

P.L.1999, CHAPTER 250, *approved October 15, 1999*
Assembly, No. 2255

1 **AN ACT** concerning licensed lenders and amending P.L.1996, c.157
2 and P.L.1960, c.40.

3

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

6

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

9 2. As used in this act:

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

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

17 "Closed-end loan" with respect to a secondary mortgage loan
18 means a **【secondary】** mortgage loan pursuant to which the licensee
19 advances a specified amount of money and the borrower agrees to
20 repay the principal and interest in substantially equal installments over
21 a stated period of time, except that: (1) the amount of the final
22 installment payment may be substantially greater than the previous
23 installments if the term of the loan is at least 36 months, or under 36
24 months if the remaining term of the first mortgage loan is under 36
25 months; or (2) the amount of the installment payments may vary as a
26 result of the change in the interest rate as permitted by this act.
27 "Closed-end loan" with respect to a consumer loan means a loan which
28 meets the requirements of section 35 of P.L.1996, c.157 (C.17:11C-
29 35) and pursuant to which the licensee advances a specified amount
30 of money and the borrower agrees to repay the principal and interest
31 in substantially equal installments over a stated period of time.

32 "Consumer loan business" means the business of making loans of
33 money, credit, goods or things in action in the amount or value of
34 \$15,000 or less and charging, contracting for, or receiving a greater
35 rate of interest, discount or consideration therefor than the lender
36 would be permitted by law to charge if he were not a licensee
37 hereunder, except as authorized by this act and without first obtaining
38 a license from the commissioner. Any person directly or indirectly
39 engaging in the business of soliciting or taking applications for such
40 loans of \$15,000 or less, or in the business of negotiating or arranging
41 or aiding the borrower or lender in procuring or making such loans of

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 \$15,000 or less, or in the business of buying, discounting or indorsing
2 notes, or of furnishing, or procuring guarantee or security for
3 compensation in amounts of \$15,000 or less, shall be deemed to be
4 engaging in the 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 \$15,000 or less made by a
11 consumer lender pursuant to the terms of this act, and not a first
12 mortgage loan or a secondary mortgage loan.

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

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

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

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

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

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

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

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

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

1 whereby:

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

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

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

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

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

18 "Primary market" means the market wherein first mortgage loans
19 are originated between a lender and a borrower, whether or not
20 through a mortgage broker or other conduit, and shall not include the
21 sale or acquisition of a mortgage loan after a mortgage loan is closed.

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

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

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

1 mortgage in favor of the seller.

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

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

18 (cf: P.L.1996, c.157, s.2)

19

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

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

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

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

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

42 c. If a borrower or borrowers obtain such insurance from or
43 through a licensee, the licensee shall show the amount of the charge
44 for the insurance and cause to be delivered to the borrower or
45 borrowers a copy of the policy, certificate or other evidence of that
46 insurance when the loan is made. Nothing in this act shall prohibit the

1 licensee from collecting the premium or identifiable charge for
2 insurance permitted by this section and from receiving and retaining
3 any dividend, or any other gain or advantage resulting from that
4 insurance.

5 d. A licensee may require a borrower to demonstrate that the
6 property securing a first mortgage loan or secondary mortgage loan is
7 insured against damage or loss due to fire and other perils, including
8 those of extended coverage, for a term not to exceed the term of the
9 loan and in an amount not to exceed the amount of the **secondary**
10 loan, together with the amount needed to satisfy all prior liens on that
11 property.

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

14 **NOTICE TO THE BORROWER**

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

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

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

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

28 **NOTICE TO THE BORROWER**

29 **YOU ARE NOT REQUIRED TO PURCHASE PERSONAL**
30 **PROPERTY INSURANCE AS A CONDITION OF RECEIVING**
31 **THE CONSUMER LOAN. IF YOU DESIRE PERSONAL**
32 **PROPERTY INSURANCE YOU MAY SECURE INSURANCE**
33 **FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.**

34 (cf: P.L.1996, c.157, s.21)

35

36 3. Section 23 of P.L.1996, c.157 (C.17:11C-23) is amended to
37 read as follows:

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

46 b. Notwithstanding the provisions of any other law, a person

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

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

8 (cf: P.L.1996, c.157, s.23)

9
10 4. Section 28 of P.L.1996, c.157 (C.17:11C-28) is amended to
11 read as follows:

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

20 (1) A secondary lender may charge and receive no more than three
21 discount points computed as a percentage of the principal amount of
22 the loan and may add such discount points to the principal balance of
23 the loan, which discount points shall be fully earned when the loan is
24 made. The annual percentage rate charged to the borrower, including
25 the discount points, if any, shall be subject to N.J.S.2C:21-19. As
26 used in this paragraph, "discount point" means one percent of the
27 principal amount of the loan, and "principal amount of the loan" means
28 the total amount of credit extended, including all loan closing fees,
29 expenses or costs that are financed, but excluding the discount points;
30 and

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

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

43 c. Secondary lenders shall also have the authority to charge and
44 collect a returned check fee in an amount not to exceed \$20 which the
45 secondary lender may charge the borrower if a check of the borrower
46 is returned to the licensee uncollected due to insufficient funds in the

1 borrower's account. Licensees shall also have the authority to charge
2 and collect a late charge in any amount as may be provided in the note
3 or loan agreement, but no late charge shall exceed 5% of the amount
4 of payment in default. Not more than one late charge shall be assessed
5 on any one payment in arrears.

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

9 (1) an application fee at closing; and

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

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

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

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

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

34 (cf: P.L.1996, c.157, s.28)

35

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

38 7. Every application for a new license shall be accompanied by an
39 application fee of not more than **[\$300]** \$500, as established by the
40 commissioner by regulation. Every sales finance company shall pay to
41 the commissioner at the time of making the application and biennially
42 thereafter upon renewal a license fee for its principal place of business
43 and for each additional place of business conducted in this State. The
44 commissioner shall charge for a license such fee as he shall prescribe
45 by rule or regulation. The license fee, as prescribed by the
46 commissioner by regulation, shall be based on the number of the

1 following activities in which the person is licensed to act: as a
2 mortgage banker, correspondent mortgage banker or mortgage
3 broker, as a secondary mortgage lender, as a consumer lender, or as
4 a sales finance company. The fee shall be set according to the
5 following schedule:

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

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

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

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

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

18 For the purpose of coordination with licensing under the "New
19 Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et al.),
20 each sales finance company license issued pursuant to the "Retail
21 Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.),
22 shall expire at the end of the biennial period. The first biennial period
23 shall begin on July 1, 1997, and shall end on June 30, 1999.
24 (cf: P.L.1996, c.157, s.52)

25
26 6. This act shall take effect on the 30th day after enactment.
27

28 STATEMENT

29
30 This bill clarifies certain provisions of the "New Jersey Licensed
31 Lenders Act," P.L.1996, c.157 (C.17:11C-1 et seq.), and provides: a
32 definition of "principal amount" with respect to secondary mortgage
33 loans which ensures that discount points are not compounded by
34 prohibiting their inclusion in the amount to be financed, which amount
35 is used to determine the dollar amount of the points to be charged in
36 a secondary mortgage loan; and that the department may charge an
37 amount not to exceed \$500 for an application for a new license as a
38 sales finance company.
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43 _____
43 Makes certain changes in the "New Jersey Licensed Lenders Act."