

P.L. 2003, CHAPTER 64, *approved May 1, 2003*
Assembly, No. 75 (*Fourth Reprint*)

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

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.

² Senate SCM committee amendments adopted December 12, 2002.

³ Senate floor amendments adopted February 27, 2003.

⁴ Assembly floor amendments adopted March 13, 2003.

1 reduce by paying bona fide discount points; this rate shall not exceed
 2 the weekly average yield of United States Treasury securities having
 3 a maturity of five years, on the 15th day of the month immediately
 4 preceding the month in which the loan is made, plus four percentage
 5 points.]¹

6 ²"Affiliate" means any company that controls, is controlled by, or
 7 is under the common control with any company, as set forth in
 8 12 U.S.C. s.1841 et seq.²

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

10 (1) Knowingly paid by the borrower;

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

12 (3) In fact]¹ reducing ¹, and which result in a reduction of,¹ the
 13 interest rate or time-price differential applicable to the loan ¹[from an
 14 interest rate which does not exceed the benchmark rate]¹;

15 ³(3) In fact reducing the interest rate or time-price differential
 16 applicable to the loan from an interest rate which does not exceed the
 17 conventional mortgage rate for a home loan secured by a first lien, by
 18 more than two percentage points, or for a home loan secured by a
 19 junior lien, by more than three and one half percentage points;³ and

20 ¹[(4)] ³[(3)¹] (4)³ Recouped within the first ¹[four] five¹ years of
 21 the scheduled loan payments. Loan discount points will be considered
 22 to be recouped within the first ¹[four] five¹ years of the scheduled
 23 loan payments if the reduction in the interest rate that is achieved by
 24 the payment of the loan discount points reduces the interest charged
 25 on the scheduled payments such that the borrower's dollar amount of
 26 savings in interest over the first ¹[four] five¹ years is equal to or
 27 exceeds the dollar amount of loan discount points paid by the
 28 borrower.

29 "Borrower" means any natural person obligated to repay the loan,
 30 including a coborrower, cosigner, or guarantor.

31 ¹"Commissioner" means the Commissioner of Banking and
 32 Insurance.¹

33 ²"Conventional mortgage rate" means the most recently published
 34 annual yield on conventional mortgages published by the Board of
 35 Governors of the Federal Reserve System, as published in Statistical
 36 Release H.15 or any publication that may supersede it, as of the
 37 applicable time set forth in 12 C.F.R. 226.32(a)(1)(I).²

38 ³"Conventional prepayment penalty" means any prepayment penalty
 39 or fee that may be collected or charged in a home loan, and that is
 40 authorized by law other than by this act, provided the home loan (1)
 41 does not have an annual percentage rate that exceeds the conventional
 42 mortgage rate by more than two percentage points; and (2) does not
 43 permit any prepayment fees or penalties that exceed two percent of the
 44 amount prepaid.³

45 ²"Covered home loan" means a home loan in which:

46 (1) The total points and fees payable in connection with the loan,

1 excluding³ either a conventional prepayment penalty or³ not more than
2 two bona fide discount points, exceed 4 percent of the total loan
3 amount, or 4.5 percent of the total loan amount if the total loan
4 amount is \$40,000 or less, and ³[4.25] 4.5³ percent of the total loan
5 amount if the loan is ³[a purchase money loan]³ insured by the
6 Federal Housing Administration or guaranteed by the federal
7 Department of Veterans Affairs; or

8 (2) The home loan is such that it is considered a high-cost home
9 loan under this act.²

10 "Creditor" means a person who extends consumer credit that is
11 subject to a finance charge or is payable by written agreement in more
12 than four installments, and to whom the obligation is payable at any
13 time. ¹Creditor shall also mean any person brokering a home loan,
14 which shall include any person who directly or indirectly solicits,
15 processes, places, or negotiates home loans for others or who closes
16 home loans which may be in the person's own name with funds
17 provided by others and which loans are thereafter assigned to the
18 person providing the funding of such loans, provided that creditor shall
19 not include a person who is an attorney providing legal services² to the
20 borrower² or ²[an insurance producer with title insurance authority]
21 a person or entity holding an individual or organization insurance
22 producer license in the line of title insurance or a title insurance
23 company, as defined by subsection c. of section 1 of P.L.1975, c.106
24 (C.17:46B-1), or any officer, director or employee thereof,² providing
25 services in the closing of a home loan² who is not also funding the
26 home loan and is not an affiliate of the creditor² ⁴or an assignee that
27 is subject to the provisions of section 6 of this act⁴.

