

[First Reprint]

ASSEMBLY, No. 75

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED MAY 9, 2002

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Assemblywomen Perez-Cinciarelli and Watson Coleman

SYNOPSIS

"New Jersey Home Ownership Security Act of 2002."

CURRENT VERSION OF TEXT

As reported by the Assembly Senior Issues Committee on June 6, 2002, with amendments.

(Sponsorship Updated As Of: 6/14/2002)

1 AN ACT prohibiting certain abusive lending practices and
2 supplementing Title 46 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Home Ownership Security Act of 2002."

9
10 2. The Legislature finds and declares that:

11 a. Abusive mortgage lending has become an increasing problem in
12 this State, exacerbating the loss of equity in homes and causing an
13 increase in the number of foreclosures in recent years. One of the
14 most common forms of abusive lending is the making of loans that are
15 equity-based, rather than income-based. The financing of points and
16 fees in these loans provides immediate income to the originator and
17 encourages the repeated refinancing of home loans. The lender's
18 ability to sell loans reduces the incentive to ensure that the homeowner
19 can afford the payments of the loan. As long as there is sufficient
20 equity in the home, an abusive lender benefits even if the borrower is
21 unable to make the payments and is forced to refinance. In addition,
22 the financing of high points and fees causes the loss of precious equity
23 in each refinancing and often leads to foreclosure.

24 b. Abusive lending has threatened the viability of many
25 communities and caused decreases in home ownership. While the
26 marketplace appears to operate effectively for conventional mortgages,
27 too many homeowners find themselves victims of overreaching lenders
28 who provide loans with unnecessarily high costs and terms that are
29 unnecessary to secure repayment of the loan.

30 c. As competition and self-regulation have not eliminated the
31 abusive terms from loans secured by a consumer's home, the consumer
32 protection provisions of this act are necessary to encourage lending at
33 reasonable rates with reasonable terms.

34
35 3. As used in this act:

36 ¹["Benchmark rate" is the interest rate which the borrower can
37 reduce by paying bona fide discount points; this rate shall not exceed
38 the weekly average yield of United States Treasury securities having
39 a maturity of five years, on the 15th day of the month immediately
40 preceding the month in which the loan is made, plus four percentage
41 points.]¹

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:

¹ Assembly ASI committee amendments adopted June 6, 2002.

1 "Bona fide discount points" means loan discount points which are:

2 (1) Knowingly paid by the borrower;

3 (2) Paid for the express purpose of ¹[lowering the benchmark rate;

4 (3) In fact]¹ reducing ¹, and which result in a reduction of,¹ the

5 interest rate or time-price differential applicable to the loan ¹[from an

6 interest rate which does not exceed the benchmark rate]¹; and

7 ¹[~~(4)~~] ~~(3)~~¹ Recouped within the first ~~[four]~~ five¹ years of the

8 scheduled loan payments. Loan discount points will be considered to

9 be recouped within the first ¹[~~four~~] five¹ years of the scheduled loan

10 payments if the reduction in the interest rate that is achieved by the

11 payment of the loan discount points reduces the interest charged on

12 the scheduled payments such that the borrower's dollar amount of

13 savings in interest over the first ¹[~~four~~] five¹ years is equal to or

14 exceeds the dollar amount of loan discount points paid by the

15 borrower.

16 "Borrower" means any natural person obligated to repay the loan,

17 including a coborrower, cosigner, or guarantor.

18 ¹"Commissioner" means the Commissioner of Banking and

19 Insurance.¹

20 "Creditor" means a person who extends consumer credit that is

21 subject to a finance charge or is payable by written agreement in more

22 than four installments, and to whom the obligation is payable at any

23 time. ¹Creditor shall also mean any person brokering a home loan,

24 which shall include any person who directly or indirectly solicits,

25 processes, places, or negotiates home loans for others or who closes

26 home loans which may be in the person's own name with funds

27 provided by others and which loans are thereafter assigned to the

28 person providing the funding of such loans, provided that creditor shall

29 not include a person who is an attorney providing legal services or an

30 insurance producer with title insurance authority providing services in

31 the closing of a home loan.

