with
33 the provisions of the "Administrative Procedure Act," P.L.1968,
34 c.410 (C.52:14B-1 et seq.).

35 (6) Impose such other conditions as the department deems
36 appropriate.

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

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

45 g. A decision of the commissioner shall be a final order of the
46 department and shall be enforceable in a court of competent
47 jurisdiction. The department shall publish the final adjudication

1 issued in accordance with this section, subject to redaction or
2 modification to preserve confidentiality.

3 h. The provisions of this section shall not limit the authority of
4 the Attorney General or the Public Advocate, as established
5 pursuant to P.L.2005, c.155 (C.52:27EE-1 et seq.) [(now before the
6 Legislature as Assembly Committee Substitute for Assembly Bill
7 Nos. 345 and 2341)] , from instituting or maintaining any action
8 within the scope of their respective authority with respect to the
9 practices prohibited under this act.
10 (cf: P.L.2003, c.64, s.7)

11

12 69. Section 3 of P.L.2008, c.86 (C.46:10B-38) is amended to
13 read as follows:

14 3. As used in this act:

15 "Creditor" means a State chartered bank, savings bank, savings
16 and loan association or credit union, any person required to be
17 licensed under the provisions of the ["New Jersey Licensed Lenders
18 Act," P.L.1996, c.157 (C.17:11C-1 et seq.)] "New Jersey
19 Residential Mortgage Lending Act," sections 1 through 39 of
20 P.L. , c. (C.) (pending before the Legislature as this bill),
21 and any entity acting on behalf of the creditor named in the debt
22 obligation including, but not limited to, servicers.

23 "Eligible borrower" means a borrower who is obligated to repay
24 a loan secured by an introductory rate mortgage.

25 "Eligible foreclosed borrower" means a borrower who is
26 obligated to repay a loan secured by an introductory rate mortgage
27 and who receives a notice of intention to foreclose that mortgage
28 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
29 53 et al.), except that an "eligible foreclosed borrower" shall not
30 include an eligible borrower who has previously exercised the right
31 to obtain a three-year period of extension pursuant to section 5 of
32 this act.

33 "Full repayment" means the full repayment of the amounts due
34 under the introductory rate mortgage, including, without limitation,
35 upon the maturity date, a refinancing, or a sale of or other transfer
36 of title to the property.

37 "Fully indexed rate" means the sum of the current value of the
38 index used for the adjustable rate mortgage and the margin
39 disclosed in the loan agreement.

40 "Introductory rate mortgage" means a consumer credit
41 transaction in which the loan is secured by a mortgage on real estate
42 in this State upon which there is located a one to four family
43 dwelling which is occupied by the borrower as the borrower's
44 principal residence, and which provides for: (1) an introductory
45 payment rate option that is set at least 3 percent below the fully
46 indexed rate at the time the loan was originated and payments may
47 adjust by more than 3 percent at the reset date regardless of whether
48 the variable rate index has increased; or (2) an interest rate that may

1 adjust by more than 2 percent at the end of the initial fixed rate
2 period of the loan and which, notwithstanding the payment rate in
3 effect, had an interest rate at origination of more than 200 basis
4 points over the Freddie Mac 30-year conventional interest rate and
5 which provides for an introductory rate that is set below the fully
6 indexed rate at the time the loan was originated and may adjust at
7 the reset date regardless of whether the variable rate index has
8 increased. "Introductory rate mortgage" shall not include: (1) a loan
9 that provides for a fixed rate of interest for the first five years or
10 longer; or (2) a loan that provides for an introductory rate that is set
11 below the fully indexed rate at the time the loan was originated only
12 as a result of the borrower's payment of bona fide discount points.
13 (cf: P.L.2008, c.86, s.3)

14

15 70. Section 8 of P.L.1997, c.204 (C.2A:49A-32) is amended to
16 read as follows:

17 8. Nothing in this act shall be construed to require the
18 enforcement of any foreign judgment which is based on a consumer
19 loan containing any provision prohibited by the provisions of the
20 **["New Jersey Licensed Lenders Act,"]** "New Jersey Consumer
21 Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157
22 (C.17:11C-1 et seq.).

