

CHAPTER 157

AN ACT concerning licensed lenders, supplementing Title 17 of the Revised Statutes, and amending and repealing various parts of the statutory law.

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

C.17:11C-1 Short title.

1. Sections 1 through 49 of this act shall be known and may be cited as the "New Jersey Licensed Lenders Act."

C.17:11C-2 Definitions regarding licensed lenders.

2. As used in this act:

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

"Borrower" means any person applying for a loan from a lender licensed under this act, whether or not the loan is granted, and any person who has actually obtained such a loan.

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

"Consumer loan business" means the business of making loans of money, credit, goods or things in action in the amount or value of \$15,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this act and without first obtaining a license from the commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$15,000 or less, or in the business of negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$15,000 or less, or in the business of buying, discounting or indorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$15,000 or less, shall be deemed to be engaging in the consumer loan business.

"Commissioner" means the Commissioner of Banking and Insurance.

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

"Consumer loan" means a loan of \$15,000 or less made by a consumer lender pursuant to the terms of this act, and not a first mortgage loan or a secondary mortgage loan.

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

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

"Department" means the Department of Banking and Insurance.

"Depository institution" means a state or federally chartered bank, savings bank, savings and loan association, building and loan association or credit union.

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

"Licensee" means a person who is licensed under this act.

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

"Mortgage broker" means any person, not exempt under section 4 of this act and licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for other, or offers

to negotiate, place or sell for others, first mortgage loans in the primary market.

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

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

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

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

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

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

"Primary market" means the market wherein first mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit.

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

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

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

"Secondary mortgage loan business" means advertising, causing to be advertised, soliciting, negotiating, offering to make or making a secondary mortgage loan in this State, whether directly or by any person acting for his benefit, or becoming the subsequent holder of a promissory note or mortgage, indenture or any other similar instrument or document received in connection with a secondary mortgage loan.

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

C.17:11C-3 License required for mortgage banker, broker, secondary mortgage, consumer loan business.

3. a. No person shall act as a mortgage banker or mortgage broker, engage in the secondary mortgage loan business or engage in the consumer loan business without first obtaining a license under this act, except that a person licensed as a mortgage banker may act as a mortgage broker or mortgage solicitor, and a person licensed as a mortgage broker may act as a mortgage

solicitor.

b. The department shall issue licenses under this act which specify whether a licensee may act as a mortgage banker or mortgage broker, a secondary lender or a consumer lender. A licensee may not engage in a licensed activity under the act unless the license issued by the department specifies that the licensee may engage in that licensed activity.

c. No person shall act as a solicitor without first being registered with the department.

d. No corporation, partnership, association or any other entity shall be issued or hold a license as a mortgage banker or broker or secondary lender unless one officer or principal has an individual license of that same type sought or held. The commissioner may, by regulation, require a licensed mortgage banker or broker to employ additional licensed individuals to properly supervise the licensee and its branch offices. If the employed individual licensee allows his license to lapse or for some other reason is no longer affiliated with the employing licensee, the employing licensee shall notify the commissioner within 10 days, and shall appoint another licensed individual within 90 days or such longer period as permitted by the commissioner.

C.17:11C-4 Nonapplicability of act.

4. The requirements of this act which apply to a mortgage banker, mortgage broker or mortgage solicitor shall not apply to :

a. Depository institutions and insurance companies; but subsidiaries and service corporations of these institutions or companies shall not be exempt.

b. A person making, acquiring or selling mortgage loans for private investment or gain and not in the regular course of business. Only a person not engaged in the financial services industry who makes one or two mortgage loans in a calendar year, or a person employed in the financial services industry who makes one or two private mortgage loans in a calendar year outside of his employment, shall qualify for this exemption.

c. An attorney at law of this State, not actively and principally engaged in the business of a mortgage banker or broker, when the attorney renders services in the course of his practice.

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

e. Builders who secure mortgages for their own construction or for sale of their own construction.

C.17:11C-5 Exemptions from licensing.

5. a. Depository institutions and insurance companies are exempt from licensing as secondary mortgage lenders; but subsidiaries and service corporations of these institutions or companies shall not be exempt.

b. A real estate broker or salesperson licensed in New Jersey pursuant to R.S.45:15-1 et seq. is not required to obtain a license to negotiate a secondary mortgage loan in the normal course of business as a real estate broker or salesman.

c. An attorney authorized to practice law in New Jersey is not required to obtain a license to negotiate a secondary mortgage loan in the normal course of business as an attorney.

d. Any person who makes one or two secondary mortgage loans in this State during any calendar year which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest, shall not be required to obtain a license under this act.

e. Any employer who provides secondary mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, is not required to be licensed.

f. A municipality, its officer, employee or any agency or instrumentality thereof, which, in

accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et seq.), or in fulfillment of a regional contribution agreement with a municipality that has received such certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated, is not required to be licensed.

C.17:11C-6 Exempt consumer loan business, certain.

6. A depository institution, trust company, insurance company, or pawnbroker operating under R.S.45:22-1 et seq., may conduct consumer loan business without obtaining a license under this act and without being subject to this act.

C.17:11C-7 Conditions for issuance of license.

