

§§1-39 -  
C.17:11C-51 to  
17:11C-89  
§73 - Repealer  
§74 - Note to  
§§1-73

P.L. 2009, CHAPTER 53, *approved May 4, 2009*  
Assembly, No. 3816

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

**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 importance as to warrant updating the State's regulation of the  
2 mortgage lending process.

3 Thus, the Legislature finds and declares that the intent of this act,  
4 the "New Jersey Residential Mortgage Lending Act," is to protect  
5 consumers seeking mortgage loans and to ensure that the mortgage  
6 lending industry operates without unfair, deceptive, and fraudulent  
7 practices by establishing, in coordination with the provisions of the  
8 federal "Secure and Fair Enforcement for Mortgage Licensing Act  
9 of 2008" and the Nationwide Mortgage Licensing System and  
10 Registry, a revised system of licensing, supervision and  
11 enforcement, and by providing the Department of Banking and  
12 Insurance and its commissioner broad administrative authority to  
13 oversee the operation of the mortgage lending industry in this State.  
14

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

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

19 "Business licensee" means a corporation, association, joint  
20 venture, partnership, limited liability company, limited liability  
21 partnership, sole proprietorship, or any other legal entity, however  
22 organized, permitted under the laws of this State, that is licensed as  
23 a residential mortgage lender or residential mortgage broker, or that  
24 should be so licensed.

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

40 "Closed-end loan" with respect to a secondary mortgage loan  
41 means a mortgage loan pursuant to which the business licensee  
42 advances a specified amount of money and the borrower agrees to  
43 repay the principal and interest in substantially equal installments  
44 over a stated period of time, except that: (1) the amount of the final  
45 installment payment may be substantially greater than the previous  
46 installments if the term of the loan is at least 36 months, or under 36  
47 months if the remaining term of the first residential mortgage loan  
48 is under 36 months; or (2) the amount of the installment payments

1 may vary as a result of the change in the interest rate as permitted  
2 by this act.

3 “Commissioner” means the Commissioner of Banking and  
4 Insurance.

5 “Controlling interest” means ownership, control or interest of  
6 25% or more of the business licensee or applicant.

7 “Correspondent mortgage lender” means a residential mortgage  
8 lender who: (1) in the regular course of business, does not hold any  
9 mortgage loans in its portfolio, or service mortgage loans, for more  
10 than 90 days; and (2) has shown to the department’s satisfaction an  
11 ability to fund mortgage loans through warehouse agreements, table  
12 funding agreements or otherwise.

13 “Department” means the Department of Banking and Insurance.

14 “Depository institution” means “depository institution” as  
15 defined in section 3 of the “Federal Deposit Insurance Act,”  
16 Pub.L.81-797 (12 U.S.C. s.1813), and also means any credit union.

17 “Federal banking agency” means the Board of Governors of the  
18 Federal Reserve System, the Comptroller of the Currency, the  
19 Director of the Office of Thrift Supervision, the National Credit  
20 Union Administration, or the Federal Deposit Insurance  
21 Corporation, or any of their successor agencies.

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

27 “Individual” means a natural person.

28 “Individual licensee” means a natural person licensed as a  
29 qualified individual licensee for a residential mortgage lender or  
30 residential mortgage broker, or a mortgage loan originator.

31 “Licensee” means a legal entity or natural person who is licensed  
32 under this act, or who should be so licensed.

33 “Loan processor” or “loan underwriter” means an individual who  
34 performs clerical or support duties as an employee, at the direction  
35 of and subject to the supervision and instruction of a licensee under  
36 this act or a person exempt from licensure.

37 “Mortgage loan originator” means any individual, not exempt  
38 under section 5 of this act and licensed pursuant to the provisions of  
39 this act, and any individual who should be licensed pursuant to the  
40 provisions of this act, who for compensation or gain, or in the  
41 expectation of compensation or gain, either directly or indirectly  
42 takes a residential mortgage loan application, or offers or negotiates  
43 terms of a residential mortgage loan. However, the term “mortgage  
44 loan originator” does not mean an individual:

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

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

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

4 “Nationwide Mortgage Licensing System and Registry” means  
5 the mortgage licensing system developed and maintained by the  
6 Conference of State Bank Supervisors and the American  
7 Association of Residential Mortgage Regulators, or their  
8 successors, and utilized for licensing and registering residential  
9 mortgage lenders and residential mortgage brokers as business  
10 licensees in accordance with this act, and residential mortgage  
11 lenders and brokers as qualified individual licensees and mortgage  
12 loan originators as required pursuant to the federal “Secure and Fair  
13 Enforcement for Mortgage Licensing Act of 2008,” title V of  
14 Pub.L.110-289 (12U.S.C. s.5101 et seq.).

15 “Nontraditional mortgage product” means any mortgage product  
16 other than a 30-year fixed rate residential mortgage loan.

17 "Open-end loan" means a secondary mortgage loan made by a  
18 residential mortgage lender pursuant to a written agreement with the  
19 borrower whereby:

20 (1) The lender may permit the borrower to obtain advances of  
21 money from the lender from time to time or the lender may advance  
22 money on behalf of the borrower from time to time as directed by  
23 the borrower;

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

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

29 (4) The borrower has the privilege of paying the account in full  
30 at any time or, if the account is not in default, in monthly  
31 installments of fixed or determinable amounts as provided in the  
32 agreement.

33 "Person" means an individual, sole proprietor, association, joint  
34 venture, partnership, limited partnership association, limited  
35 liability company, corporation, trust, or any other group of  
36 individuals however organized.

37 “Primary market” means the market wherein residential  
38 mortgage loans are originated between a residential mortgage lender  
39 and a borrower, whether or not through a residential mortgage  
40 broker or other conduit, and shall not include the sale or acquisition  
41 of a residential mortgage loan after the mortgage loan is closed.

42 “Qualified individual licensee” means an individual licensed as a  
43 residential mortgage lender or residential mortgage broker, who is  
44 required to be licensed under this act as a condition for a person to  
45 be issued or hold a license as a business licensee, whereby the  
46 individual: (1) meets, at a minimum, the licensing criteria  
47 applicable to a mortgage loan originator; and (2) is an officer,  
48 director, partner, owner, or principal of the business licensee.

1       “Registered mortgage loan originator” means any individual  
2 who:

- 3       (1) is a mortgage loan originator and an employee of:  
4       (a) a depository institution;  
5       (b) a subsidiary that is (i) owned and controlled by a depository  
6 institution and (ii) regulated by a federal banking agency; or  
7       (c) an institution regulated by the Farm Credit Administration  
8 established by section 5.7 of the “Farm Credit Act of 1971,”  
9 Pub.L.92-181 (12U.S.C. s.2241), or its successor; and  
10      (2) is registered with, and maintains a unique identifier through,  
11 the Nationwide Mortgage Licensing System and Registry.

12      “Residential mortgage broker” means any person, not exempt  
13 under section 5 of this act and licensed pursuant to the provisions of  
14 this act, and any person who should be licensed pursuant to the  
15 provisions of this act, who for compensation or gain, or in the  
16 expectation of compensation or gain, either directly or indirectly  
17 takes a residential mortgage loan application for others, or  
18 negotiates, places or sells for others, or offers to take an application  
19 for, negotiate, place or sell, residential mortgage loans in the  
20 primary market for others. The term “residential mortgage broker”  
21 also means an individual who is a qualified individual licensee for a  
22 residential mortgage broker.

23      “Residential mortgage lender” means any person, not exempt  
24 under section 5 of this act and licensed pursuant to the provisions of  
25 this act, and any person who should be licensed pursuant to the  
26 provisions of this act, who for compensation or gain, or in the  
27 expectation of compensation or gain, either directly or indirectly  
28 takes a residential mortgage loan application, or offers, negotiates,  
29 originates, or acquires residential mortgage loans in the primary  
30 market. The term “residential mortgage lender” also means: (1)  
31 with respect to a business licensee, a correspondent mortgage  
32 lender, unless the provisions of this act clearly indicate otherwise;  
33 and (2) with respect to an individual licensee, an individual who is a  
34 qualified individual licensee for a residential mortgage lender.

35      “Residential mortgage loan” means any loan primarily for  
36 personal, family, or household purposes that is secured by a  
37 mortgage, deed of trust, or other equivalent consensual security  
38 interest on a dwelling, as defined in section 103(v) of the Truth in  
39 Lending Act, Pub.L.90-321 (15U.S.C. s.1602(v)), or residential real  
40 estate upon which is constructed or intended to be constructed a  
41 dwelling.

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

46      “Secondary mortgage loan” means a loan made to an individual,  
47 association, joint venture, partnership, limited partnership  
48 association, limited liability company, trust, or any other group of

1 individuals, however organized, except a corporation, which is  
2 secured in whole or in part by a lien upon any interest in real  
3 property, including but not limited to shares of stock in a  
4 cooperative corporation, created by a security agreement, including  
5 a mortgage, indenture, or any other similar instrument or document,  
6 which real property is subject to one or more prior mortgage liens  
7 and on which there is erected a structure containing a one, two,  
8 three, or four family dwelling, as defined in section 103(v) of the  
9 Truth in Lending Act, Pub.L.90-321 (1 U.S.C. s.1602(v)), a portion  
10 of which structure may be used for nonresidential purposes, except  
11 that the following loans shall not be subject to the provisions of this  
12 act: (1) a loan which is to be repaid in 90 days or less; (2) a loan  
13 which is taken as security for a home repair contract executed in  
14 accordance with the provisions of the "Home Repair Financing  
15 Act," P.L.1960, c.41 (C.17:16C-62 et seq.); or (3) a loan which is  
16 the result of the private sale of a dwelling, if title to the dwelling is  
17 in the name of the seller and the seller has resided in that dwelling  
18 for at least one year, if the buyer is purchasing that dwelling for his  
19 own residence and, if the buyer, as part of the purchase price,  
20 executes a secondary mortgage in favor of the seller.

21 "Unique identifier" means a number or other identifier for a  
22 mortgage loan originator or a qualified individual licensee as a  
23 residential mortgage lender or residential mortgage broker, assigned  
24 by protocols established by the Nationwide Mortgage Licensing  
25 System and Registry.

26

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

34 a. For residential mortgage lenders and residential mortgage  
35 brokers, as business licensees:

36 (1) No person shall act as a residential mortgage lender or  
37 broker without first obtaining a license under this act, except that a  
38 person licensed as a residential mortgage lender may act as a  
39 broker, if proper disclosure is made. The department shall issue  
40 licenses which specify whether a business licensee is licensed as a  
41 residential mortgage lender or broker.

42 (2) No person shall be issued or hold a license as a residential  
43 mortgage lender or residential mortgage broker unless one officer,  
44 director, partner, owner or principal is a qualified individual  
45 licensee of that same type sought or held. The commissioner may,  
46 by regulation, require a licensed residential mortgage lender or  
47 broker to employ additional qualified individual licensees to  
48 properly supervise the business licensee in its branch offices. If a

1 qualified individual licensee allows his license to lapse or for some  
2 other reason is no longer affiliated with the business licensee, the  
3 business licensee shall notify the commissioner within 10 days, and  
4 shall appoint another qualified individual licensee within 90 days or  
5 a longer period as permitted by the commissioner.

6 (3) No person licensed as a mortgage banker, correspondent  
7 mortgage banker, mortgage broker, or secondary lender under the  
8 provisions of the “New Jersey Licensed Lenders Act,” sections 1  
9 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the  
10 effective date of its reform and re-titling as the “New Jersey  
11 Consumer Finance Licensing Act” pursuant to P.L. , c. (C. )  
12 (pending before the Legislature as this bill), shall continue to  
13 engage in any activities for which a license was previously issued,  
14 and henceforth act as a residential mortgage lender or residential  
15 mortgage broker without first obtaining a license under this act.

16 b. For residential mortgage lenders and residential mortgage  
17 brokers, as qualified individual licensees:

18 (1) No individual shall act as a qualified individual licensee for  
19 a residential mortgage lender or residential mortgage broker without  
20 first obtaining a license under this act. A qualified individual  
21 licensee licensed as a residential mortgage lender or broker may act  
22 as a mortgage loan originator.

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

33 c. For mortgage loan originators:

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

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

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

44 (3) No individual registered as a mortgage solicitor under the  
45 provisions of the “New Jersey Licensed Lenders Act,” sections 1  
46 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the  
47 effective date of its reform and re-titling as the “New Jersey  
48 Consumer Finance Licensing Act” pursuant to P.L. , c. (C. )

1 (pending before the Legislature as this bill), shall continue to  
2 engage in any activities for which a registration was previously  
3 issued, and henceforth act as a mortgage loan originator without  
4 first obtaining a license under this act.

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

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

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

14 c. A licensed attorney who negotiates the terms of a residential  
15 mortgage loan on behalf of a client as an ancillary matter to the  
16 attorney's representation of the client, unless the attorney is  
17 compensated by a residential mortgage lender, residential mortgage  
18 broker, or mortgage loan originator.

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

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

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

46 g. Any individual who offers or negotiates terms of a  
47 residential mortgage loan:

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



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

3  
4 6. (New section) Beginning no later than July 31, 2010, or a  
5 later date approved by the Secretary of the United States  
6 Department of Housing and Urban Development pursuant to the  
7 provisions of section 1508 of the federal "Secure and Fair  
8 Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289  
9 (12U.S.C. s.5107), the commissioner shall begin issuing licenses for  
10 business licensees as residential mortgage lenders or residential  
11 mortgage brokers under this act if the following conditions are met:

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

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

37 c. A finding by the commissioner that the financial  
38 responsibility, experience, character, and general fitness of the  
39 person seeking licensure demonstrates that as a business licensee,  
40 the person will operate honestly, fairly, and efficiently within the  
41 purposes of this act.

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

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

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

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

7  
8 7. (New section) Beginning no later than July 31, 2010, or a  
9 later date approved by the Secretary of the United States  
10 Department of Housing and Urban Development pursuant to the  
11 provisions of section 1508 of the federal "Secure and Fair  
12 Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289  
13 (12U.S.C. s.5107), the commissioner shall begin issuing licenses for  
14 individual licensees under this act, utilizing the Nationwide  
15 Mortgage Licensing System and Registry, or other entity designated  
16 by that nationwide system and registry, as required or permitted by  
17 the federal "Secure and Fair Enforcement for Mortgage Licensing  
18 Act of 2008" and as otherwise deemed appropriate by the  
19 commissioner to carry out the provisions of this act, if the following  
20 conditions are met:

21 a. For mortgage loan originators:

22 (1) A completed application for a new license or for a renewal  
23 of a license, submitted to the commissioner on the form, in the  
24 manner, and with appropriate evidence in support of the application,  
25 as required by this act and as may be prescribed by the  
26 commissioner.

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

43 (a) fingerprints, for submission to the Federal Bureau of  
44 Investigation and any other governmental agency authorized to  
45 receive this information for a state, federal, and international  
46 criminal history record background check, to determine whether the  
47 individual has been convicted of, or plead guilty or nolo contendere  
48 to, a felony in a domestic court, which in this State includes any

1 crime of the fourth degree or higher punishable by a term of  
2 imprisonment of more than one year, or in a foreign or military  
3 court:

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

8 (ii) at any time preceding the filing of the application, if the  
9 felony involved an act of fraud, dishonesty, a breach of trust, or  
10 money laundering, except that a conviction under this sub-  
11 subparagraph which is pardoned shall not be considered  
12 disqualifying information; and

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

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

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

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

39 (a) current outstanding judgments, except judgments solely as a  
40 result of medical expenses;

41 (b) current outstanding tax liens or other government liens and  
42 filings;

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

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

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

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

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

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

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

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

14 (10) The payment of any required fees under this act, as  
15 established by the commissioner by regulation and payable to the  
16 commissioner or, by arrangement of the commissioner, to the  
17 Nationwide Mortgage Licensing System and Registry on behalf of  
18 the commissioner, or as set forth by the nationwide system and  
19 registry and payable to that nationwide system and registry.

20 b. For residential mortgage lenders and residential mortgage  
21 brokers, as qualified individual licensees:

22 (1) A completed application for a new license or for a renewal  
23 of a license as a qualified licensed individual for a residential  
24 mortgage lender or broker, submitted to the commissioner on the  
25 form, in the manner, and with appropriate evidence in support of the  
26 application, whereby the applicant follows the licensing procedure  
27 and meets the licensing criteria applicable to a mortgage loan  
28 originator, as set forth in subsection a. of this section, except that  
29 the applicant shall not request or be issued a separate license as a  
30 mortgage loan originator under that subsection.

31 (2) A determination with respect to any stricter or additional  
32 licensing requirements that the commissioner may, by regulation,  
33 establish.

34 (3) The payment of any required fees under this act, as  
35 established by the commissioner by regulation and payable to the  
36 commissioner or, by arrangement of the commissioner, to the  
37 Nationwide Mortgage Licensing System and Registry on behalf of  
38 the commissioner, or as set forth by the nationwide system and  
39 registry and payable to that nationwide system and registry.  
40

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

44 (1) Shall pay to the commissioner at the time of the application  
45 a nonrefundable application fee, as established by the commissioner  
46 through regulation, not to exceed \$2,800. The nonrefundable  
47 application fee is required for each residential mortgage lender or

1 broker license issued, including for each branch office license of a  
2 business licensee.