23 (cf: P.L.1997, c.204, s.8)

24

25 71. Section 2 of P.L.1968, c.282 (C.2A:168A-2) is amended to
26 read as follows:

27 2. Notwithstanding the contrary provisions of any law or rule or
28 regulation issued pursuant to law, no State, county or municipal
29 department, board, officer or agency, hereinafter referred to as
30 "licensing authority" authorized to pass upon the qualifications of
31 any applicant for a license or certificate of authority or qualification
32 to engage in the practice of a profession or business or for
33 admission to an examination to qualify for such a license or
34 certificate may disqualify or discriminate against an applicant for a
35 license or certificate or an application for admission to a qualifying
36 examination on the grounds that the applicant has been convicted of
37 a crime, or adjudged a disorderly person, except that a licensing
38 authority may disqualify or discriminate against an applicant for a
39 license or certificate if N.J.S.2C:51-2 or any disqualifying criminal
40 activity set forth in subsection a. of section 7 of P.L. , c. (C.)
41 (pending before the Legislature as this bill) is applicable, or if a
42 conviction for a crime relates adversely to the occupation, trade,
43 vocation, profession or business for which the license or certificate
44 is sought. In determining that a conviction for a crime relates
45 adversely to the occupation, trade, vocation, profession or business,
46 the licensing authority shall explain in writing how the following
47 factors, or any other factors, relate to the license or certificate
48 sought:

- 1 a. The nature and duties of the occupation, trade, vocation,
- 2 profession or business, a license or certificate for which the person
- 3 is applying;
- 4 b. Nature and seriousness of the crime;
- 5 c. Circumstances under which the crime occurred;
- 6 d. Date of the crime;
- 7 e. Age of the person when the crime was committed;
- 8 f. Whether the crime was an isolated or repeated incident;
- 9 g. Social conditions which may have contributed to the crime;
- 10 h. Any evidence of rehabilitation, including good conduct in
- 11 prison or in the community, counseling or psychiatric treatment
- 12 received, acquisition of additional academic or vocational
- 13 schooling, successful participation in correctional work-release
- 14 programs, or the recommendation of persons who have or have had
- 15 the applicant under their supervision.
- 16 (cf: P.L.1981, c.487, s.4)
- 17

18 72. Section 1 of P.L.2007, c.327 (C.2A:168A-7) is amended to
19 read as follows:

20 1. a. Notwithstanding any law to the contrary, a certificate may
21 be issued in accordance with the provisions of this act that suspends
22 certain disabilities, forfeitures or bars to employment or
23 professional licensure or certification that apply to persons
24 convicted of criminal offenses.

25 b. A certificate issued pursuant to this act shall have the effect
26 of relieving disabilities, forfeitures or bars, except those established
27 or required by federal law, to:

28 (1) public employment, as defined in this section;

29 (2) qualification for a license or certification to engage in the
30 practice of a profession, occupation or business, except the practice
31 of law , or as a mortgage loan originator, or residential mortgage
32 lender or residential mortgage broker as a qualified individual
33 licensee, pursuant to the "New Jersey Residential Mortgage
34 Lending Act," sections 1 through 39 of P.L. , c. (C.)
35 (pending before the Legislature as this bill); or

36 (3) admission to an examination to qualify for [such a] that
37 license or certification, except for the bar examination, a qualified
38 written test for a mortgage loan originator, or residential mortgage
39 lender or broker as a qualified individual licensee, or an
40 examination for a law enforcement, homeland security, or
41 emergency management position.

42 A certificate issued pursuant to this act may be limited to one or
43 more enumerated disabilities, forfeitures or bars, or may relieve the
44 subject of all disabilities, forfeitures or bars that may be affected by
45 the act.

46 c. For purposes of this act:

47 (1) "Public employment" shall mean employment by a State,
48 county, or municipal agency, but shall not include elected office, or

1 employment in law enforcement, corrections, the judiciary, in a
2 position related to homeland security or emergency management, or
3 any position that has access to sensitive information that could
4 threaten the public health, welfare, or safety.

5 (2) "Qualified offender" refers to a person who has one criminal
6 conviction or who has convictions for more than one crime charged
7 in separate counts of one indictment or accusation. Multiple
8 convictions charged in two indictments or two accusations, or one
9 indictment and one accusation filed in the same court prior to entry
10 of judgment under any of them, shall be deemed to be one
11 conviction. Convictions of crimes entered more than 10 years prior
12 to an application for a certificate under this act shall not be
13 considered in determining whether a person has one criminal
14 conviction. In the case of a person seeking relief at the time of
15 sentencing, qualified offender means a person who will have one
16 conviction, as set forth in this paragraph, upon sentencing and
17 issuance of the judgment of conviction.

