

[First Reprint]
ASSEMBLY, No. 2007

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblymen BATEMAN and AUGUSTINE

1 AN ACT concerning open and closed end loans and amending
2 P.L.1985, ¹[c.85] c.81 and repealing section 25 of P.L.1985, c.81¹.

3

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

6

7 1. Section 5 of P.L.1985, c.81 (C.17:3B-8) is amended to read as
8 follows:

9 5. Periodic percentage rates. If the agreement governing the
10 revolving credit plan [so] provides [,] that the periodic percentage
11 rates of interest under the plan may increase or decrease , the increase
12 or decrease shall take place only in correspondence with the
13 movement of the market interest rate index specified in the revolving
14 credit plan agreement, which index shall be readily verifiable by the
15 borrower and beyond the control of the lender. Periodic percentage
16 rate increases, based on a rise in the interest rate index, may be made
17 at the option of the lender. Periodic percentage rate decreases shall be
18 made whenever there is a decrease in the interest rate index which
19 results in an interest rate which is less than the interest rate then
20 applicable to the note or loan, except that the revolving credit plan
21 agreement may stipulate a percentage decrease in the interest rate
22 index below which a corresponding decrease in the periodic
23 percentage rate need not be made by the lender, provided that the
24 index decrement shall be the same as the index increment used for
25 interest rate increases. Interest rate increases may, and interest rate
26 decreases shall, apply to all outstanding unpaid indebtedness under the
27 plan on or after the effective date of the rate variation, as provided in
28 the plan agreement.

29 (cf: P.L.1985, c.81, s.5)

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted May 13, 1996.

1 2. Section 9 of P.L.1985, c.81 (c.17:3B-12) is amended to read as
2 follows:

3 9. Loans under a revolving credit plan. [A] If the agreement
4 governing the revolving credit plan so provides, a lender may:

5 a. Take personal or real property , or both, as security on a loan
6 made under a revolving credit plan;

7 b. Require that any property securing the loan be insured for the
8 benefit of the lender against loss or damage of the security, and retain
9 out of the proceeds of the loan the premium for the insurance;

10 c. Require that all taxes, assessments and other governmental
11 charges against [personal] property securing the loan be paid when
12 due and that the security be maintained free of all executions, levies,
13 encumbrances, and other charges which may adversely affect the value
14 of the lender's interest in the security ;

15 d. Charge and collect fees and charges, in addition to interest and
16 fees and charges specifically permitted by P.L.1985, c.81 (C.17:3B-4
17 et seq.), in amounts as provided in the agreement or as established in
18 the manner the agreement provides, such as, but not limited to,
19 minimum charges, annual fees, check charges, maintenance charges,
20 and late charges, except as may be specifically limited by P.L.1985,
21 c.81 (C.17:3B-4 et seq.):

22 e. On a secured loan, charge and collect the actual costs of filing
23 or recording the instrument of security, or notice or abstract thereof,
24 if the filing or recording is authorized by law.

25 (cf: P.L.1985, c.81, s.9)

26

27 3. Section 10 of P.L.1985, c.81 (C.17:3B-13) is amended to read
28 as follows:

29 10. Revolving credit plan prohibitions. No revolving credit plan
30 agreement shall contain:

31 a. An acceleration clause under which any part or all of the
32 balance, not yet matured, may be declared immediately due and
33 payable because the lender deems himself to be insecure, which
34 provision shall be void and unenforceable;

35 b. A provision whereby the borrower waives any right of action or
36 defense against the lender or other person acting on his behalf for any
37 illegal act committed in the collection of the payments under the
38 revolving credit plan, which provision shall be void and unenforceable;
39 and

40 c. A power of attorney to confess judgment or any other power of
41 attorney, which provision shall be void and unenforceable[; and] .

42 d. [A requirement that the credit be secured by real property.]
43 (Deleted by amendment, P.L. , c. .)

44 (cf: P.L.1985, c.81, s.10)

45

46 4. Section 12 of P.L.1985, c.81 (C.17:3B-15) is amended to read

1 as follows:

2 12. Changes in terms. a. A lender may, if the agreement
3 governing a revolving credit plan so provides, at any time amend the
4 terms of the agreement with respect to the periodic percentage rates
5 used to calculate interest, the method of computing the outstanding
6 unpaid indebtedness to which those rates are applied, and the terms of
7 the installment repayment schedule, subject to the limitations of
8 subsection b. of this section.

9 b. The lender shall notify each affected borrower of any
10 amendment pursuant to subsection a. by mailing or delivering to the
11 borrower, at least [30] 15 days before the effective date of the
12 amendment, a clear and conspicuous written notice which shall
13 describe the amendment and the existing terms of the agreement
14 affected by the amendment and shall also set forth the effective date
15 of the amendment and the pertinent information contemplated by the
16 following provisions of this section. If the amendment has the effect
17 of increasing the interest or other charges to be paid by the borrower
18 by changing the method of calculating interest or the index used to
19 calculate the interest, the amendment shall become effective [only if
20 the borrower uses the plan after a date specified in the notice which is]
21 ¹only if the borrower uses the plan after a date specified in the notice
22 which is¹ at least [30] 15 days after the giving of the notice [, but
23 which need not be the date the amendment becomes effective, by
24 making a purchase or obtaining a loan, or if the borrower indicates to
25 the lender in writing the borrower's express agreement to the
26 amendment, and the amendment may become effective as to a
27 particular borrower as of the first day of the billing period during
28 which the borrower so used the borrower's account or so indicated
29 agreement to the amendment. Any borrower who fails to use the
30 borrower's account or so to indicate agreement to an amendment shall
31 be permitted to pay the outstanding unpaid indebtedness in the
32 borrower's account under the plan in accordance with the terms of the
33 agreement governing the plan without giving effect to the amendment]
34 ¹, but which need not be the date the amendment becomes effective,
35 by making a purchase or obtaining a loan, or if the borrower indicates
36 to the lender in writing the borrower's express agreement to the
37 amendment, and the amendment may become effective as to a
38 particular borrower as of the first day of the billing period during
39 which the borrower so used the borrower's account or so indicated
40 agreement to the amendment. Any borrower who fails to use the
41 borrower's account or so to indicate agreement to an amendment shall
42 be permitted to pay the outstanding unpaid indebtedness in the
43 borrower's account under the plan in accordance with the terms of the
44 agreement governing the plan without giving effect to the
45 amendment¹.