32 "Department" means the Department of Banking and Insurance.¹

33 "High-cost home loan" means a home loan for which the principal

34 amount of the loan does not exceed \$350,000, which amount shall be

35 adjusted annually to include the last published increase of the housing

36 component of the national Consumer Price Index, New York-

37 Northeastern New Jersey Region, in which the terms of the loan meet

38 or exceed one or more of the thresholds as defined in this section.

39 "Home loan" means a loan, including an open-end credit plan, other

40 than a reverse mortgage transaction, in which the loan is secured by:

41 (1) A mortgage or deed of trust on real estate in this State upon

42 which there is located or there is to be located a one to six family

43 dwelling which is or will be occupied by a borrower as the borrower's

44 principal dwelling; or

45 (2) A security interest in a manufactured home which is or will be

46 occupied by a borrower as the borrower's principal dwelling.

1 "Points and fees" means:

2 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except
3 interest or the time-price differential;

4 (2) All charges listed in 15 U.S.C. s.1605(e);

5 (3) All compensation paid directly or indirectly to a mortgage
6 broker, including a broker that originates a loan in its own name in a
7 table-funded transaction;

8 (4) The cost of all premiums financed by the creditor, directly or
9 indirectly for any credit life, credit disability, credit unemployment or
10 credit property insurance, or any other life or health insurance, or any
11 payments financed by the creditor directly or indirectly for any debt
12 cancellation or suspension agreement or contract, except that
13 insurance premiums calculated and paid on a monthly basis shall not
14 be considered financed by the creditor;

15 (5) The maximum prepayment fees and penalties that may be
16 charged or collected under the terms of the loan documents; ¹[and]¹

17 (6) All prepayment fees or penalties that are charged to the
18 borrower if the loan refinances a previous loan made by the same
19 creditor or an affiliate of the creditor ¹[.]; and¹

20 (7) For open-end loans, the points and fees are calculated by
21 adding the total fees charged at closing plus the maximum additional
22 fees which can be charged pursuant to the loan documents during the
23 term of the loan.

24 ¹"Points and fees" shall not include the following: taxes, filing fees,
25 and recording and other charges and fees paid or to be paid to public
26 officials for determining the existence of or for perfecting, releasing,
27 or satisfying a security interest; and fees paid to a person other than a
28 creditor or an affiliate of the creditor or to the mortgage broker or an
29 affiliate of the mortgage broker for the following: fees for tax payment
30 services; fees for flood certification; fees for pest infestation and flood
31 determinations; appraisal fees; fees for inspections performed prior to
32 closing; fees for credit reports; fees for surveys; attorneys' fees; notary
33 fees; escrow charges; title insurance premiums; and fire and flood
34 insurance premiums, provided that the conditions in 12 C.F.R.
35 s.226.4(d)(2) are met.¹

36 "Rate" means the interest rate charged on the home loan, based on
37 an annual simple interest yield.

38 "Threshold" means any one of the following three items, as defined:

39 (1) "Rate threshold" means the annual percentage rate of the loan
40 at the time the loan is consummated such that the loan is considered
41 a "mortgage" under section 152 of the federal "Home Ownership and
42 Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C.
43 s.1602(aa)), and the regulations promulgated by the Federal Reserve
44 Board, including 12 C.F.R. s.226.32, without regard to whether the
45 loan transaction is or may be a "residential mortgage transaction," as
46 defined in 12 C.F.R. s.226.2(a)(24).

(2) "Total points and fees threshold" means that the total points and fees payable by the borrower at or before the loan closing, excluding up to two bona fide discount points, exceed:

(a) 5% of the total loan amount if the total loan amount is \$20,000 or more; or

(b) the lesser of 8% of the total loan amount or \$1,000, if the total loan amount is less than \$20,000 ¹ [; provided, the following discount points and prepayment fees shall be excluded from the calculation of the total points and fees payable by the borrower:

(i) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only], except that two bona fide discount points shall not be excluded¹ if the interest rate from which the loan's interest rate will be discounted ¹ [does not exceed, by more than one percentage point, the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

(ii) Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed, by more than two percentage points, the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater] exceeds the average weekly yield of United States Treasury securities having a maturity of 10 years, on the 15th day of the month immediately preceding the month in which the loan is made, plus four percentage points¹.

(3) "Prepayment penalty threshold" means the home loan agreement permits the lender to charge or collect ¹ [payment penalties or] prepayment¹ penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than 2% of the amount prepaid.