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

29 "High-cost home loan" means a home loan for which the principal
30 amount of the loan does not exceed \$350,000, which amount shall be
31 adjusted annually to include the last published increase of the housing
32 component of the national Consumer Price Index, New York-
33 Northeastern New Jersey Region, in which the terms of the loan meet
34 or exceed one or more of the thresholds as defined in this section.

35 "Home loan" means ²[a loan] an extension of credit primarily for
36 personal, family or household purposes², including an open-end credit
37 plan, other than a reverse mortgage transaction, in which the loan is
38 secured by:

39 (1) A mortgage or deed of trust on real estate in this State upon
40 which there is located or there is to be located a one to six family
41 dwelling which is or will be occupied by a borrower as the borrower's
42 principal dwelling; or

43 (2) A security interest in a manufactured home which is or will be
44 occupied by a borrower as the borrower's principal dwelling.

45 ²"Manufactured home" means a structure, transportable in one or
46 more sections, which in the traveling mode is eight body feet or more

1 in width or 40 body feet or more in length or, when erected on site is
2 320 or more square feet and which is built on a permanent chassis and
3 designed to be used as a dwelling with a permanent foundation when
4 erected on land secured in conjunction with the real property on which
5 the manufactured home is located and connected to the required
6 utilities and includes the plumbing, heating, air-conditioning and
7 electrical systems contained therein; except that such term shall
8 include any structure which meets all the requirements of this
9 paragraph except the size requirements and with respect to which the
10 manufacturer voluntarily files a certification required by the Secretary
11 of the United States Department of Housing and Urban Development
12 and complies with the standards established under the federal National
13 Manufactured Housing Construction and Safety Standards Act of
14 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental
15 property or second homes or manufactured homes when not secured
16 in conjunction with the real property on which the manufactured home
17 is located.²

18 "Points and fees" means:

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

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

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

25 (4) The cost of all premiums financed by the creditor, directly or
26 indirectly for any credit life, credit disability, credit unemployment or
27 credit property insurance, or any other life or health insurance, or any
28 payments financed by the creditor directly or indirectly for any debt
29 cancellation or suspension agreement or contract, except that
30 insurance premiums calculated and paid on a monthly basis shall not
31 be considered financed by the creditor;

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

34 (6) All prepayment fees or penalties that are ²[charged to]
35 incurred by² the borrower if the loan refinances a previous loan made
36 ³or currently held³ by the same creditor or an affiliate of the
37 creditor¹[.]; and¹

38 (7) For open-end loans, the points and fees are calculated by
39 adding the total ²points and² fees ²[charged at] known at or before²
40 closing ²[plus the maximum additional fees which can be charged
41 pursuant to the loan documents during the term of the loan], including
42 the maximum prepayment penalties which may be charged or collected
43 under the terms of the loan documents ⁴if prepayment penalties are
44 authorized by law other than by this act⁴, plus the minimum additional
45 fees the borrower would be required to pay to draw down an amount
46 equal to the total credit line².

1 ¹"Points and fees" shall not include the following ²items²: ²title
 2 insurance premiums and fees, charges and premiums paid to a person
 3 or entity holding an individual or organization insurance producer
 4 license in the line of title insurance or a title insurance company, as
 5 defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-
 6 1);² taxes, filing fees, and recording and other charges and fees paid
 7 or to be paid to public officials for determining the existence of or for
 8 perfecting, releasing, or satisfying a security interest; and ³reasonable³
 9 fees paid to a person other than a creditor or an affiliate of the creditor
 10 or to the mortgage broker or an affiliate of the mortgage broker for
 11 the following ³, provided that the conditions in 12 C.F.R. s.226.4(c)(7)
 12 are met³; fees for tax payment services; fees for flood certification;
 13 fees for pest infestation and flood determinations; appraisal fees; fees
 14 for inspections performed prior to closing; fees for credit reports; fees
 15 for surveys; attorneys' fees; notary fees; escrow charges; ²[title
 16 insurance premiums;]² and fire and flood insurance premiums,
 17 provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.¹

18 "Rate" means ²[the interest rate charged on the home loan, based
 19 on an annual simple interest yield] that annual percentage rate for the
 20 loan calculated at closing based on the points and fees set forth in this
 21 act and according to the provisions of 15 U.S.C. s. 1601 et seq. and
 22 the regulations promulgated thereunder by the Federal Reserve
 23 Board².

