

[First Reprint]  
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

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Senate SBA committee amendments adopted December 16, 1996.**

1 rate of interest, discount or consideration therefor than the lender  
2 would be permitted by law to charge if he were not a licensee  
3 hereunder, except as authorized by this act and without first obtaining  
4 a license from the commissioner. Any person directly or indirectly  
5 engaging in the business of soliciting or taking applications for such  
6 loans of \$15,000 or less, or in the business of negotiating or arranging  
7 or aiding the borrower or lender in procuring or making such loans of  
8 \$15,000 or less, or in the business of buying, discounting or indorsing  
9 notes, or of furnishing, or procuring guarantee or security for  
10 compensation in amounts of \$15,000 or less, shall be deemed to be  
11 engaging in the consumer loan business.

12 "Commissioner" means the Commissioner of Banking and  
13 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and, if the buyer, as part of the purchase price, executes a secondary  
2 mortgage in favor of the seller.

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

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

18

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

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

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

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

45

46 4. (New section) The <sup>1</sup>[following persons may] requirements of

1 this<sup>1</sup> act <sup>1</sup>[as] which apply to<sup>1</sup> a mortgage banker, mortgage broker or  
2 mortgage solicitor <sup>1</sup>[without obtaining a license under this act] shall  
3 not apply to<sup>1</sup>:

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

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

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

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

23 e. Builders who <sup>1</sup>[broker first mortgage loans] secure mortgages<sup>1</sup>  
24 for their own construction or for sale of their own construction <sup>1</sup>[and  
25 not engaged in the business of a mortgage banker or broker]<sup>1</sup>.

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

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

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

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

45 e. Any employer who provides secondary mortgage loans to his  
46 employees as a benefit of employment which are at an interest rate

1 which is not in excess of the usury rate in existence at the time the  
2 loan is made, as established in accordance with the law of this State,  
3 and on which the borrower has not agreed to pay, directly or  
4 indirectly, any charge, cost, expense or any fee whatsoever, other than  
5 said interest, is not required to be licensed.

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

19

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

24

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

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

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

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

46 d. A person holding a license under this act or as a sales finance

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

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

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

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

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

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

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

38

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

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

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

1 a branch license fee;

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

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

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

9

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

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

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

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

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

25

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

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

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

45

46 12. (New section) Any sale or transfer of a controlling interest in

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

13

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

29

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

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

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

45 d. The commissioner may by regulation: define the term "tangible  
46 net worth;" provide for a phase-in period for licensees acting as

1 mortgage bankers or mortgage brokers to comply with the tangible net  
2 worth requirements of this section; and establish standards for  
3 determining compliance with those requirements and any remedial  
4 action, including suspension of a license, for failure to comply with  
5 those requirements.

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

10

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

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

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

28

29 16. (New section) a. Every applicant for a license as a consumer  
30 lender shall prove in a form satisfactory to the commissioner, that the  
31 applicant has a net worth of at least \$100,000, and has available for  
32 the purpose of making consumer loans liquid assets of at least  
33 \$100,000.

34 b. Every consumer lender shall have at all times a net worth of at  
35 least \$100,000 and shall maintain at all times assets of at least  
36 \$100,000 in liquid form available for or actually used in the making of  
37 consumer loans.

38

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

1 of process.

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

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

8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45  
46 21. (New section) a. A borrower shall not be required to purchase

1 credit life or accident and health insurance or credit involuntary  
2 unemployment insurance in connection with a first mortgage loan, a  
3 secondary mortgage loan or a consumer loan. If the borrower or  
4 borrowers consent thereto in writing, a licensee may obtain or provide:

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

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

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

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

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

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

38

39

**NOTICE TO THE BORROWER**

40

**YOU MAY BE REQUIRED TO PURCHASE PROPERTY  
INSURANCE AS A CONDITION OF RECEIVING THE LOAN.**

41

42

**IF PROPERTY INSURANCE IS REQUIRED, YOU MAY  
SECURE INSURANCE FROM A COMPANY OR AGENT OF  
YOUR OWN CHOOSING.**

43

44

45

46

e. Incident to a consumer loan, a licensee may make available,

1 insurance covering direct or indirect damage or loss, by fire or other  
2 perils, including those of extended coverage, to the personal property  
3 of the borrower all or part of which is security for the loan. The  
4 insurance shall be for an amount and term not to exceed the total  
5 amount of payments and term of the loan.