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

a. A written application for a new license or for a renewal of a license shall be submitted to the commissioner on the forms and in the manner, and accompanied by such evidence in support of the application, as required by this act and as may be prescribed by the commissioner, and shall be accompanied by the required fees.

b. An individual applicant for a new license shall qualify by examination, the content and form of which shall be approved by the commissioner. The commissioner may designate an independent testing service to prepare and administer the examinations. In addition, the commissioner by regulation may establish additional requirements for licensure as an individual, including education and experience.

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

d. A person holding a license under this act or as a sales finance company pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), who is in full compliance with this act, the "Retail Installment Sales Act of 1960," and the regulations promulgated thereunder, as applicable, may apply to the commissioner for a license to act as a mortgage banker or mortgage broker, a secondary lender, a consumer lender or a sales finance company, or any combination of these capacities for which the person is not already licensed, by filing with the commissioner an abbreviated application containing the information which the commissioner deems necessary when considering whether to license that person for that specific activity, an application fee, and the necessary additional license fee.

C.17:11C-8 Application, fee.

8. a. Every application for an initial license shall be accompanied by an application fee of not more than \$500, as established by the commissioner by regulation. When the applicant at the same time seeks a license to engage in more than one activity, only one application fee may be charged. The license fee, as prescribed by the commissioner by regulation, shall be based on the number of the following activities in which the person is licensed to engage under this act or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.): a mortgage banker or mortgage broker; a secondary lender; a consumer lender; or a sales finance company. The fee for a biennial license or a renewal thereof shall be set according to the following schedule:

- (1) If the person is licensed to engage in one activity, the fee shall not be more than \$3,000;
- (2) If the person is licensed to engage in two activities, the fee shall not be more than \$4,000;
- (3) If the person is licensed to engage in three activities, the fee shall not be more than \$5,000; and
- (4) If the person is licensed to engage in all four activities, the fee shall not be more than

\$6,000.

b. When the initial license is issued in the second year of the biennial licensing period, the license fee shall equal one-half of the license fee for the biennial period set forth above. In lieu of, or in addition to, the fees set forth above, the department may impose other fees and charges as provided by regulation.

C.17:11C-9 Maintenance of branch offices by licensee.

9. a. A licensee may maintain a branch office or offices. The licensee shall license all branch offices in this State and all branch offices outside this State from which the licensee has direct contact with New Jersey consumers regarding origination or brokering.

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

(1) The licensee has submitted a completed application form, a branch application fee of not more than \$300 as set by regulation, and a branch license fee;

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

(3) The application contains a certification that the office is covered by the surety bond.

c. The license fee for a branch office shall be based on the number of activities in which the person is authorized to engage at that location pursuant to the schedule provided in section 8 of this act.

C.17:11C-10 Information on license; posting, disposition of license.

10. a. The license shall state the name of the licensee and the licensee's place of business or businesses, as applicable, and shall contain such other information as the commissioner may see fit to require.

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

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

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

e. No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner.

C.17:11C-11 Issuance of licenses.

11. a. Each license issued pursuant to this act shall expire at the end of the biennial period. The first biennial period shall begin on July 1, 1997, and shall end on June 30, 1999. Every licensee shall on or before June 30 of every other year pay to the commissioner a biennial license fee for the next biennial period. The license fee shall be determined by the provisions of sections 8 and 9 of this act.

b. Licenses issued to persons under the "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et seq.) or the "Consumer Loan Act," R.S.17:10-1 et seq. or under the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.) as a sales finance company, and in effect prior to the operative date of this act shall expire on July 1, 1997. All such persons shall receive a credit of \$250 to renew any authority to engage in the secondary mortgage loan business, the consumer loan business or the sales finance company business.

c. The commissioner may by regulation provide for individual mortgage banker, mortgage broker and secondary lender licenses to continue in existence in an inactive status for a specified period of time.

C.17:11C-12 Approval of transfer, sale.

12. Any sale or transfer of a controlling interest in a 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 written notice of the proposed sale or transfer to the commissioner. The commissioner shall approve the transfer or sale unless the commissioner determines, following an opportunity for a hearing, that sufficient grounds exist to deny, revoke or suspend the license. The sale or

transfer shall be deemed approved if the commissioner does not deny the application within 30 days after receipt, or 10 days when the sale or transfer is to another licensee under this act. The commissioner may charge such fee as set by regulation, not to exceed \$200, for considering an application for a sale or transfer of a controlling interest.

C.17:11C-13 Bond required for licensee.

13. A licensee, prior to doing business as a mortgage banker or broker or as a secondary lender, shall obtain a bond in an amount and form prescribed by regulations of the commissioner, but not less than \$25,000. The bond shall be obtained from a surety company authorized by law to do business in this State. In lieu of individual bonds, a licensee may procure a blanket bond to cover all employees licensed under the provisions of this act in an amount as prescribed by regulations of the commissioner. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or its employees. No bond shall comply with the requirements of this section unless the bond contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is filed in the department at least 30 days before the day upon which cancellation shall take effect.

C.17:11C-14 Tangible net worth requirements for mortgage bankers, brokers.

