

ASSEMBLY, No. 1594

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Requires licensing of mortgage originators; revises "New Jersey Licensed Lenders Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the licensing of mortgage originators,
2 amending and supplementing P.L.1996, c.157 and amending
3 P.L.2005, c.199.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 2 of P.L.1996, c.157 (C.17:11C-2) is amended to
9 read as follows:

10 2. As used in this act:

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

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

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

28 "Closed-end loan" with respect to a consumer loan means a loan
29 which meets the requirements of section 35 of P.L.1996, c.157
30 (C.17:11C-35) and pursuant to which the licensee advances a
31 specified amount of money and the borrower agrees to repay the
32 principal and interest in substantially equal installments over a
33 stated period of time.

34 "Consumer loan business" means the business of making loans of
35 money, credit, goods or things in action, which are to be used
36 primarily for personal, family or household purposes, in the amount
37 or value of \$50,000 or less and charging, contracting for, or
38 receiving a greater rate of interest, discount or consideration
39 therefor than the lender would be permitted by law to charge if he
40 were not a licensee hereunder, except as authorized by this act and
41 without first obtaining a license from the commissioner. Any
42 person directly or indirectly engaging in the business of soliciting
43 or taking applications for such loans of \$50,000 or less, or in the
44 business of negotiating or arranging or aiding the borrower or
45 lender in procuring or making such loans of \$50,000 or less, or in

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

Matter underlined thus is new matter.

1 the business of buying, discounting or indorsing notes, or of
2 furnishing, or procuring guarantee or security for compensation in
3 amounts of \$50,000 or less, shall be deemed to be engaging in the
4 consumer loan business.

5 "Commissioner" means the Commissioner of Banking and
6 Insurance.

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

10 "Consumer loan" means a loan of \$50,000 or less made by a
11 consumer lender, payable in one or more installments, pursuant to
12 the terms of this act, and not a first mortgage loan or a secondary
13 mortgage loan.

14 "Controlling interest" means ownership, control or interest of
15 25% or more of the licensee or applicant.

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

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

23 "Depository institution" means a state or federally chartered
24 bank, savings bank, savings and loan association, building and loan
25 association or credit union, irrespective of whether the entity
26 accepts deposits.

27 "First mortgage loan" means any loan secured by a first
28 mortgage on real property on which there is located a one to **[six]**
29 **four** family dwelling, a portion of which may be used for
30 nonresidential purposes.

31 "Licensee" means a person who is licensed under this act, or who
32 should be so licensed.

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

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

46 "Mortgage originator" means any person not licensed as a
47 mortgage banker, correspondent mortgage banker, or mortgage

1 broker who is employed as a mortgage originator by one, and not
2 more than one, licensee, who is subject to the direct supervision and
3 control of that licensee, and who solicits, provides, or accepts first
4 mortgage loan applications in other than a clerical or ministerial
5 fashion but does not influence the decision of the borrower as to the
6 loan product or terms of the loan product to be selected, or assists
7 borrowers in completing first mortgage loan applications, and
8 whose compensation is in any way based on the dollar amount or
9 volume of first mortgage loan applications, first mortgage loan
10 closings or other first mortgage loan activity.

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

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

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

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

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

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

31 "Primary market" means the market wherein first mortgage loans
32 are originated between a lender and a borrower, whether or not
33 through a mortgage broker or other conduit, and shall not include
34 the sale or acquisition of a mortgage loan after a mortgage loan is
35 closed.

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

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

41 "Secondary mortgage loan" means a loan made to an individual,
42 association, joint venture, partnership, limited partnership
43 association, limited liability company, trust, or any other group of
44 individuals, however organized, except a corporation, which is
45 secured in whole or in part by a lien upon any interest in real
46 property, including but not limited to shares of stock in a
47 cooperative corporation, created by a security agreement, including

1 a mortgage, indenture, or any other similar instrument or document,
2 which real property is subject to one or more prior mortgage liens
3 and on which there is erected a structure containing one, two, three,
4 four, five or six dwelling units, a portion of which structure may be
5 used for nonresidential purposes, except that the following loans
6 shall not be subject to the provisions of this act: (1) a loan which is
7 to be repaid in 90 days or less; (2) a loan which is taken as security
8 for a home repair contract executed in accordance with the
9 provisions of the "Home Repair Financing Act," P.L.1960, c.41
10 (C.17:16C-62 et seq.); or (3) a loan which is the result of the private
11 sale of a dwelling, if title to the dwelling is in the name of the seller
12 and the seller has resided in that dwelling for at least one year, if
13 the buyer is purchasing that dwelling for his own residence and, if
14 the buyer, as part of the purchase price, executes a secondary
15 mortgage in favor of the seller.

