

SENATE, No. 1688

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 18, 1996

By Senators **INVERSO** and **RICE**

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

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

7
8 1. (New section) Sections 1 through 49 of this act shall be known
9 and may be cited as the "New Jersey Licensed Lenders Act."

10
11 2. (New section) As used in this act:
12 "Billing cycle" means the time interval between periodic billing
13 dates. A billing cycle shall be considered monthly if the closing date
14 of the cycle is the same date each month or does not vary by more than
15 four days from such date.

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

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

29 "Consumer loan business" means the business of making loans of
30 money, credit, goods or things in action in the amount or value of
31 \$15,000 or less and charging, contracting for, or receiving a greater
32 rate of interest, discount or consideration therefor than the lender
33 would be permitted by law to charge if he were not a licensee
34 hereunder, except as authorized by this act and without first obtaining

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.

1 a license from the commissioner. Any person directly or indirectly
2 engaging in the business of soliciting or taking applications for such
3 loans of \$15,000 or less, or in the business of negotiating or arranging
4 or aiding the borrower or lender in procuring or making such loans of
5 \$15,000 or less, or in the business of buying, discounting or indorsing
6 notes, or of furnishing, or procuring guarantee or security for
7 compensation in amounts of \$15,000 or less, shall be deemed to be
8 engaging in the consumer loan business.

9 "Commissioner" means the Commissioner of Banking and
10 Insurance.

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

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

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

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

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

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

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

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

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

38 "Mortgage broker" means any person, not exempt under section 4
39 of this act and licensed pursuant to the provisions of this act, who for
40 compensation or gain, or in the expectation of compensation or gain,
41 either directly or indirectly negotiates, places or sells for other, or
42 offers to negotiate, place or sell for others, first mortgage loans in the
43 primary market.

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

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

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

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

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

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

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

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

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

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

46 "Secondary mortgage loan business" means advertising, causing to

1 be advertised, soliciting, negotiating, offering to make or making a
2 secondary mortgage loan in this State, whether directly or by any
3 person acting for his benefit, or becoming the subsequent holder of a
4 promissory note or mortgage, indenture or any other similar
5 instrument or document received in connection with a secondary
6 mortgage loan.

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

15

16 3. (New section) a. No person shall act as a mortgage banker or
17 mortgage broker, engage in the secondary mortgage loan business or
18 engage in the consumer loan business without first obtaining a license
19 under this act, except that a person licensed as a mortgage banker may
20 act as a mortgage broker or mortgage solicitor, and a person licensed
21 as a mortgage broker may act as a mortgage solicitor.

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

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

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

42

43 4. (New section) The following persons may act as a mortgage
44 banker, mortgage broker or mortgage solicitor without obtaining a
45 license under this act:

46 a. Depository institutions and insurance companies; but

1 subsidiaries and service corporations of these institutions or companies
2 shall not be exempt.

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

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

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

19 e. Builders who broker first mortgage loans for their own
20 construction or for sale of their own construction and not engaged in
21 the business of a mortgage banker or broker.

22

23 5. (New section) a. Depository institutions and insurance
24 companies are exempt from licensing as secondary mortgage lenders;
25 but subsidiaries and service corporations of these institutions or
26 companies shall not be exempt.

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

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

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

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

1 said interest, is not required to be licensed.

2 f. A municipality, its officer, employee or any agency or
3 instrumentality thereof, which, in accordance with a housing element
4 that has received substantive certification from the Council on
5 Affordable Housing pursuant to the "Fair Housing Act," P.L.1985,
6 c.222 (C.52:27D-301 et seq.), or in fulfillment of a regional
7 contribution agreement with a municipality that has received such
8 certification, employs or proposes to employ municipally generated
9 funds, funds obtained through any State or federal subsidy, or funds
10 acquired by the municipality under a regional contribution agreement,
11 to finance the provision of affordable housing by extending loans or
12 advances the repayment of which is secured by a lien, subordinate to
13 any prior lien, upon the property that is to be rehabilitated, is not
14 required to be licensed.