14. a. Each applicant for a license as a mortgage banker shall demonstrate that it has tangible net worth of \$250,000, except that an applicant for a correspondent mortgage banker license shall demonstrate that it has tangible net worth of at least \$150,000. Each applicant for a license as a mortgage broker shall demonstrate that it has tangible net worth of at least \$50,000.

b. Each licensed mortgage banker shall maintain at all times tangible net worth of at least \$250,000, except that a correspondent mortgage banker shall maintain at all times tangible net worth of at least \$150,000. Each licensed mortgage broker shall maintain at all times tangible net worth of at least \$50,000.

c. In the case of the application of an officer, partner, member, employee or other principal of a corporation, partnership, association or other entity, that individual shall not be required to demonstrate that the individual has the tangible net worth required by this section.

d. The commissioner may by regulation: define the term "tangible net worth;" provide for a phase-in period for licensees acting as mortgage bankers or mortgage brokers to comply with the tangible net worth requirements of this section; and establish standards for determining compliance with those requirements and any remedial action, including suspension of a license, for failure to comply with those requirements.

e. The net worth and liquid asset requirements of this section and of sections 15 and 16 of this act are not cumulative, and the net worth and liquid assets necessary to satisfy the requirements for one licensed activity may also be used to satisfy another licensed activity.

C.17:11C-15 Net worth requirements for secondary lenders.

15. a. Each applicant for a license as a secondary lender shall demonstrate that the applicant has liquid assets of at least \$150,000 available for the purpose of making secondary mortgage loans and a net worth of at least \$150,000 except that, in the case of the application of an officer, partner, member or other principal of a corporation, partnership, association or other entity, that individual shall not be required to demonstrate that the individual has liquid assets and a net worth of at least \$150,000.

b. Each secondary lender shall maintain a net worth and liquid assets of \$150,000.00 at all times except that, in the case of an officer, partner, member or other principal of a corporation, partnership, association or other entity, that individual shall not be required to maintain a net worth of at least \$150,000.

c. In lieu of the liquid asset requirement of this section, the commissioner may, by regulation, require that a licensee demonstrate to the satisfaction of the commissioner that it has adequate means to fund loans through lines of credit, or otherwise.

C.17:11C-16 Net worth requirements for consumer lenders.

16. a. Every applicant for a license as a consumer lender shall prove in a form satisfactory

to the commissioner, that the applicant has a net worth of at least \$100,000, and has available for the purpose of making consumer loans liquid assets of at least \$100,000.

b. Every consumer lender shall have at all times a net worth of at least \$100,000 and shall maintain at all times assets of at least \$100,000 in liquid form available for or actually used in the making of consumer loans.

C.17:11C-17 Maintenance of place of business.

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

b. If a licensee maintains a branch office or offices, one of the offices shall be designated as a principal office.

c. A licensee which changes the address of its principal office or a branch office shall file with the commissioner those documents required by regulation, and shall pay an administrative fee not in excess of \$100.

C.17:11C-18 Refusal to issue, revocation, suspending, refusal to renew license, imposition of penalty.

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

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

(2) Withheld information or made a material misstatement in the application for the license;

(3) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or had a final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;

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

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

(6) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial of the license.

b. A license of a corporation, partnership, association or other entity may be suspended or revoked if any officer, director or member of the licensee has committed any act which would be cause for suspending or revoking a license issued to him as an individual.

c. If the license issued to an individual is revoked or suspended, the license issued to the partnership, association, corporation or other entity shall also be revoked or suspended by the commissioner, unless within the time fixed by the commissioner, in the case of a partnership, the connection therewith of the member whose license has been revoked shall be severed and that member's interest in the partnership and share in its activities brought to an end, or in the case of an association, corporation, or other entity, the offending officer or director shall be discharged and shall have no further participation in its activity. Officers and directors of the corporation shall be required to fully divest themselves of all stock, bonds or other corporate holdings.

d. The department may suspend or revoke the entire license of a person whose license is suspended or revoked for only one of its authorized licensed activities.

e. Any licensee may surrender any license by delivering to the commissioner written notice that the license is surrendered, along with the license, but the surrender shall not affect the licensee's civil or criminal liability for an act committed prior to the surrender.

C.17:11C-19 Maintenance of books, accounts, records, documents.

19. a. Every licensee shall maintain, at the place of business in this State designated in the license, those books, accounts, records and documents of the business conducted under the license as may be prescribed by the commissioner to enable the commissioner to determine whether the business of the licensee is being conducted in accordance with the provisions of this act and the orders, rules and regulations issued hereunder.

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

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

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

C.17:11C-20 Prohibited practices.

20. a. No person or licensee shall advertise, print, display, publish, distribute, telecast or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, televised or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

b. No licensee shall transact business provided for by this act under any name other than that named in the license.

c. No licensee shall make any statement or representation that the licensee will provide "immediate approval" of a mortgage loan application or "immediate closing" of a loan or will afford unqualified access to credit.

C.17:11C-21 Purchase of insurance by borrowers.

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

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

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

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

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

d. A licensee may require a borrower to demonstrate that the property securing a first mortgage loan or secondary mortgage loan is insured against damage or loss due to fire and

other perils, including those of extended coverage, for a term not to exceed the term of the loan and in an amount not to exceed the amount of the secondary loan, together with the amount needed to satisfy all prior liens on that property.