16 "Secondary mortgage loan business" means advertising, causing
17 to be advertised, soliciting, negotiating, offering to make or making
18 a secondary mortgage loan in this State, whether directly or by any
19 person acting for his benefit.

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

29 (cf: P.L.2001, c.294, s.1)

30

31 2. Section 3 of P.L.1996, c.157 (C.17:11C-3) is amended to
32 read as follows:

33 3. a. No person shall act as a mortgage banker **【or】**, mortgage
34 broker or mortgage originator, engage in the secondary mortgage
35 loan business or engage in the consumer loan business without first
36 obtaining a license under this act, except that a person licensed as a
37 mortgage banker may act as a mortgage broker or mortgage
38 **【solicitor】** originator, and a person licensed as a mortgage broker
39 may act as a mortgage **【solicitor】** originator.

40 b. The department shall issue licenses under this act which
41 specify whether a licensee may act as a mortgage banker **【or】**,
42 mortgage broker, or mortgage originator, a secondary lender or a
43 consumer lender. A licensee may not engage in a licensed activity
44 under the act unless the license issued by the department specifies
45 that the licensee may engage in that licensed activity.

1 c. [No person shall act as a solicitor without first being
2 registered with the department.] (Deleted by amendment,
3 P.L. , c.) (pending before the Legislature as this bill)

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

16 (cf: P.L.1996, c.157, s.3)

17
18 3. Section 4 of P.L.1996, c.157 (C.17:11C-4) is amended to
19 read as follows:

20 4. The requirements of this act which apply to a mortgage
21 banker, mortgage broker or mortgage ~~[solicitor]~~ originator shall not
22 apply to :

23 a. Depository institutions and insurance companies; but
24 subsidiaries and service corporations of these institutions or
25 companies and employees thereof shall not be exempt.

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

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

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

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

44 (cf: P.L.1996, c.157, s.4)

45
46 4. Section 7 of P.L.1996, c.157 (C.17:11C-7) is amended to read
47 as follows:

1 7. The commissioner shall issue a license under this act, as
2 amended and supplemented, if the following conditions are met:

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

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

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

23 d. A person holding a license under this act or as a sales
24 finance company pursuant to the "Retail Installment Sales Act of
25 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), who is in full
26 compliance with this act, the "Retail Installment Sales Act of 1960,"
27 and the regulations promulgated thereunder, as applicable, may
28 apply to the commissioner for a license to act as a mortgage banker
29 [or], mortgage broker, or mortgage originator, a secondary lender,
30 a consumer lender or a sales finance company, or any combination
31 of these capacities for which the person is not already licensed, by
32 filing with the commissioner an abbreviated application containing
33 the information which the commissioner deems necessary when
34 considering whether to license that person for that specific activity,
35 an application fee, and the necessary additional license fee.

36 e. (1) Any applicant for a license pursuant to this section and
37 any officer, director, partner or owner of a controlling interest of a
38 corporation or partnership filing for licensure shall submit to the
39 commissioner the applicant's name, address, fingerprints and
40 written consent for a criminal history record background check to
41 be performed. The commissioner is authorized to exchange
42 fingerprint data with and receive criminal history record
43 information from the State Bureau of Identification in the Division
44 of State Police and the Federal Bureau of Investigation consistent
45 with applicable State and federal laws, rules and regulations, for the
46 purposes of facilitating determinations concerning licensure
47 eligibility. The applicant shall bear the cost for the criminal history

1 record background check, including all costs of administering and
2 processing the check. The Division of State Police shall promptly
3 notify the commissioner in the event a current holder of a license or
4 prospective applicant, who was the subject of a criminal history
5 record background check pursuant to this section, is arrested for a
6 crime or offense in this State after the date the background check
7 was performed.