18 (3) "Supervising authority" shall mean the court in the case of a
19 person who was subject to probation or who was not required to
20 serve a period of supervision, or the State Parole Board in the case
21 of a person who was under parole supervision.

22 (cf: P.L.2007, c.327, s.1)

23

24 73. The following sections are repealed:

25 Sections 4, 5, 13 through 15, 20, 22 through 31, 45 through 48,
26 and 50 of P.L.1996, c.157 (C.17:11C-4, 5, 13 through 15, 20, 22
27 through 31, 45 through 48, and 50).

28

29 74. Sections 1 through 39, and 47 shall take effect immediately,
30 and the remaining sections shall take effect on July 31, 2010, or the
31 later date approved by the Secretary of the United States
32 Department of Housing and Urban Development pursuant to the
33 provisions of section 1508 of the federal "Secure and Fair
34 Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289
35 (12 U.S.C. s.5107); but the Commissioner of Banking and Insurance
36 may take any anticipatory administrative action in advance thereof
37 as shall be necessary, or as otherwise authorized under the
38 provisions of the federal "Secure and Fair Enforcement for
39 Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12
40 U.S.C. s.5101 et seq.), for the implementation of this act.

41

42

43

STATEMENT

44

45 This bill represents a reform of the licensed lending activities
46 currently regulated under the "New Jersey Licensed Lenders Act,"
47 sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.),
48 covering mortgage loans and consumer loans of \$50,000 or less.

1 The reforms are largely focused on mortgage activities, and
2 undertaken in response to new federal law requirements set forth
3 under the “Secure and Fair Enforcement for Mortgage Licensing
4 Act of 2008,” also referred to as the “S.A.F.E. Mortgage Licensing
5 Act of 2008,” title V of Pub.L.110-289 (12U.S.C. s.5101 et seq.).
6 Specifically, this federal law mandates the establishment of new
7 State licensing standards, business practices, and oversight for
8 individuals acting as mortgage loan originators, and applies to loan
9 activities in both the primary and secondary mortgage loan markets.

10 In order to address the federal law requirements in the most
11 effective manner, the bill completely revises and supplements the
12 current “New Jersey Licensed Lenders Act,” creating two separate
13 regulatory schemes, with one part dedicated to mortgage activities,
14 titled the “New Jersey Residential Mortgage Lending Act,” and the
15 other reorganizing those remaining provisions which concern non-
16 mortgage lending activities, titled the “New Jersey Consumer
17 Finance Licensing Act.” The bill additionally updates several
18 related sections of law to account for changes brought about
19 through this two-way split, including those sections concerning the
20 Licensed Lenders Advisory Board and dedicated funding for the
21 Department of Banking and Insurance to cover regulatory oversight
22 expenses incurred by the Division of Banking.

23 ***The “New Jersey Residential Mortgage Lending Act” (Sections***
24 ***1-39):*** This part of the bill addresses licensing standards, business
25 practices, and oversight for the newly designated residential
26 mortgage lenders, residential mortgage brokers, and mortgage loan
27 originators. Under the existing “New Jersey Licensed Lenders
28 Act,” these businesses and individuals are licensed as mortgage
29 bankers, correspondent mortgage bankers, mortgage brokers and
30 secondary lenders, or registered as mortgage loan solicitors, and in
31 order to continue to engage in their respective business practices,
32 they must qualify for licensure under the new licensing scheme.

33 For the licensing of residential mortgage lenders and brokers, as
34 business licensees, the bill requires: a completed application
35 accompanied by appropriate supporting evidence; the submission of
36 information for a criminal history record background check to be
37 performed on any officer, director, partner or owner of a controlling
38 (25% or more) interest of the business; a general finding of
39 responsibility and fitness worthy of licensure; at least one officer,
40 director, partner or owner to be qualified and licensed as an
41 individual for the same type of license sought, referred to as the
42 “qualified individual licensee”; appropriate coverage of the
43 business, its qualified individual licensee, mortgage loan
44 originators, other employees and agents by a surety bond; a
45 demonstration of the business’ minimum tangible net worth; and
46 payment of any required fees.