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

NOTICE TO THE BORROWER
YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE AS A
CONDITION OF RECEIVING THE LOAN.
IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE FROM
A COMPANY OR AGENT OF YOUR OWN CHOOSING.

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

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

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

C.17:11C-22 Mortgage bankers, brokers; prohibited practices.

22. a. No person shall use the word "mortgage" or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that the person arranges first mortgage loans unless that person is licensed to act as a mortgage banker or mortgage broker under this act, or is exempt from licensing under section 4 of this act. No person licensed under this act shall be granted a license in a name containing such words as "insured," "bonded," "guaranteed," "secured" and the like. Notwithstanding the provisions of section 18 of P.L.1948, c.67 (C.17:9A-18) or any other law to the contrary, a person licensed under this act to act as a mortgage banker or mortgage broker may use the terms "mortgage banker" or "mortgage broker," respectively, as part of the licensee's name.

b. No mortgage banker or mortgage broker shall, in connection with or incidental to the making of a first mortgage loan, require or permit the mortgage instrument or bond or note to be signed by a party to the transaction if the instrument contains any blank spaces to be filled in after it has been signed, except blank spaces relating to recording.

c. No mortgage banker or mortgage broker shall charge or exact directly or indirectly from the mortgagor or any other person fees, commissions or charges not authorized by this act.

d. No person shall receive any commission, bonus or fee in connection with arranging or originating a first mortgage loan for a borrower unless that person is licensed or exempt from licensure as a mortgage banker or mortgage broker, except that a registered mortgage solicitor may receive a commission, bonus, or fee from his employer.

e. No person or licensee authorized to act as a mortgage banker or mortgage broker shall pay any commission, bonus or fee to any person not licensed or not exempt under the provisions of this act in connection with arranging for or originating a mortgage loan for a borrower, except that a registered mortgage solicitor may be paid a bonus, commission or fee by his employer.

f. No person shall obtain or attempt to obtain a license by fraud or misrepresentation.

g. No mortgage banker or mortgage broker shall misrepresent, circumvent, or conceal the nature of any material particular of any transaction to which the mortgage banker or broker is a party.

h. No mortgage banker or mortgage broker shall fail to disburse funds in accordance with the mortgage banker's or broker's agreements, unless otherwise ordered by the commissioner or

a court of this State or of the United States.

i. No mortgage banker or mortgage broker shall fail without good cause to account or deliver to any person any personal property, money, fund, deposit, check, draft, mortgage, document or thing of value, which is not the mortgage banker's or broker's property, or which the mortgage banker or broker is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon, or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

j. No person or licensee shall fail to place in escrow, immediately upon receipt, any money, fund, deposit, check or draft entrusted to him by any person dealing with him as a mortgage banker or mortgage broker, in a manner approved by the commissioner, or to deposit the funds in a trust or escrow account maintained by him with a financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, wherein the funds shall be kept until the disbursement thereof is properly authorized.

k. No mortgage banker or mortgage broker shall fail (1) to present a certified check, cashier's check or bank check for the proceeds of the first mortgage loan; (2) to arrange an electronic fund transfer for the proceeds of the loan; or (3) to provide for payment by any other means which is ethically permissible to the purchaser, acting on the purchaser's own behalf, or to the attorney for the purchaser, at a reasonable time and place prior to the time of the mortgage closing transaction. This subsection shall not prevent a person or licensee from utilizing any method of payment which is agreed upon by the person or licensee and the closing agent; nor shall it prevent the person or licensee from assessing a reasonable charge as set forth by regulation by the commissioner to reflect the additional cost to the person or licensee for the issuance of a certified, cashier's or bank check, an electronic fund transfer, or any other means of payment which is ethically permissible. That reasonable charge shall be fully disclosed at application or at or prior to the issuance of the loan commitment. A "bank check" means a negotiable instrument drawn by a state or federally chartered bank, savings bank or savings and loan association on itself or on its account in another state or federally chartered bank, savings bank or savings and loan association doing business in this State.

C.17:11C-23 Fees allowed to be charged by mortgage bankers.

23. a. Notwithstanding the provisions of any other law, a person licensed as a mortgage banker, incidental to the origination, processing and closing of a mortgage loan transaction, shall have the right to charge only the following fees: (1) credit report fee; (2) appraisal fee; (3) application fee; (4) commitment fee; (5) warehouse fee; (6) fees necessary to reimburse the mortgage banker for charges imposed by third parties; and (7) discount points.

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

c. No person licensed as a mortgage banker or mortgage broker may charge any fee either not expressly authorized by this section or authorized by the commissioner by regulation.

C.17:11C-24 Secondary lenders permitted to make closed-end loans.

24. a. Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, a person licensed as a secondary lender may make closed-end loans, and may charge, contract for and receive thereon interest at an annual percentage rate agreed to by the licensee and the borrower.

b. The note evidencing a closed-end loan may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. If the note provides for a variation in the interest rate, that fact shall be clearly described in plain language, in at least eight-point bold face type on the face of the note. If the note provides for a final payment which is substantially greater than the previous installments, that fact, together with a statement that the lender is under no obligation to refinance the loan, unless the lender unconditionally obligates itself to do so, shall be clearly disclosed in plain

language, in at least eight-point bold face type on the face of the note. No rate increase or decrease shall take effect during the first six months of the term of the loan. Thereafter, no rate increase or decrease shall take effect unless at least 30 days prior to the effective date of that increase or decrease, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the increase or decrease, and unless at least six months have elapsed without any increase in the rate.

c. Upon written request from the borrower, a secondary lender shall give to the borrower, without charge, within five days from the date of receipt of that request, a written statement of the borrower's account, which shall show the dates and amounts of all installment payments on a closed-end loan credited to the borrower's account, the dates, amounts and explanation of all other charges or credits to the account and the unpaid balance thereof. A secondary lender shall not be required to furnish more than two such statements in any 12-month period.