8 (2) Within 60 days of the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill), any person registered
10 as a solicitor shall submit to the commissioner the information
11 required by this subsection for purposes of becoming licensed as a
12 mortgage originator as required by this amendatory and
13 supplementary act, P.L. , c. (C.) (pending before the
14 Legislature as this bill).

15 (cf: P.L.2003, c.199, s.10)

16

17 5. Section 8 of P.L.1996, c.157 (C.17:11C-8) is amended to
18 read as follows:

19 8. a. **【Every】** Except as provided in subsection c. of this
20 section, every application for an initial license shall be accompanied
21 by a nonrefundable application fee as set forth in subsection d. of
22 this section. When the applicant at the same time seeks a license to
23 engage in more than one activity, only one application fee may be
24 charged. With respect to a license fee imposed prior to the
25 implementation of the assessment pursuant to P.L.2005, c.199
26 (C.17:1C-33 et al.), the license fee, as prescribed by the
27 commissioner by regulation, shall be based on the number of the
28 following activities in which the person is licensed to engage under
29 this act or the "Retail Installment Sales Act of 1960," P.L.1960,
30 c.40 (C.17:16C-1 et seq.): a mortgage banker or mortgage broker;
31 a secondary lender; a consumer lender; or a sales finance company.
32 The fee for a biennial license or a renewal thereof shall be set
33 according to the following schedule:

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

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

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

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

42 Upon implementation of the assessment pursuant to P.L.2005,
43 c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed
44 or collected by the commissioner pursuant to this section. A license
45 shall run from the date of issuance to the end of a term of not less
46 than two years as set by the commissioner by regulation.

47 b. (Deleted by amendment, P.L.2007, c.81).

1 c. An applicant for a mortgage ~~【solicitor registration pursuant~~
2 ~~to subsection c. of section 3 of P.L.1996, c.157 (C.17:11C-3)】~~
3 ~~originator license~~ shall be subject to a nonrefundable mortgage
4 ~~【solicitor registration】~~ ~~originator licensing~~ application fee~~【, not to~~
5 ~~exceed】~~ of \$100 ~~【as established by the commissioner by~~
6 ~~regulation】~~, ~~except that in the case of any mortgage banker or~~
7 ~~mortgage broker who employs not less than 50 mortgage originators~~
8 ~~and pays the licensing fee for each of his employees that mortgage~~
9 ~~banker or mortgage broker shall be subject to a fee of \$50 for each~~
10 ~~licensing application and to a maximum amount of \$50,000 per year~~
11 ~~in application fees.~~ A ~~【solicitor】~~ ~~mortgage originator~~ who changes
12 his ~~【registration】~~ ~~license~~ to a different ~~【licensee】~~ ~~licensed~~
13 ~~mortgage banker or mortgage broker~~ shall be required to submit a
14 new ~~【registration】~~ ~~licensure~~ application and to pay another
15 nonrefundable application fee.

16 d. ~~【An】~~ ~~Except for an applicant for a mortgage originator~~
17 ~~license, each~~ applicant shall pay to the commissioner at the time of
18 the initial application for a license a nonrefundable application fee
19 not to exceed the amounts specified in this subsection:

20 (1) For an application for one activity, an application fee not to
21 exceed \$700;

22 (2) For an application for two activities, an application fee not
23 to exceed \$1,000;

24 (3) For an application for three activities, an application fee not
25 to exceed \$1,300; and

26 (4) For an application for four activities, an application fee not
27 to exceed \$1,600.

28 e. A licensee that seeks to add an additional activity to an
29 existing license shall pay a fee not to exceed \$300 per activity.

30 f. Fee amounts shall be prescribed by the commissioner by
31 regulation.

32 (cf: P.L.2007, c.81, s.7)

33
34 6. Section 9 of P.L.1996, c.157 (C.17:11C-9) is amended to
35 read as follows:

36 9. a. A licensee, ~~other than a mortgage originator,~~ may
37 maintain a branch office or offices. The licensee shall license all
38 branch offices in this State and all branch offices outside this State
39 from which the licensee has direct contact with New Jersey
40 consumers regarding origination or brokering.