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

8  
9 **NOTICE TO THE BORROWER**

10 **YOU ARE NOT REQUIRED TO PURCHASE PERSONAL**  
11 **PROPERTY INSURANCE AS A CONDITION OF RECEIVING**  
12 **THE CONSUMER LOAN. IF YOU DESIRE PERSONAL**  
13 **PROPERTY INSURANCE YOU MAY SECURE INSURANCE**  
14 **FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.**  
15

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

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

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

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

44 e. No person or licensee authorized to act as a mortgage banker  
45 or mortgage broker shall pay any commission, bonus or fee to any  
46 person not licensed or not exempt under the provisions of this act in

1 connection with arranging for or originating a mortgage loan for a  
2 borrower, except that a registered mortgage solicitor may be paid a  
3 bonus, commission or fee by his employer.

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

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

9 h. No mortgage banker or mortgage broker shall fail to disburse  
10 funds in accordance with the mortgage banker's or broker's  
11 agreements, unless otherwise ordered by the commissioner or a court  
12 of this State or of the United States.

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

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

30 k. No mortgage banker or mortgage broker shall fail (1) to present  
31 a certified check, cashier's check or bank check for the proceeds of the  
32 first mortgage loan; (2) to arrange an electronic fund transfer for the  
33 proceeds of the loan; or (3) to provide for payment by any other means  
34 which is ethically permissible to the purchaser, acting on the  
35 purchaser's own behalf, or to the attorney for the purchaser, at a  
36 reasonable time and place prior to the time of the mortgage closing  
37 transaction. This subsection shall not prevent a person or licensee  
38 from utilizing any method of payment which is agreed upon by the  
39 person or licensee and the closing agent; nor shall it prevent the person  
40 or licensee from assessing a reasonable charge as set forth by  
41 regulation by the commissioner to reflect the additional cost to the  
42 person or licensee for the issuance of a certified, cashier's or bank  
43 check, an electronic fund transfer, or any other means of payment  
44 which is ethically permissible. That reasonable charge shall be fully  
45 disclosed at application or at or prior to the issuance of the loan  
46 commitment. A "bank check" means a negotiable instrument drawn by

1 a state or federally chartered bank, savings bank or savings and loan  
2 association on itself or on its account in another state or federally  
3 chartered bank, savings bank or savings and loan association doing  
4 business in this State.

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

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

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

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

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

45 c. Upon written request from the borrower, a secondary lender  
46 shall give to the borrower, without charge, within five days from the

1 date of receipt of that request, a written statement of the borrower's  
2 account, which shall show the dates and amounts of all installment  
3 payments on a closed-end loan credited to the borrower's account, the  
4 dates, amounts and explanation of all other charges or credits to the  
5 account and the unpaid balance thereof. A secondary lender shall not  
6 be required to furnish more than two such statements in any 12-month  
7 period.

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

21  
22 26. (New section) An instrument evidencing a secondary mortgage  
23 loan shall:

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

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

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

44

45

"NOTICE TO BORROWER

46

1 Read this promissory note or loan agreement before you sign.

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

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

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

10

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

13 a. A power of attorney to confess judgment;

14 b. An assignment of or order for the payment of any salary,  
15 wages, commissions or any other compensation for services, or any  
16 part thereof, earned or to be earned.

17 c. An agreement to pay any amount other than the unpaid balance  
18 of the promissory note or loan agreement or any other charge  
19 authorized by this act.

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

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

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

31

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

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

1 principal amount of the loan; and

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

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

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

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

26 (1) an application fee at closing; and

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

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

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

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

39 (3) Suit is actually filed by the attorney to whom the promissory  
40 note or loan agreement is referred and subsequently decided in favor  
41 of the secondary lender, in which event the attorney fees shall not  
42 exceed 15% of the first \$500, 10% of the next \$500 and 5% of any  
43 excess amount due and owing under the promissory note or loan  
44 agreement and, provided further that at least 15 days prior to the  
45 commencement of the suit, the secondary lender or his attorney shall  
46 send to the borrower, by certified or registered mail, return receipt

1 requested, at the borrower's last known address, a statement of the  
2 secondary lender's intention to sue, which statement shall also specify  
3 the amount of principal, interest and any other charge due and owing  
4 to the secondary lender.