C.17:11C-25 Secondary lenders permitted to make open-end loans.

25. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, and subject to all applicable provisions of this act, a person licensed as a secondary lender shall have authority to make open-end loans as defined in section 2 of this act, upon the same terms and conditions permitted to banks, savings banks, savings and loan associations pursuant to State and federal laws and regulations promulgated thereunder, and may charge, contract for, and receive thereon, interest at an annual percentage rate agreed to by the licensee and the borrower, provided however, that with respect to fees and other charges permitted in connection with open-end loans, secondary mortgage lenders shall be subject to the provisions of this act.

C.17:11C-26 Requirements for instruments evidencing secondary mortgage loan.

26. An instrument evidencing a secondary mortgage loan shall:

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

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

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

"NOTICE TO BORROWER

Read this promissory note or loan agreement before you sign.

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

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

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

C.17:11C-27 Prohibited provisions in writings executed in connection with secondary mortgage loan.

27. No writing of any kind executed in connection with a secondary mortgage loan shall contain:

- a. A power of attorney to confess judgment;
- b. An assignment of or order for the payment of any salary, wages, commissions or any other compensation for services, or any part thereof, earned or to be earned.
- c. An agreement to pay any amount other than the unpaid balance of the promissory note or loan agreement or any other charge authorized by this act.
- d. A provision relieving the licensee from liability for any claim, or from any legal remedy, which the borrower may have against the licensee under the terms of the promissory note or loan agreement.
- e. A provision whereby the borrower waives any right of action against the licensee, a subsequent holder or any person acting on the licensee's or holder's behalf for any illegal act committed in the collection of payments under the promissory note or loan agreement.
- f. An acceleration clause under which the unpaid balance of the promissory note or loan agreement not yet matured or any part thereof may be declared due and payable because the licensee or subsequent holder deems himself to be insecure.

C.17:11C-28 Secondary lenders, charges, fees allowed.

28. a. A secondary lender shall not contract for, charge, receive or collect directly or indirectly, any of the following in connection with a secondary mortgage loan: a broker's or finder's fee; commission; expense; fine; penalty; premium; or any other thing of value other than the charges authorized by this act; except the expenses incurred on actual sale of the real property in foreclosure proceedings or upon the entry of judgment, which are otherwise authorized by law; provided, however, that:

(1) A secondary lender may charge and receive no more than three discount points computed as a percentage of the principal amount of the loan and may add such discount points to the principal balance of the loan, which discount points shall be fully earned when the loan is made. The annual percentage rate charged to the borrower, including the discount points, if any, shall be subject to N.J.S.2C:21-19. As used in this paragraph, "discount point" means one percent of the principal amount of the loan; and

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

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

c. Secondary lenders shall also have the authority to charge and collect a returned check fee in an amount not to exceed \$20 which the secondary lender may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account. Licensees shall also have the authority to charge and collect a late charge in any amount as may be provided in the note or loan agreement, but no late charge shall exceed 5% of the amount of payment in default. Not more than one late charge shall be assessed on any one payment in arrears.

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

(1) an application fee at closing; and

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

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

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

(2) The attorney to whom the promissory note or loan agreement is referred is not a partner, officer, director or employee, whether salaried or commissioned, of the secondary lender; and

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

C.17:11C-29 Collection of additional charges by secondary lender.

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

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

C.17:11C-30 Obligations of secondary lender to borrower.

30. A secondary lender shall:

a. Give to the borrower, without charge, a copy of every instrument, document or other writing the borrower signs, and written evidence of any insurance obtained from the licensee.

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

c. In the event a borrower's application for a secondary mortgage loan is denied, notify the borrower, in writing, of that denial and provided further, the name of any such borrower or a list of such borrowers shall not be referred by the licensee, in any manner whatsoever, to any other lender, retail seller of personal property or services or to any other person, whether in this or any other state.

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

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

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

(1) Refund or credit to the borrower, in accordance with regulations promulgated by the commissioner, any unearned portion of the premium for any insurance, if a premium for such insurance was disbursed on behalf of the borrower at the time the secondary mortgage loan was originally made.

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

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

C.17:11C-31 Secondary lenders, prohibited practices.