"Total loan amount" means the principal of the loan minus those points and fees as defined in this section that are included in the principal amount of the loan. For open-end loans, the total amount shall be calculated using the total line of credit allowed under the home loan.

4. a. No creditor making a home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis

1 shall not be considered financed by the creditor.

2 b. No creditor shall engage in the unfair act or practice of
3 "flipping" a home loan. "Flipping" a loan is the making of a home loan
4 to a borrower that refinances an existing home loan when the new loan
5 does not have reasonable, tangible net benefit to the borrower
6 considering all of the circumstances, including the terms of both the
7 new and refinanced loans, the cost of the new loan, and the borrower's
8 circumstances. ¹The commissioner may promulgate regulations to
9 implement the provisions of this section.¹ In addition, the following
10 home loan refinancings shall be presumed to be flipping if:

11 (1) The primary tangible benefit to the borrower is an interest rate
12 lower than the interest rate on a debt satisfied or refinanced in
13 connection with the home loan, and it will take more than four years
14 for the borrower to recoup the costs of the points and fees and other
15 closing costs through savings resulting from the lower interest rate; or

16 (2) The new loan refinances an existing home loan that is a special
17 mortgage originated, subsidized, or guaranteed by or through a state,
18 tribal or local government, or nonprofit organization, which either
19 bears a below-market interest rate at the time the loan was originated,
20 or has nonstandard payment terms beneficial to the borrower, such as
21 payments that vary with income or are limited to a percentage of
22 income, or where no payments are required under specified conditions,
23 and where, as a result of refinancing, the borrower will lose one or
24 more of the benefits of the special mortgage.

25 c. No creditor shall recommend or encourage default on an existing
26 loan or other debt prior to and in connection with the closing or
27 planned closing of a home loan that refinances all or any portion of
28 that existing loan or debt.

29 d. No creditor shall charge a late payment fee in relation to a home
30 loan except according to the following rules:

31 (1) The late payment fee may not be in excess of ¹~~[4%]~~ 5%¹ of the
32 amount of the payment past due.

33 (2) The fee may only be assessed by a payment past due for
34 15 days or more.

35 (3) The fee may not be charged more than once with respect to a
36 single late payment. If a late payment fee is deducted from a payment
37 made on the loan, and such deduction causes a subsequent default on
38 a subsequent payment, no late payment fee may be imposed for such
39 default. If a late payment fee has been once imposed with respect to
40 a particular late payment, no such fee shall be imposed with respect to
41 any future payment which would have been timely and sufficient, but
42 for the previous default.

43 (4) No fee shall be charged unless the creditor notifies the
44 borrower within 45 days following the date the payment was due that
45 a late payment fee has been imposed for a particular late payment. No
46 late payment fee may be collected from any borrower if the borrower

1 informs the creditor that nonpayment of an installment is in dispute
2 and presents proof of payment within 45 days of receipt of the
3 creditor's notice of the late fee.

4 (5) The creditor shall treat each and every payment as posted on
5 the same date as it was received by the creditor, servicer, creditor's
6 agent, or at the address provided to the borrower by the creditor,
7 servicer, or the creditor's agent for making payments.

8 e. No home loan shall contain a provision that permits the creditor,
9 in its sole discretion, to accelerate the indebtedness. This provision
10 does not prohibit acceleration of the loan in good faith due to the
11 borrower's failure to abide by the material terms of the loan.

12 f. No creditor shall charge a fee for informing or transmitting to
13 any person the balance due to pay off a home loan or to provide a
14 release upon prepayment. Payoff balances shall be provided within
15 seven business days after the request.

16
17 5. A high-cost home loan shall be subject to the following
18 additional limitations and prohibited practices:

19 a. No high-cost home loan shall contain a scheduled payment that
20 is more than twice as large as the average of earlier scheduled
21 payments. This provision shall not apply when the payment schedule
22 is adjusted to the seasonal or irregular income of the borrower.

23 b. No high-cost home loan shall include payment terms under
24 which the outstanding principal balance will increase at any time over
25 the course of the loan because the regular periodic payments do not
26 cover the full amount of interest due.

27 c. No high-cost home loan shall contain a provision that increases
28 the interest rate after default. This provision does not apply to interest
29 rate changes in a variable rate loan otherwise consistent with the
30 provisions of the loan documents, provided the change in the interest
31 rate is not triggered by the event of default or the acceleration of the
32 indebtedness.