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

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

28  
29 30. (New section) A secondary lender shall:

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

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

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

- 1       d. If a secondary mortgage loan is not consummated, return all  
2 documents executed by or belonging to the borrower.
- 3       e. When payment is made in cash on an account of a secondary  
4 mortgage loan, give to the borrower, without charge, at the time that  
5 payment is actually received, a written receipt which shall show the  
6 name and address of the licensee, the name and address of the  
7 borrower, account number or other identification mark or symbol, date  
8 and amount paid.
- 9       f. When a closed-end loan is paid in full, or when an open-end loan  
10 is paid in full and the borrower has notified the licensee in writing to  
11 discontinue his account with the licensee:
- 12       (1) Refund or credit to the borrower, in accordance with  
13 regulations promulgated by the commissioner, any unearned portion  
14 of the premium for any insurance, if a premium for such insurance was  
15 disbursed on behalf of the borrower at the time the secondary  
16 mortgage loan was originally made.
- 17       (2) Stamp or write on the face of the promissory note or loan  
18 agreement evidencing the borrower's secondary mortgage loan  
19 indebtedness "Paid in Full" or "Canceled," the date paid and the name  
20 and address of the licensee and, within 45 days, return the promissory  
21 note or loan agreement to the borrower.
- 22       (3) Release any lien on real property and cancel the same of record  
23 pursuant to P.L.1975, c.137 (C.46:18-11.2 et seq.), and, at the time  
24 the promissory note or loan agreement evidencing the borrower's  
25 secondary mortgage loan indebtedness is returned, deliver to the  
26 borrower such good and sufficient assignments, releases or any other  
27 certificate, instrument or document as may be necessary to vest the  
28 borrower with complete evidence of title, insofar as the applicable  
29 secondary mortgage loan is concerned, to the real property, except  
30 that the licensee may require the borrower to pay any charge imposed  
31 upon the licensee by a county recording officer to effect the  
32 cancellation or release.
- 33
- 34       31. (New section) A secondary lender shall not:
- 35       a. Transact any business subject to the provisions of this act under  
36 any other name or at any other location except that designated in his  
37 license. For the purpose of this section, the transaction of business  
38 includes, but is not limited to, the signing of any instrument, document  
39 or any other form by the borrower, except that a borrower's  
40 application for a secondary mortgage loan need not be signed in the  
41 office of the licensee and a secondary mortgage loan need not be  
42 closed at the office of a licensee so long as it is closed in New Jersey  
43 at the office of an attorney admitted to practice in this State.
- 44       b. Request that a borrower incorporate in connection with a  
45 secondary mortgage loan or aid or abet such a scheme.
- 46       c. Make a secondary mortgage loan which has been referred by a

1 retail seller, who, in connection with that referral, has required the  
2 borrower to purchase personal property or services or has indicated  
3 that such a purchase is necessary as a condition precedent for that  
4 loan.

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

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

21

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

28 b. A closed-end consumer loan contract may provide for a  
29 variation in the interest rate in which adjustments to the interest rate  
30 shall correspond directly to the movement of an interest rate index  
31 which is readily available to and verifiable by the borrower and is  
32 beyond the control of the lender. No increase during the entire loan  
33 term shall result in an interest rate of more than 6% per annum over  
34 the rate applicable initially, nor shall the rate be raised more than 3%  
35 per annum during any 12-month period. The lender shall not be  
36 obligated to decrease the interest rate more than 6% over the term of  
37 the loan, nor more than 3% per annum during any 12-month period.  
38 If a rate increase is applied to the loan, the lender shall also be  
39 obligated to adopt and implement uniform standards for decreasing the  
40 rate. If the contract provides for the possibility of an increase or  
41 decrease or both in the rate, that fact shall be clearly described in plain  
42 language, in at least 8-point bold face type on the face of the contract.  
43 No rate increase shall take effect unless (1) at least 90 days prior to  
44 the effective date of the first such increase, or 30 days prior to the  
45 effective date of any subsequent increase, a written notice has been  
46 mailed or delivered to the borrower that clearly and conspicuously

1 describes such increase, and (2) unless at least 365 days have elapsed  
2 without any increase in the rate. Where the loan contract so provides  
3 for an increase or decrease in the rate of interest, the installments may  
4 vary in amount, notwithstanding any other law to the contrary, except  
5 that if the rate increases, the borrower may request, and the lender  
6 shall provide for, either an increase in the amount of the installment  
7 payment or an extension of the term of the loan, or some combination  
8 of an increase in the amount of the installment payment and extension  
9 of the term.

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

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

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

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

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

31 (5) no change in any term of the agreement or of the index  
32 specified in the agreement shall be effective unless: (a) at least 30 days  
33 prior to the effective date of the change, a written notice has been  
34 mailed or delivered to the borrower that clearly and conspicuously  
35 describes the change and the indebtedness to which it applies, and  
36 states that the incurrence by the borrower or another person  
37 authorized by him of any further indebtedness under the law to which  
38 the agreement relates on or after the effective date of the change  
39 specified in the notice shall constitute acceptance of the change; and  
40 (b) either the borrower agrees in writing to the change or the borrower  
41 or another person authorized by him incurs further indebtedness on or  
42 after the effective date of the change stated in that notice, which  
43 indebtedness may include outstanding balances. Any borrower who  
44 fails to use the borrower's account or so to indicate agreement to the  
45 change shall be permitted to pay the outstanding unpaid indebtedness  
46 in the borrower's account in accordance with the terms governing the

1 open-end consumer loan agreement without giving effect to the  
2 change.