31. A secondary lender shall not:

a. Transact any business subject to the provisions of this act under any other name or at any other location except that designated in his license. For the purpose of this section, the transaction of business includes, but is not limited to, the signing of any instrument, document or any other form by the borrower, except that a borrower's application for a secondary mortgage loan need not be signed in the office of the licensee and a secondary mortgage loan need not be closed at the office of a licensee so long as it is closed in New Jersey at the office of an attorney admitted to practice in this State.

b. Request that a borrower incorporate in connection with a secondary mortgage loan or aid or abet such a scheme.

c. Make a secondary mortgage loan which has been referred by a retail seller, who, in connection with that referral, has required the borrower to purchase personal property or services or has indicated that such a purchase is necessary as a condition precedent for that loan.

d. Require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document which creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

e. Solicit secondary mortgage loan business through any other person by paying, directly or indirectly, for such business referred to the licensee by any such person, except that a licensee may solicit secondary mortgage loan business on behalf of another licensee or lender expressly authorized to make secondary mortgage loans in this State if (1) that solicitation results in no additional cost or expense to the borrower; and (2) the application and all advertising in connection therewith clearly disclose the identity of the person or entity which will be making the loan. If those conditions are met, a licensee may collect a fee or a commission from the lender as consideration for the solicitation.

C.17:11C-32 Consumer loans permitted by licensees, terms.

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

b. A closed-end consumer loan contract may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the contract provides for the possibility of an increase or decrease or both in the rate, that fact shall be clearly described in plain

language, in at least 8-point bold face type on the face of the contract. No rate increase shall take effect unless (1) at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (2) unless at least 365 days have elapsed without any increase in the rate. Where the loan contract so provides for an increase or decrease in the rate of interest, the installments may vary in amount, notwithstanding any other law to the contrary, except that if the rate increases, the borrower may request, and the lender shall provide for, either an increase in the amount of the installment payment or an extension of the term of the loan, or some combination of an increase in the amount of the installment payment and extension of the term.

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

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

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

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

(4) if the agreement provides for the possibility of a change in any term of the agreement, including the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the written notice; and

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

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

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

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

g. No consumer lender shall induce or permit any person nor any husband and wife, jointly

or severally, to become obligated, directly or contingently or both, under more than one contract of a consumer loan at the same time for the purpose of obtaining a higher rate of interest than would otherwise be permitted by this section. This prohibition shall not apply to any loan made pursuant to any other law of this State.

C.17:11C-33 Additional charges prohibited on consumer loan; violations.

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

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

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

C.17:11C-34 Requirements for consumer lender relative to closed-end loan.

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

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

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

if any of the loan;

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

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

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

C.17:11C-35 Limits on closed-end consumer loans.

35. a. No closed-end consumer loan in an amount of \$1,000 or less shall be made for a greater period of time than 36 months and 15 days.

b. No closed-end consumer loan in an amount in excess of \$1,000, but not exceeding \$2,500, shall be made for a greater period of time than 48 months and 15 days.

c. No closed-end consumer loan in an amount in excess of \$2,500, but not exceeding \$5,000, shall be made for a greater period of time than 60 months and 15 days.

d. No closed-end consumer loan in an amount in excess of \$5,000, but not exceeding \$10,000, shall be made for a greater period of time than 84 months and 15 days.

e. No closed-end consumer loan in an amount in excess of \$10,000 shall be made for a greater period of time than 120 months and 15 days.

C.17:11C-36 Open-end consumer loans; conditions, terms.

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

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

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

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

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

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

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

e. In an open-end consumer loan, the borrower may at any time pay all or any part of the unpaid balance in his account; or, if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to the following minimum payment

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

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

(1) If credit life, disability or involuntary unemployment insurance is provided and if the insured dies or becomes disabled or involuntarily unemployed when there is an outstanding open-end loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance or all covered minimum payments which become due on the loan during the covered period of involuntary unemployment in the case of involuntary unemployment insurance. The additional charge for credit life insurance, credit disability insurance or credit involuntary unemployment insurance shall be calculated in each billing cycle by applying the current monthly premium rate for that insurance, as determined by the commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection c. of this section for the calculation of interest;

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

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

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

C.17:11C-37 Prohibited charges for large consumer loans.

37. No licensee authorized to engage in the consumer loan business shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than he would be permitted by law to charge if he were not a licensee under this act upon the loan, use, or sale of credit, of the amount or value of more than \$15,000. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as indorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both under one or more loan

contracts to the licensee at any time the sum of more than \$15,000 for principal.

C.17:11C-38 Certain payments deemed loan secured by assignment.

38. The payment of \$15,000 or less in money, credit, goods or things in action, as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall, for the purposes of this act, be deemed a loan secured by the assignment. The transaction shall be governed by and subject to the provisions of this act and any such sale, assignment or order hereafter made shall, for the purposes of this act, be void and of no effect.

C.17:11C-39 Validity of chattel mortgage, security interest, conditions.

39. No chattel mortgage or security interest, as defined in N.J.S.12A:1-201, in, or other lien on, household furniture then in the possession and use of the borrower, taken in connection with a consumer loan, shall be valid unless that chattel mortgage and the financing statement and the security agreement are in writing, signed in person by the borrower, and if the borrower is married, unless it is signed in person by both husband and wife. The written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of the mortgage or lien or security interest.

C.17:11C-40 Loans secured by property.

40. The payment of \$15,000 or less in money, credit, goods or things in action as consideration for any sale of personal property which is made on condition that the property be sold back at a greater price shall, for the purposes of this act, be deemed to be a loan secured by the property and the amount by which the repurchase price exceeds the original payment actually paid shall be deemed interest or charges upon the loan from the date the original payment is made until the date the repurchase price is paid. The transaction shall be governed by and be subject to the provisions of this act as if it were a consumer loan.