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

8 b. An applicant for a new license or for a renewal of a license to  
9 be a residential mortgage lender or residential mortgage broker, as a  
10 qualified individual licensee:

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.

14 (2) Shall additionally pay to the Nationwide Mortgage Licensing  
15 System and Registry any required fees as set forth by that  
16 nationwide system and registry, or any commissioner's fees, which  
17 by arrangement of the commissioner, are payable to the nationwide  
18 system and registry on behalf of the commissioner.

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

21 (1) Shall pay to the commissioner at the time of the application  
22 a nonrefundable application fee, as established by the commissioner  
23 through regulation, not to exceed \$500. A mortgage loan  
24 originator, other than a loan processor or underwriter who is an  
25 independent contractor and subject to licensure pursuant to  
26 paragraph (2) of subsection c. of section 4 of this act, who changes  
27 the employment affiliation on his license, which affiliation is  
28 required as a condition of licensure pursuant to paragraph (1) of  
29 subsection c. of section 4 of this act, to a different business  
30 licensee, shall be required to submit any documentation required by  
31 regulation and pay another nonrefundable application fee.

32 (2) Shall additionally pay to the Nationwide Mortgage Licensing  
33 System and Registry any required fees as set forth by that  
34 nationwide system and registry, or any commissioner's fees, which  
35 by arrangement of the commissioner, are payable to the nationwide  
36 system and registry on behalf of the commissioner.

37

38 9. (New section) a. An applicant for a new license as a  
39 mortgage loan originator or a qualified individual licensee shall  
40 complete, as a pre-licensing requirement, at least 20 hours of  
41 education from an educational course provided by an educational  
42 course provider, reviewed and approved by the Nationwide  
43 Mortgage Licensing System and Registry, based upon reasonable  
44 standards established by that nationwide system and registry.

45 (1) Pursuant to the reasonable standards established by the  
46 nationwide system and registry, an approved educational course  
47 provider may include the employer or affiliated business licensee of  
48 the applicant, or an entity which is affiliated with the applicant by

1 an agency contract, or any subsidiary or affiliate of the applicant's  
2 employer, affiliated business licensee, or affiliated entity.

3 (2) Pursuant to the reasonable standards established by the  
4 nationwide system and registry, an approved educational course  
5 may be offered at any location and by any means, including live  
6 classroom instruction, prepared group or individual coursework, or  
7 the Internet.

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

10 (1) 3 hours of instruction on federal statutes and regulations;

11 (2) 3 hours of instruction on ethics, including instruction on  
12 fraud, consumer protection, and fair licensing issues; and

13 (3) 2 hours of training related to lending standards for the  
14 nontraditional mortgage product marketplace.

15 c. Any pre-licensing educational requirements of another state,  
16 reviewed and approved by the Nationwide Mortgage Licensing  
17 System and Registry, and completed by an applicant for licensure in  
18 that state pursuant to the provisions of the federal "Secure and Fair  
19 Enforcement for Mortgage Licensing Act of 2008," title V of  
20 Pub.L.110-289 (12 U.S.C. s.5101 et seq.), shall be accepted by the  
21 commissioner from the applicant as credit towards completion of  
22 the reviewed and approved pre-licensing educational requirements  
23 of this section for licensure in this State.

24

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

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

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

- 1 (1) federal and State statutes and regulations pertaining to  
2 mortgage origination;
- 3 (2) other federal and State statutes and regulations, including  
4 those pertaining to fraud, consumer protection, fair lending issues,  
5 and the nontraditional mortgage marketplace; and
- 6 (3) ethics.
- 7 c. An applicant shall only be considered to have passed the  
8 qualified written test if the applicant achieves a test score of not less  
9 than 75 percent correct answers to the test questions.
- 10 d. An applicant may take the qualified written test up to three  
11 consecutive times in order to successfully pass and qualify for  
12 licensure. The applicant shall not take a subsequent, consecutive  
13 test until at least 30 calendar days next following the applicant's  
14 preceding test date. If the applicant fails to pass the qualified  
15 written test after three consecutive attempts, the applicant shall not  
16 be permitted to retake the test for a period of at least six months  
17 from the applicant's last preceding test date.
- 18
- 19 11. (New section) a. An applicant for a renewal of a license as a  
20 mortgage loan originator or a qualified individual licensee, shall  
21 complete, as a requirement for the license renewal, at least 12 hours  
22 of education from one or more continuing educational courses  
23 provided by a continuing educational course provider, reviewed and  
24 approved by the Nationwide Mortgage Licensing System and  
25 Registry, based upon reasonable standards established by that  
26 nationwide system and registry.
- 27 (1) Pursuant to the reasonable standards established by the  
28 nationwide system and registry, an approved continuing educational  
29 course provider may include the employer or affiliated business  
30 licensee of the individual licensee, or an entity which is affiliated  
31 with the individual licensee by an agency contract, or any  
32 subsidiary or affiliate of the individual licensee's employer,  
33 affiliated business licensee, or affiliated entity.
- 34 (2) Pursuant to the reasonable standards established by the  
35 nationwide system and registry, an approved continuing educational  
36 course may be offered at any location and by any means, including  
37 live classroom instruction, prepared group or individual  
38 coursework, or the Internet.
- 39 b. The approved continuing educational course shall include at a  
40 minimum, but not be limited to:
- 41 (1) 3 hours of instruction on federal statutes and regulations;
- 42 (2) 2 hours of instruction on ethics, including instruction on  
43 fraud, consumer protection, and fair licensing issues; and
- 44 (3) 2 hours of training related to lending standards for the  
45 nontraditional mortgage product marketplace.
- 46 c. (1) Except as set forth by the commissioner in regulation  
47 consistent with this act and the provisions of the federal "Secure  
48 and Fair Enforcement for Mortgage Licensing Act of 2008," title V

1 of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), a licensed mortgage  
2 loan originator, or a licensed residential mortgage lender or  
3 residential mortgage broker as a qualified individual licensee, may  
4 only receive credit for an approved continuing educational course:

5 (a) in the calendar year in which the licensee takes the course;  
6 and

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

9 (2) A licensed mortgage loan originator, residential mortgage  
10 lender or broker, who is an approved instructor of an approved  
11 continuing educational course, may receive credit towards the  
12 individual licensee's own continuing educational requirements set  
13 forth in this section at the rate of two hours of credit for every one  
14 hour of the approved continuing educational course taught.

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

20 d. Any continuing educational requirements of another state,  
21 reviewed and approved by the Nationwide Mortgage Licensing  
22 System and Registry, and completed by an applicant for a license  
23 renewal in that state pursuant to the provisions of the federal  
24 "Secure and Fair Enforcement for Mortgage Licensing Act of  
25 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), shall be  
26 accepted by the commissioner from an applicant as credit towards  
27 completion of the reviewed and approved continuing educational  
28 requirements of this section for a license renewal in this State.

29

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

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

41 (2) The commissioner is authorized, through regulation, to  
42 coordinate the registration of an applicant through the nationwide  
43 system and registry with the State licensing of the applicant under  
44 this act, on any matters deemed necessary by the commissioner for  
45 participation in that nationwide system and registry, including but  
46 not limited to:

47 (a) background checks, including a criminal history record  
48 background check, a check of administrative and civil records, and



1 a credit history check as set forth in section 7 of this act, and  
2 concerning any other information deemed necessary by the  
3 nationwide system and registry;

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

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

8 (d) payment of any required fees, as established by the  
9 commissioner and payable to the commissioner or to the nationwide  
10 system and registry on behalf of the commissioner, and as set forth  
11 by the nationwide system and registry and payable to that  
12 nationwide system and registry.

13 (3) The commissioner shall, in order to participate in the  
14 nationwide system and registry, regularly report violations of this  
15 act by an applicant or licensee, as well as information concerning  
16 enforcement actions on those violations, along with any other  
17 relevant information, to the nationwide system and registry, in a  
18 manner and frequency established by that nationwide system and  
19 registry.

20 (4) The commissioner shall, in order to participate in the  
21 nationwide system and registry, establish by regulation a process by  
22 which an applicant or current licensee may request access to the  
23 applicant's or licensee's information or material provided to,  
24 received from, or collected by the nationwide system and registry,  
25 and a process by which that applicant or licensee may correct,  
26 amend or delete information or material disputed as incorrect or  
27 incomplete.

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

1 public, based upon reasonable standards established by the  
2 nationwide system and registry.

3 (a) In order to ensure the application of privacy, confidentiality,  
4 and privilege protections to information and material as set forth in  
5 this paragraph, the commissioner may enter into any necessary  
6 arrangement with the nationwide system and registry, other federal  
7 or state agency, the Conference of State Bank Supervisors or its  
8 successor organization, or other organization representing a federal  
9 or state agency, regarding information and material the  
10 commissioner shares, and information and materials shared with the  
11 commissioner.

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

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

20 (ii) subpoena or discovery, or admission into evidence, in any  
21 private civil action or administrative process, except with respect to  
22 any privacy, confidentiality, or privilege held by the nationwide  
23 system and registry connected to an applicant's or licensee's  
24 information or material that the applicant or licensee gives  
25 permission to waive, in whole or in part.

26

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

44

45 14. (New section) a. (1) Each applicant for a business license  
46 as a residential mortgage lender shall demonstrate that it has  
47 tangible net worth of at least \$250,000, except that an applicant for  
48 a business license as a correspondent mortgage lender shall

1 demonstrate that it has a tangible net worth of at least \$150,000.  
2 Each applicant for a business license as a residential mortgage  
3 broker shall demonstrate that it has tangible net worth of at least  
4 \$50,000.

5 (2) Each licensed residential mortgage lender that is a business  
6 licensee shall maintain at all times tangible net worth of at least  
7 \$250,000, except that a correspondent mortgage lender that is a  
8 business licensee shall maintain at all times tangible net work of at  
9 least \$150,000. Each licensed residential mortgage broker that is a  
10 business licensee shall maintain at all times tangible net worth of at  
11 least \$50,000.

12 (3) The commissioner may by regulation:

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

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

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

19 b. The commissioner may, by regulation, require that a  
20 business licensee demonstrate to the satisfaction of the  
21 commissioner that it has adequate means to fund loans through lines  
22 of credit, or otherwise.

23

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

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

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

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

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

41

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

47 b. Whenever the business licensee changes the address of its  
48 principal office or a branch office serving New Jersey consumers, it

1 shall file, as part of its notice of address change required pursuant to  
2 paragraph (5) of subsection a. of section 17 of this act, any  
3 documents required of it by regulation.  
4

5 17. (New section) a. (1) The license for a residential mortgage  
6 lender or residential mortgage broker, including a qualified  
7 individual licensee, shall state the name of the business licensee and  
8 the licensee's place or places of business, as applicable, and shall  
9 contain any other information as the commissioner may require  
10 pursuant to regulation. A license shall not be issued in a name  
11 containing any words including "insured," "bonded," "guaranteed,"  
12 "secured" and the like. Notwithstanding the provisions of section  
13 18 of P.L.1948, c.67 (C.17:9A-18) or any other law to the contrary,  
14 a licensed residential mortgage lender or broker may use the terms  
15 "mortgage lender" or "mortgage broker," respectively, as part of the  
16 licensee's name; a licensed residential mortgage lender may also use  
17 the term "mortgage banker."

18 (2) The license of the business licensee shall be posted  
19 conspicuously in the place or places of business of that licensee,  
20 and the license of any qualified individual licensee shall be  
21 maintained by that licensee and available for public inspection at  
22 the licensee's place or places of business.

23 (3) A licensee or any other person shall not photocopy or  
24 otherwise reproduce the license except for legitimate business  
25 purposes.

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

29 (5) No licensee shall change the name or address of the  
30 licensee's place or places of business without notice to the  
31 commissioner.

32 b. (1) The license for a mortgage loan originator shall state the  
33 name of the originator's employing business licensee and the  
34 licensee's place or places of business, as applicable, and shall  
35 contain any other information as the commissioner may see fit to  
36 require.

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

39 (3) A licensee or any other person shall not photocopy or  
40 otherwise reproduce the license except for legitimate business  
41 purposes.

42 (4) No licensee shall change the name or address of the  
43 licensee's place or places of business without notice to the  
44 commissioner.  
45

46 18. (New section) a. Each residential mortgage lender,  
47 residential mortgage broker, and mortgage loan originator license

1 issued pursuant to this act shall expire in accordance with the  
2 following schedule:

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

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

11 However, the commissioner may modify this schedule pursuant  
12 to regulation or order, based upon any later dates approved by the  
13 Secretary of the United States Department of Housing and Urban  
14 Development pursuant to the provisions of section 1508 of the  
15 federal "Secure and Fair Enforcement for Mortgage Licensing Act  
16 of 2008," Pub.L.110-289 (12U.S.C. s.1507), providing a temporary  
17 deadline extension with respect to complying with the licensing  
18 requirements for states established pursuant to the provisions of the  
19 federal "Secure and Fair Enforcement for Mortgage Licensing Act  
20 of 2008," title V of Pub.L.110-289 (12U.S.C. s.5101 et seq.).

21 b. (1) Consistent with the provisions of subsection a. of this  
22 section, the license of any person failing to satisfy the standards for  
23 license renewal set forth in sections 6 through 15 of this act shall  
24 expire. However, the commissioner may adopt regulations  
25 concerning procedures for a person with an expired license to  
26 obtain a reinstatement of that license, which in the case of a  
27 formerly licensed individual shall be consistent with any expired  
28 license reinstatement standards established by the Nationwide  
29 Mortgage Licensing System and Registry.

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

34 c. A licensee may surrender any license, consistent with  
35 paragraph (2) of subsection b. of section 12 of this act concerning  
36 the coordination of license surrender with the Nationwide Mortgage  
37 Licensing System and Registry, by delivering to the commissioner  
38 written notice that the license is surrendered, along with the license,  
39 but the surrender shall not affect the licensee's civil or criminal  
40 liability for any act committed prior to the surrender.

41

42 19. (New section) Any sale or transfer of a controlling interest  
43 in a residential mortgage lender or residential mortgage broker  
44 applicant's or licensee's business shall be approved by the  
45 commissioner prior to the transfer or sale, after the applicant or  
46 business licensee has provided an application which contains a  
47 written notice of the proposed sale or transfer to the commissioner.  
48 The application shall list each officer, director, partner or owner to

1 receive a controlling interest as a result of the transfer or sale, and  
2 each shall be subject to a criminal history record background check  
3 as set forth in subsection b. of section 6 of this act as a condition for  
4 the commissioner's approval of the transfer or sale. The  
5 commissioner shall approve the transfer or sale unless the  
6 commissioner determines, following an opportunity for a hearing,  
7 that sufficient grounds exist to deny, revoke or suspend the  
8 residential mortgage lender's or broker's license. The sale or  
9 transfer shall be deemed approved if the commissioner does not  
10 deny a completed application within 90 days after its receipt.

11

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

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

20 (2) The commissioner may refuse to issue, and may revoke,  
21 suspend, or refuse to renew, a residential mortgage lender or  
22 residential mortgage broker license, including the license of a  
23 qualified individual licensee or a branch office license, or a  
24 mortgage loan originator license, or impose a penalty pursuant to  
25 this act, if the commissioner finds, after notice and an opportunity  
26 for a hearing in accordance with the "Administrative Procedure  
27 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted  
28 thereunder, that any person, applicant for or holder of the license  
29 has:

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

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

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

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

46 (e) Become insolvent;

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

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

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

9 (4) If the license issued to a residential mortgage lender or  
10 residential mortgage broker as a qualified individual licensee is  
11 revoked or suspended, the affiliated license issued to the business  
12 licensee shall also be revoked or suspended by the commissioner,  
13 unless within the time fixed by the commissioner, in the case of a  
14 partnership, the connection therewith of the offending qualified  
15 individual licensee whose license has been revoked or suspended  
16 shall be severed and that individual's interest in the partnership and  
17 share in its activities brought to an end, or in the case of an  
18 association, corporation, or other legal entity, the offending  
19 qualified individual licensee whose license has been revoked or  
20 suspended shall be discharged and shall have no further  
21 participation in the legal entity's activities. In the case of an  
22 offending qualified individual licensee who is an officer or director  
23 of the corporation or other legal entity, that individual shall be  
24 required to fully divest himself of all stock, bonds or other  
25 corporate holdings.

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

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

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

35 (3) Whenever it appears to the commissioner that any person has  
36 engaged, is engaged, or is about to engage in any practice or  
37 transaction prohibited by this act, the commissioner may issue, in  
38 accordance with the "Administrative Procedure Act," P.L.1968,  
39 c.410 (C.52:14B-1 et seq.), a cease and desist order if the  
40 commissioner determines it necessary. In addition to any other  
41 remedy available, the commissioner may also bring a summary  
42 action in a court of competent jurisdiction against a person, and any  
43 other person concerned or in any way participating in or about to  
44 participate in a practice or transaction in violation of this act, to  
45 enjoin the person from continuing the practice or transaction  
46 engaged, or from engaging in the practice or transaction, or doing  
47 any act in furtherance towards engaging in the practice or  
48 transaction.

1 (4) The commissioner may impose a civil penalty not exceeding  
2 \$25,000 on any person for a violation of this act. Each violation of  
3 this act, including any order, rule or regulation made or issued  
4 pursuant to this act, shall constitute a separate offense.  
5 Additionally, each violation of this act which constitutes a knowing  
6 violation shall be considered a crime of the third degree.

