

(CORRECTED COPY)
P.L. 1997, CHAPTER 12, *approved January 27, 1997*
Assembly, No. 2007 (*Second Reprint*)

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)

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

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.

² Senate SSM committee amendments adopted October 7, 1996.

1 follows:

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

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

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

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

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

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

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

25

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

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

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

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

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

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

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

44

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

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

8 b. The lender shall notify each affected borrower of any
9 amendment pursuant to subsection a. by mailing or delivering to the
10 borrower, at least [30] ²[15] 30² days before the effective date of the
11 amendment, a clear and conspicuous written notice which shall
12 describe the amendment and the existing terms of the agreement
13 affected by the amendment and shall also set forth the effective date
14 of the amendment and the pertinent information contemplated by the
15 following provisions of this section. If the amendment has the effect
16 of increasing the interest or other charges to be paid by the borrower
17 by changing the method of calculating interest or the index used to
18 calculate the interest, the amendment shall become effective [only if
19 the borrower uses the plan after a date specified in the notice which is]
20 ¹only if the borrower uses the plan after a date specified in the notice
21 which is¹ at least [30] ²[15] 30² days after the giving of the notice [,
22 but which need not be the date the amendment becomes effective, by
23 making a purchase or obtaining a loan, or if the borrower indicates to
24 the lender in writing the borrower's express agreement to the
25 amendment, and the amendment may become effective as to a
26 particular borrower as of the first day of the billing period during
27 which the borrower so used the borrower's account or so indicated
28 agreement to the amendment. Any borrower who fails to use the
29 borrower's account or so to indicate agreement to an amendment shall
30 be permitted to pay the outstanding unpaid indebtedness in the
31 borrower's account under the plan in accordance with the terms of the
32 agreement governing the plan without giving effect to the amendment]
33 ¹, but which need not be the date the amendment becomes effective,
34 by making a purchase or obtaining a loan, or if the borrower indicates
35 to the lender in writing the borrower's express agreement to the
36 amendment, and the amendment may become effective as to a
37 particular borrower as of the first day of the billing period during
38 which the borrower so used the borrower's account or so indicated
39 agreement to the amendment. Any borrower who fails to use the
40 borrower's account or so to indicate agreement to an amendment shall
41 be permitted to pay the outstanding unpaid indebtedness in the
42 borrower's account under the plan in accordance with the terms of the
43 agreement governing the plan without giving effect to the
44 amendment¹.

45 For purposes of this section a variation in periodic percentage rates
46 of interest in accordance with the terms of the index established in the

1 revolving credit plan agreement [and notice provided pursuant to
2 section 25] shall not be considered to be an amendment.

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

4

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

7 15. Periodic percentage rates. The periodic percentage rates of
8 interest charged and collected with respect to a loan under a closed
9 end credit agreement may, subject to any limitations set forth in the
10 loan agreement, vary in accordance with the market interest rate index
11 specified in the loan agreement, which index shall be readily verifiable
12 by the borrower and beyond the control of the lender. Periodic
13 percentage rate increases, based on a rise in the interest rate index,
14 may be made at the option of the lender. Periodic percentage rate
15 decreases shall be made whenever there is a decrease in the interest
16 rate index which results in an interest rate which is less than the
17 interest rate then applicable to the note or loan, except that the loan
18 agreement may stipulate a percentage decrease below which a
19 corresponding decrease in the periodic percentage rate need not be
20 made by the lender, provided the index decrement shall be the same as
21 the index increment used for interest rate increases. Interest rate
22 increases may, and interest rate decreases shall, apply to any
23 outstanding and unpaid loan balances on or after the effective date of
24 the rate variation. Upon an increase in the rate of interest, the term of
25 the note shall be extended as necessary to provide for payment of the
26 balance due without any increase in the amount of each of the
27 borrower's periodic payments, except that the periodic payments may
28 be increased, if either a. [the borrower, at his option within 20 days of
29 the date of the notice provided by the lender pursuant to section 25,
30 specifically requests the lender, in writing, to increase each periodic
31 payment or the final payment, rather than extend the term] the
32 agreement so provides or the parties agree to the increase in writing,
33 or b. if the periodic payment amounts would not be sufficient to
34 reduce the principal amount due, the lender, no sooner than ¹[15] ¹30¹
35 days after notifying the borrower of that fact [pursuant to section 25],
36 may require that the periodic payments be increased, or that there be
37 a combination of an extended term and increased periodic payments.
38 (cf: P.L.1985, c.81, s.15)

39

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

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

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

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

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

9
10 7. Section 18 of P.L.1985, c.81 (C.17:3B-21) is amended to read
11 as follows:

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

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

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

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

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

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

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

39 (cf: P.L.1985, c.81, s.25)]¹

40
41 ¹8. Section 25 of P.L.1985, c.81 (C.17:3B-28) is repealed.¹

42
43 9. This act shall take effect immediately.

1

2

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