State of New Jersey

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

relating to

INTEREST AND USURY

MARCH 1998

NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 648-3123
email: reviser@superlink.net
web site: http://www.lawrev.state.nj.us

TABLE OF CONTENTS

INTRODUCTION

The current New Jersey usury statute is based on the 1877 Revised statutes.[1] In the 19th century, the maximum permitted interest rate on a loan of money was 6%, a rate that today would have the effect of terminating the credit business in New Jersey. Later, the statute was amended to establish two rates: (1) 6% per year on an oral contract to lend money or any thing of value, and (2) 16% per year if the contract is written and the contract specifies the interest rate.[2] The statute itself contains several exceptions to the two base rates.[3] The most important exceptions are the ones for first lien mortgages for residential property, and for other loans exceeding $50,000.[4]

Though the statute appears to establish a simple and workable system of regulating interest rates, this is not the case. Changes in the banking industry have required New Jersey to exempt large categories of loans from the usury statute. Federal deregulation of banking and federal preemption of state usury laws for first lien residential mortgages have weakened the New Jersey usury statute.[5] The usury statute does not apply to national banks doing business in New Jersey, further limiting the statute's jurisdiction. Consequently, the usury statute is not a comprehensive statement of the regulation of interest rates in New Jersey. Its main effect on New Jersey law is to obfuscate the rules setting lawful interest rates and thereby to impose an unnecessary information cost on the credit industry.

There are four categories of loans that the usury statute does not cover. First, purchases under revolving credit accounts, installment loan purchases and purchases under credit card accounts are exempted from the usury statute under what is called the "time-price differential" doctrine.[6] This doctrine creates the legal fiction that the extension of

---

[1] Rev. 1877, p. 519, §1, as am. By L.1878, c.26, §1, p.30 [C.S. p. 5704, §1].
[2] N.J.S.A. 31:1-1.
[3] E.g., N.J.S.A. 31:1-1(b).
[4] N.J.S.A. 31:1-1(b); N.J.S.A. 31:1-1(e).
[5] See discussion of Federal Law infra at 9.
[6] E.g., Steffenauer v. Mytelka & Rose, Inc., 87 N.J. Super. 506 (App. Div. 1965)(finding that installment sale contract containing finance charge did not constitute a loan bearing interest but reflected a time price differential).

credit is not a loan of money but an adjustment in price for the privilege of delaying payment. Consequently, an enormous class of sales finance transactions, some carrying interest rates that can exceed 20% per year, do not even come within the jurisdiction of the statute. Second, national banks may charge the interest rate allowed to the state's most favored lender.[7] A national bank hence may lend money to a New Jersey resident in complete disregard of the usury statute and set the highest permitted rate allowable in New Jersey for its most favored lender. In New Jersey, credit unions may lend at any rate agreed to between the parties.[8] Therefore national banks may charge any agreed upon interest rate.

Third, national and federally insured banks may export the interest rates of the states in which they are chartered to borrowers located in foreign jurisdictions.[9] For example, a bank located in North Dakota can charge interest to a New Jersey borrower at North Dakota rates. Fourth, federal law has pre-empted state usury statutes for first lien residential mortgages. Thus, federally insured banks may charge any interest rate to a New Jersey home buyer.

The practical collapse of the usury statute proves that it does not work. The realities of the marketplace and the development of a national credit industry have been the statute's undoing. The New Jersey Legislature, by enacting so many exceptions to the statute, has explicitly recognized the difficulty of controlling interest rates at the state level. The usury statute now is the exception to the general rule that there are no limits on credit except for those within the criminal usury law. Elimination of usury rates has not resulted in disaster. This conclusion is evidenced by the residential mortgage business where market forces, not governmental controls, are responsible for the relatively low interest rates enjoyed by borrowers in the 1990's.

---

[7] E.g., United Bank of Kansas City v. Danforth, 394 F. Supp. 774, 779 (W.D. Mo. 1975)(containing modern statement of most favored lender rule).

[8] N.J.S.A. 17:13-104(b).

[9] E.g., Marquette National Bank of Minneapolis v. First of Omaha Service Corp., 439 U.S. 299 (1978)(finding that national bank may charge its out-of-state customers higher interest rates than that allowed by customer's jurisdiction).

