

ASSEMBLY, No. 2255

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JUNE 22, 1998

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

Senator Inverso

SYNOPSIS

Makes certain changes in the "New Jersey Licensed Lenders Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/2/1999)

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
42 \$15,000 or less, or in the business of buying, discounting or indorsing
43 notes, or of furnishing, or procuring guarantee or security for

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 compensation in amounts of \$15,000 or less, shall be deemed to be
2 engaging in the consumer loan business.

3 "Commissioner" means the Commissioner of Banking and
4 Insurance.

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

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

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

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

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

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

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

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

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

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

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

46 (1) The lender may permit the borrower to obtain advances of

1 money from the secondary lender from time to time or the secondary
2 lender may advance money on behalf of the borrower from time to
3 time as directed by the borrower;

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

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

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

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

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

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

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

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

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

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

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

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

17

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

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

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

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

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

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

1 any dividend, or any other gain or advantage resulting from that
2 insurance.

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

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

12 NOTICE TO THE BORROWER

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

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

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

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

26 NOTICE TO THE BORROWER

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

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

33

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

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

44 b. Notwithstanding the provisions of any other law, a person
45 licensed as a mortgage broker, incidental to the brokering of a first
46 mortgage loan transaction, shall have the right to charge only the

1 following fees: (1) application fee; and (2) discount points.

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

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

7

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

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

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

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

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

41 c. Secondary lenders shall also have the authority to charge and
42 collect a returned check fee in an amount not to exceed \$20 which the
43 secondary lender may charge the borrower if a check of the borrower
44 is returned to the licensee uncollected due to insufficient funds in the
45 borrower's account. Licensees shall also have the authority to charge
46 and collect a late charge in any amount as may be provided in the note

1 or loan agreement, but no late charge shall exceed 5% of the amount
2 of payment in default. Not more than one late charge shall be assessed
3 on any one payment in arrears.

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

7 (1) an application fee at closing; and

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

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

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

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

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

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

33

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

36 7. Every application for a new license shall be accompanied by an
37 application fee of not more than ~~【\$300】~~ \$500, as established by the
38 commissioner by regulation. Every sales finance company shall pay to
39 the commissioner at the time of making the application and biennially
40 thereafter upon renewal a license fee for its principal place of business
41 and for each additional place of business conducted in this State. The
42 commissioner shall charge for a license such fee as he shall prescribe
43 by rule or regulation. The license fee, as prescribed by the
44 commissioner by regulation, shall be based on the number of the
45 following activities in which the person is licensed to act: as a
46 mortgage banker, correspondent mortgage banker or mortgage

1 broker, as a secondary mortgage lender, as a consumer lender, or as
2 a sales finance company. The fee shall be set according to the
3 following schedule:

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

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

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

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

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

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

22 (cf: P.L.1996, c.157, s.52)

23

24 6. This act shall take effect on the 30th day after enactment.

25

26

STATEMENT

27

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