24 "Threshold" means any one of the following ³[three] two³ items,
 25 as defined:

26 (1) "Rate threshold" means the annual percentage rate of the loan
 27 at the time the loan is consummated such that the loan is considered
 28 a "mortgage" under section 152 of the federal "Home Ownership and
 29 Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C.
 30 s.1602(aa)), and the regulations promulgated by the Federal Reserve
 31 Board, including 12 C.F.R. s.226.32, without regard to whether the
 32 loan transaction is or may be a "residential mortgage transaction," as
 33 defined in 12 C.F.R. s.226.2(a)(24) ⁴[²less]⁴ ³[1.25] ⁴[1.0³
 34 percentage]⁴ ³[points] ⁴[point³ for a loan secured by a first lien or
 35 a loan secured by a junior lien²]⁴ .

36 (2) "Total points and fees threshold" means that the total points
 37 and fees payable by the borrower at or before the loan closing,
 38 excluding ³either a conventional prepayment penalty or³ up to two
 39 bona fide discount points, exceed:

40 (a) 5% of the total loan amount if the total loan amount is
 41 ²[\$20,000] \$40,000² or more; or

42 (b) the lesser of ²[8%] 6%² of the total loan amount or \$1,000, if
 43 the total loan amount is less than \$20,000 ², and 6% if the total loan
 44 amount is \$20,000 or more but less than \$40,000² ¹[; provided, the
 45 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] ³ [except that] ³ ² [two] ³ [no² bona fide discount points shall] ³ ² [not] ² ³ [be excluded] ¹ ² from the calculations in either subparagraph (a) or (b) of this paragraph² if the interest rate from which the loan's interest rate will be discounted] ³ 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] ³ [²is such that it² exceeds the] ³ ² [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 [conventional mortgage rate for a home loan secured by a first lien, by more than two percentage points, or for a home loan secured by a junior lien, by more than three and one half percentage points²] ³.

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

"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 ²loan² 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 shall not be considered financed by the creditor.

b. No creditor shall engage in the unfair act or practice of "flipping" a ³ [²covered²] ³ home loan. "Flipping" ² [a loan is the

1 making of] occurs when a creditor makes² a ²covered² home loan to
2 a borrower that refinances an existing home loan ²that was
3 consummated within the prior 60 months² when the new loan does not
4 have reasonable, tangible net benefit to the borrower considering all
5 of the circumstances, including the terms of both the new and
6 refinanced loans, ²the economic and noneconomic circumstances, the
7 purpose of the loan,² the cost of the new loan, and the borrower's
8 circumstances. ²[¹The commissioner may promulgate regulations to
9 implement the provisions of this section.¹]² 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 ²Without limiting the foregoing, it is hereby declared that
26 ³subsection b. of³ this section shall create no presumption that any
27 home loan that is not a covered home loan or a high-cost home loan,
28 and any refinancing outside the durational limits set forth above, is not
29 unconscionable, and it is hereby further declared that ³subsection b.
30 of ³ this section shall create no presumption that any home loan that
31 is not a covered home loan or a high-cost home loan, and any
32 refinancing outside the durational limits set forth above, shall not
33 constitute an unlawful practice under P.L.1960, c.39 (C.56:8-1 et
34 seq.), based on ³[the]³ factors ³including those ³set forth in
35 ³subsection b. of ³ this section ³alone³ or ³in conjunction with³ any
36 other circumstances.²

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

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

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

45 (2) The fee may only be assessed by a payment past due for
46 15 days or more.

1 (3) The fee may not be charged more than once with respect to a
2 single late payment. If a late payment fee is deducted from a payment
3 made on the loan, and such deduction causes a subsequent default on
4 a subsequent payment, no late payment fee may be imposed for such
5 default. If a late payment fee has been once imposed with respect to
6 a particular late payment, no such fee shall be imposed with respect to
7 any future payment which would have been timely and sufficient, but
8 for the previous default.