The New Jersey usury statute is a throw-back to the days when banking was a matter of local concern. In the United States, the tradition of local banking was extremely strong and persistent. National banks were created only after the Civil War, and the United States did not establish its current central bank until 1911. Under these conditions, a state could effectively regulate interest rates and protect its borrowers by usury laws since banks served local communities and made investments tailored to the needs of its community. However, interest rates now are established mainly at the national level. Legal barriers to interstate banking have been removed and the legislative trend is to allow banks to conduct business across state borders. These legal developments have undercut the importance of New Jersey's usury law and have laid the basis for a reconsideration of the theory and policy of attempting to control interest rates at the state level.

RECOMMENDATION

The Commission recommends the repeal of the New Jersey civil usury statute, and the enactment of a statute giving the Executive limited authority to regulate interest rates in an emergency. Under the Commission's proposal, the setting of interest rates would be determined by the market forces of supply and demand for credit. Under limited circumstances, the Commissioner of Banking and Insurance would have the authority to promulgate a self-terminating interest rate regulation. The repeal of the civil usury statute would have no major impact on New Jersey borrowers due to the fact that the current usury statute affects such a small class of loan agreements. The repeal also would not disturb regulatory and licensing schemes governing lenders.

LEGAL ANALYSIS

The New Jersey Interest and Usury Statute

The New Jersey usury statute is found at N.J.S.A. 31:1-1 to 31:1-9. Section 31:1-1(a) establishes two basic legal rates of interest. First, the maximum rate of interest on a loan of money or other thing of value based on an oral contract is $6 for the forbearance

of $100 in any year, or stated as a simple interest rate, 6% per year. Second, the maximum rate of interest on a loan of money or other thing of value based on a written contract specifying a rate of interest is $16 for the forbearance of $100 in any year, or stated as a simple rate of interest, 16% per year.

The statute contains five exceptions to the basic rate. First, Section 31:1-1(b) gives the Commissioner of Banking and Insurance authority to establish by regulation interest rates for first lien mortgages on residential property. This interest rate may not exceed the "Monthly Index of Long Term Government Bond Yields" plus 8%. Second, Section 31:1-1(e)(1) permits the parties to agree on any interest rate related to non-first lien residential loans the amount of which exceeds $50,000. Third, Section 31:1-1(e)(2) provides an exception for residential mortgages packaged for sale on the secondary market to federally established programs. Fourth, Section 31:1-1(g) excepts the basic rate of interest for certain business and agricultural loans.

Fifth, Section 31:1-1.1 allows New Jersey state banks to charge any rate a national bank is allowed to charge New Jersey borrowers. This exception was needed to allow state banks to compete with national banks.[10] Under a line of cases beginning with Tiffany v. National Bank of Missouri, 85 U.S. 409 (1873), the "most favored lender" doctrine has allowed national banks systematically to ignore state usury rates. The underlying theory is that Congress, in enacting the national banking act, intended to prefer national banks over state banks. In response, the New Jersey legislature enacted the state bank parity act, which allows state banks to lend money at a rate "equal to the rate allowed by Federal law or regulation to be charged by national banking associations." N.J.S.A. 17:13B-1 et seq.

The penalty for violating the usury rate limits is found at Section 31:1-3. The lender forfeits the entire interest and is entitled to recover only the principal of the loan. The remaining sections of the usury statute deal with a variety of related topics: 31:1-2 (compelling a witness to testify); 31:1-4 (permitting borrower to compel discovery in

[10] Note that state bank parity obviates Section 31:1-1(b), the limited exception for first lien residential mortgages, and that state bank parity is obviated, at least for first lien residential mortgages, by the federal preemption of state usury laws for residential mortgages.

action based on statutory violation); 31:1-5 (providing special provision for sale of railroad and canal bonds below par value); 31:1-6 (eliminating defense of usury for corporations issuing debt obligations); 31:1-7 (exempting subdivisions of government that raise money in the bond market from the usury statute); 31:1-8 (containing liberal construction clause); and 31:1-9 (containing statement on effect of 1969 amendment). Since these sections are unrelated to the question of whether the usury statute should be repealed, they do not require further discussion.