C.17:11C-41 Consumer lenders, prohibited practices.

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

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

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

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

e. No person, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount of \$15,000 or less. This prohibition shall apply to any person who, by any device, subterfuge, or pretense, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

f. No consumer loans of the amount or value of \$15,000 or less for which a greater rate of interest, consideration, or charge than is permitted by this act has been charged, contracted for, or received, whenever made, shall be enforced in this State and any person, partnership, association or corporation in any way participating therein in this State shall be subject to the provisions of this act. The foregoing shall not apply to loans legally made in any state which then has in effect a regulatory small loan law similar in principle to this act, but an action to enforce any loan made in any state to a person then residing in this State may be maintained in this State only if the amount of interest, discount, consideration or other charge for that loan, demanded to be paid in the action, does not exceed that permitted to a licensee authorized to engage in the consumer loan business by this act for a loan of the same amount repayable in the same manner.

C.17:11C-42 Investigations, examinations of licensees.

42. a. The commissioner may make such investigations and examinations of any licensee or other person as the commissioner deems necessary to determine compliance with this act and the orders, rules and regulations issued hereunder. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any licensee or other person. Each licensee shall be subject to an examination by the commissioner, not more than once in any 18-month period, unless the commissioner has reason to believe that the licensee is not complying with the provisions of this act or any rule or regulation promulgated thereunder, or is not transacting business in accordance with law, at which time the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, records and other documents and materials relative to an examination or investigation. Examinations conducted under the provisions of this act shall be confidential except as required in the administration, enforcement and prosecution of violations under this act or pursuant to court order. The cost of the investigations and examinations shall be borne by the licensee.

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

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

C.17:11C-43 Annual report by licensees.

43. A licensee shall annually file a report before April 1 with the commissioner which shall set forth such information as the commissioner shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing under oath and on a form provided by the commissioner. The commissioner shall charge a fee for the filing of the report to defer the department's administrative expense.

C.17:11C-44 Agreements unenforceable, void.

44. Any agreement to waive any provision of this act shall be unenforceable and void.

C.17:11C-45 Applicability of act to mortgages.

45. The provisions of this act shall apply to any first mortgage loan or secondary mortgage loan:

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

b. Made or executed within this State; or

c. Which is secured by real property located in this State, notwithstanding the place of execution.

C.17:11C-46 Validity of mortgages.

46. The failure of any person to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan or secondary mortgage loan, and no person acquiring such a loan shall be required to ascertain if a licensee has made such a loan in compliance with the provisions of this act.

C.17:11C-47 Injunctions by commissioner.

47. If the commissioner has reason to believe that any person or licensee has engaged, is engaged, or is about to engage in any practice or transaction prohibited by this act, the commissioner may, in addition to any other remedies he may have, bring a summary action in the name and on behalf of the State against the person or licensee and any other person concerned or in any way participating in or about to participate in those practices or those actions in violation of this act, to enjoin the person or licensee from continuing the practices or transactions or engaging therein or doing any act in furtherance thereof or in violation of this act.

C.17:11C-48 Violations, penalties.

48. a. Any person or licensee who engages in any conduct or practice prohibited by this act may be liable to a penalty not exceeding \$5,000 to be recovered in a summary proceeding under the "penalty enforcement law" (N.J.S.2A:58-1 et seq.). Each violation shall constitute a separate offense, and the penalty under this section shall be in addition to any suspension or revocation of license. In addition, the commissioner may order any licensee to refund any fee taken illegally or in violation of this act or rules, regulations or orders issued pursuant hereto. Willful violations of this act shall be considered a crime of the third degree.

b. After notice and an opportunity for a hearing, the commissioner may order that any person who has purposely and knowingly violated any provision of this act, or of the rules and regulations issued pursuant hereto, and has thereby caused financial harm to consumers, be barred for a term not exceeding 10 years from acting as a licensee, a stockholder, a partner or other owner, or an employee of a licensee, an officer of a licensee, a director of a licensee or in any other capacity pursuant to this act. Violations of such a final order shall be considered a crime of the third degree.

C.17:11C-49 Rules, regulations.

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

50. Section 7 of P.L.1992, c.66 (C.17:10B-7) is amended to read as follows:

C.17:10B-7 Nonapplicability of act.

7. The provisions of this act shall not apply to State or federally chartered banks, savings banks, savings and loan associations or credit unions; mortgage solicitors as defined by section 2 of P.L.1996, c.157 (C.17:11C-2); licensees regulated pursuant to P.L.1996, c.157 (C.17:11C-1 et al.), P.L.1960, c.40 (C.17:16C-1 et seq.), P.L.1968, c.223 (C.17:16C-61.1 et seq.), P.L.1960, c.41 (C.17:16C-62 et seq.) and P.L.1968, c.224 (C.17:16C-95 et seq.); attorneys licensed to practice in this State; certified public accountants licensed to practice in this State pursuant to P.L.1977, c.144 (C.45:2B-1 et seq.); or insurance companies.

51. Section 3 of P.L.1960, c.40 (C.17:16C-3) is amended to read as follows:

C.17:16C-3 License application.