9 (4) No fee shall be charged unless the creditor notifies the
10 borrower within 45 days following the date the payment was due that
11 a late payment fee has been imposed for a particular late payment. No
12 late payment fee may be collected from any borrower if the borrower
13 informs the creditor that nonpayment of an installment is in dispute
14 and presents proof of payment within 45 days of receipt of the
15 creditor's notice of the late fee.

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

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

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

28
29 5. A high-cost home loan shall be subject to the following
30 additional limitations and prohibited practices:

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

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

39 c. No high-cost home loan shall contain a provision that increases
40 the interest rate after default. This provision ²[does] shall² not apply
41 to interest rate changes in a variable rate loan otherwise consistent
42 with the provisions of the loan documents, provided the change in the
43 interest rate is not triggered by the event of default or the acceleration
44 of the indebtedness.

45 d. No high-cost home loan shall include terms under which more
46 than two periodic payments required under the loan are consolidated

1 and paid in advance from the loan proceeds provided to the borrower.

2 e. ²[No high-cost home loan shall be subject to a mandatory
3 arbitration clause that]² ¹[limits in any way the right of the borrower
4 to seek relief through the judicial process for any and all claims and
5 defenses the borrower may have against the creditor, broker, or other
6 party involved in the loan transaction] ²[is oppressive, unfair,
7 unconscionable, or substantially in derogation of the rights of
8 borrowers. Arbitration clauses that comply with the standards set
9 forth in the Statement of Principles of the National Consumer Dispute
10 Advisory Committee in effect as of the effective date of this act shall
11 be presumed not to violate this subsection. The borrower shall have
12 the exclusive option to require arbitration concerning any claims or
13 defenses relating to high-cost home loans¹] Without regard to
14 whether a borrower is acting individually or on behalf of others
15 similarly situated, any provision of a high-cost home loan agreement
16 that allows a party to require a borrower to assert any claim or defense
17 in a forum that is less convenient, more costly, or more dilatory for the
18 resolution of a dispute than a judicial forum established in this State if
19 the borrower may otherwise properly bring a claim or defense or limits
20 in any way any claim or defense the borrower may have is
21 unconscionable and void².

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

27
28 NOTICE TO BORROWER

29
30 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE
31 TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD
32 SHOP AROUND AND COMPARE LOAN RATES AND FEES.
33 MORTGAGE LOAN RATES AND CLOSING COSTS AND
34 FEES VARY BASED ON MANY FACTORS, INCLUDING
35 YOUR PARTICULAR CREDIT AND FINANCIAL
36 CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE
37 LOAN-TO-VALUE REQUESTED AND THE TYPE OF
38 PROPERTY THAT WILL SECURE YOUR LOAN. THE
39 LOAN RATE AND FEES COULD ALSO VARY BASED ON
40 WHICH CREDITOR OR BROKER YOU SELECT.

41
42 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
43 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR
44 HOME. YOU COULD LOSE YOUR HOME AND ANY
45 MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR
46 PAYMENT OBLIGATIONS UNDER THE LOAN.

1 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND
2 A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR
3 OTHER EXPERIENCED FINANCIAL ADVISOR
4 REGARDING THE RATE, FEES AND PROVISIONS OF
5 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A
6 LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY
7 CONTACTING THE NEW JERSEY DEPARTMENT OF
8 BANKING AND INSURANCE.

9
10 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
11 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED
12 THIS DISCLOSURE OR HAVE SIGNED A LOAN
13 APPLICATION.

14
15 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
16 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL
17 CREDITORS PROVIDE ESCROW SERVICES FOR THESE
18 PAYMENTS. YOU SHOULD ASK YOUR CREDITOR
19 ABOUT THESE SERVICES.

20
21 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
22 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU
23 SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR
24 REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

25
26 g.¹ A creditor shall not make a high-cost home loan ¹to a borrower
27 who finances points and fees in connection with a high-cost home
28 loan¹ without first receiving certification from a ¹third-party nonprofit
29 credit¹ counselor, approved by the United States Department of
30 Housing and Urban Development ¹and the Department of Banking and
31 Insurance¹, that the borrower has received counseling on the
32 advisability of the loan transaction ²or completing another substantial
33 requirement developed by the department².