33 d. No high-cost home loan shall include terms under which more
34 than two periodic payments required under the loan are consolidated
35 and paid in advance from the loan proceeds provided to the borrower.

36 e. No high-cost home loan shall be subject to a mandatory
37 arbitration clause that ¹[limits in any way the right of the borrower to
38 seek relief through the judicial process for any and all claims and
39 defenses the borrower may have against the creditor, broker, or other
40 party involved in the loan transaction] is oppressive, unfair,
41 unconscionable, or substantially in derogation of the rights of
42 borrowers. Arbitration clauses that comply with the standards set
43 forth in the Statement of Principles of the National Consumer Dispute
44 Advisory Committee in effect as of the effective date of this act shall
45 be presumed not to violate this subsection. The borrower shall have
46 the exclusive option to require arbitration concerning any claims or

1 defenses relating to high-cost home loans¹.

2 f. ¹A creditor shall not make a high-cost home loan unless the
3 creditor has given the following notice, or substantially similar notice,
4 in writing, to the borrower, acknowledged in writing and signed by the
5 borrower not later than the time the notice is required under the notice
6 provision contained in 12 C.F.R. s.226.31(c).

7

8

NOTICE TO BORROWER

9

10 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE
11 TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD
12 SHOP AROUND AND COMPARE LOAN RATES AND FEES.
13 MORTGAGE LOAN RATES AND CLOSING COSTS AND
14 FEES VARY BASED ON MANY FACTORS, INCLUDING
15 YOUR PARTICULAR CREDIT AND FINANCIAL
16 CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE
17 LOAN-TO-VALUE REQUESTED AND THE TYPE OF
18 PROPERTY THAT WILL SECURE YOUR LOAN. THE
19 LOAN RATE AND FEES COULD ALSO VARY BASED ON
20 WHICH CREDITOR OR BROKER YOU SELECT.

21

22 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
23 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR
24 HOME. YOU COULD LOSE YOUR HOME AND ANY
25 MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR
26 PAYMENT OBLIGATIONS UNDER THE LOAN.

27

28 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND
29 A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR
30 OTHER EXPERIENCED FINANCIAL ADVISOR
31 REGARDING THE RATE, FEES AND PROVISIONS OF
32 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A
33 LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY
34 CONTACTING THE NEW JERSEY DEPARTMENT OF
35 BANKING AND INSURANCE.

36

37 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
38 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED
39 THIS DISCLOSURE OR HAVE SIGNED A LOAN
40 APPLICATION.

41

42 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
43 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL
44 CREDITORS PROVIDE ESCROW SERVICES FOR THESE
45 PAYMENTS. YOU SHOULD ASK YOUR CREDITOR
46 ABOUT THESE SERVICES.

1 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
2 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU
3 SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR
4 REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

5
6 g.¹ A creditor shall not make a high-cost home loan ¹to a borrower
7 who finances points and fees in connection with a high-cost home
8 loan¹ without first receiving certification from a ¹third-party nonprofit
9 credit¹ counselor, approved by the United States Department of
10 Housing and Urban Development ¹and the Department of Banking and
11 Insurance¹, that the borrower has received counseling on the
12 advisability of the loan transaction.

13 ¹[g.] h.¹ A creditor shall not make a high-cost home loan without
14 due regard to repayment ability. A creditor shall not make a high-cost
15 home loan unless the creditor reasonably believes at the time the loan
16 is consummated that one or more of the borrowers, when considered
17 individually or collectively, will be able to make the scheduled
18 payments to repay the obligation, based upon a consideration of their
19 current and expected income, current obligations, employment status
20 and other financial resources, other than the borrower's equity in the
21 dwelling which secures repayment of the loan. A borrower shall be
22 presumed to be able to make the scheduled payments to repay the
23 obligation if, at the time the loan is consummated, the borrower's total
24 monthly debts, including amounts owed under the loan, do not exceed
25 50% of the borrower's monthly gross income as verified by the credit
26 application, the borrower's financial statement, a credit report,
27 financial information provided to the creditor by or on behalf of the
28 borrower, or any other reasonable means. Notwithstanding the
29 foregoing, no presumption of inability to make the scheduled payments
30 to repay the obligation shall arise solely from the fact that, at the time
31 the loan is consummated, the borrower's total monthly debts, including
32 amounts owed under the loan, exceed 50% of the borrower's monthly
33 gross income. ¹[A creditor who follows the residual income
34 guidelines established in 38 C.F.R. s.36.4337(e) and VA Form 26-
35 6393 shall benefit from a rebuttable presumption that the creditor
36 made the loan with due regard to repayment ability.]¹