46 For purposes of this section a variation in periodic percentage rates

1 of interest in accordance with the terms of the index established in the
2 revolving credit plan agreement [and notice provided pursuant to
3 section 25] shall not be considered to be an amendment.

4 (cf: P.L.1985, c.81, s.12)

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6 5. Section 15 of P.L.1985, c.81 (C.17:3B-18) is amended to read
7 as follows:

8 15. Periodic percentage rates. The periodic percentage rates of
9 interest charged and collected with respect to a loan under a closed
10 end credit agreement may, subject to any limitations set forth in the
11 loan agreement, vary in accordance with the market interest rate index
12 specified in the loan agreement, which index shall be readily verifiable
13 by the borrower and beyond the control of the lender. Periodic
14 percentage rate increases, based on a rise in the interest rate index,
15 may be made at the option of the lender. Periodic percentage rate
16 decreases shall be made whenever there is a decrease in the interest
17 rate index which results in an interest rate which is less than the
18 interest rate then applicable to the note or loan, except that the loan
19 agreement may stipulate a percentage decrease below which a
20 corresponding decrease in the periodic percentage rate need not be
21 made by the lender, provided the index decrement shall be the same as
22 the index increment used for interest rate increases. Interest rate
23 increases may, and interest rate decreases shall, apply to any
24 outstanding and unpaid loan balances on or after the effective date of
25 the rate variation. Upon an increase in the rate of interest, the term of
26 the note shall be extended as necessary to provide for payment of the
27 balance due without any increase in the amount of each of the
28 borrower's periodic payments, except that the periodic payments may
29 be increased, if either a. [the borrower, at his option within 20 days of
30 the date of the notice provided by the lender pursuant to section 25,
31 specifically requests the lender, in writing, to increase each periodic
32 payment or the final payment, rather than extend the term] the
33 agreement so provides or the parties agree to the increase in writing,
34 or b. if the periodic payment amounts would not be sufficient to
35 reduce the principal amount due, the lender, no sooner than ¹[15] 30¹
36 days after notifying the borrower of that fact [pursuant to section 25],
37 may require that the periodic payments be increased, or that there be
38 a combination of an extended term and increased periodic payments.

39 (cf: P.L.1985, c.81, s.15)

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41 6. Section 16 of P.L.1985, c.81 (C.17:3B-19) is amended to read
42 as follows:

43 16. Additional charges. If the closed end loan agreement on a
44 secured loan so provides, a lender may [, on a secured loan, charge] :

45 a. Charge and collect the actual costs of filing or recording the
46 instrument of security, or notice or abstract thereof, if the filing or

1 recording is authorized by law.

2 b. Charge and collect fees and charges, in addition to interest and
3 fees and charges specifically permitted by P.L.1985, c.81 (C.17:3B-4
4 et seq.), in amounts as provided in the agreement or as established in
5 the manner the agreement provides, such as, but not limited to,
6 minimum charges, check charges and maintenance charges, and late
7 charges, except as may be specifically limited by P.L.1985, c.81
8 (C.17:3B-4 et seq.).

9 (cf: P.L.1985, c.81, s.16)

10

11 7. Section 18 of P.L.1985, c.81 (C.17:3B-21) is amended to read
12 as follows:

13 18. Insurance. A lender under a closed or open end credit
14 agreement may:

15 a. Subject to the terms of the loan agreement, require any property
16 securing the loan to be insured for the benefit of the lender against loss
17 or damage of the security;

18 b. Offer credit life insurance or credit accident and health
19 insurance, or both, on the borrower in accordance with the provisions
20 of chapter 29 of Title 17B of the New Jersey Statutes.

21 A lender may deduct and retain from the proceeds of the loan the
22 amount of the premium for any insurance provided by the lender to the
23 borrower pursuant to this section.

24 (cf: P.L.1985, c.81, s.18)

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26 ¹[8. Section 25 of P.L.1985, c.81 (C.17:3B-28) is amended to read
27 as follows:

28 25. A lender shall notify a borrower by mail of any variations in the
29 periodic percentage rate of interest pursuant to section [5 or section]
30 15 and of any change in the amount of periodic payment or term or
31 both, resulting from a variation in the periodic percentage rate of
32 interest pursuant to section 15. Any variation or change shall not take
33 effect until at least 30 days and not more than 60 days after the date
34 of the notice to the borrower. The notice may be provided to the
35 borrower in a periodic bill or statement. If there is an increase in the
36 periodic payment as provided for in subsection b. of section 15, the
37 lender shall so notify the borrower. The notice period shall be uniform
38 for both increases and decreases in the periodic percentage rate of
39 interest or change in the amount of periodic payment or term or both.
40 (cf: P.L.1985, c.81, s.25)]¹

41

42 ¹8. Section 25 of P.L.1985, c.81 (C.17:3B-28) is repealed.¹

43

44 9. This act shall take effect immediately.

1

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3 Makes certain changes in the "Market Rate Consumer Loan Act."