7 (5) The commissioner may order that any person who has been  
8 found to have knowingly violated any provision of this act, or of the  
9 rules and regulations issued pursuant hereto, and has thereby caused  
10 financial harm to consumers, be barred from acting as a residential  
11 mortgage lender, residential mortgage broker, or mortgage loan  
12 originator, or a stockholder, an officer, director, partner or other  
13 owner, or an employee of a licensee, or act in any other capacity  
14 pursuant to this act. Violations of this final order shall be  
15 considered a crime of the third degree.

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

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

22 c. The commissioner, in order to fulfill the activities  
23 encompassed by the commissioner's authority set forth in this  
24 section, may:

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

28 (2) Utilize any public or privately available analytical system,  
29 method, or software;

30 (3) Utilize any examination or investigative report prepared by  
31 any federal banking agency or other federal agency, or any state  
32 agency including another department, division, bureau, or office of  
33 this State; and

34 (4) Enter into any necessary arrangement with a federal or state  
35 agency, the Conference of State Bank Supervisors or its successor  
36 organization, or other organization representing any federal or state  
37 agency, in order to reduce the commissioner's regulatory burden by  
38 sharing resources, including sharing information and materials  
39 through the Nationwide Mortgage Licensing System and Registry in  
40 accordance with subsection b. of section 12 of this act, and  
41 following standardized or uniform methods or procedures.

42

43 21. (New section) a. Every residential mortgage lender,  
44 residential mortgage broker, and mortgage loan originator shall  
45 identify the place of business 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. Upon appropriate notice to the commissioner and if a change  
4 in location of records is made, the commissioner shall be notified in  
5 writing of the change within five business days of the change.

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

11 (2) During any examination by the commissioner:

12 (a) The commissioner may control access to any books,  
13 accounts, records or other documents by either taking possession of  
14 the documents, or selecting a designee to be exclusively in charge  
15 of the documents in the location where the documents are  
16 maintained. During this period of controlled access, no person,  
17 other than the licensee as provided in subparagraph (b) of this  
18 paragraph, shall, or attempt to, alter, remove, abstract, mutilate,  
19 destroy, or secrete any of the documents, except with the written  
20 consent of the commissioner or pursuant to court order from a court  
21 of competent jurisdiction.

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

28 d. A licensee may, upon approval of the commissioner, keep  
29 records at a location, identified by the licensee, outside this State,  
30 provided that the licensee shall make the records available in this  
31 State upon request of the commissioner, or, at its option have the  
32 records examined at its out-of-State location, for which it shall pay  
33 the reasonable expenses of the commissioner for the examination.

34

35 22. (New section) a. Every residential mortgage lender or  
36 residential mortgage broker as qualified individual licensees, and  
37 every mortgage loan originator licensee shall provide, in a  
38 conspicuous manner, the unique identifier assigned to the licensee  
39 through the Nationwide Mortgage Licensing System and Registry,  
40 on all residential mortgage loan application forms, solicitations, and  
41 advertisements, whether in print, broadcast, or electronically  
42 transmitted, and on any other document established by regulation of  
43 the commissioner. Every residential mortgage lender or broker as a  
44 business licensee shall ensure the provision of the unique identifier  
45 by its qualified individual licensees and mortgage loan originators  
46 as required by this section.

47 b. No residential mortgage lender, residential mortgage broker,  
48 or mortgage loan originator, whether a business or individual

1 licensee, shall transact business provided for under this act using  
2 any name other than that named in the licensee's license, and if  
3 applicable, using any unique identifier other than the individual  
4 licensee's unique identifier assigned through the Nationwide  
5 Mortgage Licensing System.

6  
7 23. (New section) a. A borrower shall not be required to  
8 purchase credit life or accident and health insurance or credit  
9 involuntary unemployment insurance in connection with any  
10 mortgage loan. If the borrower or borrowers consent thereto in  
11 writing, a residential mortgage lender or residential mortgage  
12 broker may obtain or provide:

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

16 (2) Credit involuntary unemployment insurance in accordance  
17 with forms and rates filed and approved by the commissioner  
18 pursuant to applicable regulations.

19 b. If a licensee obtains or provides any credit insurance for a  
20 borrower or borrowers pursuant to subsection a. of this section, a  
21 licensee may deduct from the principal of the loan and retain an  
22 amount equal to the premium lawfully charged by the insurance  
23 company. The premium may be charged monthly in the case of an  
24 open-end, secondary mortgage loan. The amount so deducted and  
25 retained shall not be considered a prohibited charge or amount of  
26 any examination, service, brokerage, commission, expense, fee or  
27 bonus or other thing or otherwise.

28 c. If a borrower or borrowers obtain the credit insurance from  
29 or through a licensee, the licensee shall show the amount of the  
30 charge for the insurance and cause to be delivered to the borrower  
31 or borrowers a copy of the policy, certificate or other evidence of  
32 that insurance when the loan is made. Nothing in this act shall  
33 prohibit the licensee from collecting the premium or identifiable  
34 charge for insurance permitted by this section and from receiving  
35 and retaining any dividend, or any other gain or advantage resulting  
36 from that insurance.

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

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

45 **NOTICE TO THE BORROWER**

46 **YOU MAY BE REQUIRED TO PURCHASE PROPERTY**  
47 **INSURANCE AS A CONDITION OF RECEIVING THE LOAN.**

1 IF PROPERTY INSURANCE IS REQUIRED, YOU MAY  
2 SECURE INSURANCE FROM A COMPANY OR AGENT OF  
3 YOUR OWN CHOOSING.

4  
5 24. (New section) a. Notwithstanding the provisions of any  
6 other law, a residential mortgage lender, incidental to the  
7 origination, processing and closing of any mortgage loan  
8 transaction, shall have the right to charge only the following fees:  
9 (1) credit report fee; (2) appraisal fee; (3) application fee; (4)  
10 commitment fee; (5) warehouse fee; (6) fees necessary to reimburse  
11 the residential mortgage lender for charges imposed by third  
12 parties; and (7) discount points.

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

17 c. No residential mortgage lender or residential mortgage  
18 broker may charge any fee either not expressly authorized by this  
19 section or authorized by the commissioner by regulation.

20  
21 25. (New section) The following practices shall be prohibited  
22 and a violation of this act with respect to any mortgage loan:

23 a. No person shall use the word "mortgage" or similar word in  
24 any advertising, sign, letterhead, business card, or like matter which  
25 tends to represent that the person solicits, makes, brokers, or  
26 negotiates mortgage loans unless licensed to act as a residential  
27 mortgage lender, residential mortgage broker, or mortgage loan  
28 originator under this act, or is exempt from licensure pursuant to  
29 section 5 of this act.

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

32 c. No person shall assist, or aide or abet a licensee with respect  
33 to any licensed activities regulated by this act, unless properly  
34 licensed under this act, or exempt from licensure pursuant to section  
35 5 of this act.

36 d. No residential mortgage lender, residential mortgage broker,  
37 or mortgage loan originator, whether a business or individual  
38 licensee, shall make, advertise, print, display, publish, distribute,  
39 electronically transmit, telecast or broadcast, or cause or permit to  
40 be made, advertised, printed, displayed, published, distributed,  
41 electronically transmitted, televised or broadcast, in any manner,  
42 any statement or representation which is false, misleading or  
43 deceptive.

44 e. No residential mortgage lender, residential mortgage broker,  
45 or mortgage loan originator shall engage in any unfair or deceptive  
46 practice toward any person, or directly or indirectly employ any  
47 scheme, device, or artifice to defraud or mislead borrowers, lenders,  
48 or any other person, including any action to misrepresent,

- 1 circumvent, or conceal the nature of any information or material  
2 particular of any transaction, or to obtain the real property that is, or  
3 intended to be, the security for the loan.
- 4 f. No residential mortgage lender, residential mortgage broker,  
5 or mortgage loan originator shall advertise, solicit, or make, broker,  
6 or negotiate a mortgage loan for a specific interest rate, points, or  
7 other financing terms unless those terms are actually available at the  
8 time of advertising, making, brokering, or negotiating the loan.
- 9 g. No residential mortgage lender, residential mortgage broker,  
10 or mortgage loan originator shall make any statement or  
11 representation that the licensee will provide "immediate approval"  
12 of any mortgage loan application or "immediate closing" of a loan,  
13 or will afford unqualified access to credit.
- 14 h. No residential mortgage lender, residential mortgage broker,  
15 or mortgage loan originator shall fail to make any disclosures  
16 concerning a mortgage loan as required by federal and State law,  
17 including any order, rule or regulation made or issued pursuant to  
18 that law.
- 19 i. No residential mortgage lender, residential mortgage broker,  
20 or mortgage loan originator shall make any payment, threat, or  
21 promise, directly or indirectly, to any person for the purposes of  
22 influencing the independent judgment of the person in connection  
23 with a mortgage loan, including to any appraiser of the real property  
24 that is, or intended to be, the security for the loan for the purposes  
25 of influencing the appraiser's judgment with respect to the value of  
26 the property.
- 27 j. No residential mortgage lender, residential mortgage broker,  
28 or mortgage loan originator shall, in connection with or incidental  
29 to the making of any mortgage loan, require or permit a party to the  
30 transaction to sign the loan agreement, promissory note, bond or  
31 other mortgage instrument if it contains any blank space to be filled  
32 in after it has been signed, except a blank space relating to  
33 recording.
- 34 k. With respect to any commission, bonus or fee:
- 35 (1) No person shall pay or receive any commission, bonus, or  
36 fee to or from any person not licensed under this act, or not exempt  
37 from licensure pursuant to section 5 of this act, in connection with  
38 soliciting, making, brokering, or negotiating any mortgage loan for  
39 a borrower.
- 40 (2) A residential mortgage lender, residential mortgage broker,  
41 or mortgage loan originator shall not solicit, make, broker, or  
42 negotiate a contact with a borrower that provides in substance that  
43 the licensee may earn a commission, bonus, or fee through "best  
44 efforts" to obtain a mortgage loan, even though no loan is actually  
45 consummated for the borrower.
- 46 l. No residential mortgage lender, residential mortgage broker,  
47 or mortgage loan originator shall charge or exact directly or

1 indirectly from a borrower or any other person any commission,  
2 bonus, fee, or charge not authorized by this act.

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

7 n. No residential mortgage lender or residential mortgage  
8 broker shall fail to place in escrow, immediately upon receipt, any  
9 money, fund, deposit, check, or draft entrusted to the licensee by  
10 any person, in a manner approved by the commissioner, or to  
11 deposit the funds in a trust or escrow account maintained by the  
12 licensee with a depository institution, wherein the funds shall be  
13 kept until the disbursement thereof is properly authorized.

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

43 p. No residential mortgage lender, residential mortgage broker,  
44 or mortgage loan originator shall fail without good cause to  
45 truthfully account or deliver to any person any personal property,  
46 money, fund, deposit, check, draft, mortgage, document or thing of  
47 value, which is not the licensee's property, or which the licensee is  
48 not in law or equity entitled to retain under the circumstances, at the

1 time which has been agreed upon, or is required by law, or, in the  
2 absence of a fixed time, upon demand of the person entitled to the  
3 accounting or delivery.

4

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

10 b. The promissory note evidencing the closed-end loan may  
11 provide for a variation in the interest rate in which adjustments to  
12 the interest rate shall correspond directly to the movement of an  
13 interest rate index which is readily available to and verifiable by the  
14 borrower and is beyond the control of the licensee. If the note  
15 provides for a variation in the interest rate, that fact shall be clearly  
16 described in plain language, in at least eight-point bold face type on  
17 the face of the note. If the note provides for a final payment which  
18 is substantially greater than the previous installments, that fact,  
19 together with a statement that the licensee is under no obligation to  
20 refinance the loan, unless the licensee unconditionally obligates  
21 itself to do so, shall be clearly disclosed in plain language, in at  
22 least eight-point bold face type on the face of the note. No rate  
23 increase or decrease shall take effect during the first six months of  
24 the term of the loan. Thereafter, no rate increase or decrease shall  
25 take effect unless at least 30 days prior to the effective date of that  
26 increase or decrease, a written notice has been mailed or delivered  
27 to the borrower that clearly and conspicuously describes the  
28 increase or decrease, and unless at least six months have elapsed  
29 without any increase in the rate.

30 c. Upon written request from the borrower, the licensee shall  
31 give to the borrower, without charge, within five days from the date  
32 of receipt of that request, a written statement of the borrower's  
33 account, which shall show the dates and amounts of all installment  
34 payments on the closed-end loan credited to the borrower's account,  
35 the dates, amounts and explanation of all other charges or credits to  
36 the account and the unpaid balance thereof. The licensee shall not  
37 be required to furnish more than two statements pursuant to this  
38 subsection in any 12-month period.

39

40 27. (New section) Notwithstanding the provisions of R.S.31:1-1  
41 or any other law to the contrary, and subject to all applicable  
42 provisions of this act, a licensed residential mortgage lender shall  
43 have authority to make an open-end, secondary mortgage loan upon  
44 the same terms and conditions permitted to banks, savings banks,  
45 and savings and loan associations pursuant to State and federal  
46 statutes and regulations promulgated thereunder, and may charge,  
47 contract for, and receive thereon, interest at an annual percentage  
48 rate agreed to by the licensee and the borrower, provided however,

1 that with respect to fees and other charges permitted in connection  
2 with the open-end loan, the licensee shall be subject to the  
3 provisions of this act.

4  
5 28. (New section) An instrument evidencing a secondary  
6 mortgage loan shall:

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

12 b. Provide for the payment, in full, of the total amount of the  
13 secondary mortgage loan in substantially equal payment periods,  
14 measured in terms of weeks or months, and, except as otherwise  
15 permitted, substantially equal installment payment amounts, except  
16 that the initial payment period may be deferred for 60 days, and,  
17 provided further, when appropriate for the purpose of facilitating  
18 payment in accordance with the borrower's intermittent income, a  
19 promissory note or loan agreement may provide an installment  
20 schedule which reduces or omits payments over any period of time  
21 during which the borrower's income is reduced or suspended, and  
22 the final installment may be \$1 more or less than the amount of all  
23 other installment payments.

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

27 "NOTICE TO BORROWER

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

29 Do not sign this promissory note or loan agreement if it contains  
30 blank spaces.

31 The promissory note or loan agreement is secured by a secondary  
32 mortgage on your real property."

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

37  
38 29. (New section) No writing of any kind executed in  
39 connection with a secondary mortgage loan shall contain:

40 a. A power of attorney to confess judgment;

41 b. An assignment of or order for the payment of any salary,  
42 wages, commissions or any other compensation for services, or any  
43 part thereof, earned or to be earned.

44 c. An agreement to pay any amount other than the unpaid  
45 balance of the promissory note or loan agreement or any other  
46 charge authorized by this act.

47 d. A provision relieving the residential mortgage lender or  
48 residential mortgage broker from liability for any claim, or from

1 any legal remedy, which the borrower may have against the licensee  
2 under the terms of the promissory note or loan agreement.

3 e. A provision whereby the borrower waives any right of action  
4 against the licensee, a subsequent holder or any person acting on the  
5 licensee's or holder's behalf for any illegal act committed in the  
6 collection of payments under the promissory note or loan  
7 agreement.

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

12

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

22 (1) The licensee may charge and receive no more than three  
23 discount points computed as a percentage of the principal amount of  
24 the secondary mortgage loan and may add these discount points to  
25 the principal balance of the loan, which discount points shall be  
26 fully earned when the loan is made. The annual percentage rate  
27 charged to the borrower, including the discount points, if any, shall  
28 be subject to N.J.S.2C:21-19. As used in this paragraph, "discount  
29 point" means one percent of the principal amount of the loan, and  
30 "principal amount of the loan" means the total amount of credit  
31 extended, including all loan closing fees, expenses or costs that are  
32 financed, but excluding the discount points; and

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

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

45 c. The licensee shall also have the authority to charge and  
46 collect a returned check fee in an amount not to exceed \$20 which  
47 the licensee may charge the borrower if a check of the borrower for  
48 a secondary mortgage loan is returned to the licensee uncollected



1 due to insufficient funds in the borrower's account. The licensee  
2 shall also have the authority to charge and collect a late charge in  
3 any amount as may be provided in the promissory note or loan  
4 agreement, but no late charge shall exceed 5% of the amount of  
5 payment in default. Not more than one late charge shall be assessed  
6 on any one payment in arrears.

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

10 (1) An application fee for the secondary mortgage loan at  
11 closing; and

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

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

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

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

24 (3) Suit is actually filed by the attorney to whom the promissory  
25 note or loan agreement is referred and subsequently decided in  
26 favor of the licensee, in which event the attorney fees shall not  
27 exceed 15% of the first \$500, 10% of the next \$500, and 5% of any  
28 excess amount due and owing under the promissory note or loan  
29 agreement, and provided further that at least 15 days prior to the  
30 commencement of the suit, the licensee or his attorney shall send to  
31 the borrower, by certified or registered mail, return receipt  
32 requested, at the borrower's last known address, a statement of the  
33 licensee's intention to sue, which statement shall also specify the  
34 amount of principal, interest and any other charge due and owing to  
35 the licensee.