15

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

20

21 7. (New section) The commissioner shall issue a license under this
22 act if the following conditions are met:

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

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

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

42 d. A person holding a license under this act or as a sales finance
43 company pursuant to the "Retail Installment Sales Act of 1960,"
44 P.L.1960, c.40 (C.17:16C-1 et seq.), who is in full compliance with
45 this act, the "Retail Installment Sales Act of 1960," and the regulations
46 promulgated thereunder, as applicable, may apply to the commissioner

1 for a license to act as a mortgage banker or mortgage broker, a
2 secondary lender, a consumer lender or a sales finance company, or
3 any combination of these capacities for which the person is not already
4 licensed, by filing with the commissioner an abbreviated application
5 containing the information which the commissioner deems necessary
6 when considering whether to license that person for that specific
7 activity, an application fee, and the necessary additional license fee.

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

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

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

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

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

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

34
35 9. (New section) a. A licensee may maintain a branch office or
36 offices. The licensee shall license all branch offices in this State and
37 all branch offices outside this State from which the licensee has direct
38 contact with New Jersey consumers regarding origination or
39 brokering.

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

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

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

46 (3) The application contains a certification that the office is

1 covered by the surety bond.

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

5

6 10. (New section) a. The license shall state the name of the
7 licensee and the licensee's place of business or businesses, as
8 applicable, and shall contain such other information as the
9 commissioner may see fit to require.

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

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

15 d. Licenses issued pursuant to this act or the "Retail Installment
16 Sales Act of 1960," P.L.1960, c.40 (C17:16C-1 et seq.) shall not be
17 transferable or assignable, other than as provided by section 12 of this
18 act.

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

21

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

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

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

42

43 12. (New section) Any sale or transfer of a controlling interest in
44 a licensee's or applicant's business shall be approved by the
45 commissioner prior to the transfer or sale, after the licensee or
46 applicant has provided written notice of the proposed sale or transfer

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

10
11 13. (New section) A licensee, prior to doing business as a
12 mortgage banker or broker or as a secondary lender, shall obtain a
13 bond in an amount and form prescribed by regulations of the
14 commissioner, but not less than \$25,000. The bond shall be obtained
15 from a surety company authorized by law to do business in this State.
16 In lieu of individual bonds, a licensee may procure a blanket bond to
17 cover all employees licensed under the provisions of this act in an
18 amount as prescribed by regulations of the commissioner. The bond
19 shall run to the State for the benefit of any person injured by the
20 wrongful act, default, fraud or misrepresentation of the licensee or its
21 employees. No bond shall comply with the requirements of this
22 section unless the bond contains a provision that it shall not be
23 canceled for any cause unless notice of intention to cancel is filed in
24 the department at least 30 days before the day upon which cancellation
25 shall take effect.

26
27 14. (New section) a. Each applicant for a license as a mortgage
28 banker shall demonstrate that it has tangible net worth of \$250,000,
29 except that an applicant for a correspondent mortgage banker license
30 shall demonstrate that it has tangible net worth of at least \$150,000.
31 Each applicant for a license as a mortgage broker shall demonstrate
32 that it has tangible net worth of at least \$50,000.

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

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

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

1 action, including suspension of a license, for failure to comply with
2 those requirements.

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

7

8 15. (New section) a. Each applicant for a license as a secondary
9 lender shall demonstrate that the applicant has liquid assets of at least
10 \$150,000 available for the purpose of making secondary mortgage
11 loans and a net worth of at least \$150,000 except that, in the case of
12 the application of an officer, partner, member or other principal of a
13 corporation, partnership, association or other entity, that individual
14 shall not be required to demonstrate that the individual has liquid
15 assets and a net worth of at least \$150,000.

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

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

25

26 16. (New section) a. Every applicant for a license as a
27 consumer lender shall prove in a form satisfactory to the
28 commissioner, that the applicant has a net worth of at least \$100,000,
29 and has available for the purpose of making consumer loans liquid
30 assets of at least \$100,000.

31 b. Every consumer lender shall have at all times a net worth of at
32 least \$100,000 and shall maintain at all times assets of at least
33 \$100,000 in liquid form available for or actually used in the making of
34 consumer loans.

35

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

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

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

5
6 18. (New section) a. The commissioner may refuse to issue and
7 may revoke, suspend or refuse to renew a license or impose a penalty
8 pursuant to this act, or refuse to register or rescind or revoke a
9 solicitor registration, if the commissioner finds, after notice and an
10 opportunity for a hearing in accordance with the "Administrative
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules
12 adopted thereunder, that any person, applicant for or holder of the
13 license has:

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

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

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

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

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

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

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

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

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

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

5
6 19. (New section) a. Every licensee shall maintain, at the place of
7 business in this State designated in the license, those books, accounts,
8 records and documents of the business conducted under the license as
9 may be prescribed by the commissioner to enable the commissioner to
10 determine whether the business of the licensee is being conducted in
11 accordance with the provisions of this act and the orders, rules and
12 regulations issued hereunder.