47 For the licensing of mortgage loan originators, who may only be
48 individual licensees, and the qualified individual licensees of a

1 residential mortgage lender or broker, the bill requires: a completed
2 application accompanied by appropriate supporting evidence; the
3 submission of personal information for a criminal history record
4 background check, credit report, and check of information related to
5 administrative, civil or criminal findings by any government
6 jurisdiction; a determination of character and fitness worthy of
7 licensure; a demonstration of employment by one, and only one,
8 residential mortgage lender or broker business licensee; the
9 completion of pre-licensing education requirements; successful
10 passage of a qualified written test; the completion of continuing
11 education requirements, if seeking a license renewal; coverage
12 under the employing business licensee's surety bond; registration
13 with the Nationwide Mortgage Licensing System and Registry,
14 which is a newly created licensing and registration system designed
15 to assist state licensing efforts under the federal "S.A.F.E. Mortgage
16 Licensing Act of 2008"; and payment of any required fees to the
17 Commissioner of Banking and Insurance or the nationwide
18 licensing system and registry, as appropriate.

19 Concerning the pre-licensing education, continuing education,
20 and examination requirements for individual licensees, the bill
21 establishes minimum standards that shall be developed or approved
22 by the Nationwide Mortgage Licensing System and Registry. For
23 example, the pre-licensing education component shall consist of at
24 least 20 hours of course work provided by an approved educational
25 course provider, which includes, at a minimum, 3 hours of
26 instruction on federal statutes and regulations, 3 hours on ethics,
27 and 2 hours of training on lending standards for nontraditional
28 mortgage products. Continuing education shall consist of at least
29 12 hours of course work provided by an approved educational
30 course provider, and similarly includes, at a minimum, 3 hours of
31 instruction on federal statutes and regulations, 2 hours on ethics,
32 and 2 hours of training on lending standards for nontraditional
33 mortgage products.

34 In order to ensure full compliance with the federal law regarding
35 the new State licensing standards, the commissioner is authorized to
36 participate in the Nationwide Mortgage Licensing System and
37 Registry. This participation shall serve the purpose of coordinating
38 State licensing efforts with the registration of licensees at the
39 national level, as well as permit necessary information sharing and
40 reporting by the commissioner with other federal and state banking
41 agencies, other government agencies, and organizations
42 representing government agencies, such as the Conference of State
43 Bank Supervisors or its successor. Generally, any information or
44 material provided to, received from, or collected by the nationwide
45 system and registry shall remain subject to any applicable State and
46 federal laws of privacy, confidentiality, or privilege, and shall not
47 be subject to government open records requirements, other than
48 with respect to the employment history of, and publicly adjudicated

1 disciplinary or enforcement actions against, an individual applicant
2 or current licensee.

3 In order to complete the transition of existing licensees and
4 registrants under the “New Jersey Licensed Lenders Act” to the new
5 licensing regime under the “New Jersey Residential Mortgage
6 Lending Act,” the bill adheres to the federal deadline to begin
7 licensing no later than July 31, 2010, or a later date approved by the
8 Secretary of the United States Department of Housing and Urban
9 Development pursuant to section 1508 of the federal “S.A.F.E.
10 Mortgage Licensing Act of 2008” (12 U.S.C. s.5107). Any licenses
11 issued by the commissioner on or before the July 31, 2010 date (or
12 later date) shall expire on December 31, 2010. The commissioner
13 shall thereafter issue licenses on or after January 1, 2011 only on an
14 annual, calendar year basis, matching the annual licensing schedule
15 set forth under the federal law. However, the commissioner may
16 modify this schedule pursuant to regulation or order, based upon
17 any later dates approved by the Secretary of the United States
18 Department of Housing and Urban Development, in order to
19 provide a temporary deadline extension with respect to complying
20 with the licensing requirements mandated by the provisions of the
21 federal “S.A.F.E. Mortgage Licensing Act of 2008.”

22 With respect to business practices, the bill largely retains the
23 existing requirements set forth by the “New Jersey Licensed
24 Lenders Act” concerning first mortgage and secondary mortgage
25 lending activities. However, unlike the existing law, licensees shall
26 not be required to possess a separate license to engage in one
27 marketplace or the other; residential mortgage lenders, brokers, and
28 mortgage loan originators shall be authorized to engage in business
29 activities in both markets under one license. Annually, residential
30 mortgage lenders and brokers shall file a report with the
31 commissioner concerning the business conducted during the
32 preceding calendar year, and shall additionally submit to the
33 Nationwide Mortgage Licensing System and Registry mortgage call
34 reports of condition, and any other reports, at any time as required
35 by that nationwide licensing system and registry.