36

37 31. (New section) a. If a residential mortgage lender charges or  
38 collects interest, costs or other charges on a secondary mortgage  
39 loan in excess of those permitted by this act, the licensee may  
40 collect only the principal amount of the loan, and may not collect  
41 interest, costs or other charges with respect to the loan. In addition,  
42 a licensee who knowingly and willfully violates any provision of  
43 this act shall also forfeit to the borrower three times any amount of  
44 the interest, costs or other charges collected in excess of that  
45 authorized by law.

46 b. The licensee shall have no liability on a secondary mortgage  
47 loan for an unintentional error if within 90 days after discovering  
48 the error the licensee notifies the borrower of the error and makes

1 adjustments in the account as necessary to assure that the borrower  
2 will not be required to pay any interest, costs or other charges  
3 which aggregate in excess of the charges permitted under this act  
4 for secondary mortgage loans. The discovery of an unintentional  
5 error within the meaning of this section shall include an entry of a  
6 judgment by a court of competent jurisdiction, holding that a rule or  
7 regulation with which the licensee acted in conformity was invalid  
8 or in violation of this act, and the licensee shall have no liability for  
9 that unintentional error if the licensee takes the actions required  
10 upon discovery of the error pursuant to this section, within the time  
11 stated therein following entry of the judgment.

12

13 32. (New section) A residential mortgage lender shall, in  
14 connection with a secondary mortgage loan:

15 a. Give to the borrower, without charge, a copy of every  
16 instrument, document or other writing the borrower signs, and  
17 written evidence of any insurance obtained from the licensee  
18 pursuant to section 23 of this act.

19 b. Give to the borrower, without charge, at the time the loan is  
20 made, if a closed-end loan, and at the time of the first advance, if an  
21 open-end loan, a closing statement which itemizes the individual  
22 amounts disbursed to or on behalf of the borrower, including, but  
23 not limited to, the premium for insurance, if any, the total amount  
24 of funds so disbursed, the amount of the interest charge, total  
25 amount of the loan, the amount, number and due date of the  
26 installment payments and the interest charge expressed as an annual  
27 percentage rate, as applicable.

28 c. In the event a borrower's application for the secondary  
29 mortgage loan is denied, notify the borrower, in writing, of that  
30 denial. The name of the denied borrower or a list of denied  
31 borrowers shall not be referred by the licensee, in any manner  
32 whatsoever, to any other lender, retail seller of personal property or  
33 services, or to any other person, whether in this State or any other  
34 state.

35 d. If the secondary mortgage loan is not consummated, return  
36 all documents executed by or belonging to the borrower.

37 e. Whenever payment is made in cash on an account of the  
38 secondary mortgage loan, give to the borrower, without charge, at  
39 the time that payment is actually received, a written receipt which  
40 shall show the name and address of the licensee, the name and  
41 address of the borrower, account number or other identification  
42 mark or symbol, date and amount paid.

43 f. When the loan, if a closed-end loan, is paid in full, or when  
44 the loan, if an open-end loan, is paid in full and the borrower has  
45 notified the licensee in writing to discontinue his account with the  
46 licensee:

47 (1) Refund or credit to the borrower, in accordance with  
48 regulations promulgated by the commissioner, any unearned portion

1 of the premium for any insurance, if a premium for the insurance  
2 was disbursed on behalf of the borrower at the time the secondary  
3 mortgage loan was originally made.

4 (2) Stamp or write on the face of the promissory note or loan  
5 agreement evidencing the borrower's secondary mortgage loan  
6 indebtedness "Paid in Full" or "Canceled," the date paid and the  
7 name and address of the licensee and, within 45 days, return the  
8 promissory note or loan agreement to the borrower.

9 (3) Release any lien on real property and cancel the same of  
10 record pursuant to P.L.1975, c.137 (C.46:18-11.2 et seq.), and, at  
11 the time the promissory note or loan agreement evidencing the  
12 borrower's secondary mortgage loan indebtedness is returned,  
13 deliver to the borrower any good and sufficient assignments,  
14 releases or any other certificate, instrument or document as may be  
15 necessary to vest the borrower with complete evidence of title,  
16 insofar as the applicable secondary mortgage loan is concerned, to  
17 the real property, except that the licensee may require the borrower  
18 to pay any charge imposed upon the licensee by a county recording  
19 officer to effect the cancellation or release.

20

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

25 a. No residential mortgage lender shall, consistent with section  
26 17 of this act, engage in any business regulated by this act under  
27 any other name or at any other location except that designated in the  
28 licensee's license. For the purpose of this subsection, the  
29 transaction of business includes, but is not limited to, the signing of  
30 any instrument, document or any other form by the borrower,  
31 except that a borrower's application for a secondary mortgage loan  
32 need not be signed in the office of the licensee and the loan need  
33 not be closed at the office of the licensee, so long as it is closed in  
34 New Jersey at the office of an attorney admitted to practice in this  
35 State, or a licensed title company or producer.

36 b. No residential mortgage lender or residential mortgage broker  
37 shall request that a borrower incorporate in connection with a  
38 secondary mortgage loan, or aid or abet a scheme to incorporate a  
39 borrower.

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

45 d. No residential mortgage lender or residential mortgage broker  
46 shall require or accept from a borrower any collateral or security for  
47 a secondary mortgage loan other than a mortgage, indenture or any  
48 other similar instrument or document which creates a lien upon any

1 real property or an interest in real property including, but not  
2 limited to, shares of stock in a cooperative corporation.

3  
4 34. (New section) a. The commissioner may investigate or  
5 examine any residential mortgage lender, residential mortgage  
6 broker, mortgage loan originator, or other person as the  
7 commissioner deems necessary to determine compliance with this  
8 act and the orders, rules and regulations issued hereunder. For  
9 these purposes, the commissioner may examine the books, accounts,  
10 records and other documents or matters of any licensee, maintained  
11 pursuant to section 21 of this act, or other person. Each licensee  
12 shall be subject to an examination by the commissioner, not more  
13 than once in any 9-month period, unless the commissioner has  
14 reason to believe that the licensee is not complying with the  
15 provisions of this act or any rule or regulation promulgated  
16 hereunder, or is not transacting business in accordance with law, in  
17 which case the commissioner may conduct an examination at any  
18 time. The commissioner shall have the power to compel by  
19 subpoena the production of all relevant books, accounts, records  
20 and other documents and materials relative to an examination or  
21 investigation. Examinations conducted under the provisions of this  
22 act shall be confidential; notwithstanding this confidentiality, the  
23 examinations shall be subject to: (1) reporting and sharing  
24 procedures established by the Nationwide Mortgage Licensing  
25 System and Registry pursuant to subsection b. of section 12 of this  
26 act; and (2) public disclosure as required in the administration,  
27 enforcement and prosecution of violations under this act or pursuant  
28 to court order. The cost of any investigation or examination shall  
29 be borne by the licensee.

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

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

42  
43 35. (New section) a. (1) Every residential mortgage lender and  
44 residential mortgage broker shall annually file a report with the  
45 commissioner, which shall set forth any information as the  
46 commissioner shall require concerning the business conducted as a  
47 licensee during the preceding calendar year. The report shall be

1 under oath and in a form and within the time specified by the  
2 commissioner by regulation.

3 (2) Every residential mortgage lender and broker shall  
4 additionally submit to the Nationwide Mortgage Licensing System  
5 and Registry a mortgage call report of condition, in the form and  
6 manner, and with any information, at any time as may be required  
7 by that nationwide system and registry, and any other report to, or  
8 through, the nationwide system and registry pursuant to an  
9 arrangement for reporting and sharing information as set forth in  
10 subsection b. of section 12 of this act.

11 b. Any negligently made false statement or knowing omission of  
12 material fact in connection with any report or supporting  
13 information filed with the commissioner, the nationwide mortgage  
14 licensing system and registry, or through that nationwide mortgage  
15 licensing system and registry with any federal or state agency, shall  
16 be deemed a violation of this act.

17 c. A licensee that fails to make and file its annual report with the  
18 commissioner, or any report with or through the nationwide system  
19 and registry, in the form and within the time provided in this  
20 section, shall be subject to a penalty payable to the commissioner of  
21 not more than \$100 for each day's failure concerning the annual  
22 report, and any penalty for a failure concerning a report to be filed  
23 with or through the nationwide system and registry, payable to the  
24 nationwide system and registry, and the commissioner, as  
25 authorized pursuant to section 20 of this act, may revoke or suspend  
26 the licensee's authority to do business in this State. The penalty  
27 may be collected in a summary proceeding pursuant to the "Penalty  
28 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
29 A warrant may issue in lieu of a summons.

30

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

33

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

36 a. Advertised, caused to be advertised, solicited, negotiated,  
37 offered, or otherwise transacted within this State, in whole or in  
38 part, whether by the ultimate residential mortgage lender or any  
39 other person;

40 b. Made or executed within this State; or

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

43

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

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

5  
6       40. Section 1 of P.L.1996, c.157 (C.17:11C-1) is amended to  
7 read as follows:

8       1. Sections 1 through 49 of this act ~~【shall be】~~ , previously  
9 known and ~~【may be】~~ cited as the "New Jersey Licensed Lenders  
10 Act ~~【.】~~," shall be known and may be cited as the "New Jersey  
11 Consumer Finance Licensing Act," on or after the effective date of  
12 P.L. , c. (C. ) (pending before the Legislature as this bill).  
13 (cf: P.L.1996, c.157, s.1)

14  
15       41. Section 2 of P.L.1996, c.157 (C.17:11C-2) is amended to  
16 read as follows:

17       2. As used in this act:

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

22       "Borrower" means any ~~【person】~~ individual applying for a  
23 consumer loan from a lender licensed under this act, whether or not  
24 the loan is granted, and any ~~【person】~~ individual who has actually  
25 obtained such a loan.

26       "Closed-end loan" ~~【with respect to a secondary mortgage loan~~  
27 means a mortgage loan pursuant to which the licensee advances a  
28 specified amount of money and the borrower agrees to repay the  
29 principal and interest in substantially equal installments over a  
30 stated period of time, except that: (1) the amount of the final  
31 installment payment may be substantially greater than the previous  
32 installments if the term of the loan is at least 36 months, or under 36  
33 months if the remaining term of the first mortgage loan is under 36  
34 months; or (2) the amount of the installment payments may vary as  
35 a result of the change in the interest rate as permitted by this act.  
36 "Closed-end loan" with respect to a consumer loan】 means a  
37 consumer loan which meets the requirements of section 35 of  
38 P.L.1996, c.157 (C.17:11C-35) and pursuant to which the licensee  
39 advances a specified amount of money and the borrower agrees to  
40 repay the principal and interest in substantially equal installments  
41 over a stated period of time.

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

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

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

6     "Consumer loan business" means the business of making loans of  
7     money, credit, goods or things in action, which are to be used  
8     primarily for personal, family or household purposes, in the amount  
9     or value of \$50,000 or less and charging, contracting for, or  
10    receiving a greater rate of interest, discount or consideration  
11    therefor than the lender would be permitted by law to charge if he  
12    were not a licensee hereunder, except as authorized by this act and  
13    without first obtaining a license from the commissioner. Any  
14    person directly or indirectly engaging in the business of soliciting  
15    or taking applications for such loans of \$50,000 or less, or in the  
16    business of negotiating or arranging or aiding the borrower or  
17    lender in procuring or making such loans of \$50,000 or less, or in  
18    the business of buying, discounting or **indorsing** endorsing notes,  
19    or of furnishing, or procuring guarantee or security for  
20    compensation in amounts of \$50,000 or less, shall be deemed to be  
21    engaging in the consumer loan business.

22    **["Commissioner" means the Commissioner of Banking and**  
23    **Insurance.**

24    "Consumer lender" means a person licensed, or a person who  
25    should be licensed, under this act to engage in the consumer loan  
26    business.

27    "Consumer loan" means a loan of \$50,000 or less made by a  
28    consumer lender, payable in one or more installments, pursuant to  
29    the terms of this act, and not a first mortgage loan or a secondary  
30    mortgage loan. **]**

31    "Controlling interest" means ownership, control or interest of  
32    25% or more of the licensee or applicant.

33    **["Correspondent mortgage banker" means a mortgage banker**  
34    **who: (1) in the regular course of business, does not hold mortgage**  
35    **loans in its portfolio, or service mortgage loans, for more than 90**  
36    **days; and (2) has shown to the department's satisfaction an ability to**  
37    **fund loans through warehouse agreements, table funding**  
38    **agreements or otherwise. ]**

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

40    "Depository institution" means a state or federally chartered  
41    bank, savings bank, savings and loan association, building and loan  
42    association or credit union, irrespective of whether the entity  
43    accepts deposits.

44    **["First mortgage loan" means any loan secured by a first**  
45    **mortgage on real property on a one to six family dwelling, a portion**  
46    **of which may be used for nonresidential purposes. ]**

47    "Individual" means a natural person.

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

3 **["Mortgage banker" means any person, not exempt under section**  
4 **4 of this act and licensed pursuant to the provisions of this act, and**  
5 **any person who should be licensed pursuant to the provisions of this**  
6 **act, who for compensation or gain, or in the expectation of**  
7 **compensation or gain, either directly or indirectly originates,**  
8 **acquires or negotiates first mortgage loans in the primary market.**

9 "Mortgage broker" means any person, not exempt under section  
10 4 of this act and licensed pursuant to the provisions of this act, and  
11 any person who should be licensed pursuant to the provisions of this  
12 act, who for compensation or gain, or in the expectation of  
13 compensation or gain, either directly or indirectly negotiates, places  
14 or sells for others, or offers to negotiate, place or sell for others,  
15 first mortgage loans in the primary market.】

16 "Open-end loan" means a **【secondary mortgage loan made by a**  
17 **secondary lender or a】** consumer loan made by a consumer lender  
18 pursuant to a written agreement with the borrower whereby:

19 (1) The lender may permit the borrower to obtain advances of  
20 money from the **【secondary】** lender from time to time or the  
21 **【secondary】** lender may advance money on behalf of the borrower  
22 from time to time as directed by the borrower;

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

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

28 (4) The borrower has the privilege of paying the account in full  
29 at any time or, if the account is not in default, in monthly  
30 installments of fixed or determinable amounts as provided in the  
31 agreement.

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

36 **【"Primary market" means the market wherein first mortgage**  
37 **loans are originated between a lender and a borrower, whether or**  
38 **not through a mortgage broker or other conduit, and shall not**  
39 **include the sale or acquisition of a mortgage loan after a mortgage**  
40 **loan is closed.】**

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

43 **【"Secondary lender" means a person licensed, or a person who**  
44 **should be licensed, under this act to engage in the secondary**  
45 **mortgage loan business.**

46 "Secondary mortgage loan" means a loan made to an individual,  
47 association, joint venture, partnership, limited partnership



1 association, limited liability company, trust, or any other group of  
2 individuals, however organized, except a corporation, which is  
3 secured in whole or in part by a lien upon any interest in real  
4 property, including but not limited to shares of stock in a  
5 cooperative corporation, created by a security agreement, including  
6 a mortgage, indenture, or any other similar instrument or document,  
7 which real property is subject to one or more prior mortgage liens  
8 and on which there is erected a structure containing a one, two,  
9 three, four, five or six dwelling units, a portion of which structure  
10 may be used for nonresidential purposes, except that the following  
11 loans shall not be subject to the provisions of this act: (1) a loan  
12 which is to be repaid in 90 days or less; (2) a loan which is taken as  
13 security for a home repair contract executed in accordance with the  
14 provisions of the "Home Repair Financing Act," P.L.1960, c.41  
15 (C.17:16C-62 et seq.); or (3) a loan which is the result of the private  
16 sale of a dwelling, if title to the dwelling is in the name of the seller  
17 and the seller has resided in that dwelling for at least one year, if  
18 the buyer is purchasing that dwelling for his own residence and, if  
19 the buyer, as part of the purchase price, executes a secondary  
20 mortgage in favor of the seller.

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

25 "Solicitor" means any person not licensed as a mortgage banker,  
26 correspondent mortgage banker or mortgage broker who is  
27 employed as a solicitor by one, and not more than one, licensee,  
28 who is subject to the direct supervision and control of that licensee,  
29 and who solicits, provides or accepts first mortgage loan  
30 applications, or assists borrowers in completing first mortgage loan  
31 applications, and whose compensation is in any way based on the  
32 dollar amount or volume of first mortgage loan applications, first  
33 mortgage loan closings or other first mortgage loan activity.】

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

35

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

38 3. a. No person shall 【act as a mortgage banker or mortgage  
39 broker, engage in the secondary mortgage loan business or】 engage  
40 in 【the consumer loan】 business as a consumer lender or sales  
41 finance company without first obtaining a license or licenses under  
42 this act 【, except that a person licensed as a mortgage banker may  
43 act as a mortgage broker or mortgage solicitor, and a person  
44 licensed as a mortgage broker may act as a mortgage solicitor】.

45 b. The department shall issue licenses under this act which  
46 specify whether a licensee may act as a 【mortgage banker or  
47 mortgage broker, a secondary lender or a】 consumer lender or a

1 sales finance company. A licensee may not engage in a licensed  
2 activity under ~~the~~ this act or the “Retail Installment Sales Act of  
3 1960,” P.L.1960, c.40 (C.17:16C-1 et seq.), unless the license  
4 issued by the department specifies that the licensee may engage in  
5 that licensed activity.