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

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

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

30
31 20. (New section) a. No person or licensee shall advertise, print,
32 display, publish, distribute, telecast or broadcast, or cause or permit
33 to be advertised, printed, displayed, published, distributed, televised
34 or broadcast, in any manner, any statement or representation which is
35 false, misleading or deceptive.

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

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

42
43 21. (New section) a. A borrower shall not be required to purchase
44 credit life or accident and health insurance or credit involuntary
45 unemployment insurance in connection with a first mortgage loan, a
46 secondary mortgage loan or a consumer loan. If the borrower or

1 borrowers consent thereto in writing, a licensee may obtain or provide:

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

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

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

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

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

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

35

36

NOTICE TO THE BORROWER

37

YOU MAY BE REQUIRED TO PURCHASE PROPERTY

38

INSURANCE AS A CONDITION OF RECEIVING THE LOAN.

39

IF PROPERTY INSURANCE IS REQUIRED, YOU MAY

40

SECURE INSURANCE FROM A COMPANY OR AGENT OF

41

YOUR OWN CHOOSING.

42

43 e. Incident to a consumer loan, a licensee may make available,
44 insurance covering direct or indirect damage or loss, by fire or other
45 perils, including those of extended coverage, to the personal property
46 of the borrower all or part of which is security for the loan. The

1 insurance shall be for an amount and term not to exceed the total
2 amount of payments and term of the loan.

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

5

6

NOTICE TO THE BORROWER

7

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

12

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

26

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

32

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

35

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

41

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

- 1 f. No person shall obtain or attempt to obtain a license by fraud
2 or misrepresentation.
- 3 g. No mortgage banker or mortgage broker shall misrepresent,
4 circumvent, or conceal the nature of any material particular of any
5 transaction to which the mortgage banker or broker is a party.
- 6 h. No mortgage banker or mortgage broker shall fail to disburse
7 funds in accordance with the mortgage banker's or broker's
8 agreements, unless otherwise ordered by the commissioner or a court
9 of this State or of the United States.
- 10 i. No mortgage banker or mortgage broker shall fail without
11 good cause to account or deliver to any person any personal property,
12 money, fund, deposit, check, draft, mortgage, document or thing of
13 value, which is not the mortgage banker's or broker's property, or
14 which the mortgage banker or broker is not in law or equity entitled
15 to retain under the circumstances, at the time which has been agreed
16 upon, or is required by law or, in the absence of a fixed time, upon
17 demand of the person entitled to such accounting and delivery.
- 18 j. No person or licensee shall fail to place in escrow, immediately
19 upon receipt, any money, fund, deposit, check or draft entrusted to
20 him by any person dealing with him as a mortgage banker or mortgage
21 broker, in a manner approved by the commissioner, or to deposit the
22 funds in a trust or escrow account maintained by him with a financial
23 institution the deposits of which are insured by the Federal Deposit
24 Insurance Corporation or the Federal Savings and Loan Insurance
25 Corporation, wherein the funds shall be kept until the disbursement
26 thereof is properly authorized.
- 27 k. No mortgage banker or mortgage broker shall fail (1) to present
28 a certified check, cashier's check or bank check for the proceeds of the
29 first mortgage loan; (2) to arrange an electronic fund transfer for the
30 proceeds of the loan; or (3) to provide for payment by any other means
31 which is ethically permissible to the purchaser, acting on the
32 purchaser's own behalf, or to the attorney for the purchaser, at a
33 reasonable time and place prior to the time of the mortgage closing
34 transaction. This subsection shall not prevent a person or licensee
35 from utilizing any method of payment which is agreed upon by the
36 person or licensee and the closing agent; nor shall it prevent the person
37 or licensee from assessing a reasonable charge as set forth by
38 regulation by the commissioner to reflect the additional cost to the
39 person or licensee for the issuance of a certified, cashier's or bank
40 check, an electronic fund transfer, or any other means of payment
41 which is ethically permissible. That reasonable charge shall be fully
42 disclosed at application or at or prior to the issuance of the loan
43 commitment. A "bank check" means a negotiable instrument drawn by
44 a state or federally chartered bank, savings bank or savings and loan
45 association on itself or on its account in another state or federally
46 chartered bank, savings bank or savings and loan association doing

1 business in this State.