37 ¹[h.] i.¹ A creditor shall not pay a contractor under a home-
38 improvement contract from the proceeds of a high-cost home loan,
39 unless the instrument is payable to the borrower or jointly to the
40 borrower and the contractor, or, at the election of the borrower,
41 through a third-party escrow agent in accordance with terms
42 established in a written agreement signed by the borrower, the
43 creditor, and the contractor prior to the disbursement.

44 ¹[i.] j.¹ A creditor shall not charge a borrower any fees or other
45 charges to modify, renew, extend, or amend a high-cost home loan or
46 to defer any payment due under the terms of a high-cost home loan.

1 ¹[j.] k.¹ A creditor shall not charge a borrower points and fees in
2 connection with a high-cost home loan if the proceeds of the high-cost
3 home loan are used to refinance an existing high-cost home loan held
4 by the same creditor as note holder.

5 ¹[k.] l.¹ Notwithstanding any other law to the contrary, a creditor
6 making a high-cost home loan that has the legal right to foreclose shall
7 use the judicial foreclosure procedures of this State so long as the
8 property securing the loan is located in this State. ¹[Notwithstanding
9 any other law to the contrary, the borrower shall have the right to
10 assert in that proceeding the nonexistence of a default and any other
11 claim or defense to acceleration and foreclosure, including any based
12 on any violations of this act, though those claims or defenses shall not
13 be deemed compulsory counterclaims.]

14 m. No creditor making a high-cost home loan shall directly or
15 indirectly finance points and fees in excess of 2% of the total loan
16 amount.¹

17
18 6. a. Notwithstanding any other law to the contrary, if a home loan
19 was made, arranged, or assigned by a person selling either a
20 manufactured home, or home improvements to the dwelling of a
21 borrower, the borrower may assert all affirmative claims and any
22 defenses that the borrower may have against the seller or home-
23 improvement contractor against the creditor, any assignee, holder, or
24 servicer, in any capacity.

25 b. ¹[Notwithstanding any other law to the contrary, the remedies
26 provided by this act apply to the creditor, any director, officer,
27 employee, or controlling stockholder of, or agent for, a creditor who
28 personally participated in the making or approving of a high-cost home
29 loan, and any other persons to whom this act applies and who violated
30 the requirements of this act.]¹ Any person who purchases or is
31 otherwise assigned a high-cost home loan shall be subject to all
32 affirmative claims and any defenses with respect to the loan that the
33 borrower could assert against the original creditor or broker of the
34 loan.

35 c. Notwithstanding any other law to the contrary, a borrower in
36 default more than 60 days or in foreclosure may assert a violation of
37 this act by way of offset:

38 (1) As an original action;

39 (2) As a defense or counterclaim to an action to collect amounts
40 owed; or

41 (3) To obtain possession of the home secured by the home loan.

42 d. ¹Notwithstanding any other law to the contrary, the borrower
43 shall have the right to assert in a foreclosure proceeding the
44 nonexistence of a default and any other claim or defense to
45 acceleration and foreclosure, including any claim based on any
46 violations of this act, though those claims or defenses shall not be

1 deemed compulsory counterclaims.

2 e. ¹It is a violation of this act for any person, in bad faith, to
3 attempt to avoid the application of this act by:

4 (1) Dividing any loan transaction into separate parts; or

5 (2) Any other such subterfuge, with the intent of evading the
6 provisions of this act.

7
8 ¹⁷. a. The department shall conduct examinations and
9 investigations and issue subpoenas and orders to enforce the
10 provisions of this act with respect to a person licensed or subject to
11 the provision of the "New Jersey Licensed Lenders Act," P.L.1996,
12 c.157 (C.17:11C-1 et seq.).