6 c. ~~【No person shall act as a solicitor without first being~~  
7 ~~registered with the department.】~~ (Deleted by amendment, P.L. ,  
8 c. ) (pending before the Legislature as this bill)

9 d. ~~【No corporation, partnership, association or any other entity~~  
10 ~~shall be issued or hold a license as a mortgage banker or broker or~~  
11 ~~secondary lender unless one officer or principal has an individual~~  
12 ~~license of that same type sought or held. The commissioner may,~~  
13 ~~by regulation, require a licensed mortgage banker or broker to~~  
14 ~~employ additional licensed individuals to properly supervise the~~  
15 ~~licensee and its branch offices. If the employed individual licensee~~  
16 ~~allows his license to lapse or for some other reason is no longer~~  
17 ~~affiliated with the employing licensee, the employing licensee shall~~  
18 ~~notify the commissioner within 10 days, and shall appoint another~~  
19 ~~licensed individual within 90 days or such longer period as~~  
20 ~~permitted by the commissioner.】~~ (Deleted by amendment, P.L. ,  
21 c. ) (pending before the Legislature as this bill)

22 (cf: P.L.1996, c.157, s.3)

23

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

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

28 a. ~~【A written】~~ An application for a new license or for a  
29 renewal of a license shall be submitted to the commissioner on the  
30 forms and in the manner, and accompanied by such evidence in  
31 support of the application, as required by this act and as may be  
32 prescribed by the commissioner, and shall be accompanied by the  
33 required fees.

34 b. ~~【An individual applicant for a new license shall qualify by~~  
35 ~~examination, the content and form of which shall be approved by~~  
36 ~~the commissioner. The commissioner may designate an~~  
37 ~~independent testing service to prepare and administer the~~  
38 ~~examinations. In addition, the commissioner by regulation may~~  
39 ~~establish additional requirements for licensure as an individual,~~  
40 ~~including education and experience.】~~ (Deleted by amendment,  
41 P.L. , c. ) (pending before the Legislature as this bill)

42 c. If the commissioner finds that the financial responsibility,  
43 experience, character, and general fitness of the applicant for a new  
44 license or for a renewal of a license demonstrate that the business  
45 will be operated honestly, fairly, and efficiently within the purposes  
46 of this act, and if all other licensing requirements of this act and  
47 regulations promulgated by the commissioner are met, the

1 commissioner shall issue the license of the type sought by the  
2 applicant.

3 d. A person already holding a license under this act, or a  
4 business license as a residential mortgage lender or residential  
5 mortgage broker under the "New Jersey Residential Mortgage  
6 Lending Act," sections 1 through 39 of P.L. , c. (C. )  
7 (pending before the Legislature as this bill), may apply to the  
8 commissioner to act as a consumer lender or as a sales finance  
9 company pursuant to the "Retail Installment Sales Act of 1960,"  
10 P.L.1960, c.40 (C.17:16C-1 et seq.), [who is in full compliance  
11 with this act, the "Retail Installment Sales Act of 1960," and the  
12 regulations promulgated thereunder, as applicable, may apply to the  
13 commissioner for a license to act as a mortgage banker or mortgage  
14 broker, a secondary lender, a consumer lender or a sales finance  
15 company, or any combination of these capacities for which the  
16 person is not already licensed,] by filing with the commissioner an  
17 abbreviated application containing the information which the  
18 commissioner deems necessary when considering whether to license  
19 that person for that specific [activity,] type of license along with an  
20 application fee [, and the necessary additional license fee] for the  
21 amount set forth in subsection e. of section 8 of P.L.1996, c.157  
22 (C.17:11C-8).

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

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

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

3       8. a. **【**Every application for an initial license shall be  
4 accompanied by a nonrefundable application fee as set forth in  
5 subsection d. of this section. When the applicant at the same time  
6 seeks a license to engage in more than one activity, only one  
7 application fee may be charged. With respect to a license fee  
8 imposed prior to the implementation of the assessment pursuant to  
9 P.L.2005, c.199 (C.17:1C-33 et al.), the license fee, as prescribed  
10 by the commissioner by regulation, shall be based on the number of  
11 the following activities in which the person is licensed to engage  
12 under this act or the "Retail Installment Sales Act of 1960,"  
13 P.L.1960, c.40 (C.17:16C-1 et seq.): a mortgage banker or mortgage  
14 broker; a secondary lender; a consumer lender; or a sales finance  
15 company. The fee for a biennial license or a renewal thereof shall  
16 be set according to the following schedule:

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

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

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

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

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

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

33       c. **【**An applicant for a mortgage solicitor registration pursuant  
34 to subsection c. of section 3 of P.L.1996, c.157 (C.17:11C-3) shall  
35 be subject to a nonrefundable mortgage solicitor registration  
36 application fee, not to exceed \$100 as established by the  
37 commissioner by regulation. A solicitor who changes his  
38 registration to a different licensee shall be required to submit a new  
39 registration application and to pay another nonrefundable  
40 application fee. **】** (Deleted by amendment, P.L. , c. ) (pending  
41 before the Legislature as this bill)

42       d. An applicant for a new license or for a renewal of a license  
43 to be a consumer lender or a sales finance company shall pay to the  
44 commissioner at the time of the **【initial】** application **【for a license】**  
45 a nonrefundable application fee not to exceed the amounts specified  
46 in this subsection. The nonrefundable application fee is also

1 required for each branch office license of a consumer lender or sales  
2 finance company. The nonrefundable application fee shall be:

3 (1) For an application for one **[activity]** license, an application  
4 fee not to exceed \$700;

5 (2) For an application for two **[activities]** licenses, an  
6 application fee not to exceed \$1,000;

7 (3) **[For an application for three activities, an application fee**  
8 **not to exceed \$1,300; and]** (Deleted by amendment, P.L. , c. )  
9 (pending before the Legislature as this bill)

10 (4) **[For an application for four activities, an application fee not**  
11 **to exceed \$1,600.]** (Deleted by amendment, P.L. , c. ) (pending  
12 before the Legislature as this bill)

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

19 f. Fee amounts shall be prescribed by the commissioner by  
20 regulation.

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

22  
23 45. Section 9 of P.L.1996, c.157 (C.17:11C-9) is amended to  
24 read as follows:

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

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

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

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

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

1 c. (Deleted by amendment, P.L.2007, c.81).  
2 (cf: P.L.2007, c.81, s.8)

3  
4 46. Section 10 of P.L.1996, c.157 (C.17:11C-10) is amended to  
5 read as follows:

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

15 b. The license shall be posted conspicuously in the place or  
16 places of business of the licensee.

17 c. A licensee or any other person shall not photocopy or  
18 otherwise reproduce the license except for legitimate business  
19 purposes.

20 d. Licenses issued pursuant to this act or , previously, the  
21 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1  
22 et seq.), shall not be transferable or assignable, other than as  
23 provided by section 12 of this act.

24 e. No licensee shall change the name or address of the licensee's  
25 place or places of business without notice to the commissioner.  
26 (cf: P.L.1996, c.157, s.10)

27  
28 47. Section 11 of P.L.1996, c.157 (C.17:11C-11) is amended to  
29 read as follows:

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

34 (2) A licensee may surrender any license by delivering to the  
35 commissioner written notice that the license is surrendered, along  
36 with the license, and complying with any regulation set forth by the  
37 commissioner concerning the license surrender, but the surrender  
38 shall not affect the licensee's civil or criminal liability for an act  
39 committed prior to the surrender.

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

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

46 d. Each mortgage banker, correspondent mortgage banker,  
47 mortgage broker, and secondary lender license, and each mortgage  
48 solicitor registration issued pursuant to the provisions of the "New

Jersey Licensed Lenders Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the “New Jersey Consumer Finance Licensing Act” pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), shall expire in accordance with the following schedule:

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

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

(a) the license or registration shall expire on July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” Pub.L.110-289 (12U.S.C. s. 5107); and

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

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

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

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

12. Any sale or transfer of a controlling interest in a consumer lender or sales finance company licensee's or applicant's business shall be approved by the commissioner prior to the transfer or sale, after the licensee or applicant has provided an application which contains a written notice of the proposed sale or transfer to the commissioner. The application shall list each officer, director, partner or owner to receive a controlling interest as a result of the transfer or sale, and each shall be subject to a criminal history record background check as set forth in subsection e. of section 7 of P.L.1996, c.157 (C.17:11C-7) as a condition for the commissioner's

1 approval of the transfer or sale. The commissioner shall approve the  
2 transfer or sale unless the commissioner determines, following an  
3 opportunity for a hearing, that sufficient grounds exist to deny,  
4 revoke or suspend the license. The sale or transfer shall be deemed  
5 approved if the commissioner does not deny ~~the~~ a completed  
6 application within ~~30~~ 90 days after its receipt ~~], or 10 days when~~  
7 the sale or transfer is to another licensee under this act. The  
8 commissioner may charge such fee as set by regulation, not to  
9 exceed \$200, for considering an application for a sale or transfer of  
10 a controlling interest].

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

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

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

24 b. ~~]~~ If a licensee maintains a branch office or offices, one of the  
25 offices shall be designated as a principal office.] ~~(Deleted by~~  
26 ~~amendment, P.L. , c. )~~ (pending before the Legislature as this  
27 bill)

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

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

36  
37 50. Section 18 of P.L.1996, c.157 (C.17:11C-18) is amended to  
38 read as follows:

39 18. The commissioner's authority with respect to issuing  
40 consumer lender and sales finance company licenses, and with  
41 respect to oversight of licensees and enforcement of the activities  
42 regulated under the "New Jersey Consumer Finance Licensing Act"  
43 shall include the following:

44 a. The commissioner may refuse to issue and may revoke,  
45 suspend or refuse to renew a license, or impose a penalty pursuant  
46 to this act, ~~]~~ or refuse to register or rescind or revoke a solicitor



1 registration,] if the commissioner finds, after notice and an  
2 opportunity for a hearing in accordance with the "Administrative  
3 Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and any rules  
4 adopted thereunder, that any person, applicant for or holder of the  
5 license has:

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

8 (2) **[Withheld]** Failed at any time to meet the requirements for  
9 licensure, or withheld information or made a material misstatement  
10 in the application for the license;

11 (3) Been convicted of an offense involving breach of trust,  
12 moral turpitude or fraudulent or dishonest dealing, or had a final  
13 judgment entered against **[him]** the person in a civil or  
14 administrative action upon grounds of fraud, misrepresentation, or  
15 deceit, or failure to maintain books, accounts, records and other  
16 documents as required by section 19 of P.L.1996, c.157 (C.17:11C-  
17 19);

18 (4) Become insolvent, or failed to attain or maintain the required  
19 net worth;

20 (5) Demonstrated unworthiness, incompetence, bad faith or  
21 dishonesty in the transaction of business as a licensee; or

22 (6) Engaged in any other conduct which would be deemed by  
23 the commissioner to be the cause for denial, revocation, suspension,  
24 or refusal of the license or license renewal.

25 b. A license **[of a corporation, partnership, association or other**  
26 **entity]** may be suspended **[or]** , revoked , or not renewed by the  
27 commissioner if any officer, director, partner, or **[member]** owner  
28 of the licensee has committed any act which would be cause for  
29 suspending **[or]** , revoking or not renewing a license if issued to  
30 **[him]** that person as an individual.

31 c. If the license **[issued to an individual]** is **[revoked or]**  
32 suspended or revoked pursuant to subsection b. of this section, the  
33 license **[issued to the partnership, association, corporation or other**  
34 **entity]** shall **[also be revoked or suspended by the commissioner]**  
35 remain suspended or revoked, unless within the time fixed by the  
36 commissioner, in the case of a partnership, the connection therewith  
37 of the **[member whose license has been revoked]** offending  
38 individual shall be severed and that **[member's]** individual's  
39 interest in the partnership and share in its activities brought to an  
40 end, or in the case of an association, corporation, or other legal  
41 entity, the offending **[officer or director]** individual shall be  
42 discharged and shall have no further participation in **[its activity]**  
43 the legal entity's activities. **[Officers and directors]** In the case of  
44 an offending individual who is an officer or director of the  
45 corporation or other legal entity, that individual shall be required to

- 1 fully divest ~~【themselves】~~ himself of all stock, bonds or other  
2 corporate holdings.
- 3 d. ~~【The department may suspend or revoke the entire license of~~  
4 ~~a person whose license is suspended or revoked for only one of its~~  
5 ~~authorized licensed activities.】~~ (Deleted by amendment, P.L. \_\_\_\_\_,  
6 c. ) (pending before the Legislature as this bill)
- 7 e. ~~【Any licensee may surrender any license by delivering to the~~  
8 ~~commissioner written notice that the license is surrendered, along~~  
9 ~~with the license, but the surrender shall not affect the licensee's civil~~  
10 ~~or criminal liability for an act committed prior to the surrender.】~~  
11 (Deleted by amendment, P.L. \_\_\_\_\_, c. ) (pending before the  
12 Legislature as this bill)
- 13 f. The commissioner may access and examine books, accounts,  
14 records and other documents maintained by a consumer lender or  
15 sales finance company licensee pursuant to section 19 of P.L.1996,  
16 c.157 (C.17:11C-19).
- 17 g. The commissioner may conduct investigations, which may  
18 include the subpoena of witnesses and documents, pursuant to  
19 section 42 of P.L.1996, c.157 (C.17:11C-42).
- 20 h. Whenever it appears to the commissioner that any person has  
21 engaged, is engaging, or is about to engage, in any practice or  
22 transaction prohibited by the “New Jersey Consumer Finance  
23 Licensing Act,” sections 1 through 49 of P.L.1996, c.157  
24 (C.17:11C-1 et seq.), the commissioner may, in addition to any  
25 other remedy available, bring a summary action in a court of  
26 competent jurisdiction against the person, and any other person  
27 concerned or in any way participating in or about to participate in a  
28 practice or transaction in violation of the “New Jersey Consumer  
29 Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157  
30 (C.17:11C-1 et seq.), to enjoin the person from continuing the  
31 practice or transaction engaged, or from engaging in the practice or  
32 transaction, or doing any act in furtherance of engaging in the  
33 practice or transaction.
- 34 i. The commissioner may impose a civil penalty not exceeding  
35 \$25,000 on any person for a violation of the “New Jersey Consumer  
36 Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157  
37 (C.17:11C-1 et seq.). Each violation of the act, including any order,  
38 rule or regulation made or issued pursuant to the act, shall  
39 constitute a separate offense. Additionally, each violation which  
40 constitutes a knowing violation shall be considered a crime of the  
41 third degree.
- 42 j. The commissioner may order that any person who has been  
43 found to have knowingly violated any provision of the “New Jersey  
44 Consumer Finance Licensing Act,” sections 1 through 49 of  
45 P.L.1996, c.157 (C.17:11C-1 et seq.), or of the rules and regulations  
46 issued pursuant hereto, and has thereby caused financial harm to  
47 consumers, be barred for a term not exceeding 10 years from acting

1 as a consumer lender or sales finance company, or a stockholder, or  
2 an officer, director, partner or other owner, or an employee of a  
3 consumer lender or sales finance company licensee, or act in any  
4 other capacity pursuant to the “New Jersey Consumer Finance  
5 Licensing Act,” sections 1 through 49 of P.L.1996, c.157  
6 (C.17:11C-1 et seq.). Violations of this final order shall be  
7 considered a crime of the third degree.

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

9  
10 51. Section 19 of P.L.1996, c.157 (C.17:11C-19) is amended to  
11 read as follows:

12 19. a. Every consumer lender or sales finance company licensee  
13 shall **【maintain, at】** identify the place of business **【in this State**  
14 **designated in the license,】** where those books, accounts, records  
15 and other documents of the business conducted under the license, as  
16 may be prescribed by the commissioner, are maintained, to enable  
17 the commissioner to determine whether the business of the licensee  
18 is being conducted in accordance with the provisions of this act and  
19 the orders, rules and regulations issued hereunder.

20 b. **【A licensee operating two or more licensed places of business**  
21 **in this State shall maintain the records of all licensed places at any**  
22 **one of the licensed places.】** Upon appropriate notice to the  
23 commissioner and if a change in location of records is made, the  
24 commissioner shall be notified in writing of the change within five  
25 business days of the change.

26 c. Every licensee shall preserve all books, accounts, records and  
27 other documents pertaining to its business, and keep them available  
28 for examination by the commissioner, for at least three years from  
29 the date of original entry, or **【such】** a longer time as prescribed by  
30 the commissioner by regulation.

31 d. A licensee may, upon approval of the commissioner, keep  
32 records at a location, **【designated】** identified by the licensee,  
33 outside this State, provided that the licensee shall make the records  
34 available in this State upon request of the commissioner **【, or, at its**  
35 **option have the records examined at its out-of-State location and**  
36 **shall pay the reasonable expenses of the commissioner for the**  
37 **examination】.**

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

39  
40 52. Section 21 of P.L.1996, c.157 (C.17:11C-21) is amended to  
41 read as follows:

42 21. a. A borrower shall not be required to purchase credit life or  
43 accident and health insurance or credit involuntary unemployment  
44 insurance in connection with a **【first mortgage loan, a secondary**  
45 **mortgage loan or a】** consumer loan. If the borrower or borrowers  
46 consent thereto in writing, a licensee may obtain or provide:

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

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

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

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

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

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

34 **NOTICE TO THE BORROWER**

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

37 **IF PROPERTY INSURANCE IS REQUIRED, YOU MAY**  
38 **SECURE INSURANCE FROM A COMPANY OR AGENT OF**  
39 **YOUR OWN CHOOSING.]** (Deleted by amendment, P.L. \_\_, c. \_\_)  
40 (pending before the Legislature as this bill)

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

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

3 NOTICE TO THE BORROWER

4 YOU ARE NOT REQUIRED TO PURCHASE PERSONAL  
5 PROPERTY INSURANCE AS A CONDITION OF RECEIVING  
6 THE CONSUMER LOAN. IF YOU DESIRE PERSONAL  
7 PROPERTY INSURANCE YOU MAY SECURE INSURANCE  
8 FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.