2

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

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

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

17

18 24. (New section) a. Notwithstanding the provisions of R.S. 31:1-
19 1 or any other law to the contrary, a person licensed as a secondary
20 lender may make closed-end loans, and may charge, contract for and
21 receive thereon interest at an annual percentage rate agreed to by the
22 licensee and the borrower.

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

42 c. Upon written request from the borrower, a secondary lender
43 shall give to the borrower, without charge, within five days from the
44 date of receipt of that request, a written statement of the borrower's
45 account, which shall show the dates and amounts of all installment
46 payments on a closed-end loan credited to the borrower's account, the

1 dates, amounts and explanation of all other charges or credits to the
2 account and the unpaid balance thereof. A secondary lender shall not
3 be required to furnish more than two such statements in any 12-month
4 period.

5
6 25. (New section) Notwithstanding the provisions of R.S.31:1-1
7 or any other law to the contrary, and subject to all applicable
8 provisions of this act, a person licensed as a secondary lender shall
9 have authority to make open-end loans as defined in section 2 of this
10 act, upon the same terms and conditions permitted to banks, savings
11 banks, savings and loan associations pursuant to State and federal laws
12 and regulations promulgated thereunder, and may charge, contract for,
13 and receive thereon, interest at an annual percentage rate agreed to by
14 the licensee and the borrower, provided however, that with respect to
15 fees and other charges permitted in connection with open-end loans,
16 secondary mortgage lenders shall be subject to the provisions of this
17 act.

18
19 26. (New section) An instrument evidencing a secondary mortgage
20 loan shall:

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

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

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

41
42 **"NOTICE TO BORROWER**

43
44 Read this promissory note or loan agreement before you sign.

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

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

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

7

8 27. (New section) No writing of any kind executed in connection
9 with a secondary mortgage loan shall contain:

10 a. A power of attorney to confess judgment;

11 b. An assignment of or order for the payment of any salary,
12 wages, commissions or any other compensation for services, or any
13 part thereof, earned or to be earned.

14 c. An agreement to pay any amount other than the unpaid balance
15 of the promissory note or loan agreement or any other charge
16 authorized by this act.

17 d. A provision relieving the licensee from liability for any claim,
18 or from any legal remedy, which the borrower may have against the
19 licensee under the terms of the promissory note or loan agreement.

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

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

28

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

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

45 (2) A secondary lender may require a borrower to pay a
46 reasonable legal fee at the time of the execution of the secondary

1 mortgage loan, provided that any legal fee shall represent a charge
2 actually incurred in connection with the secondary mortgage loan and
3 shall not be paid to any person other than an attorney authorized to
4 practice law in this state; provided further that the legal fee shall be
5 evidenced by a statement issued to the licensee from the attorney.

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

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

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

- 23 (1) an application fee at closing; and
24 (2) on an open-end loan, an annual fee of \$50 or 1% of the line
25 of credit, whichever is less.

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

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

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

36 (3) Suit is actually filed by the attorney to whom the
37 promissory note or loan agreement is referred and subsequently
38 decided in favor of the secondary lender, in which event the attorney
39 fees shall not exceed 15% of the first \$500, 10% of the next \$500 and
40 5% of any excess amount due and owing under the promissory note or
41 loan agreement and, provided further that at least 15 days prior to the
42 commencement of the suit, the secondary lender or his attorney shall
43 send to the borrower, by certified or registered mail, return receipt
44 requested, at the borrower's last known address, a statement of the
45 secondary lender's intention to sue, which statement shall also specify
46 the amount of principal, interest and any other charge due and owing

1 to the secondary lender.

2

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

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

25

26 30. (New section) A secondary lender shall:

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

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

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

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

46 e. When payment is made in cash on an account of a secondary

1 mortgage loan, give to the borrower, without charge, at the time that
2 payment is actually received, a written receipt which shall show the
3 name and address of the licensee, the name and address of the
4 borrower, account number or other identification mark or symbol, date
5 and amount paid.

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

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

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

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

30

31 31. (New section) A secondary lender shall not:

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

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

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

1 loan.

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

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

18

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

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

1 vary in amount, notwithstanding any other law to the contrary, except
2 that if the rate increases, the borrower may request, and the lender
3 shall provide for, either an increase in the amount of the installment
4 payment or an extension of the term of the loan, or some combination
5 of an increase in the amount of the installment payment and extension
6 of the term.