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

42 (1) The licensee has submitted a completed application form and
43 a branch application fee pursuant to the schedule provided in
44 subsection d. of section 8 of P.L.1996, c.157 (C.17:11C-8);

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

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

3 c. (Deleted by amendment, P.L.2007, c.81).
4 (cf: P.L.2007, c.81, s.8)
5

6 7. Section 10 of P.L.1996, c.157 (C.17:11C-10) is amended to
7 read as follows:

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

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

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

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

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

24 f. If a licensed mortgage originator is terminated, discharged or
25 otherwise terminates the relationship with a mortgage banker,
26 correspondent mortgage banker, or mortgage broker, the mortgage
27 banker, correspondent mortgage banker, or mortgage broker, as the
28 case may be, shall return to the mortgage originator his license
29 within five business days of such termination or discharge. A
30 mortgage banker, correspondent mortgage banker, or mortgage
31 broker who fails to return a mortgage originator license shall be
32 subject to a fine of \$250 and an additional fine of \$25 per day for
33 each additional day thereafter that the license is not returned.

34 (cf: P.L.1996, c.157, s.10)
35

36 8. Section 18 of P.L.1996, c.157 (C.17:11C-18) is amended to
37 read as follows:

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

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

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

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

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

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

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

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

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

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

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

37 (cf: P.L.1996, c.157, s.18)

38

39 9. Section 21 of P.L.1996, c.157 (C.17:11C-21) is amended to
40 read as follows:

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

- 1 (1) Insurance on the life and on the health or disability, or both,
2 of one borrower, and on the lives, health or disability of two
3 borrowers pursuant to the provisions of N.J.S.17B:29-1 et seq.; and
4 (2) Credit involuntary unemployment insurance in accordance
5 with forms and rates filed and approved by the commissioner
6 pursuant to applicable regulations.
- 7 b. If a licensee obtains or provides any credit insurance for a
8 borrower or borrowers pursuant to subsection a. of this section, a
9 licensee may deduct from the principal of a loan and retain an
10 amount equal to the premium lawfully charged by the insurance
11 company. The premium may be charged monthly in the case of an
12 open-end loan or open-end consumer loan. The amount so deducted
13 and retained shall not be considered a prohibited charge or amount
14 of any examination, service, brokerage, commission, expense, fee
15 or bonus or other thing or otherwise.
- 16 c. If a borrower or borrowers obtain such insurance from or
17 through a licensee pursuant to subsection a. of this section, the
18 licensee shall show the amount of the charge for the insurance and
19 cause to be delivered to the borrower or borrowers a copy of the
20 policy, certificate or other evidence of that insurance when the loan
21 is made. Nothing in this act shall prohibit the licensee from
22 collecting the premium or identifiable charge for insurance
23 permitted by this section and from receiving and retaining any
24 dividend, or any other gain or advantage resulting from that
25 insurance.
- 26 d. A licensee may require a borrower to demonstrate that the
27 property securing a first mortgage loan or secondary mortgage loan
28 is insured against damage or loss due to fire and other perils,
29 including those of extended coverage, for a term not to exceed the
30 term of the loan and in an amount not to exceed the amount of the
31 loan, together with the amount needed to satisfy all prior liens on
32 that property.
- 33 The licensee shall provide the borrower with the following
34 written statement, to be printed in at least 10-point bold type:
- 35 **NOTICE TO THE BORROWER**
- 36 **YOU MAY BE REQUIRED TO PURCHASE PROPERTY**
37 **INSURANCE AS A CONDITION OF RECEIVING THE LOAN.**
- 38 **IF PROPERTY INSURANCE IS REQUIRED, YOU MAY**
39 **SECURE INSURANCE FROM A COMPANY OR AGENT OF**
40 **YOUR OWN CHOOSING.**
- 41 e. Incident to a consumer loan, a licensee may make available,
42 insurance covering direct or indirect damage or loss, by fire or other
43 perils, including those of extended coverage, to the personal
44 property of the borrower all or part of which is security for the loan.
45 The insurance shall be for an amount and term not to exceed the
46 total amount of payments and term of the loan.