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

10

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

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

20 b. A closed-end consumer loan contract may provide for a  
21 variation in the interest rate in which adjustments to the interest rate  
22 shall correspond directly to the movement of an interest rate index  
23 which is readily available to and verifiable by the borrower and is  
24 beyond the control of the lender. No increase during the entire loan  
25 term shall result in an interest rate of more than 6% per annum over  
26 the rate applicable initially, nor shall the rate be raised more than  
27 3% per annum during any 12-month period. The lender shall not be  
28 obligated to decrease the interest rate more than 6% over the term  
29 of the loan, nor more than 3% per annum during any 12-month  
30 period. If a rate increase is applied to the loan, the lender shall also  
31 be obligated to adopt and implement uniform standards for  
32 decreasing the rate. If the contract provides for the possibility of an  
33 increase or decrease or both in the rate, that fact shall be clearly  
34 described in plain language, in at least 8-point bold face type on the  
35 face of the contract. No rate increase shall take effect unless (1) at  
36 least 90 days prior to the effective date of the first such increase, or  
37 30 days prior to the effective date of any subsequent increase, a  
38 written notice has been mailed or delivered to the borrower that  
39 clearly and conspicuously describes such increase, and (2) unless at  
40 least 365 days have elapsed without any increase in the rate. Where  
41 the loan contract so provides for an increase or decrease in the rate  
42 of interest, the installments may vary in amount, notwithstanding  
43 any other law to the contrary, except that if the rate increases, the  
44 borrower may request, and the lender shall provide for, either an  
45 increase in the amount of the installment payment or an extension  
46 of the term of the loan, or some combination of an increase in the  
47 amount of the installment payment and extension of the term.

- 1       c. An open-end loan agreement may provide that the lender  
2 may at any time, or from time to time, change the terms of the  
3 agreement, including the terms governing the periodic interest rate,  
4 calculation of interest or the method of computing the required  
5 amount of periodic installment payments, provided however, that:
- 6       (1) the periodic interest rate shall not be changed more than  
7 once in each billing cycle;
- 8       (2) any change in the periodic interest rate shall correspond to  
9 the movement of a market interest rate index specified in the  
10 agreement which is readily verifiable by the borrower and beyond  
11 the control of the lender;
- 12       (3) a change in any term of the agreement, including the  
13 periodic interest rate, may be permitted to apply to any then-  
14 outstanding unpaid indebtedness in the borrower's account,  
15 including any indebtedness which shall have arisen from advances  
16 obtained prior to the effective date of the change, so long as that  
17 fact is clearly and conspicuously disclosed in the agreement;
- 18       (4) if the agreement provides for the possibility of a change in  
19 any term of the agreement, including the rate, that fact shall be  
20 clearly described in plain language, in at least 8-point bold face  
21 type on the face of the written notice; and
- 22       (5) no change in any term of the agreement or of the index  
23 specified in the agreement shall be effective unless: (a) at least 30  
24 days prior to the effective date of the change, a written notice has  
25 been mailed or delivered to the borrower that clearly and  
26 conspicuously describes the change and the indebtedness to which it  
27 applies, and states that the incurrence by the borrower or another  
28 person authorized by him of any further indebtedness under the law  
29 to which the agreement relates on or after the effective date of the  
30 change specified in the notice shall constitute acceptance of the  
31 change; and (b) either the borrower agrees in writing to the change  
32 or the borrower or another person authorized by him incurs further  
33 indebtedness on or after the effective date of the change stated in  
34 that notice, which indebtedness may include outstanding balances.  
35 Any borrower who fails to use the borrower's account or so to  
36 indicate agreement to the change shall be permitted to pay the  
37 outstanding unpaid indebtedness in the borrower's account in  
38 accordance with the terms governing the open-end consumer loan  
39 agreement without giving effect to the change.
- 40       d. The consumer lender shall notify each affected borrower in a  
41 consumer loan agreement of any change in the manner set forth in  
42 the closed-end and open-end agreement governing the plan and in  
43 compliance with the requirements of the federal "Truth in Lending  
44 Act," Pub.L.90-321 (15 U.S.C. s.1601 et seq.), and regulations  
45 promulgated thereunder, as in effect from time to time, if  
46 applicable.
- 47       e. The interest and periodic payments for consumer loans at  
48 these rates shall be computed from the standard tables based on the

1 actuarial or annuity method which conforms to the so-called  
2 "United States Rule of Partial Payments," which provides that  
3 interest shall be calculated whenever a payment is made and the  
4 payment shall be first applied to the payment of interest and if it  
5 exceeds the interest due, the balance is to be applied to diminish  
6 principal. If the payment is insufficient to pay the entire amount of  
7 interest, the balance of interest due shall not be added to principal,  
8 so as to produce interest thereon.

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

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

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

23  
24 54. Section 33 of P.L.1996, c.157 (C.17:11C-33) is amended to  
25 read as follows:

26 33. a. In addition to the interest herein provided for on a  
27 consumer loan, no further or other charge, or amount whatsoever  
28 for any examination, service, brokerage, commission, expense, fee,  
29 or bonus or other thing or otherwise shall be directly or indirectly  
30 charged, contracted for, or received, except for any amount actually  
31 paid by a licensee to a public official for the recording of a security  
32 interest in connection with security given for the loan and: (1)  
33 amounts for insurance obtained or provided by the licensee in  
34 accordance with the provisions of this act; (2) on actual sale of the  
35 security in foreclosure proceedings or upon the entry of judgment;  
36 (3) a returned check fee in an amount not to exceed \$20, which the  
37 licensee may charge the borrower if a check of the borrower is  
38 returned to the licensee uncollected due to insufficient funds in the  
39 borrower's account; and (4) an annual fee on open-end accounts  
40 which may not exceed an amount equal to one percent of the line of  
41 credit or \$50, whichever is less.

42 b. A consumer lender who violates or participates in the  
43 violation of any provision of section 3, 19, ~~20,~~ 21, 34, 35 or 36,  
44 or subsection a. of section 10, or subsection a., b., or c. of section  
45 32, or subsection a. of this section, or subsection e. ~~[or], f., g., or h.~~  
46 of section 41 of this act, shall be guilty of a crime of the fourth  
47 degree. A contract of a loan not invalid for any other reason, in the  
48 making or collection of which any act shall have been done which

1 constitutes a crime of the fourth degree under this section, shall be  
2 void and the lender shall have no right to collect or receive any  
3 principal, interest or charges unless the act was the result of a good  
4 faith error, including a good faith error made as a result of a  
5 licensee's acting in conformity with a rule or regulation of the  
6 commissioner which is later held to be invalid or in violation of any  
7 provision of this act by a judgment of a court of competent  
8 jurisdiction, and the licensee notifies the borrower of the error  
9 within 90 days after discovering it and makes adjustments in the  
10 account necessary to assure that the borrower will not be required to  
11 pay any interest, costs, or other charges which aggregate in excess  
12 of the charges permitted under this act. If any interest,  
13 consideration or charges in excess of those permitted are charged,  
14 contracted for or received, except as the result of a good faith error,  
15 the consumer lender may collect only the principal amount of the  
16 loan, and may not collect interest, costs or other charges with  
17 respect to the loan. In addition, a consumer lender who knowingly  
18 and willfully violates any provision of this act shall also forfeit to  
19 the borrower three times any amount of the interest, costs or other  
20 charges collected in excess of that authorized by law.

21 c. A consumer lender shall have no liability on a consumer loan  
22 for an unintentional error if within 90 days after discovering an  
23 error the licensee notifies the borrower of the error and makes  
24 adjustments in the account as necessary to assure that the borrower  
25 will not be required to pay any interest, costs or other charges  
26 which aggregate in excess of the charges permitted under this act  
27 for consumer loans. The discovery of an unintentional error within  
28 the meaning of this section shall include an entry of a judgment by  
29 a court of competent jurisdiction, holding that a rule or regulation  
30 with which the consumer lender acted in conformity was invalid or  
31 in violation of this act, and a consumer lender shall have no liability  
32 for such unintentional error if the consumer lender takes the actions  
33 required by this section upon discovery of such an error, within the  
34 time stated therein following entry of such a judgment.

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

36  
37 55. Section 34 of P.L.1996, c.157 (C.17:11C-34) is amended to  
38 read as follows:

39 34. Every consumer lender, incident to a closed-end consumer  
40 loan, shall:

41 a. Deliver to the borrower at the time a loan is made a statement  
42 in the English language showing in clear and distinct terms the  
43 amount and date of the loan and its maturity, the nature of the  
44 security, if any, for the loan, the name and address of the borrower  
45 and of the licensee, the payment schedule, the amount of interest  
46 charges, and the annual percentage rate of interest;

47 b. Give to any borrower who makes a payment in cash a plain  
48 and complete receipt for all payments made on account of the loan



1 at the time payments are made, specifying the amount applied to  
2 interest and the amount, if any, applied to principal, and stating the  
3 unpaid balance, if any of the loan;

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

8 d. Upon repayment of the loan in full, mark indelibly every  
9 obligation and security signed by the borrower, or a copy thereof,  
10 with the word "paid" or "canceled," and release, or give the  
11 borrower evidence to release any mortgage, or security interest  
12 which no longer secures an obligation to the licensee, restore any  
13 pledge, cancel and return any note or a copy thereof, and cancel and  
14 return any assignment or a copy thereof given to the licensee by the  
15 borrower.

16 No consumer lender shall take any confession of judgment  
17 incident to a closed-end consumer loan. No consumer lender shall,  
18 incident to a closed-end consumer loan take any note, promise to  
19 pay, or security that does not accurately disclose the amount of the  
20 loan, the date of the loan, the payment schedule, the amount of  
21 interest charges, and the annual percentage rate of interest, nor any  
22 instrument in which blanks are left to be filled in after the loan is  
23 made.

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

25

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

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

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

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

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

42 (2) By multiplying one-twelfth of each yearly rate by the  
43 applicable portion of the average daily unpaid principal balance of  
44 the account in the billing cycle, in which case the average daily  
45 unpaid principal balance is the sum of the amount unpaid each day  
46 during the cycle divided by the number of days in the cycle; or

47 (3) By converting each yearly rate to a daily rate and multiplying  
48 that daily rate by the applicable portion of the average daily unpaid

1 principal balance of the account in the billing cycle, in which case  
2 each daily rate is determined by dividing each yearly rate by 365,  
3 and the average daily unpaid principal balance is the sum of the  
4 amount unpaid each day during the cycle divided by the number of  
5 days in the cycle.

6 d. For all of the above methods of computation, the billing cycle  
7 shall be monthly and the unpaid principal balance on any day shall  
8 be determined by adding to any balance unpaid as of the beginning  
9 of that day all advances and other permissible amounts charged to  
10 the borrower and deducting all payments and other credits made or  
11 received that day.

12 e. In an open-end consumer loan, the borrower may at any time  
13 pay all or any part of the unpaid balance in his account; or, if the  
14 account is not in default, the borrower may pay the unpaid principal  
15 balance in monthly installments, subject to the following minimum  
16 payment requirements. Minimum monthly payments shall be in an  
17 amount which would result in the full repayment of the initial loan  
18 advance, exclusive of any interest, within the maximum term set  
19 forth for other loans of the same amount in section 35 of this act,  
20 except that the minimum payment for any initial advance not  
21 exceeding \$2,500 shall be in an amount which would result in full  
22 repayment of the initial loan advance within the maximum term of  
23 48 months and 15 days. This minimum payment shall continue at  
24 that amount until such time as an additional advance to the  
25 borrower is made, other than for permitted charges, at which time  
26 the minimum monthly payment shall be determined and shall be in  
27 that amount which would result in the full repayment of the unpaid  
28 principal balance of the loan, after the advance and including the  
29 advance, within the maximum term set forth for the other loans of  
30 the same amount, except that if the principal balance of the loan,  
31 after the advance and including the advance, does not exceed  
32 \$2,500, the minimum payment shall be in that amount which would  
33 result in full repayment of the principal balance of the loan within  
34 the maximum term of 48 months and 15 days. Minimum payments  
35 after each subsequent advance shall be determined in the same  
36 manner. No minimum payment shall exceed the amount required to  
37 pay the balance in full, including unpaid interest and charges to  
38 date.

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

43 (1) If credit life, disability or involuntary unemployment  
44 insurance is provided pursuant to section 21 of P.L.1996, c.157  
45 (C.17:11C-21) and if the insured dies or becomes disabled or  
46 involuntarily unemployed when there is an outstanding open-end  
47 loan indebtedness, the insurance shall be sufficient to pay the total  
48 balance of the loan due on the date of the borrower's death in the

1 case of credit life insurance, all minimum payments which become  
2 due on the loan during the covered period of disability in the case of  
3 credit disability insurance or all covered minimum payments which  
4 become due on the loan during the covered period of involuntary  
5 unemployment in the case of involuntary unemployment insurance.  
6 The additional charge for credit life insurance, credit disability  
7 insurance or credit involuntary unemployment insurance shall be  
8 calculated in each billing cycle by applying the current monthly  
9 premium rate for that insurance, as determined by the  
10 commissioner, to the unpaid balances in the borrower's account,  
11 using any of the methods specified in subsection c. of this section  
12 for the calculation of interest;

13 (2) No credit life, disability or involuntary unemployment  
14 insurance written in connection with an open-end loan shall be  
15 canceled by the licensee because of delinquency of the borrower in  
16 the making of the required minimum payments on the loan unless  
17 one or more of the payments is past due for a period of 90 days or  
18 more; and the licensee shall advance to the insurer the amounts  
19 required to keep the insurance in force during that period, which  
20 amounts may be debited to the borrower's account.

21 g. A consumer lender may take a security interest in personal  
22 property to secure an open-end consumer loan. Any security may  
23 be retained until the open-end account is terminated, except that if  
24 the security interest covers consumer goods, then within one month,  
25 or within 10 days following written demand by the borrower, after  
26 there is no outstanding balance in the account and no commitment  
27 by the licensee to make advances, the licensee shall release the  
28 security interest. If a security interest is taken, the open-end  
29 consumer loan agreement shall state the nature and extent of that  
30 security interest.

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

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

36

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

39 37. No licensee authorized to engage in the consumer loan  
40 business shall directly or indirectly charge, contract for, or receive  
41 any interest, discount, or consideration greater than **[he]** the  
42 licensee would be permitted by law to charge if he were not a  
43 licensee under this act upon the loan, use, or sale of credit, of the  
44 amount or value of more than \$50,000. The foregoing prohibition  
45 shall also apply to any licensee who permits any person, as  
46 borrower or as **[indorser]** endorser, guarantor, or surety for any  
47 borrower, or otherwise, to owe directly or contingently or both

1 under one or more loan contracts to the licensee at any time the sum  
2 of more than \$50,000 for principal.

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

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

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

10 a. No consumer lender shall make any loan upon security of any  
11 assignment of or order for the payment of any salary, wages,  
12 commissions or other compensation for services earned, or to be  
13 earned, nor shall any such assignment or order be taken by a  
14 licensee at any time in connection with any consumer loan, or for  
15 the enforcement or repayment thereof, and any such assignment or  
16 order hereafter so taken or given to secure any loan made by any  
17 licensee under this act shall be void and of no effect.

18 b. No consumer lender shall take a lien upon real estate as  
19 security for any consumer loan, except a lien created by law upon  
20 the recording of a judgment.

21 c. No licensee shall conduct the consumer loan business within  
22 any office, room, or place of business in which any other business is  
23 solicited or engaged in, or in association or conjunction therewith,  
24 except as may be authorized in writing by the commissioner.

25 d. Every multiple installment consumer loan contract, other  
26 than an open-end consumer loan contract or a variable rate closed-  
27 end consumer loan contract under subsection b. of section 32 of this  
28 act, shall provide for repayment of principal and interest combined  
29 in installments which shall be payable at approximately equal  
30 periodic intervals of time and which shall be so arranged that no  
31 installment is substantially greater in amount than any preceding  
32 installment, except that the repayment schedule may reduce or omit  
33 installments when necessary because of the seasonal nature of the  
34 borrower's income.

35 e. No person, except as authorized by this act, shall directly or  
36 indirectly charge, contract for, or receive any interest, discount, or  
37 consideration greater than the lender would be permitted by law to  
38 charge if he were not a licensee hereunder upon the loan, use, or  
39 forbearance of money, goods, or things in action, or upon the loan,  
40 use, or sale of credit of the amount of \$50,000 or less. This  
41 prohibition shall apply to any person who, by any device,  
42 subterfuge, or pretense, shall charge, contract for, or receive greater  
43 interest, consideration, or charges than is authorized by this act for  
44 the loan, use, or forbearance of money, goods, or things in action or  
45 for the loan, use, or sale of credit.