34 ¹[g.] ²[h.¹ A creditor shall not make a high-cost home loan
35 without due regard to repayment ability. A creditor shall not make a
36 high-cost home loan unless the creditor reasonably believes at the time
37 the loan is consummated that one or more of the borrowers, when
38 considered individually or collectively, will be able to make the
39 scheduled payments to repay the obligation, based upon a
40 consideration of their current and expected income, current
41 obligations, employment status and other financial resources, other
42 than the borrower's equity in the dwelling which secures repayment of
43 the loan. A borrower shall be presumed to be able to make the
44 scheduled payments to repay the obligation if, at the time the loan is
45 consummated, the borrower's total monthly debts, including amounts
46 owed under the loan, do not exceed 50% of the borrower's monthly

1 gross income as verified by the credit application, the borrower's
 2 financial statement, a credit report, financial information provided to
 3 the creditor by or on behalf of the borrower, or any other reasonable
 4 means. Notwithstanding the foregoing, no presumption of inability to
 5 make the scheduled payments to repay the obligation shall arise solely
 6 from the fact that, at the time the loan is consummated, the borrower's
 7 total monthly debts, including amounts owed under the loan, exceed
 8 50% of the borrower's monthly gross income.]² ¹[A creditor who
 9 follows the residual income guidelines established in 38 C.F.R.
 10 s.36.4337(e) and VA Form 26-6393 shall benefit from a rebuttable
 11 presumption that the creditor made the loan with due regard to
 12 repayment ability.]¹

13 ¹[h.] ²[i.] ¹ h.² A creditor shall not pay a contractor under a
 14 home-improvement contract from the proceeds of a high-cost home
 15 loan, unless the instrument is payable to the borrower or jointly to the
 16 borrower and the contractor, or, at the election of the borrower,
 17 through a third-party escrow agent in accordance with terms
 18 established in a written agreement signed by the borrower, the
 19 creditor, and the contractor prior to the disbursement.

20 ¹[i.] ²[j.] ¹ i.² A creditor shall not charge a borrower any fees or
 21 other charges to modify, renew, extend, or amend a high-cost home
 22 loan or to defer any payment due under the terms of a high-cost home
 23 loan.

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

28 ¹[k.] ²[l.] ¹ k.² Notwithstanding any other law to the contrary, a
 29 creditor making a high-cost home loan that has the legal right to
 30 foreclose shall use the judicial foreclosure procedures of this State so
 31 long as the property securing the loan is located in this State.
 32 ¹[Notwithstanding any other law to the contrary, the borrower shall
 33 have the right to assert in that proceeding the nonexistence of a default
 34 and any other claim or defense to acceleration and foreclosure,
 35 including any based on any violations of this act, though those claims
 36 or defenses shall not be deemed compulsory counterclaims.]

37 ²[m.] ¹ l.² No creditor making a high-cost home loan shall directly
 38 or indirectly finance points and fees in excess of 2% of the total loan
 39 amount.¹

40

41 6. a. Notwithstanding any other law to the contrary, if a home loan
 42 was made, arranged, or assigned by a person selling either a
 43 manufactured home, or home improvements to the dwelling of a
 44 borrower², or was made by or through a creditor to whom the
 45 borrower was referred by such seller², the borrower may assert all

1 affirmative claims and any defenses that the borrower may have against
2 the seller or home-improvement contractor ⁴limited to amounts
3 required to reduce or extinguish the borrower's liability under the
4 home loan, plus the total amount paid by the borrower in connection
5 with the transaction, plus amounts required to recover costs, including
6 reasonable attorney's fees⁴ against the creditor, any assignee ²[,] or²
7 holder, ²[or servicer,]² in any capacity.

