[Second Reprint]

SENATE, No. 928

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1996

By Senator BUBBA

AN ACT concerning the use of "good funds" for [2][the purchase of]2 real property 2mortgages2 and amending P.L.1981, c.18 and supplementing P.L.1975, c.106 (C.17:46B-1 et seq.).

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

1. Section 14 of P.L.1981, c.18 (C.17:11B-14) is amended to read as follows:

14. 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 with regard to the rates, terms or conditions pertaining to the making, negotiating, or sale of loans, which is false, misleading or deceptive. No person who is not licensed under this act or not exempt under section 3 of this act shall use the word "mortgage" or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that he arranges real estate mortgage loans. 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.

b. No person or licensee shall, in connection with or incidental to the making of a 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 person or licensee shall charge or exact directly or indirectly from the mortgagor or any other person fees, commissions or charges determined to be excessive in accordance with subsection b. of section 13 of this act.

d. No person not licensed or not exempt from licensure under this

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1 Senate SCM committee amendments adopted May 2, 1996.
2 Assembly AFI committee amendments adopted September 16, 1996.

act shall receive any commission, bonus or fee in connection with arranging or originating a mortgage loan for a borrower, except that a mortgage solicitor can receive such commission, bonus, or fee from his employer.

e. No person or licensee 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 mortgage solicitor may be paid such bonus, commission, or fee by his employer.

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

g. No person or licensee shall misrepresent, circumvent, or conceal the nature of any material particular of any transaction to which he is a party.

h. No person or licensee shall fail to disburse funds in accordance with his agreements, unless otherwise ordered by the commissioner or a court of this State or of the United States.

i. No person or licensee 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 his property, or which he 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 person licensed under this act shall change the address of his place of business without notice to the commissioner.

l. No person or licensee shall fail (1) to present a certified check, cashier's check [1], teller's check[1] or bank check for the proceeds of the loan, (2) to arrange an electronic funds transfer for the proceeds of the loan or (3) to provide for payment by [any other means which is ethically permissible] cash, to the [2][purchaser] mortgagor[2], acting on his own behalf, or the attorney or other person acting for the [2][purchaser] mortgagor[2] , 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] Nothing contained in this subsection l. shall [it] prevent the

person or licensee from assessing a reasonable charge as set forth by regulation by the Commissioner of Banking [2]and Insurance[2] to reflect the additional cost to the person or licensee for the issuance of a certified, cashier's [1], teller's[1] or bank check [,] or arranging an electronic funds transfer [, or any other means of payment which is ethically permissible]. Such reasonable charge shall be fully disclosed 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. [2]A "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.[2]

(cf: P.L.1985, c.23, s.1)

2. (New section) a. Every title insurance producer licensed pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.) and every title insurance company shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing or settlement proceeds of a real estate transaction, which funds shall be deposited in a separate trust or escrow account, and which shall not be commingled with a producer's or company's own funds or with funds held by a producer or company in any other capacity.

b. No title insurance producer or company shall disburse funds representing closing or settlement proceeds of a real estate transaction unless those funds shall have been deposited in a separate trust or escrow account by cash, electronic wire transfer, or certified, cashier's [1], teller's[1] or bank check, or other collected funds; provided nevertheless, that nothing contained herein shall be construed to prohibit a title insurance producer or company from disbursing against [2][uncollected][2] funds [2]deposited in a separate trust or escrow account other than by cash, electronic wire transfer, or certified, cashier's, teller's or bank check, or other collected funds[2] in an amount not to exceed $1,000. 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. [2]A "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.[2]

c. The Commissioner of [2]Banking and[2]Insurance shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, [1][c.412] c.410[1] (C.52:14B-1 et seq.), necessary to effectuate the provisions of this section.

3. This act shall take effect immediately.

Requires the use of "good funds" for proceeds of real estate mortgage loans.