13 b. The department shall examine any instrument, document,
14 account, book, record, or file of a person originating or brokering a
15 high-cost home loan under this act. The department shall recover the
16 cost of examinations from the person. A person originating or
17 brokering high-cost home loans shall maintain its records in a manner
18 that will facilitate the department in determining whether the person
19 is complying with the provisions of this act and the regulations
20 promulgated thereunder. The department shall require the submission
21 of reports by persons originating or brokering high-cost home loans
22 which shall set forth such information as the department shall require
23 by regulation.

24 c. In the event that a person fails to comply with a subpoena for
25 documents or testimony issued by the department, the department may
26 request an order from a court of competent jurisdiction requiring the
27 person to produce the requested information.

28 d. If the department determines that a person has violated the
29 provisions of this act, the department may do any combination of the
30 following that it deems appropriate:

31 (1) Impose a civil penalty of up to \$10,000 for each offense, 40%
32 of which penalty shall be dedicated for and used by the department for
33 consumer education through nonprofit organizations which can
34 establish to the satisfaction of the department that they have sufficient
35 experience in credit counseling and financial education. In determining
36 the penalty to be assessed, the commissioner shall consider the
37 following criteria: whether the violation was willful; whether the
38 violation was part of a pattern and practice; the amount of the loan;
39 the points and fees charged; the financial condition of the violator; and
40 other relevant factors. The department may require the person to pay
41 investigative costs, if any.

42 (2) Suspend, revoke, or refuse to renew any license issued by the
43 department.

44 (3) Prohibit or permanently remove an individual responsible for
45 a violation of this act from working in his present capacity or in any
46 other capacity related to activities regulated by the department.

1 (4) Order a person to cease and desist any violation of this act and
2 to make restitution for actual damages to borrowers.

3 (5) Pending completion of an investigation or any formal
4 proceeding instituted pursuant to this act, if the commissioner finds
5 that the interests of the public require immediate action to prevent
6 undue harm to borrowers, the commissioner may enter an appropriate
7 temporary order to be effective immediately and until entry of a final
8 order. The temporary emergent order may include: a temporary
9 suspension of the creditor's authority to make high-cost home loans
10 under this act; a temporary cease and desist order; a temporary
11 prohibition against a creditor transacting high-cost home loan business
12 in this State, or such other order relating to high-cost home loans as
13 the commissioner may deem necessary to prevent undue harm to
14 borrowers pending completion of an investigation or formal
15 proceeding. Orders issued pursuant to this section shall be subject to
16 an application to vacate upon two days' notice, and a preliminary
17 hearing on the temporary emergent order shall be held, in any event,
18 within five days after it is issued, in accordance with the provisions of
19 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.).

21 (6) Impose such other conditions as the department deems
22 appropriate.

23 e. Any person aggrieved by a decision of the department and who
24 has a direct interest in the decision may appeal the decision of the
25 department to the commissioner. The appeal shall be conducted in
26 accordance with the provisions of the "Administrative Procedure Act,"
27 P.L.1968, c.410 (C.52:14B-1 et seq.).

28 f. The department may maintain an action for an injunction or other
29 process against any person to restrain and prevent the person from
30 engaging in any activity violating this act.

31 g. A decision of the commissioner shall be a final order of the
32 department and shall be enforceable in a court of competent
33 jurisdiction. The department shall publish the final adjudication issued
34 in accordance with this section, subject to redaction or modification
35 to preserve confidentiality.

36 h. The provisions of this section shall not limit the authority of the
37 Attorney General or the Public Advocate as established pursuant to
38 P.L. _____, c. _____ (C. _____) (now before the Legislature as Assembly
39 Committee Substitute for Assembly, Nos. 345 and 2341) from
40 instituting or maintaining any action within the scope of their
41 respective authority with respect to the practices prohibited under this
42 act.¹

44 ¹[7.] 8.¹ a. Any violation of this act constitutes an unlawful
45 practice under P.L.1960, c.39 (C.56:8-1 et seq.).

46 b. In addition to penalties under that law, including¹, but not

1 limited to,¹ any moneys or property ordered to be paid pursuant to
2 section 2 of P.L.1966, c.39 (C.56:8-14) or section 3 of P.L.1971,
3 c.247 (C.56:8-15):

4 (1) Any person found by a preponderance of the evidence to have
5 violated this act shall be liable to the borrower for the following:

6 (a) Statutory damages equal to the finance charges agreed to in the
7 home loan agreement, plus 10% of the amount financed ¹[.]:¹

8 (b) Punitive damages, when the violation was malicious or
9 reckless; and

10 (c) Costs and reasonable attorneys' fees.