46 f. No consumer loans of the amount or value of \$50,000 or less  
47 for which a greater rate of interest, consideration, or charge than is  
48 permitted by this act has been charged, contracted for, or received,

1 whenever made, shall be enforced in this State and any person [,  
2 partnership, association or corporation] in any way participating  
3 therein in this State shall be subject to the provisions of this act.  
4 The foregoing shall not apply to loans legally made in any state  
5 which then has in effect a regulatory small loan law similar in  
6 principle to this act, but an action to enforce any loan made in any  
7 state to a person then residing in this State may be maintained in  
8 this State only if the amount of interest, discount, consideration or  
9 other charge for that loan, demanded to be paid in the action, does  
10 not exceed that permitted to a licensee authorized to engage in the  
11 consumer loan business by this act for a loan of the same amount  
12 repayable in the same manner.

13 g. No consumer lender shall make, advertise, print, display,  
14 publish, distribute, electronically transmit, telecast or broadcast, in  
15 any manner, any statement or representation which is false,  
16 misleading or deceptive.

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

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

21

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

24 42. a. The commissioner may make such investigations and  
25 examinations of any licensee or other person as the commissioner  
26 deems necessary to determine compliance with this act and the  
27 orders, rules and regulations issued hereunder. For these purposes,  
28 the commissioner may examine the books, accounts, records and  
29 other documents or matters of any licensee, maintained pursuant to  
30 section 19 of P.L.1996, c.157 (C.17:11C-19), or other person. Each  
31 licensee shall be subject to an examination by the commissioner,  
32 not more than once in any 18-month period, unless the  
33 commissioner has reason to believe that the licensee is not  
34 complying with the provisions of this act or any rule or regulation  
35 promulgated thereunder, or is not transacting business in  
36 accordance with law, at which time the commissioner may conduct  
37 an examination at any time. The commissioner shall have the  
38 power to compel by subpoena the production of all relevant books,  
39 accounts, records and other documents and materials relative to an  
40 examination or investigation. Examinations conducted under the  
41 provisions of this act shall be confidential except as required in the  
42 administration, enforcement and prosecution of violations under  
43 this act or pursuant to court order. **[The cost of the investigations**  
44 **and examination shall be borne by the licensee.]**

45 b. The commissioner or the commissioner's designee shall have  
46 power to issue subpoenas to compel the attendance of witnesses and  
47 the production of documents, papers, books, accounts, records and  
48 other evidence before him in any matter over which he has

1 jurisdiction pursuant to this act, and to administer oaths and  
2 affirmations to any person.

3 c. If any person shall refuse to obey a subpoena, or to give  
4 testimony or to produce evidence as required thereby, the  
5 commissioner may apply ex parte to any court having jurisdiction  
6 over that person for an order compelling the appearance of the  
7 witness before the commissioner to give testimony or to produce  
8 evidence as required thereby, or both.

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

10

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

13 43. A consumer lender or sales finance company licensee shall  
14 annually file a report with the commissioner which shall set forth  
15 such information as the commissioner shall require concerning the  
16 business conducted as a licensee during the preceding calendar  
17 year. The report shall be under oath and in a form and within the  
18 time specified by the commissioner by regulation.

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

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

29

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

32 1. There is created in the Department of Banking and Insurance  
33 a **[Licensed Lenders]** Residential Mortgage and Consumer Finance  
34 Advisory Board. The board shall consist of the Commissioner of  
35 Banking and Insurance or his designee, who shall be ex officio the  
36 chair of the board, and seven members to be appointed by the  
37 Governor, with the advice and consent of the Senate, for a term of  
38 three years. Each member shall hold office for the term of  
39 appointment and until his successor is appointed and qualified. A  
40 member is eligible to be reappointed to the board. A member  
41 appointed to fill a vacancy occurring in the membership of the  
42 board for any reason other than the expiration of the term shall have  
43 a term of appointment for the unexpired term only. All vacancies  
44 shall be filled in the same manner as the original appointment. Any  
45 appointed member of the board may be removed from office by the  
46 Governor, for cause, after a hearing and may be suspended by the  
47 Governor pending the completion of the hearing. Appointed  
48 members of the board shall serve without compensation, but shall

1 be reimbursed for necessary expenses incurred in the performance  
 2 of their duties as members. Action may be taken and motions and  
 3 resolutions may be adopted by the board at a board meeting by an  
 4 affirmative vote of not less than four members. Of the seven  
 5 appointed members, ~~one~~ two shall have had, at the time of  
 6 appointment, not less than five years of practical experience as a  
 7 licensed ~~first~~ residential mortgage lender located in the State of  
 8 New Jersey; ~~one~~ shall have had, at the time of appointment, not  
 9 less than five years of practical experience as a licensed secondary  
 10 mortgage lender located in the State of New Jersey; ~~one~~ shall have  
 11 had, at the time of appointment, not less than five years of practical  
 12 experience as a licensed residential mortgage ~~banker or~~ broker  
 13 located in the State of New Jersey; one shall be a representative  
 14 from the licensed residential mortgage lending industry in the State  
 15 of New Jersey who is not a salaried officer, director, partner, owner,  
 16 principal, or employee of any licensed residential mortgage lender  
 17 ~~[, mortgage banker]~~ or broker; two shall have had, at the time of  
 18 appointment, not less than five years of practical experience as  
 19 lenders licensed for providing loans other than ~~primary or~~  
 20 ~~secondary~~ residential mortgage loans; and one shall be a public  
 21 member who is not a salaried officer, director, partner, owner,  
 22 principal, or employee of any licensed lender ~~[, mortgage banker]~~  
 23 or broker. At no time shall there be more than one representative  
 24 on the board from any one ~~licensed~~ residential mortgage lender ~~[,~~  
 25 mortgage banker] or broker.

26 Notwithstanding any provisions of this section to the contrary,  
 27 the members of the board appointed by the Governor and serving on  
 28 the effective date of P.L. , c. (C. ) (pending before the  
 29 Legislature as this bill) shall continue to serve until the expiration  
 30 of their respective terms, but a member of the board appointed or  
 31 reappointed by the Governor after the effective date of P.L. , c.  
 32 (C. ) (pending before the Legislature as this bill) shall qualify  
 33 for membership pursuant to this section.

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

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

38 2. The board shall act as a resource to the commissioner by  
 39 developing and recommending to the commissioner ideas, programs  
 40 and tools to assist:

- 41 a. in the development of educational requirements for licensees;
- 42 b. licensed residential mortgage lenders, residential mortgage  
 43 ~~bankers,~~ brokers, and ~~solicitors~~ mortgage loan originators in  
 44 meeting the mortgage lending needs of consumers;
- 45 c. other ~~licensed lenders~~ consumer finance licensees in  
 46 meeting the lending needs of consumers; and
- 47 d. consumers in understanding and using:

1 (1) residential mortgage lending information and choosing from  
2 available mortgage lending opportunities through licensed  
3 residential mortgage lenders, residential mortgage [bankers,]  
4 brokers, and [solicitors] mortgage loan originators in this State;  
5 and

6 (2) consumer lending information and choosing from available  
7 consumer lenders.

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

9  
10 63. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to  
11 read as follows:

12 2. For the purposes of this act:

13 "Assessment" means the assessment imposed pursuant to section  
14 3 of this act for the special functions of the division as provided in  
15 that section.

16 "Commissioner" means the Commissioner of Banking and  
17 Insurance.

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

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

22 "Division" means the Division of Banking in the Department of  
23 Banking and Insurance.

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

44 "Nationwide Mortgage Licensing System and Registry" means  
45 the mortgage licensing system developed and maintained by the  
46 Conference of State Bank Supervisors and the American  
47 Association of Residential Mortgage Regulators, or their  
48 successors, and utilized in this State pursuant to the provisions of



1 the "New Jersey Residential Mortgage Lending Act," section 1  
2 through 39 of P.L. , c. (C. ) (pending before the Legislature  
3 as this bill).

4 "Regulated entity" means a depository institution, other financial  
5 entity or person chartered, licensed or registered by the Division of  
6 Banking or who should be chartered, licensed or registered.  
7 (cf: P.L.2005, c.199, s.2)

8  
9 64. Section 13 of P.L.2005, c.199 (C.17:1C-45) is amended to  
10 read as follows:

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

16 (1) charter fees;

17 (2) application fees for licenses;

18 (3) **【mortgage solicitor registration application fees;】** (Deleted  
19 by amendment, P.L. , c. ) (pending before the Legislature as this  
20 bill)

21 (4) fees for entry by a foreign depository institution whether  
22 from another state of the United States or from another country into  
23 New Jersey for branch, trust or other activities;

24 (5) fees charged under the "Governmental Unit Deposit  
25 Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);

26 (6) fees charged any entity not chartered, licensed or registered  
27 by this State, including but not limited to activities conducted by  
28 foreign banks pursuant to section 316 of P.L.1948, c.47 (C.17:9A-  
29 316) or foreign associations pursuant to section 214 of P.L.1963,  
30 c.144 (C.17:12B-214); and

31 (7) fees charged qualified corporations authorized pursuant to  
32 section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either  
33 registrar and transfer agent activities or activities permitted for  
34 qualified educational institutions.

35 b. Nothing in this section shall exempt a regulated entity from  
36 paying any fine or penalty imposed by the commissioner for a  
37 violation of a statute or regulation.

38 c. Except as provided in paragraph (1) of subsection d. of  
39 section 7 of the "New Jersey Home Ownership Security Act of  
40 2002," P.L.2003, c.64 (C.46:10B-28), all fees, charges, fines and  
41 penalties as described in subsections a. and b. of this subsection  
42 shall be remitted to the State Treasurer for deposit into the General  
43 Fund, and those fees, charges, fines and penalties shall not be part  
44 of the assessment funding mechanism or considered in the  
45 calculation pursuant to section 15 of this act.

46 (cf: P.L.2005, c.199, s.13)

1       65. Section 14 of P.L.2005, c.199 (C.17:1C-46) is amended to  
2 read as follows:

3       14. a. The State Treasurer and the commissioner may adopt  
4 rules and regulations, pursuant to the "Administrative Procedure  
5 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the  
6 purposes of this act.

7       b. Any regulation promulgated by the commissioner shall  
8 describe the factors to be considered in computing the assessment.  
9 In the case of depository institutions, the assessment shall consider  
10 the following factors as appropriate: assets, deposits or shares, trust  
11 funds under management and the supervisory rating of the  
12 institution. In the case of licensees or registrants, the assessment  
13 shall consider the following factors as appropriate: loan volume,  
14 volume of money transmitted, number of transactions, volume of  
15 checks cashed, number of licensee branches, number of  
16 **【authorities】** license types held under the **【"New Jersey Licensed**  
17 **Lenders Act,"】** "New Jersey Consumer Finance Licensing Act,"  
18 sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.) or the  
19 "New Jersey Residential Mortgage Lending Act," sections 1  
20 through 39 of P.L. , c. (C. ) (pending before the Legislature  
21 as this bill), and the supervisory rating of the entity. In computing  
22 the assessment for depository institutions, licensees or registrants,  
23 the commissioner may consider those additional factors the  
24 commissioner deems appropriate.

25       c. The general purpose of the computations to determine the  
26 assessment shall be to distribute the financial burden proportionally  
27 among the depository institutions and other financial entities it  
28 charters, licenses and registers consistent with the division's  
29 regulatory activities.

30       d. The commissioner shall provide for the orderly and fair  
31 transition to assessments on existing charters, licensees and  
32 registrants by promulgating rules and regulations and by  
33 establishing administrative procedures that are reasonable,  
34 necessary and consistent with this act.

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

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

41

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

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

47       (1) the total amount of expenses incurred by the State in  
48 connection with the administration of the special functions of the

1 division pursuant to section 3 of this act during the preceding fiscal  
2 year as ascertained by the Director of the Division of Budget and  
3 Accounting in the Department of the Treasury, on or before August  
4 15 in each year, and certified to the commissioner by category; or

5 (2) .0001084 times the sum of (a) the average total assets for  
6 State-chartered banks, savings banks, and savings and loan  
7 associations for the preceding five calendar years' data, excluding  
8 the two most recent calendar years plus (b) the average total loan  
9 volume for residential mortgage loans closed by licensed residential  
10 mortgage lenders or residential mortgage brokers pursuant to the  
11 ["New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1  
12 et seq.)] "New Jersey Residential Mortgage Lending Act," sections  
13 1 through 39 of P.L. , c. (C. ) (pending before the  
14 Legislature as this bill) for the preceding five calendar years' data,  
15 excluding the two most recent calendar years.

16 b. In calculating the assessments:

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

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

22 c. The department shall not issue an examination bill for an  
23 examination that has not been completed by the date that the  
24 regulated entity becomes subject to the assessment pursuant to the  
25 provisions of this act. For the purposes of this act, the completion  
26 of the examination shall not include the time to process and review  
27 the examination report.

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

29  
30 67. Section 3 of P.L.2007, c.258 (C.17:11D-3) is amended to  
31 read as follows:

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

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

45 NOTICE TO BORROWER

46 THIS IS A LOAN. THE ANNUAL PERCENTAGE RATE  
47 (APR), BASED ON THE ESTIMATED PAYMENT PERIOD IS  
48 (fill in estimated APR). YOUR TAX REFUND WILL BE USED

1 TO REPAY THE LOAN. AS A RESULT, THE AMOUNT OF  
2 YOUR REFUND WILL BE REDUCED BY (fill in the  
3 dollar amount) FOR FEES, INTEREST AND OTHER CHARGES.

4 AS AN ALTERNATIVE TO THIS LOAN, YOU CAN  
5 RECEIVE YOUR FULL REFUND IN APPROXIMATELY TWO  
6 WEEKS IF YOU FILE YOUR RETURN ELECTRONICALLY  
7 AND THE INTERNAL REVENUE SERVICE WILL SEND YOUR  
8 FULL REFUND TO YOUR BANK ACCOUNT.

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

12 IF YOU CHOOSE TO TAKE THIS LOAN AND YOUR  
13 REFUND IS DELAYED, YOU MAY HAVE TO PAY  
14 ADDITIONAL INTEREST.

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

17 (1) the information provided to the taxpayer in the alternative  
18 disclosure includes information substantially equivalent in scope  
19 and content to the specific language set forth in subsections b. and  
20 c.;

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

26 (3) the alternative disclosure includes a chart listing the  
27 estimated timelines for the delivery of funds to the taxpayer under  
28 various delivery methods, including Internal Revenue Service  
29 mailed check, Internal Revenue Service direct deposit into a  
30 taxpayer's preexisting bank account, and through a refund  
31 anticipation loan.

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

33

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

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

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

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

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

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

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

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

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

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

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

1 the provisions of the "Administrative Procedure Act," P.L.1968,  
2 c.410 (C.52:14B-1 et seq.).

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

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

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

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

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

26

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

29 3. As used in this act:

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

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

40 "Eligible foreclosed borrower" means a borrower who is  
41 obligated to repay a loan secured by an introductory rate mortgage  
42 and who receives a notice of intention to foreclose that mortgage  
43 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-  
44 53 et al.), except that an "eligible foreclosed borrower" shall not  
45 include an eligible borrower who has previously exercised the right  
46 to obtain a three-year period of extension pursuant to section 5 of  
47 this act.

1 "Full repayment" means the full repayment of the amounts due  
2 under the introductory rate mortgage, including, without limitation,  
3 upon the maturity date, a refinancing, or a sale of or other transfer  
4 of title to the property.

5 "Fully indexed rate" means the sum of the current value of the  
6 index used for the adjustable rate mortgage and the margin  
7 disclosed in the loan agreement.

8 "Introductory rate mortgage" means a consumer credit  
9 transaction in which the loan is secured by a mortgage on real estate  
10 in this State upon which there is located a one to four family  
11 dwelling which is occupied by the borrower as the borrower's  
12 principal residence, and which provides for: (1) an introductory  
13 payment rate option that is set at least 3 percent below the fully  
14 indexed rate at the time the loan was originated and payments may  
15 adjust by more than 3 percent at the reset date regardless of whether  
16 the variable rate index has increased; or (2) an interest rate that may  
17 adjust by more than 2 percent at the end of the initial fixed rate  
18 period of the loan and which, notwithstanding the payment rate in  
19 effect, had an interest rate at origination of more than 200 basis  
20 points over the Freddie Mac 30-year conventional interest rate and  
21 which provides for an introductory rate that is set below the fully  
22 indexed rate at the time the loan was originated and may adjust at  
23 the reset date regardless of whether the variable rate index has  
24 increased. "Introductory rate mortgage" shall not include: (1) a loan  
25 that provides for a fixed rate of interest for the first five years or  
26 longer; or (2) a loan that provides for an introductory rate that is set  
27 below the fully indexed rate at the time the loan was originated only  
28 as a result of the borrower's payment of bona fide discount points.  
29 (cf: P.L.2008, c.86, s.3)

30

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

33 8. Nothing in this act shall be construed to require the  
34 enforcement of any foreign judgment which is based on a consumer  
35 loan containing any provision prohibited by the provisions of the  
36 **["New Jersey Licensed Lenders Act,"]** "New Jersey Consumer  
37 Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157  
38 (C.17:11C-1 et seq.).  
39 (cf: P.L.1997, c.204, s.8)

40

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

43 2. Notwithstanding the contrary provisions of any law or rule or  
44 regulation issued pursuant to law, no State, county or municipal  
45 department, board, officer or agency, hereinafter referred to as  
46 "licensing authority" authorized to pass upon the qualifications of  
47 any applicant for a license or certificate of authority or qualification  
48 to engage in the practice of a profession or business or for

1 admission to an examination to qualify for such a license or  
2 certificate may disqualify or discriminate against an applicant for a  
3 license or certificate or an application for admission to a qualifying  
4 examination on the grounds that the applicant has been convicted of  
5 a crime, or adjudged a disorderly person, except that a licensing  
6 authority may disqualify or discriminate against an applicant for a  
7 license or certificate if N.J.S.2C:51-2 or any disqualifying criminal  
8 activity set forth in subsection a. of section 7 of P.L. , c. (C. )  
9 (pending before the Legislature as this bill) is applicable, or if a  
10 conviction for a crime relates adversely to the occupation, trade,  
11 vocation, profession or business for which the license or certificate  
12 is sought. In determining that a conviction for a crime relates  
13 adversely to the occupation, trade, vocation, profession or business,  
14 the licensing authority shall explain in writing how the following  
15 factors, or any other factors, relate to the license or certificate  
16 sought:

17 a. The nature and duties of the occupation, trade, vocation,  
18 profession or business, a license or certificate for which the person  
19 is applying;

20 b. Nature and seriousness of the crime;

21 c. Circumstances under which the crime occurred;

22 d. Date of the crime;

23 e. Age of the person when the crime was committed;

24 f. Whether the crime was an isolated or repeated incident;

25 g. Social conditions which may have contributed to the crime;

26 h. Any evidence of rehabilitation, including good conduct in  
27 prison or in the community, counseling or psychiatric treatment  
28 received, acquisition of additional academic or vocational  
29 schooling, successful participation in correctional work-release  
30 programs, or the recommendation of persons who have or have had  
31 the applicant under their supervision.