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

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

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

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

31

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

1 \$50, whichever is less.

2 b. A consumer lender who violates or participates in the violation  
3 of any provision of sections 3, 19, 20, 21 34, 35 or 36 or subsections  
4 a., b., or c. of section 32, or subsection a. of this section, or  
5 subsections e. or f. of section 41 of this act, shall be guilty of a crime  
6 of the fourth degree. A contract of loan not invalid for any other  
7 reason, in the making or collection of which any act shall have been  
8 done which constitutes a crime of the fourth degree under this section,  
9 shall be void and the lender shall have no right to collect or receive  
10 any principal, interest or charges unless the act was the result of a  
11 good faith error, including a good faith error made as a result of a  
12 licensee's acting in conformity with a rule or regulation of the  
13 commissioner which is later held to be invalid or in violation of any  
14 provision of this act by a judgment of a court of competent  
15 jurisdiction, and the licensee notifies the borrower of the error within  
16 90 days after discovering it and makes adjustments in the account  
17 necessary to assure that the borrower will not be required to pay any  
18 interest, costs, or other charges which aggregate in excess of the  
19 charges permitted under this act. If any interest, consideration or  
20 charges in excess of those permitted are charged, contracted for or  
21 received, except as the result of a good faith error, the consumer  
22 lender may collect only the principal amount of the loan, and may not  
23 collect interest, costs or other charges with respect to the loan. In  
24 addition, a consumer lender who knowingly and willfully violates any  
25 provision of this act shall also forfeit to the borrower three times any  
26 amount of the interest, costs or other charges collected in excess of  
27 that authorized by law.

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

42

43 34. (New section) Every consumer lender, incident to a closed-end  
44 consumer loan, shall:

45 a. Deliver to the borrower at the time a loan is made a statement  
46 in the English language showing in clear and distinct terms the amount

1 and date of the loan and its maturity, the nature of the security, if any,  
2 for the loan, the name and address of the borrower and of the licensee,  
3 the payment schedule, the amount of interest charges, and the annual  
4 percentage rate of interest;

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

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

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

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

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

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

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

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

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

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

- 1 or rates agreed to by the licensee and the borrower.
- 2 b. A consumer lender shall not compound interest on an open-end  
3 consumer loan by adding any unpaid interest authorized by this act to  
4 the principal balance of the borrower's account but the unpaid  
5 principal balance may include other charges permitted by this act.
- 6 c. Interest on an open-end consumer loan shall be computed in  
7 each billing cycle by one of the following methods:
- 8 (1) By converting each yearly rate to a daily rate and multiplying  
9 that daily rate by the applicable portion of the daily unpaid principal  
10 balance of the account, in which case each daily rate is determined by  
11 dividing each yearly rate by 365; or
- 12 (2) By multiplying one-twelfth of each yearly rate by the applicable  
13 portion of the average daily unpaid principal balance of the account in  
14 the billing cycle, in which case the average daily unpaid principal  
15 balance is the sum of the amount unpaid each day during the cycle  
16 divided by the number of days in the cycle; or
- 17 (3) By converting each yearly rate to a daily rate and multiplying  
18 that daily rate by the applicable portion of the average daily unpaid  
19 principal balance of the account in the billing cycle, in which case each  
20 daily rate is determined by dividing each yearly rate by 365, and the  
21 average daily unpaid principal balance is the sum of the amount unpaid  
22 each day during the cycle divided by the number of days in the cycle.
- 23 d. For all of the above methods of computation, the billing cycle  
24 shall be monthly and the unpaid principal balance on any day shall be  
25 determined by adding to any balance unpaid as of the beginning of that  
26 day all advances and other permissible amounts charged to the  
27 borrower and deducting all payments and other credits made or  
28 received that day.
- 29 e. In an open-end consumer loan, the borrower may at any time  
30 pay all or any part of the unpaid balance in his account; or, if the  
31 account is not in default, the borrower may pay the unpaid principal  
32 balance in monthly installments, subject to the following minimum  
33 payment requirements. Minimum monthly payments shall be in an  
34 amount which would result in the full repayment of the initial loan  
35 advance, exclusive of any interest, within the maximum term set forth  
36 for other loans of the same amount in section 35 of this act, except  
37 that the minimum payment for any initial advance not exceeding  
38 \$2,500 shall be in an amount which would result in full repayment of  
39 the initial loan advance within the maximum term of 48 months and 15  
40 days. This minimum payment shall continue at that amount until such  
41 time as an additional advance to the borrower is made, other than for  
42 permitted charges, at which time the minimum monthly payment shall  
43 be determined and shall be in that amount which would result in the  
44 full repayment of the unpaid principal balance of the loan, after the  
45 advance and including the advance, within the maximum term set forth  
46 for the other loans of the same amount, except that if the principal