8 b. ¹[Notwithstanding any other law to the contrary, the remedies
9 provided by this act apply to the creditor, any director, officer,
10 employee, or controlling stockholder of, or agent for, a creditor who
11 personally participated in the making or approving of a high-cost home
12 loan, and any other persons to whom this act applies and who violated
13 the requirements of this act.]¹ ²[Any] Notwithstanding any other
14 provision of law, any² person who purchases or is otherwise assigned
15 a high-cost home loan shall be subject to all affirmative claims and any
16 defenses with respect to the loan that the borrower could assert
17 against the original creditor or broker of the loan ²; provided that this
18 subsection shall not apply if the purchaser or assignee demonstrates,
19 by a preponderance of the evidence, that a reasonable person
20 exercising reasonable due diligence could not determine that the
21 mortgage was a high-cost home loan. It shall be presumed that a
22 purchaser or assignee has exercised such due diligence if the purchaser
23 or assignee demonstrates by a preponderance of the evidence that it:
24 (1) ⁴[maintains] has in place at the time of the purchase or
25 assignment of the loan, ⁴policies that expressly prohibit its purchase or
26 acceptance of assignment of any high-cost home loan; (2) requires by
27 contract that a seller or assignor of home loans to the purchaser or
28 assignee represents and warrants to the purchaser or assignee that
29 ⁴either (a) ⁴it will not sell or assign any high-cost home loan to the
30 purchaser or assignee ⁴or (b) that the seller or assignor is a beneficiary
31 of a representation and warranty from a previous seller or assignor to
32 that effect⁴ ; and (3) exercises reasonable due diligence at the time of
33 purchase or assignment of home loans or within a reasonable period
34 of time thereafter intended by the purchaser or assignee to prevent the
35 purchaser or assignee from purchasing or taking assignment of any
36 high-cost home loan².

37 c. Notwithstanding any other law to the contrary, ²[a borrower in
38 default more than 60 days or in foreclosure may assert a violation of
39 this act by way of offset:

40 (1) As an original action;

41 (2) As a defense or counterclaim to an action to collect amounts
42 owed; or

43 (3) To obtain possession of the home secured by the home loan]
44 but limited to amounts required to reduce or extinguish the borrower's
45 liability under the home loan plus amounts required to recover costs
46 including reasonable attorney's fees, a borrower acting only in an

1 individual capacity may assert against the creditor or any subsequent
 2 holder or assignee of the home loan:

3 (1) within six years of the closing of a covered home loan, a
 4 violation of ⁴[section 4, subsection d. of this section, section 8]⁴
 5 ³[and] ⁴[or³ section 12 of]⁴ this act in connection with the loan as an
 6 original action ⁴,⁴ or as a defense, claim or counterclaim after an
 7 action to collect on the home loan or foreclose on the collateral
 8 securing the home loan has been initiated or the debt arising from the
 9 home loan has been accelerated or the home loan has become 60 days
 10 in default; and

11 (2) at any time during the term of ³[the] a high-cost home³ loan
 12 after an action to collect on the home loan or foreclose on the
 13 collateral securing the home loan has been initiated or the debt arising
 14 from the home loan has been accelerated or the home loan has become
 15 60 days in default, ³[a violation of this act in connection with a high-
 16 cost home loan as a defense, claim or counterclaim; or]³ any defense,
 17 claim or counterclaim ³[in connection with a high-cost home loan²]³.

18 d. ²[¹Notwithstanding any other law to the contrary, the borrower
 19 shall have the right to assert in a foreclosure proceeding the
 20 nonexistence of a default and any other claim or defense to
 21 acceleration and foreclosure, including any claim based on any
 22 violations of this act, though those claims or defenses shall not be
 23 deemed compulsory counterclaims.

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

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

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

29 ²e. Nothing in this section shall be construed to limit the
 30 substantive rights, remedies or procedural rights ³, including, but not
 31 limited to, recoupment rights under the common law, ³ available to a
 32 borrower against any creditor, assignee or holder under any other law.
 33 The limitations on assignee liability in subsection b. of this section
 34 shall not apply to the assignee liability in subsection a., c. and d. of this
 35 section.²

36
 37 ¹7. a. The department shall conduct examinations and investigations
 38 and issue subpoenas and orders to enforce the provisions of this act
 39 with respect to a person licensed or subject to the provision of the
 40 "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et
 41 seq.).

42 b. The department shall examine any instrument, document,
 43 account, book, record, or file of a person originating or brokering a
 44 high-cost home loan under this act. The department shall recover the
 45 cost of examinations from the person. A person originating or
 46 brokering high-cost home loans shall maintain its records in a manner

1 that will facilitate the department in determining whether the person
2 is complying with the provisions of this act and the regulations
3 promulgated thereunder. The department shall require the submission
4 of reports by persons originating or brokering high-cost home loans
5 which shall set forth such information as the department shall require
6 by regulation.