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

3 NOTICE TO THE BORROWER

4 YOU ARE NOT REQUIRED TO PURCHASE PERSONAL
5 PROPERTY INSURANCE AS A CONDITION OF RECEIVING
6 THE CONSUMER LOAN. IF YOU DESIRE PERSONAL
7 PROPERTY INSURANCE YOU MAY SECURE INSURANCE
8 FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.
9 (cf: P.L.1999, c.250, s.2)

10
11 10. Section 22 of P.L.1996, c.157 (C.17:11C-22) is amended to
12 read as follows:

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

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

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

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

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

- 1 f. No person shall obtain or attempt to obtain a license by fraud
2 or misrepresentation.
- 3 g. No mortgage banker or mortgage broker shall misrepresent,
4 circumvent, or conceal the nature of any material particular of any
5 transaction to which the mortgage banker or broker is a party.
- 6 h. No mortgage banker or mortgage broker shall fail to
7 disburse funds in accordance with the mortgage banker's or broker's
8 agreements, unless otherwise ordered by the commissioner or a
9 court of this State or of the United States.
- 10 i. No mortgage banker or mortgage broker shall fail without
11 good cause to account or deliver to any person any personal
12 property, money, fund, deposit, check, draft, mortgage, document or
13 thing of value, which is not the mortgage banker's or broker's
14 property, or which the mortgage banker or broker is not in law or
15 equity entitled to retain under the circumstances, at the time which
16 has been agreed upon, or is required by law or, in the absence of a
17 fixed time, upon demand of the person entitled to such accounting
18 and delivery.
- 19 j. No person or licensee shall fail to place in escrow,
20 immediately upon receipt, any money, fund, deposit, check or draft
21 entrusted to him by any person dealing with him as a mortgage
22 banker or mortgage broker, in a manner approved by the
23 commissioner, or to deposit the funds in a trust or escrow account
24 maintained by him with a financial institution the deposits of which
25 are insured by the Federal Deposit Insurance Corporation or [the
26 Federal Savings and Loan Insurance Corporation] its successor,
27 wherein the funds shall be kept until the disbursement thereof is
28 properly authorized.
- 29 k. If a mortgage banker or mortgage broker provides loan
30 proceeds to a closing agent for the purpose of closing and settling a
31 mortgage transaction the mortgage banker or mortgage broker shall
32 not fail (1) to present a certified check, cashier's check, teller's
33 check or bank check for the proceeds of the first mortgage loan; (2)
34 to arrange an electronic fund transfer for the proceeds of the loan;
35 or (3) to provide for payment by cash to the closing agent at a
36 reasonable time and place prior to the time of the mortgage closing
37 transaction. The closing agent shall deposit the loan proceeds in a
38 trust or escrow account, which shall not be commingled with the
39 agent's own funds, and shall disburse the loan proceeds upon the
40 closing or settlement in accordance with the settlement documents.
41 Nothing contained in this subsection k. shall require a mortgage
42 banker or mortgage broker to utilize a closing agent, nor prevent the
43 mortgage banker or mortgage broker from directly disbursing loan
44 proceeds from the account of the mortgage banker or mortgage
45 broker to the mortgagor and other persons entitled to receive
46 disbursements from the settlement if a closing agent is not used.
47 Nothing contained in this subsection k. shall prevent the person or

1 licensee from assessing a reasonable charge as set forth by
2 regulation by the commissioner to reflect the additional cost to the
3 person or licensee for the issuance of a certified, cashier's, teller's or
4 bank check or for arranging an electronic fund transfer. That
5 reasonable charge shall be fully disclosed at application or at or
6 prior to the issuance of the loan commitment. A "bank check"
7 means a negotiable instrument drawn by a state or federally
8 chartered bank, savings bank or savings and loan association on
9 itself or on its account in another state or federally chartered bank,
10 savings bank or savings and loan association doing business in this
11 State. A "teller's check" means a draft drawn by a bank on another
12 bank, or payable at or through a bank.
13 (cf: P.L.1997, c.290, s.1)

14

15 11. Section 43 of P.L.1996, c.157 (C.17:11C-43) is amended to
16 read as follows:

17 43. A licensee, other than a mortgage originator, shall annually
18 file a report with the commissioner which shall set forth such
19 information as the commissioner shall require concerning the
20 business conducted as a licensee during the preceding calendar
21 year. The report shall be under oath and in a form and within the
22 time specified by the commissioner by regulation.