36 On oversight, the commissioner’s authority with respect to
37 issuing licenses, and with respect to the general supervision of
38 licensees, shall include the following: to access, receive and use any
39 information or material deemed relevant to determine whether to
40 issue or renew a license, or revoke, suspend, or refuse to renew a
41 license; to access and examine books, accounts, records and other
42 documents, and to take control or possession of these items during
43 any examination; to conduct investigations, which may include the
44 subpoena of witnesses and documents; to issue cease and desist
45 orders, as well as bring a summary action in a court of competent
46 jurisdiction for temporary and permanent injunctions against
47 violators of the act; to impose a civil penalty not exceeding \$25,000
48 for violations; to order restitution to persons aggrieved by

1 violations; and to order any other remedial actions as deemed
2 necessary concerning violations.

3 ***The “New Jersey Consumer Finance Licensing Act” (Sections***
4 ***40-60):*** This part of the bill updates the existing “New Jersey
5 Licensed Lenders Act” by deleting all references to mortgage
6 activities, set to be covered under the “New Jersey Residential
7 Mortgage Lending Act,” and making further reforms to correspond
8 these existing licensed lender provisions of law with that new act.
9 As a result, the current “New Jersey Licensed Lenders Act” shall
10 focus solely on non-mortgage, consumer loans of \$50,000 or less,
11 and to reflect this change it is re-titled the “New Jersey Consumer
12 Finance Licensing Act.”

13 Generally, the qualifications for licensure as a consumer lender
14 or sales finance company, the licensing process, and the oversight
15 of licensees remain the same as currently set forth under the “New
16 Jersey Licensed Lenders Act.” However, the commissioner may
17 impose a civil penalty not exceeding \$25,000 for violations, which
18 is an increase of the current limit on civil penalties under the “New
19 Jersey Licensed Lenders Act”; the current act permits civil penalties
20 not to exceed \$5,000.

21 ***The Residential Mortgage and Consumer Finance Advisory***
22 ***Board (Sections 61-62):*** The existing Licensed Lenders Advisory
23 Board, created by P.L.1995, c.2 (C.17:10C-1 et seq.) as an eight
24 member board to serve as a resource for the commissioner on
25 lending issues, is renamed the Residential Mortgage and Consumer
26 Finance Advisory Board. Additionally, the board’s membership
27 and duties are updated to reflect the new licensing schemes set forth
28 under the “New Jersey Residential Mortgage Lending Act” and the
29 “New Jersey Consumer Finance Licensing Act.”

30 ***Adjustments to dedicated funding for the Division of Banking***
31 ***(Sections 63-66):*** The provisions of P.L.2005, c.199 (C.17:1C-33 et
32 al.) established a dedicated funding mechanism for the Division of
33 Banking within the Department of Banking and Insurance, so that
34 the division can directly assess the financial entities and individuals
35 that it regulates to cover expenses associated with their oversight.
36 Because the new licensing and oversight of residential mortgage
37 lenders, brokers, and mortgage loan originators involves, in part,
38 the use of the Nationwide Mortgage Licensing System and Registry,
39 fees and other expenses directly payable to that nationwide
40 licensing system and registry shall not be included when
41 determining the division’s assessment amounts to cover its own
42 oversight expenses.

43 ***Additional statutory updates (Sections 67-73):*** The remaining
44 sections of the bill involve updating references throughout the
45 statutory law, or repealing sections of law, necessitated by the
46 revising and supplementing of the “New Jersey Licensed Lenders
47 Act,” as detailed above. Additionally, provisions of law located in
48 Title 2A of the New Jersey Statutes that concern the ability of the

1 commissioner to deem individuals rehabilitated from previous
2 criminal activity, such that the individuals may become eligible for
3 licensure, are amended to prohibit such a determination with respect
4 to licensure as residential mortgage lenders and brokers (as
5 qualified individual licensees), and mortgage loan originators under
6 the “New Jersey Residential Mortgage Lending Act.” This change
7 is necessary because the federal “S.A.F.E. Mortgage Licensing Act
8 of 2008” does not provide for any form of such rehabilitation
9 determination on mortgage loan originators, and as a matter of State
10 policy the qualified individual licensees involved in supervising
11 these originators should also not be eligible for licensing based
12 upon a rehabilitation determination.