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

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

14 (1) Impose a civil penalty of up to \$10,000 for each offense, 40%
15 of which penalty shall be dedicated for and used by the department for
16 consumer education through nonprofit organizations which can
17 establish to the satisfaction of the department that they have sufficient
18 experience in credit counseling and financial education. In determining
19 the penalty to be assessed, the commissioner shall consider the
20 following criteria: whether the violation was willful; whether the
21 violation was part of a pattern and practice; the amount of the loan;
22 the points and fees charged; the financial condition of the violator; and
23 other relevant factors. The department may require the person to pay
24 investigative costs, if any.

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

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

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

32 (5) Pending completion of an investigation or any formal
33 proceeding instituted pursuant to this act, if the commissioner finds
34 that the interests of the public require immediate action to prevent
35 undue harm to borrowers, the commissioner may enter an appropriate
36 temporary order to be effective immediately and until entry of a final
37 order. The temporary emergent order may include: a temporary
38 suspension of the creditor's authority to make high-cost home loans
39 under this act; a temporary cease and desist order; a temporary
40 prohibition against a creditor transacting high-cost home loan business
41 in this State, or such other order relating to high-cost home loans as
42 the commissioner may deem necessary to prevent undue harm to
43 borrowers pending completion of an investigation or formal
44 proceeding. Orders issued pursuant to this section shall be subject to
45 an application to vacate upon two days' notice, and a preliminary
46 hearing on the temporary emergent order shall be held, in any event,

1 within five days after it is issued, in accordance with the provisions of
 2 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 3 seq.).

4 (6) Impose such other conditions as the department deems
 5 appropriate.

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

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

14 g. A decision of the commissioner shall be a final order of the
 15 department and shall be enforceable in a court of competent
 16 jurisdiction. The department shall publish the final adjudication issued
 17 in accordance with this section, subject to redaction or modification
 18 to preserve confidentiality.

19 h. The provisions of this section shall not limit the authority of the
 20 Attorney General or the Public Advocate as established pursuant to
 21 P.L. , c. (C.) (now before the Legislature as Assembly
 22 Committee Substitute for Assembly Bill Nos. 345 and 2341) from
 23 instituting or maintaining any action within the scope of their
 24 respective authority with respect to the practices prohibited under this
 25 act.¹

26
 27 ¹[7.] 8.¹ a. Any violation of this act constitutes an unlawful
 28 practice under P.L.1960, c.39 (C.56:8-1 et seq.). ²Any borrower may
 29 seek damages under the provisions of section 7 of P.L.1971, c.247
 30 (C.56:8-19) or subparagraph (a) of paragraph (1) of subsection b. of
 31 this section, but not both.²

32 b. ²[In addition to penalties under that law, including¹, but not
 33 limited to,¹ any moneys or property ordered to be paid pursuant to
 34 section 2 of P.L.1966, c.39 (C.56:8-14) or section 3 of P.L.1971,
 35 c.247 (C.56:8-15)] Except as provided in subsection a. of this section
 36 ⁴and, where applicable, subject to any limitation on the amounts
 37 recoverable against a holder or assignee pursuant to section 6 of this
 38 act⁴, in addition to the remedies available to a borrower under
 39 P.L.1960, c.39 (C.56:8-1 et seq.) and without limiting those
 40 remedies²:

41 (1) Any person found by a preponderance of the evidence to have
 42 ³[²materially²]³ violated this act shall be liable to the borrower for the
 43 following:

44 (a) ³[Statutory] For material violations, statutory³ damages equal
 45 to the finance charges agreed to in the home loan agreement, plus ³up
 46 to³ 10% of the amount financed ¹[.]:¹

1 (b) Punitive damages, when the violation was malicious or reckless
2 ²in appropriate circumstances as determined by the fact-finder² ; and

3 (c) Costs and reasonable attorneys' fees.

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

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

12 (4)]¹ ²[The right of rescission granted under 15 U.S.C. s.1601 et
13 seq. for violations of that law and all other remedies provided
14 hereunder shall be available to a borrower by way of recoupment
15 against a party foreclosing on the home loan or collecting on the loan,
16 at any time during the term of the loan.]²

17 ¹[(5)] ²[(4)]¹² The remedies provided in this section are not
18 intended to be the exclusive remedies available to a borrower, nor
19 must the borrower exhaust any administrative remedies provided under
20 this act or any other applicable law before proceeding under this
21 section.