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

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

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

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

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

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

46 d. The consumer lender shall notify each affected borrower in a

1 consumer loan agreement of any change in the manner set forth in the
2 closed-end and open-end agreement governing the plan and in
3 compliance with the requirements of the federal "Truth in Lending
4 Act" (15 U.S.C.1601 et seq.) and regulations promulgated thereunder,
5 as in effect from time to time, if applicable.

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

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

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

28

29 33. (New section) a. In addition to the interest herein provided
30 for on a consumer loan, no further or other charge, or amount
31 whatsoever for any examination, service, brokerage, commission,
32 expense, fee, or bonus or other thing or otherwise shall be directly or
33 indirectly charged, contracted for, or received, except for any amount
34 actually paid by a licensee to a public official for the recording of a
35 security interest in connection with security given for the loan and (1)
36 amounts for insurance obtained or provided by the licensee in
37 accordance with the provisions of this act; (2) on actual sale of the
38 security in foreclosure proceedings or upon the entry of judgment; (3)
39 a returned check fee in an amount not to exceed \$20, which the
40 licensee may charge the borrower if a check of the borrower is
41 returned to the licensee uncollected due to insufficient funds in the
42 borrower's account; and (4) an annual fee on open-end accounts which
43 may not exceed an amount equal to one percent of the line of credit or
44 \$50, whichever is less.

45 b. A consumer lender who violates or participates in the violation
46 of any provision of sections 3, 19, 20, 21 34, 35 or 36 or subsections

1 a., b., or c. of section 32, or subsection a. of this section, or
2 subsections e. or f. of section 41 of this act, shall be guilty of a crime
3 of the fourth degree. A contract of loan not invalid for any other
4 reason, in the making or collection of which any act shall have been
5 done which constitutes a crime of the fourth degree under this section,
6 shall be void and the lender shall have no right to collect or receive
7 any principal, interest or charges unless the act was the result of a
8 good faith error, including a good faith error made as a result of a
9 licensee's acting in conformity with a rule or regulation of the
10 commissioner which is later held to be invalid or in violation of any
11 provision of this act by a judgment of a court of competent
12 jurisdiction, and the licensee notifies the borrower of the error within
13 90 days after discovering it and makes adjustments in the account
14 necessary to assure that the borrower will not be required to pay any
15 interest, costs, or other charges which aggregate in excess of the
16 charges permitted under this act. If any interest, consideration or
17 charges in excess of those permitted are charged, contracted for or
18 received, except as the result of a good faith error, the consumer
19 lender may collect only the principal amount of the loan, and may not
20 collect interest, costs or other charges with respect to the loan. In
21 addition, a consumer lender who knowingly and willfully violates any
22 provision of this act shall also forfeit to the borrower three times any
23 amount of the interest, costs or other charges collected in excess of
24 that authorized by law.

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

39
40 34. (New section) Every consumer lender, incident to a closed-end
41 consumer loan, shall:

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

1 percentage rate of interest;

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

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

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

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

24

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

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

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

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

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

40

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

45 b. A consumer lender shall not compound interest on an open-end
46 consumer loan by adding any unpaid interest authorized by this act to

1 the principal balance of the borrower's account but the unpaid
2 principal balance may include other charges permitted by this act.

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

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

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

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

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

27 e. In an open-end consumer loan, the borrower may at any time
28 pay all or any part of the unpaid balance in his account; or, if the
29 account is not in default, the borrower may pay the unpaid principal
30 balance in monthly installments, subject to the following minimum
31 payment requirements. Minimum monthly payments shall be in an
32 amount which would result in the full repayment of the initial loan
33 advance, exclusive of any interest, within the maximum term set forth
34 for other loans of the same amount in section 35 of this act, except
35 that the minimum payment for any initial advance not exceeding
36 \$2,500 shall be in an amount which would result in full repayment of
37 the initial loan advance within the maximum term of 48 months and 15
38 days. This minimum payment shall continue at that amount until such
39 time as an additional advance to the borrower is made, other than for
40 permitted charges, at which time the minimum monthly payment shall
41 be determined and shall be in that amount which would result in the
42 full repayment of the unpaid principal balance of the loan, after the
43 advance and including the advance, within the maximum term set forth
44 for the other loans of the same amount, except that if the principal
45 balance of the loan, after the advance and including the advance, does
46 not exceed \$2,500, the minimum payment shall be in that amount

1 which would result in full repayment of the principal balance of the
2 loan within the maximum term of 48 months and 15 days. Minimum
3 payments after each subsequent advance shall be determined in the
4 same manner. No minimum payment shall exceed the amount required
5 to pay the balance in full, including unpaid interest and charges to
6 date.