Exceptions to Usury Rate Contained in Other New Jersey Law

The state of interest rate regulation in New Jersey cannot be derived from an isolated analysis of the New Jersey usury statute. Reliance on the statute itself is a trap for the unwary and wary alike. For example, the explicit statement of the statute that it applies not only to loans of money but to loans of things is misleading in light of the meaning of the Retail Installment Sales Act (RISA). N.J.S.A. 17:16C-1 et seq. That statute applies to "goods," very broadly defined, purchased on time, that is, at a price more than the sales price if the goods are paid for at the point of purchase. In economic terms, the financed purchase price is an interest rate. However, in legal parlance, the difference between the original purchase price and final financed price is called the "time price differential" and does not represent an interest rate. Steffaneur v. Mytelka & Rose, Inc., 87 N.J. Super 506, 516 (App. Div. 1965). Hence, goods with a purchase price of $10,000 or less and purchased on credit are subject to RISA but are not subject to the usury statute. Goods having a value greater than $10,000 are subject to neither law.

The Steffenauer rationale also applies to department store revolving credit card agreements and to extensions of credit when goods are purchased by bank credit cards. Sliger v. R. H. Macy & Co., 59 N.J. 465 (1971)(applying time price differential doctrine to revolving charge account agreements); Sherman v. Citibank (S.D.), N.A., 143 N.J. 35 (1995) (applying provisions of RISA to credit card purchase). The net effect of the time price differential doctrine to is to move an enormous and important category of credit

purchases out of the sphere of interest rate regulation where, at least in legislative design, it would have its greatest consumer benefit.

Additionally, the current law leads to the following irrational regulatory result. The rate of interest lenders may charge on consumer loans $15,000 or less may be set as high as 30%. The rate of interest lenders may charge on consumer loans ranging between $15,000 and $50,000 may be set only to a maximum rate of 16%. The rate of interest lenders may charge on consumer loans exceeding $50,000 may be set as high as 30%. This division of categories defies logic. In terms of consumer protection, there is no reason to lift usury protection for consumers borrowing $15,000 or less, while providing special protections for consumers borrowing in the range between $15,000 to $50,000.

Exceptions to the usury statute further augment the class of loans not subject to the legal rate of interest. Many statutes explicitly except the application of the usury statute to extensions of credit. E.g., the Market Rate Consumer Loan Act, N.J.S.A. 17:3B-4 et seq.(allowing lender, as defined in Act, to charge interest on revolving credit plan at any rate unless prohibited by criminal usury statute); Consumer Small Loan Act, N.J.S.A. 17:10-1 et seq.(exempting loan of money in the amount of $15,000 or less from usury rate); Secondary Mortgage Loan Business Act, N.J.S.A. 17:11A-35 et seq.(allowing lender to make open end-loan to borrower at any agreed upon rate); Licensed Lender Act, N.J.S.A. 17:11C-1 et seq.(allowing lender and borrower to set rate by agreement for second mortgage loans and first mortgage loans; and allowing consumer and licensed lender to set rate by agreement on loans under $15,000); Insurance Premium Financing Act, N.J.S.A. 16D-1 et seq.(permitting premium finance company to charge any rate of interest on finance charge agreed to by parties); Banking Act of 1948, N.J.S.A. 17:9A-59.1(providing for any rate agreed on between bank and customer for overdraft privileges) and N.J.S.A. 17:9A-59.6(allowing bank to charge agreed on rate for advance loans); and Revolving Loan Act, N.J.S.A. 17:3B-29 et seq. (allowing bank to charge agreed on rate for open-end loans).

The exceptions and exemptions to the usury statute have produced a complicated set of legal rules regulating interest rates. The civil usury statute has in effect become an exception to the general rule that parties may establish a rate of interest by contract subject to the limitations of the criminal usury law. While freedom of contract may comprise the general rule in many cases, the set of legal rules and regulations surrounding the area of credit is so dense that in some cases lenders and borrowers may be unsure of the legal status of the credit agreement. The unnecessary multiplication of categories involving loans and their applicable legal interest rates is illustrated by a list entitled "Current Usury Limitations as of September 22, 1988," prepared by the New Jersey Department of Banking. It specifies interest limits separately for commercial banks and savings banks for each of 18 categories of loan. Though the list is dated, it illustrates how the usury statute has caused an unnecessary level of complication in determining the lawful rate of interest on any particular loan.