32 (cf: P.L.1981, c.487, s.4)

33  
34 72. Section 1 of P.L.2007, c.327 (C.2A:168A-7) is amended to  
35 read as follows:

36 1. a. Notwithstanding any law to the contrary, a certificate may  
37 be issued in accordance with the provisions of this act that suspends  
38 certain disabilities, forfeitures or bars to employment or  
39 professional licensure or certification that apply to persons  
40 convicted of criminal offenses.

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

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

45 (2) qualification for a license or certification to engage in the  
46 practice of a profession, occupation or business, except the practice  
47 of law , or as a mortgage loan originator, or residential mortgage  
48 lender or residential mortgage broker as a qualified individual



1 licensee, pursuant to the "New Jersey Residential Mortgage  
2 Lending Act," sections 1 through 39 of P.L. , c. (C. )  
3 (pending before the Legislature as this bill); or

4 (3) admission to an examination to qualify for **[such a]** that  
5 license or certification, except for the bar examination, a qualified  
6 written test for a mortgage loan originator, or residential mortgage  
7 lender or broker as a qualified individual licensee, or an  
8 examination for a law enforcement, homeland security, or  
9 emergency management position.

10 A certificate issued pursuant to this act may be limited to one or  
11 more enumerated disabilities, forfeitures or bars, or may relieve the  
12 subject of all disabilities, forfeitures or bars that may be affected by  
13 the act.

14 c. For purposes of this act:

15 (1) "Public employment" shall mean employment by a State,  
16 county, or municipal agency, but shall not include elected office, or  
17 employment in law enforcement, corrections, the judiciary, in a  
18 position related to homeland security or emergency management, or  
19 any position that has access to sensitive information that could  
20 threaten the public health, welfare, or safety.

21 (2) "Qualified offender" refers to a person who has one criminal  
22 conviction or who has convictions for more than one crime charged  
23 in separate counts of one indictment or accusation. Multiple  
24 convictions charged in two indictments or two accusations, or one  
25 indictment and one accusation filed in the same court prior to entry  
26 of judgment under any of them, shall be deemed to be one  
27 conviction. Convictions of crimes entered more than 10 years prior  
28 to an application for a certificate under this act shall not be  
29 considered in determining whether a person has one criminal  
30 conviction. In the case of a person seeking relief at the time of  
31 sentencing, qualified offender means a person who will have one  
32 conviction, as set forth in this paragraph, upon sentencing and  
33 issuance of the judgment of conviction.

34 (3) "Supervising authority" shall mean the court in the case of a  
35 person who was subject to probation or who was not required to  
36 serve a period of supervision, or the State Parole Board in the case  
37 of a person who was under parole supervision.  
38 (cf: P.L.2007, c.327, s.1)

39  
40 73. The following sections are repealed:

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

44  
45 74. Sections 1 through 39, and 47 shall take effect immediately,  
46 and the remaining sections shall take effect on July 31, 2010, or the  
47 later date approved by the Secretary of the United States  
48 Department of Housing and Urban Development pursuant to the

1 provisions of section 1508 of the federal “Secure and Fair  
2 Enforcement for Mortgage Licensing Act of 2008,” Pub.L.110-289  
3 (12 U.S.C. s.5107); but the Commissioner of Banking and Insurance  
4 may take any anticipatory administrative action in advance thereof  
5 as shall be necessary, or as otherwise authorized under the  
6 provisions of the federal “Secure and Fair Enforcement for  
7 Mortgage Licensing Act of 2008,” title V of Pub.L.110-289 (12  
8 U.S.C. s.5101 et seq.), for the implementation of this act.

9  
10  
11 STATEMENT  
12

13 This bill represents a reform of the licensed lending activities  
14 currently regulated under the “New Jersey Licensed Lenders Act,”  
15 sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.),  
16 covering mortgage loans and consumer loans of \$50,000 or less.  
17 The reforms are largely focused on mortgage activities, and  
18 undertaken in response to new federal law requirements set forth  
19 under the “Secure and Fair Enforcement for Mortgage Licensing  
20 Act of 2008,” also referred to as the “S.A.F.E. Mortgage Licensing  
21 Act of 2008,” title V of Pub.L.110-289 (12U.S.C. s.5101 et seq.).  
22 Specifically, this federal law mandates the establishment of new  
23 State licensing standards, business practices, and oversight for  
24 individuals acting as mortgage loan originators, and applies to loan  
25 activities in both the primary and secondary mortgage loan markets.

26 In order to address the federal law requirements in the most  
27 effective manner, the bill completely revises and supplements the  
28 current “New Jersey Licensed Lenders Act,” creating two separate  
29 regulatory schemes, with one part dedicated to mortgage activities,  
30 titled the “New Jersey Residential Mortgage Lending Act,” and the  
31 other reorganizing those remaining provisions which concern non-  
32 mortgage lending activities, titled the “New Jersey Consumer  
33 Finance Licensing Act.” The bill additionally updates several  
34 related sections of law to account for changes brought about  
35 through this two-way split, including those sections concerning the  
36 Licensed Lenders Advisory Board and dedicated funding for the  
37 Department of Banking and Insurance to cover regulatory oversight  
38 expenses incurred by the Division of Banking.

39 ***The “New Jersey Residential Mortgage Lending Act” (Sections***  
40 ***1-39):*** This part of the bill addresses licensing standards, business  
41 practices, and oversight for the newly designated residential  
42 mortgage lenders, residential mortgage brokers, and mortgage loan  
43 originators. Under the existing “New Jersey Licensed Lenders  
44 Act,” these businesses and individuals are licensed as mortgage  
45 bankers, correspondent mortgage bankers, mortgage brokers and  
46 secondary lenders, or registered as mortgage loan solicitors, and in  
47 order to continue to engage in their respective business practices,  
48 they must qualify for licensure under the new licensing scheme.

1 For the licensing of residential mortgage lenders and brokers, as  
2 business licensees, the bill requires: a completed application  
3 accompanied by appropriate supporting evidence; the submission of  
4 information for a criminal history record background check to be  
5 performed on any officer, director, partner or owner of a controlling  
6 (25% or more) interest of the business; a general finding of  
7 responsibility and fitness worthy of licensure; at least one officer,  
8 director, partner or owner to be qualified and licensed as an  
9 individual for the same type of license sought, referred to as the  
10 “qualified individual licensee”; appropriate coverage of the  
11 business, its qualified individual licensee, mortgage loan  
12 originators, other employees and agents by a surety bond; a  
13 demonstration of the business’ minimum tangible net worth; and  
14 payment of any required fees.

15 For the licensing of mortgage loan originators, who may only be  
16 individual licensees, and the qualified individual licensees of a  
17 residential mortgage lender or broker, the bill requires: a completed  
18 application accompanied by appropriate supporting evidence; the  
19 submission of personal information for a criminal history record  
20 background check, credit report, and check of information related to  
21 administrative, civil or criminal findings by any government  
22 jurisdiction; a determination of character and fitness worthy of  
23 licensure; a demonstration of employment by one, and only one,  
24 residential mortgage lender or broker business licensee; the  
25 completion of pre-licensing education requirements; successful  
26 passage of a qualified written test; the completion of continuing  
27 education requirements, if seeking a license renewal; coverage  
28 under the employing business licensee’s surety bond; registration  
29 with the Nationwide Mortgage Licensing System and Registry,  
30 which is a newly created licensing and registration system designed  
31 to assist state licensing efforts under the federal “S.A.F.E. Mortgage  
32 Licensing Act of 2008”; and payment of any required fees to the  
33 Commissioner of Banking and Insurance or the nationwide  
34 licensing system and registry, as appropriate.

35 Concerning the pre-licensing education, continuing education,  
36 and examination requirements for individual licensees, the bill  
37 establishes minimum standards that shall be developed or approved  
38 by the Nationwide Mortgage Licensing System and Registry. For  
39 example, the pre-licensing education component shall consist of at  
40 least 20 hours of course work provided by an approved educational  
41 course provider, which includes, at a minimum, 3 hours of  
42 instruction on federal statutes and regulations, 3 hours on ethics,  
43 and 2 hours of training on lending standards for nontraditional  
44 mortgage products. Continuing education shall consist of at least  
45 12 hours of course work provided by an approved educational  
46 course provider, and similarly includes, at a minimum, 3 hours of  
47 instruction on federal statutes and regulations, 2 hours on ethics,

1 and 2 hours of training on lending standards for nontraditional  
2 mortgage products.

3 In order to ensure full compliance with the federal law regarding  
4 the new State licensing standards, the commissioner is authorized to  
5 participate in the Nationwide Mortgage Licensing System and  
6 Registry. This participation shall serve the purpose of coordinating  
7 State licensing efforts with the registration of licensees at the  
8 national level, as well as permit necessary information sharing and  
9 reporting by the commissioner with other federal and state banking  
10 agencies, other government agencies, and organizations  
11 representing government agencies, such as the Conference of State  
12 Bank Supervisors or its successor. Generally, any information or  
13 material provided to, received from, or collected by the nationwide  
14 system and registry shall remain subject to any applicable State and  
15 federal laws of privacy, confidentiality, or privilege, and shall not  
16 be subject to government open records requirements, other than  
17 with respect to the employment history of, and publicly adjudicated  
18 disciplinary or enforcement actions against, an individual applicant  
19 or current licensee.

20 In order to complete the transition of existing licensees and  
21 registrants under the "New Jersey Licensed Lenders Act" to the new  
22 licensing regime under the "New Jersey Residential Mortgage  
23 Lending Act," the bill adheres to the federal deadline to begin  
24 licensing no later than July 31, 2010, or a later date approved by the  
25 Secretary of the United States Department of Housing and Urban  
26 Development pursuant to section 1508 of the federal "S.A.F.E.  
27 Mortgage Licensing Act of 2008" (12 U.S.C. s.5107). Any licenses  
28 issued by the commissioner on or before the July 31, 2010 date (or  
29 later date) shall expire on December 31, 2010. The commissioner  
30 shall thereafter issue licenses on or after January 1, 2011 only on an  
31 annual, calendar year basis, matching the annual licensing schedule  
32 set forth under the federal law. However, the commissioner may  
33 modify this schedule pursuant to regulation or order, based upon  
34 any later dates approved by the Secretary of the United States  
35 Department of Housing and Urban Development, in order to  
36 provide a temporary deadline extension with respect to complying  
37 with the licensing requirements mandated by the provisions of the  
38 federal "S.A.F.E. Mortgage Licensing Act of 2008."

39 With respect to business practices, the bill largely retains the  
40 existing requirements set forth by the "New Jersey Licensed  
41 Lenders Act" concerning first mortgage and secondary mortgage  
42 lending activities. However, unlike the existing law, licensees shall  
43 not be required to possess a separate license to engage in one  
44 marketplace or the other; residential mortgage lenders, brokers, and  
45 mortgage loan originators shall be authorized to engage in business  
46 activities in both markets under one license. Annually, residential  
47 mortgage lenders and brokers shall file a report with the  
48 commissioner concerning the business conducted during the

1 preceding calendar year, and shall additionally submit to the  
2 Nationwide Mortgage Licensing System and Registry mortgage call  
3 reports of condition, and any other reports, at any time as required  
4 by that nationwide licensing system and registry.

5 On oversight, the commissioner's authority with respect to  
6 issuing licenses, and with respect to the general supervision of  
7 licensees, shall include the following: to access, receive and use any  
8 information or material deemed relevant to determine whether to  
9 issue or renew a license, or revoke, suspend, or refuse to renew a  
10 license; to access and examine books, accounts, records and other  
11 documents, and to take control or possession of these items during  
12 any examination; to conduct investigations, which may include the  
13 subpoena of witnesses and documents; to issue cease and desist  
14 orders, as well as bring a summary action in a court of competent  
15 jurisdiction for temporary and permanent injunctions against  
16 violators of the act; to impose a civil penalty not exceeding \$25,000  
17 for violations; to order restitution to persons aggrieved by  
18 violations; and to order any other remedial actions as deemed  
19 necessary concerning violations.

20 ***The "New Jersey Consumer Finance Licensing Act" (Sections***  
21 ***40-60):*** This part of the bill updates the existing "New Jersey  
22 Licensed Lenders Act" by deleting all references to mortgage  
23 activities, set to be covered under the "New Jersey Residential  
24 Mortgage Lending Act," and making further reforms to correspond  
25 these existing licensed lender provisions of law with that new act.  
26 As a result, the current "New Jersey Licensed Lenders Act" shall  
27 focus solely on non-mortgage, consumer loans of \$50,000 or less,  
28 and to reflect this change it is re-titled the "New Jersey Consumer  
29 Finance Licensing Act."

30 Generally, the qualifications for licensure as a consumer lender  
31 or sales finance company, the licensing process, and the oversight  
32 of licensees remain the same as currently set forth under the "New  
33 Jersey Licensed Lenders Act." However, the commissioner may  
34 impose a civil penalty not exceeding \$25,000 for violations, which  
35 is an increase of the current limit on civil penalties under the "New  
36 Jersey Licensed Lenders Act"; the current act permits civil penalties  
37 not to exceed \$5,000.

38 ***The Residential Mortgage and Consumer Finance Advisory***  
39 ***Board (Sections 61-62):*** The existing Licensed Lenders Advisory  
40 Board, created by P.L.1995, c.2 (C.17:10C-1 et seq.) as an eight  
41 member board to serve as a resource for the commissioner on  
42 lending issues, is renamed the Residential Mortgage and Consumer  
43 Finance Advisory Board. Additionally, the board's membership  
44 and duties are updated to reflect the new licensing schemes set forth  
45 under the "New Jersey Residential Mortgage Lending Act" and the  
46 "New Jersey Consumer Finance Licensing Act."

47 ***Adjustments to dedicated funding for the Division of Banking***  
48 ***(Sections 63-66):*** The provisions of P.L.2005, c.199 (C.17:1C-33 et

1 al.) established a dedicated funding mechanism for the Division of  
2 Banking within the Department of Banking and Insurance, so that  
3 the division can directly assess the financial entities and individuals  
4 that it regulates to cover expenses associated with their oversight.  
5 Because the new licensing and oversight of residential mortgage  
6 lenders, brokers, and mortgage loan originators involves, in part,  
7 the use of the Nationwide Mortgage Licensing System and Registry,  
8 fees and other expenses directly payable to that nationwide  
9 licensing system and registry shall not be included when  
10 determining the division's assessment amounts to cover its own  
11 oversight expenses.

12 ***Additional statutory updates (Sections 67-73):*** The remaining  
13 sections of the bill involve updating references throughout the  
14 statutory law, or repealing sections of law, necessitated by the  
15 revising and supplementing of the "New Jersey Licensed Lenders  
16 Act," as detailed above. Additionally, provisions of law located in  
17 Title 2A of the New Jersey Statutes that concern the ability of the  
18 commissioner to deem individuals rehabilitated from previous  
19 criminal activity, such that the individuals may become eligible for  
20 licensure, are amended to prohibit such a determination with respect  
21 to licensure as residential mortgage lenders and brokers (as  
22 qualified individual licensees), and mortgage loan originators under  
23 the "New Jersey Residential Mortgage Lending Act." This change  
24 is necessary because the federal "S.A.F.E. Mortgage Licensing Act  
25 of 2008" does not provide for any form of such rehabilitation  
26 determination on mortgage loan originators, and as a matter of State  
27 policy the qualified individual licensees involved in supervising  
28 these originators should also not be eligible for licensing based  
29 upon a rehabilitation determination.

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34 The "New Jersey Residential Mortgage Lending Act"; concerns  
35 certain licensed mortgage and consumer lending practices,  
36 supervision and enforcement.