1 balance of the loan, after the advance and including the advance, does  
2 not exceed \$2,500, the minimum payment shall be in that amount  
3 which would result in full repayment of the principal balance of the  
4 loan within the maximum term of 48 months and 15 days. Minimum  
5 payments after each subsequent advance shall be determined in the  
6 same manner. No minimum payment shall exceed the amount required  
7 to pay the balance in full, including unpaid interest and charges to  
8 date.

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

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

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

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

46 h. No licensee in connection with an open-end consumer loan shall

1 take any confession of judgment or power of attorney, or take any  
2 instrument in which blanks are left to be filled in after the loan is made.

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

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

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

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

45  
46 41. (New section) a. No consumer lender shall make any loan

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

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

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

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

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

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

1 a licensee authorized to engage in the consumer loan business by this  
2 act for a loan of the same amount repayable in the same manner.

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

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

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

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

43  
44 44. (New section) Any agreement to waive any provision of this  
45 act shall be unenforceable and void.

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

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

6       b. Made or executed within this State; or

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

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

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

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

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

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

5  
6 50. Section 7 of P.L.1992, c.66 (C.17:10B-7) is amended to read  
7 as follows:

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

22  
23 51. Section 3 of P.L.1960, c.40 (C.17:16C-3) is amended to read  
24 as follows:

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

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

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

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

39  
40 52. Section 7 of P.L.1960, c.40 (C.17:16C-7) is amended to read  
41 as follows:

42 7. Every application for a new license shall be accompanied by an  
43 application fee of not more than \$300, as established by the  
44 commissioner by regulation. Every sales finance company shall pay to  
45 the commissioner at the time of making the application and biennially  
46 thereafter upon renewal a license fee for its principal place of business

1 and for each additional place of business conducted in this State. The  
2 commissioner shall charge for a license such fee as he shall prescribe  
3 by rule or regulation. [Each fee shall not exceed \$1,000.00.] The  
4 license fee, as prescribed by the commissioner by regulation, shall be  
5 based on the number of the following activities in which the person is  
6 licensed to act: as a mortgage banker or mortgage broker, as a  
7 secondary mortgage lender, as a consumer lender, or as a sales finance  
8 company. The fee shall be set according to the following schedule:

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

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

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

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

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

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

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

29

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

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

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

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

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

45 (d) Willfully misrepresented or failed to disclose any of the material  
46 particulars or the nature thereof required to be stated or furnished to

1 the retail buyer under this act or any other laws of this State relating  
2 to retail installment contracts or retail charge accounts;

3 (e) Knowingly taken any instrument evidencing a retail installment  
4 contract which was signed in blank; or

5 (f) Otherwise demonstrated unworthiness, bad faith or  
6 dishonesty.]

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

13 (1) violated any of the provisions of P.L.1960, c.40 (C.17:16C-1  
14 et seq.) or any order, rule or regulation made or issued pursuant to  
15 that 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 transacting 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 to him as an individual.

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

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

37

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

1 intends to continue to engage in activities regulated by this act, the  
2 licensee shall renew the license as a licensee under the provisions of  
3 this act.

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

11

12 55. The following are repealed:

13 The "Consumer Loan Act," R.S.17:10-1 through 17:10-3 and  
14 17:10-5 through 17:10-26);

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

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

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

18 The "Secondary Mortgage Loan Act," P.L.1970, c.205

19 (C.17:11A-34 through 17:11A-38, 17:11A-41 through 17:11A-55,

20 17:11A-57 and 17:11A-59 through 17:11A-63);

21 P.L.1987, c.230, s.4-7 and 19-23 (C.17:11A-45.1, 17:11A-39.1,

22 17:11A-45.2 and 17:11A-45.3, 17:11A-44.7 through 17:11A-44.9 and

23 17:11A-59.1 and 17:11A-59.2);

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

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

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

27

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

30

31

32

33

34 Enacts the "New Jersey Licensed Lenders Act."