23 A licensee that fails to make and file its annual report in the form
24 and within the time provided in this section shall be subject to a
25 penalty of not more than \$100 for each day's failure, and the
26 commissioner may revoke or suspend its authority to do business in
27 this State. The penalty may be collected in a summary proceeding
28 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
29 c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a
30 summons.

31 (cf: P.L.2007, c.81, s.10)

32

33 12. Section 13 of P.L.2005, c.199 (C.17:1C-45) is amended to
34 read as follows:

35 13. a. Notwithstanding any law or regulation to the contrary, a
36 regulated entity paying the amounts assessed to it in statements of
37 the assessment made pursuant to section 3 of this act shall be
38 exempt from all fees or charges imposed by the division pursuant to
39 any other provision of law or regulation, except for:

40 (1) charter fees;

41 (2) application fees for licenses;

42 (3) mortgage **【solicitor registration】** originator licensing
43 application fees;

44 (4) fees for entry by a foreign depository institution whether
45 from another state of the United States or from another country into
46 New Jersey for branch, trust or other activities;

1 (5) fees charged under the "Governmental Unit Deposit
2 Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);

3 (6) fees charged any entity not chartered, licensed or registered
4 by this State, including but not limited to activities conducted by
5 foreign banks pursuant to section 316 of P.L.1948, [c.47] c.67
6 (C.17:9A-316) or foreign associations pursuant to section 214 of
7 P.L.1963, c.144 (C.17:12B-214); and

8 (7) fees charged qualified corporations authorized pursuant to
9 section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either
10 registrar and transfer agent activities or activities permitted for
11 qualified educational institutions.

12 b. Nothing in this section shall exempt a regulated entity from
13 paying any fine or penalty imposed by the commissioner for a
14 violation of a statute or regulation.

15 c. Except as provided in paragraph (1) of subsection d. of
16 section 7 of the "New Jersey Home Ownership Security Act of
17 2002," P.L.2003, c.64 (C.46:10B-28), all fees, charges, fines and
18 penalties as described in subsections a. and b. of this subsection
19 shall be remitted to the State Treasurer for deposit into the General
20 Fund, and those fees, charges, fines and penalties shall not be part
21 of the assessment funding mechanism or considered in the
22 calculation pursuant to section 15 of this act.

23 (cf: P.L.2005, c.199, s.13)
24

25 13. (New section) Upon payment to the Department of Banking
26 and Insurance of a fee and the submission of a written application
27 on forms provided by it, the department shall issue a temporary
28 license to a person who has applied for licensure as a mortgage
29 originator, provided that the applicant meets the requirements of
30 subsection b. of section 7 of P.L.1996, c.157 (C.17:11C-7) and of
31 section 14 of P.L. , c. (C.) (pending before the Legislature as
32 this bill). The temporary license shall be valid pending a decision
33 by the department of the person's application for licensure as a
34 mortgage originator.
35

36 14. (New section) a. Commencing February 1, 2008, an
37 applicant for licensure as a mortgage originator, including any
38 applicant currently registered as a solicitor, shall demonstrate to the
39 commissioner that he has satisfactorily completed not less than 20
40 hours of live classroom instruction in a course or program of study
41 regarding the first mortgage loan business, including, as determined
42 by the commissioner, instruction concerning the ethical
43 responsibilities of a mortgage originator, relevant State law that
44 includes provisions of the "New Jersey Licensed Lenders Act,"
45 P.L.1996, c.157 (C.17:11C-1 et seq.), and relevant federal law that
46 includes provisions of the "Real Estate Settlement Procedures Act
47 of 1974," Pub.L.93-533 (12 U.S.C. s.2601 et seq.), the "Truth in

1 Lending Act,” title I of Pub.L.90-321 (15 U.S.C. s.1601 et seq.),
2 and the “Equal Credit Opportunity Act,” title VII of Pub.L.90-321
3 (15 U.S.C. s.1691 et seq.).