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

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

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

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

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

1 37. (New section) No licensee authorized to engage in the
2 consumer loan business shall directly or indirectly charge, contract for,
3 or receive any interest, discount, or consideration greater than he
4 would be permitted by law to charge if he were not a licensee under
5 this act upon the loan, use, or sale of credit, of the amount or value of
6 more than \$15,000. The foregoing prohibition shall also apply to any
7 licensee who permits any person, as borrower or as indorser,
8 guarantor, or surety for any borrower, or otherwise, to owe directly
9 or contingently or both under one or more loan contracts to the
10 licensee at any time the sum of more than \$15,000 for principal.

11

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

20

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

31

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

42

43 41. (New section) a. No consumer lender shall make any loan
44 upon security of any assignment of or order for the payment of any
45 salary, wages, commissions or other compensation for services earned,
46 or to be earned, nor shall any such assignment or order be taken by a

1 licensee at any time in connection with any consumer loan, or for the
2 enforcement or repayment thereof, and any such assignment or order
3 hereafter so taken or given to secure any loan made by any licensee
4 under this act shall be void and of no effect.

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

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

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

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

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

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

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

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

32
33 43. (New section) A licensee shall annually file a report before
34 April 1 with the commissioner which shall set forth such information
35 as the commissioner shall require concerning the business conducted
36 as a licensee during the preceding calendar year. The report shall be
37 in writing under oath and on a form provided by the commissioner.
38 The commissioner shall charge a fee for the filing of the report to defer
39 the department's administrative expense.

40
41 44. (New section) Any agreement to waive any provision of this
42 act shall be unenforceable and void.

43
44 45. (New section) The provisions of this act shall apply to any first
45 mortgage loan or secondary mortgage loan:

46 a. Advertised, caused to be advertised, solicited, negotiated,

1 offered, or otherwise transacted within this State, in whole or in part,
2 whether by the ultimate lender or any other person;

3 b. Made or executed within this State; or

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

6
7 46. (New section) The failure of any person to comply with the
8 provisions of this act shall not affect the validity or enforceability of
9 any mortgage loan or secondary mortgage loan, and no person
10 acquiring such a loan shall be required to ascertain if a licensee has
11 made such a loan in compliance with the provisions of this act.

12
13 47. (New section) If the commissioner has reason to believe that
14 any person or licensee has engaged, is engaged, or is about to engage
15 in any practice or transaction prohibited by this act, the commissioner
16 may, in addition to any other remedies he may have, bring a summary
17 action in the name and on behalf of the State against the person or
18 licensee and any other person concerned or in any way participating in
19 or about to participate in those practices or those actions in violation
20 of this act, to enjoin the person or licensee from continuing the
21 practices or transactions or engaging therein or doing any act in
22 furtherance thereof or in violation of this act.

23
24 48. (New section) a. Any person or licensee who engages in any
25 conduct or practice prohibited by this act may be liable to a penalty
26 not exceeding \$5,000 to be recovered in a summary proceeding under
27 the "penalty enforcement law" (N.J.S.2A:58-1 et seq.). Each violation
28 shall constitute a separate offense, and the penalty under this section
29 shall be in addition to any suspension or revocation of license. In
30 addition, the commissioner may order any licensee to refund any fee
31 taken illegally or in violation of this act or rules, regulations or orders
32 issued pursuant hereto. Willful violations of this act shall be
33 considered a crime of the third degree.

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

43
44 49. (New section) The commissioner may issue and promulgate
45 rules and regulations, in accordance with the "Administrative
46 Procedure act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to

1 effectuate the provisions of this act.