3. An application for a new license or for a renewal thereof shall be accompanied by the required application and license fees, as appropriate, and shall be made on the forms and in the manner and accompanied by such evidence in support of the application as may be prescribed by the commissioner.

52. Section 7 of P.L.1960, c.40 (C.17:16C-7) is amended to read as follows:

C.17:16C-7 Application fee, license fee for sales finance companies.

7. Every application for a new license shall be accompanied by an application fee of not more than \$300, as established by the commissioner by regulation. Every sales finance company shall pay to the commissioner at the time of making the application and biennially thereafter upon renewal a license fee for its principal place of business and for each additional place of business conducted in this State. The commissioner shall charge for a license such fee as he shall prescribe by rule or regulation. The license fee, as prescribed by the commissioner by regulation, shall be based on the number of the following activities in which the person is licensed to act: as a mortgage banker or mortgage broker, as a secondary mortgage lender, as a consumer lender, or as a sales finance company. The fee shall be set according to the following schedule:

- a. If the person is licensed to engage in one activity, the fee shall not be more than \$3,000;
 - b. If the person is licensed to engage in two activities, the fee shall not be more than \$4,000;
 - c. If the person is licensed to engage in three activities, the fee shall not be more than \$5,000;
- and
- d. If the person is licensed to engage in all four activities, the fee shall not be more than \$6,000.

The license shall run from the date of issuance to the end of the biennial period. When the initial license is issued in the second year of the biennial licensing period, the license fee shall be an amount equal to one-half of the fee for the biennial licensing period.

For the purpose of coordination with licensing under the "New Jersey Licensed Lenders Act," (P.L.1996, c.157 (C.17:11C-1 et al.)), each sales finance company license issued pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall expire at the end of the biennial period. The first biennial period shall begin on July 1, 1997, and shall end on June 30, 1999.

53. Section 10 of P.L.1960, c.40 (C.17:16C-10) is amended to read as follows:

C.17:16C-10 Grounds for refusal to issue, revocation, suspension, refusal to renew license.

10. a. The commissioner may refuse to issue and may revoke, suspend or refuse to renew a license or impose a penalty pursuant to this act if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any person, applicant for or holder of the license has:

- (1) violated any of the provisions of P.L.1960, c.40 (C.17:16C-1 et seq.) or any order, rule or regulation made or issued pursuant to that act;
- (2) Withheld information or made a material misstatement in the application for the license;
- (3) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or had a final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;
- (4) Become insolvent, or failed to attain or maintain the required net worth;
- (5) Demonstrated unworthiness, incompetence, bad faith or dishonesty in the transacting of business as a licensee; or
- (6) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial of the license.

b. A license of a corporation, partnership, association or other entity may be suspended or revoked if any officer, director or member of the licensee has committed any act which would be cause for suspending or revoking a license to him as an individual.

c. No license issued under this act to a motor vehicle installment seller shall be valid unless such seller is the holder of a valid and subsisting license issued pursuant to chapter 10 of Title 39 of the Revised Statutes.

C.17:11C-50 Continuation of licensees.

54. a. A person licensed as a mortgage banker or mortgage broker pursuant to the provisions

of P.L.1981, c.18 (C.17:11B-1 et seq.), a secondary mortgage lender licensed pursuant to the "Secondary Mortgage Loan Act," P.L.1970, c. 205 (C.17:11A-34 et seq.), a consumer loan lender licensed pursuant to the "Consumer Loan Act," R.S.17:10-1 et seq., or a sales finance company, licensed pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall continue as a licensee under this act until July 1, 1997, at which time, if the licensee intends to continue to engage in activities regulated by this act, the licensee shall renew the license as a licensee under the provisions of this act.

b. Any licensee to whom the provisions of subsection a. of this section apply, shall be subject to a one-time administrative fee for each license the licensee seeks to renew, provided however, that a licensee seeking to renew a license to engage in one activity under this act shall not be subject to this one-time administrative fee. The administrative fee shall be set by the commissioner by regulation in an amount not to exceed \$200 for each license a licensee seeks to renew.

55. The following are repealed:

Repealer.

The "Consumer Loan Act," R.S.17:10-1 through 17:10-3 and 17:10-5 through 17:10-26;

P.L.1962, c.159, s.1 (C.17:10-14.1);

P.L.1983, c.348, s.1 (C.17:10-14.1a);

P.L.1979, c.493, ss.5 and 6 (C.17:10-14.2 and 17:10-14.3);

The "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 through 17:11A-38, 17:11A-41 through 17:11A-55, 17:11A-57 and 17:11A-59 through 17:11A-63);

P.L.1987, c.230, ss.4-7 and 19-23 (C.17:11A-45.1, 17:11A-39.1, 17:11A-45.2 and 17:11A-45.3, 17:11A-44.7 through 17:11A-44.9 and 17:11A-59.1 and 17:11A-59.2);

P.L.1983, c.348, s.2 (C.17:11A-49.1);

P.L.1983, c.437, s.8 (C.17:11A-44.6); and

P.L.1981, c.18 (C.17:11B-1 et seq.).

56. Sections 49 and 54 of this act shall take effect immediately and the remainder of this act shall take effect on July 1, 1997.

Approved January 8, 1997.