11 (2) A borrower may be granted injunctive, declaratory, and such
12 other equitable relief as the court deems appropriate in an action to
13 enforce compliance with this act.

14 (3) ¹[The intentional violation of this act, or regulation hereunder,
15 renders the home loan agreement void, and the creditor shall have no
16 right to collect, receive, or retain any principal, interest, or other
17 charges whatsoever with respect to the loan, and the borrower may
18 recover any payments made under the agreement.

19 (4)]¹ The right of rescission granted under 15 U.S.C. s.1601 et seq.
20 for violations of that law and all other remedies provided hereunder
21 shall be available to a borrower by way of recoupment against a party
22 foreclosing on the home loan or collecting on the loan, at any time
23 during the term of the loan.

24 ¹[(5)] (4)¹ The remedies provided in this section are not intended
25 to be the exclusive remedies available to a borrower, nor must the
26 borrower exhaust any administrative remedies provided under this act
27 or any other applicable law before proceeding under this section.

28 c. Any person, including members, officers, and directors of the
29 creditor, who knowingly violates this act is guilty of a disorderly
30 persons offense and, on conviction, is subject to a fine not exceeding
31 \$1,000, or to imprisonment not exceeding six months, or both.

32 d. A creditor in a home loan who, when acting in good faith, fails
33 to comply with the provisions of this act, will not be deemed to have
34 violated this section if the creditor establishes that either:

35 (1) Within ¹[30] 45¹ days of the loan closing, and prior to
36 receiving any notice from the borrower of the compliance failure, the
37 creditor has made appropriate restitution to the borrower, and
38 appropriate adjustments are made to the loan; or

39 (2) Within ¹[60] 90¹ days of the loan closing and prior to
40 receiving any notice from the borrower of the compliance failure, and
41 the compliance failure was not intentional and resulted from a bona
42 fide error notwithstanding the maintenance of procedures reasonably
43 adopted to avoid such errors, the borrower is notified of the
44 compliance failure, appropriate restitution is made to the borrower,
45 and appropriate adjustments are made to the loan.

1 Examples of bona fide errors include clerical, calculation, computer
2 malfunction and programming, and printing errors. An error of legal
3 judgment with respect to a person's obligations under this section is
4 not a bona fide error.

5 e. ¹Notwithstanding any provision of this act to the contrary, a
6 broker, who is a creditor, shall be liable for any violation of this act by
7 any party involved in a home loan transaction that he brokered.

8 f. ¹The remedies provided in this section are cumulative.

9
10 ¹[8. The rights conferred by this act are independent of and in
11 addition to any other rights under other laws.]

12 9. The rights, remedies, and prohibitions accorded by the
13 provisions of this act are hereby declared to be in addition to and
14 cumulative of any other right, remedy, or prohibition accorded by the
15 common law or statutes of this State, and nothing herein shall be
16 construed to deny, abrogate, or impair any such common law or
17 statutory right, remedy, or prohibition.¹

18
19 ¹[9.] 10.¹ The law of the state in which the property is located
20 shall be applied to all transactions governed by this act regardless of
21 where those transactions originated. This act shall apply to all loans
22 made or entered into after the effective date of this act.

23
24 ¹[10.] 11.¹ The Director of the Division of Banking in the
25 Department of Banking and Insurance, in consultation with the
26 Director of the Division of Consumer Affairs in the Department of
27 Law and Public Safety, shall develop and implement a program of
28 consumer counseling and awareness designed to inform the public
29 about the methods by which predatory lenders impose unconscionable
30 and noncompetitive fees and charges as part of complex home
31 mortgage transactions, to protect the public from incurring those fees
32 and charges, and otherwise to encourage the informed and responsible
33 use of credit.

34
35 ¹[11.] 12.¹ The Commissioner of Banking and Insurance shall
36 promulgate regulations pursuant to the "Administrative Procedure
37 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
38 provisions of this act ¹except that prior to the effective date of this act
39 the commissioner may take those actions and promulgate those
40 regulations necessary to implement the provisions of this act¹.

41
42 ¹[12.] 13.¹ This act shall take effect on the 90th day following
43 enactment.