2

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

5 7. The provisions of this act shall not apply to State or federally
6 chartered banks, savings banks, savings and loan associations or credit
7 unions; mortgage solicitors as defined by [section 1 of P.L.1981, c.18
8 (C. 17:11B-1)] section 2 of P.L. _____, c. _____ (pending before the
9 Legislature as this bill); licensees regulated pursuant to [chapter 10 of
10 Title 17 of the Revised Statutes, P.L.1970, c.205 (C.17:11A-34 et
11 seq.), P.L.1981, c.18 (C.17:11B-1 et seq.)] P.L. _____, c. _____ (pending
12 before the Legislature as this bill), P.L.1960, c.40 (C.17:16C-1 et
13 seq.), P.L.1968, c.223 (C.17:16C-61.1 et seq.), P.L.1960, c.41
14 (C.17:16C-62 et seq.) and P.L.1968, c.224 (C.17:16C-95 et seq.);
15 attorneys licensed to practice in this State; certified public accountants
16 licensed to practice in this State pursuant to P.L.1977, c.144
17 (C.45:2B-1 et seq.); or insurance companies.
18 (cf: P.L.1992, c.66, s.7)

19

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

22 3. [(a) Application for a license under this act shall be in writing
23 under oath, and shall be in the form prescribed by the commissioner.

24 (b) The application shall state the name and residence and business
25 addresses of the applicant, and if the applicant is a copartnership or
26 association, of every member thereof, and if a corporation, of each
27 officer and director thereof. It shall also state the address where the
28 business is to be conducted and any other information the
29 commissioner may require.]

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

35 (cf: P.L.1960, c.40, s.3)

36

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

39 7. Every application for a new license shall be accompanied by an
40 application fee of not more than \$300, as established by the
41 commissioner by regulation. Every sales finance company shall pay to
42 the commissioner at the time of making the application and biennially
43 thereafter upon renewal a license fee for its principal place of business
44 and for each additional place of business conducted in this State. The
45 commissioner shall charge for a license such fee as he shall prescribe
46 by rule or regulation. [Each fee shall not exceed \$1,000.00.] The

1 license fee, as prescribed by the commissioner by regulation, shall be
2 based on the number of the following activities in which the person is
3 licensed to act: as a mortgage banker or mortgage broker, as a
4 secondary mortgage lender, as a consumer lender, or as a sales finance
5 company. The fee shall be set according to the following schedule:

6 a. If the person is licensed to engage in one activity, the fee shall
7 not be more than \$3,000;

8 b. If the person is licensed to engage in two activities, the fee shall
9 not be more than \$4,000;

10 c. If the person is licensed to engage in three activities, the fee shall
11 not be more than \$5,000; and

12 d. If the person is licensed to engage in all four activities, the fee
13 shall not be more than \$6,000.

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

18 For the purpose of coordination with licensing under the "New
19 Jersey Licensed Lenders Act," (P.L. , c. . (pending before the
20 Legislature as this bill.), each sales finance company license issued
21 pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40
22 (C.17:16C-1 et seq.), shall expire at the end of the biennial period.
23 The first biennial period shall begin on July 1, 1997, and shall end on
24 June 30, 1999.

25 (cf: P.L.1981, c.321, s.1)

26

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

29 10. [The commissioner may suspend, revoke or refuse to renew
30 any license issued hereunder upon 10 days' notice in writing,
31 forwarded by registered or certified mail to the principal place of
32 business of such licensee, stating the contemplated action and in
33 general the grounds therefor, and after reasonable opportunity to be
34 heard, if he shall find that the licensee or any owner, director, officer,
35 member, partner, employee or agent of such licensee has:

36 (a) Made any material misstatement in the application;

37 (b) Knowingly or without the exercise of due care failed to comply
38 with or violated any provisions of this or any other act relating to
39 retail installment contracts or retail charge accounts;

40 (c) Defrauded any retail buyer or willfully failed to perform any
41 written agreement with any retail buyer;

42 (d) Willfully misrepresented or failed to disclose any of the material
43 particulars or the nature thereof required to be stated or furnished to
44 the retail buyer under this act or any other laws of this State relating
45 to retail installment contracts or retail charge accounts;

46 (e) Knowingly taken any instrument evidencing a retail installment

1 contract which was signed in blank; or

2 (f) Otherwise demonstrated unworthiness, bad faith or
3 dishonesty.]