4 b. The commissioner shall:

5 (1) Establish standards for the education of mortgage originators
6 as required in subsection a. of this section, including the content of
7 courses of study;

8 (2) Approve educational programs offering classroom
9 instruction and the qualification of instructors; and

10 (3) Approve other equivalent educational programs and
11 establish procedures for the issuance of credit upon satisfactory
12 proof of the completion of these programs.

13
14 15. (New section) a. The commissioner shall require each
15 person licensed as a mortgage originator, as a condition for biennial
16 license renewal pursuant to this amendatory and supplementary act,
17 to complete not less than 12 credit hours of continuing education
18 requirements imposed by the commissioner pursuant to this section.

19 b. The commissioner shall:

20 (1) Establish standards for the continuing education of mortgage
21 originators, including the subject matter and content of courses of
22 study;

23 (2) Approve educational programs offering continuing education
24 credits and the qualification of instructors; and

25 (3) Approve other equivalent educational programs and
26 establish procedures for the issuance of credit upon satisfactory
27 proof of the completion of these programs.

28 c. The commissioner may, in his discretion, waive
29 requirements for continuing education on an individual basis for
30 reasons of hardship such as illness or disability, retirement of the
31 license, or other good cause.

32
33 16. This act shall take effect on the 180th day following
34 enactment.

35
36
37 STATEMENT

38
39 This bill revises the “New Jersey Licensed Lenders Act” to
40 mandate the licensing of mortgage originators. Under current law,
41 loan solicitors are required to register with the Department of
42 Banking and Insurance and pay a registration fee.

43 The definition of “mortgage originator” in the bill, which is
44 changed from the current statutory definition of “solicitor,” includes
45 any individual, other than a licensed mortgage banker,
46 correspondent mortgage banker, or mortgage broker, who solicits,
47 provides, or accepts first mortgage loan applications in other than a

1 clerical or ministerial fashion but does not influence the decision of
2 the borrower as to the loan product or terms of the loan product to
3 be selected, or assists borrowers in completing first mortgage loan
4 applications, and whose compensation is in any way based on the
5 dollar amount or volume of first mortgage loan applications, first
6 mortgage loan closings or other first mortgage loan activity. The
7 bill revises the definition of "first mortgage loan" to mean first
8 mortgages on one to four family dwellings.

9 The bill, by requiring mortgage originators to be licensed under
10 the provisions of the "New Jersey Licensed Lenders Act," subjects
11 mortgage originators to meeting the examination and educational
12 provisions necessary to obtain a license as contained in subsection
13 b. of section 7 of P.L.1996, c.157 (C.17:11C-7). Thus, an applicant
14 for a mortgage originator license shall qualify by examination, the
15 content and form of which shall be approved by the Commissioner
16 of Banking and Insurance. The commissioner may designate an
17 independent testing service to prepare and administer the
18 examinations. Additionally, the commissioner by regulation may
19 establish additional requirements for licensure, including education
20 and experience.

21 In addition, as provided in subsection e. of the aforementioned
22 section 7, an applicant for a mortgage originator license shall
23 submit to the commissioner the applicant's name, address,
24 fingerprints and written consent for a criminal history record
25 background check to be performed. The commissioner is
26 authorized to exchange fingerprint data with and receive criminal
27 history record information from the State Bureau of Identification
28 in the Division of State Police and the Federal Bureau of
29 Investigation consistent with applicable State and federal laws,
30 rules and regulations, for the purposes of facilitating determinations
31 concerning licensure eligibility. The applicant shall bear the cost
32 for the criminal history record background check, including all
33 costs of administering and processing the check.

34 The bill also provides that commencing February 1, 2008, an
35 applicant for licensure as a mortgage originator, including any
36 applicant currently registered as a loan solicitor, shall demonstrate
37 to the commissioner that he has satisfactorily completed not less
38 than 20 hours of live classroom instruction in a course or program
39 of study regarding the first mortgage loan business.

40 Furthermore, the bill requires each person licensed as a mortgage
41 originator to complete not less than 12 credit hours of continuing
42 education as a condition for biennial license renewal.