22 c. ²[Any person, including members, officers, and directors of the
23 creditor, who knowingly violates this act is guilty of a disorderly
24 persons offense and, on conviction, is subject to a fine not exceeding
25 \$1,000, or to imprisonment not exceeding six months, or both.

26 d.]² A creditor in a home loan who, when acting in good faith, fails
27 to comply with the provisions of this act, will not be deemed to have
28 violated this section if the creditor establishes that either:

29 (1) Within ¹[30] 45¹ days of the loan closing, ²[and prior to
30 receiving any notice from the borrower of the compliance failure,]²
31 the creditor has made appropriate restitution to the borrower, and
32 appropriate adjustments are made to the loan; or

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

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

44 ²[e.] d.² ³[¹Notwithstanding any provision of this act to the
45 contrary, a broker, who is a creditor, shall be liable for any violation

1 of this act by any party involved in a home loan transaction that he
2 brokered.

3 ²[f.] e. ²]³ ¹The remedies provided in this section are cumulative.

4
5 ¹[8. The rights conferred by this act are independent of and in
6 addition to any other rights under other laws.]

7 9. The rights, remedies, and prohibitions accorded by the
8 provisions of this act are hereby declared to be in addition to and
9 cumulative of any other right, remedy, or prohibition accorded by the
10 common law or statutes ²of the United States or² of this State, and
11 nothing herein shall be construed to deny, abrogate, or impair any such
12 common law or statutory right, remedy, or prohibition.¹ ²Without
13 limiting the foregoing, the rights, remedies and prohibitions accorded
14 by the provisions of this act are hereby further declared to create no
15 presumption that any home loan or any term in a home loan is not
16 unconscionable, whether or not the home loan or loan term, alone or
17 in conjunction with other terms of the loan, violates the provisions of
18 this act.²

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

24
25 ¹[10.] 11.¹ The Director of the Division of Banking in the
26 Department of Banking and Insurance, in consultation with the
27 Director of the Division of Consumer Affairs ²and the Division of Civil
28 Rights² in the Department of Law and Public Safety, shall develop and
29 implement a program of consumer counseling and awareness designed
30 to inform the public about the methods by which predatory creditors
31 impose unconscionable and noncompetitive fees and charges as part of
32 complex home mortgage transactions, to protect the public from
33 incurring those fees and charges, and otherwise to encourage the
34 informed and responsible use of credit.

35
36 ²12. Notwithstanding any provision of this act to the contrary, a
37 mortgage broker shall be liable under the provisions of this act only for
38 acts performed by the mortgage broker in the course of providing
39 mortgage brokering services. However, a mortgage broker may be
40 held liable for acts performed by the mortgage broker outside the
41 scope of mortgage brokering services if the acts are related to the
42 purchasing or the making of a home loan and are otherwise prohibited
43 under this act.²

44
45 ²13. No municipality, county or political subdivision thereof, shall
46 enact an ordinance or resolution or promulgate any rules or

1 regulations relating to this act. The provisions of any ordinance or
2 resolution or rules or regulations of any municipality or county relative
3 to abusive home loan lending practices are superseded by the
4 provisions of this act.²

5
6 ¹[11.] ²[12.¹] 14.² The Commissioner of Banking and Insurance
7 shall promulgate regulations pursuant to the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to
9 effectuate the provisions of ²subsections f. and g. of section 5 and
10 section 11 of² this act ¹except that prior to the effective date of this
11 act the commissioner may take those actions and promulgate those
12 regulations necessary to implement ²[the] these² provisions ²[of this
13 act¹]².

14
15 ¹[12.] ²[13.¹] 15.² This act shall take effect on the ²[90th]
16 210th² day following enactment ²and shall apply to home loans closed
17 on and after that date, except that section 14 shall take effect
18 immediately² ³, and except that a loan in existence on the effective
19 date of this act and which meets the definition of home loan in this act
20 shall be a home loan for the purposes of subsection b. of section 4 of
21 this act³.

22
23
24
25
26 "New Jersey Home Ownership Security Act of 2002."