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

10 (1) violated any of the provisions of P.L.1960, c.40 (C.17:16C-1
11 et seq.) or any order, rule or regulation made or issued pursuant to
12 that act;

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

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

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

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

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

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

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

33 (cf: P.L.1971, c.409, s.3)

34

35 54. (New section) a. A person licensed as a mortgage banker
36 or mortgage broker pursuant to the provisions of P.L.1981, c.18
37 (C.17:11B-1 et seq.), a secondary mortgage lender licensed pursuant
38 to the "Secondary Mortgage Loan Act," P.L.1970,
39 c.205 (C.17:11A-34 et seq.), a consumer loan lender licensed pursuant
40 to the "Consumer Loan Act," R.S.17:10-1 et seq., or a sales finance
41 company, licensed pursuant to the "Retail Installment Sales Act of
42 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall continue as a
43 licensee under this act until July 1, 1997, at which time, if the licensee
44 intends to continue to engage in activities regulated by this act, the
45 licensee shall renew the license as a licensee under the provisions of
46 this act.

1 licenses be examined not more than once every 18 months, but
2 authorizes the commissioner to examine a licensee more frequently if
3 the commissioner has reason to believe such an examination is needed.

4 With respect to mortgage bankers and brokers, the bill:

5 1. prohibits the use of certain words in the name used by the
6 licensee that might lead consumers to believe the licensee is a
7 depository institution; the charging or extracting of fees, commissions
8 or charges not otherwise authorized by the act;

9 2. requires the disbursal of funds in accordance with agreements
10 and in a manner that guarantees that funds dispersed shall be "good
11 funds;"and

12 3. permits the charging of certain fees including, but not limited to,
13 a credit report fee, an appraisal fee, application fee, commitment fee,
14 warehouse fee, fees necessary to reimburse the mortgage bankers for
15 charges imposed by third parties, and discount points.

16 With respect to secondary lenders, the bill:

17 1. requires a certain form for, and certain content in, and prohibits
18 other content from being in an instrument evidencing a secondary
19 mortgage loan;

20 2. permits a secondary mortgage lender to make closed- and
21 open-end loans, which may have either a fixed or variable interest rate,
22 and specifies the conditions which have to be met under variable
23 interest rate loans; and

24 3. provides the specific charges that a secondary mortgage lender
25 may assess in addition to interest including, but not limited to: three
26 discount points, fees with respect to obtaining a clear title, credit
27 report and appraisal fees, recording fees, returned check and late
28 charge fees and an application fee at closing and, on an open end loan,
29 an annual fee of \$50 or 1% of the line of credit, whichever is less.

30 With respect to consumer lenders, the bill:

31 1. permits consumer lenders to make closed- and open-end loans
32 with a fixed or variable interest rate, and specifies the conditions which
33 have to be met under both; and

34 2. permits certain charges including, but not limited to, an amount
35 actually paid a public official for recording of a security interest in
36 connection with security given with a loan, amounts for credit
37 insurance, returned check fee, and an annual fee on open-end accounts
38 which may not exceed an amount equal to one percent of the line of
39 credit or \$50, whichever is less;

40 The bill sets an expiration date for licenses so that all licenses will
41 expire on July 1, 1997, and have to be renewed to begin the next
42 biennial license period on July 1, 1997, under the provisions of this
43 bill, and provides a refund to those licensees whose license extend to
44 the end of December 1997.

45 This bill changes current law in the following ways: it provides for
46 a simpler and more rational licensing and regulation procedure for the

1 Department of Banking and Insurance in connection with the four
2 businesses for which lenders may be licensed; it provides a changed
3 license fee schedule to take into consideration that a person may be
4 licensed to engage in more than one of the businesses for which a
5 person can be licensed; it provides that the net worth and liquid asset
6 requirements are not cumulative if a person seeks to be licensed in
7 more than one business; it places in statute, but does not change, the
8 net worth requirements for mortgage bankers, correspondent mortgage
9 bankers, and mortgage brokers; removes the statutory requirement
10 that branch offices of licensees have to have a licensee in that office
11 for supervisory purposes, but authorizes the commissioner by
12 regulation to require such supervision; permits secondary lenders to
13 charge an application fee at closing and, on open end loans, an annual
14 fee, the amount of which cannot exceed \$50 or one percent of the line
15 of credit, whichever is less; provides that a secondary lender may
16 change the rate of interest on a variable rate closed-end loan after the
17 first six months of the loan instead of after the first 12 months; and
18 provides for an administrative penalty against consumer lenders.

19 The bill repeals the "Consumer Loan Act," R.S.17:10-1 et seq.; the
20 "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et
21 seq.); and P.L.1981, c.18 (17:11B-1 et seq.), as well as laws
22 supplementing those acts.

23

24

25

26

27 Enacts the "New Jersey Licensed Lenders Act."