Federal Law

The United States Supreme Court held in Marquette National Bank of Minneapolis v. First of Omaha Corp., 439 U.S. 299 (1978) that a national bank may charge its out-of-state customers an interest rate on unpaid credit card balances allowed by its home state where that rate is greater than that permitted by the state of the bank's non-resident customers. The United States Supreme Court in Smiley v. Citibank, 517 U.S. 735 (1996) strengthened that decision. Reaffirming that a national bank may charge out of state credit card customers interest at the rate allowed by the bank's home state even when that rate is higher than the rate permitted by the state where the card holder resides, the Court held that the term "interest" included late payment fees charged by the national bank.[11]

The United States Supreme Court in Tiffany v. National Bank of Missouri, 85 U.S. 409 (1873) held that national banks may charge rates of interest allowed by the states to

[11] The Smiley case directly overruled the New Jersey Supreme Court in Sherman v. Citibank, (S.D.), N.A. 143 N.J. 35 (1995)(holding that South Dakota national bank cannot charge late fee because under New Jersey law late fee is not interest). By implication, Smiley also overruled Hunter v. Greenwood Trust, 143 N.J. 97 (1995)(holding that Delaware federally insured state bank cannot charge late fee because under New Jersey law late fee is not interest).

"natural persons generally, and a higher rate, if state banks of issue were authorized to charge a higher rate." Id. at 413. The case enunciated what is now referred to as the "most favored lender" doctrine. "The courts have continued to allow national banks to select the highest rate permitted to lenders generally within the state." Richard E. Brophy, Jr., State Usury Laws and National Banks, 31 Baylor L. Rev. 169,171 (1979); See, Saul v. Midlantic Nat. Bank/South, 240 N.J. Super. 62 (App. Div. 1990)(finding that under most favored lender doctrine Midlantic could charge the rate of interest a New Jersey credit union could charge, that is, anything agreed to between borrower and lender). The Comptroller of the Currency has also found that "a national bank may charge interest at the maximum rate permitted by state law to any competing state chartered or licensed lending institution." Brophy, supra at 173.

In 1980, Congress enacted the Depository Institutions Deregulation and Monetary Control Act (DIDA). Pub. L. No. 96-221, 94 Stat. 161 (Mar. 31, 1980). This act, in part, pre-empted state law with regard to first lien residential mortgage loans, whether for home purchases or other uses, such as first lien home equity loans. The preemption applies to interest, discount points, finance charges or other charges. While DIDA gave states a 3 year window in which to override the federal exemption of usury limits, New Jersey did not exercise that option and no usury rate applies to any first lien residential mortgage loan executed in New Jersey today by a banking institution or "housing creditor."

Necessary Conforming Amendments

There are two major practical effects of repealing the interest and usury statute. First, government would have no authority to stabilize the market in an economic crisis. Second, other statutes, which refer to "lawful" or "legal" interest, depend on the interest and usury statute to determine the meaning of their terms. Without the referent of the civil usury statute, these statutes would be subject to re-interpretation.

To cope with unusual conditions that cause non-competitive interest rates, the Commission recommends that the Legislature enact a statute giving the Commissioner of

the Department of Banking and Insurance the authority to promulgate a regulation controlling interest rates in an emergency. Any regulation promulgated under this power would expire automatically two years after its effective date to assure that the regulation does not outlive the emergency to which it responds. This allocation of authority to the Executive does not create a method to circumvent market interest rates. Its purpose is to permit government to intercede in the market when the market has demonstrated its inability to self-correct.

To provide a definition of lawful interest rate, the Commission recommends that the Legislature enact a statute defining the terms "lawful" or "legal" interest. The Commission's recommended definition is based on the Court Rule interest rate. R. 4:42-11(a)(ii). That rate is based on the average rate of return received by the New Jersey Cash Management Fund.

CONCLUSION

In essence, New Jersey's usury statute applies mainly to a limited class of loans: (1) first lien residential mortgage loans made by persons that are not "housing creditors" under federal law, (2) junior lien residential loans made by persons that are not required to be licensed under the Licensed Lender Act, (3) consumer loans exceeding $15,000 but less than $50,000, (4) consumer loans made by parties that are not licensed lenders, and (5) commercial loans under $50,000 that are secured by non-residential real estate or personal property, or that are unsecured loans.

The New Jersey usury statute can no longer regulate interest rates effectively. Exceptions to the usury statute, the export of interest rates by out-of-state lenders into New Jersey, the most favored lender doctrine and federal preemption reduce the benefits of the New Jersey usury statute. Its principal effect is to create confusion in the credit area. Attorneys for lenders are faced with the daunting task of determining whether the rates their clients charge are lawful under the scheme of statutes regulating interest rates. Given the multiplication of categories and the interaction of federal law, any residual benefits of the usury law are outweighed by the cost of this wasteful intellectual labor.

The benefits of the repeal are self-evident. Lenders and borrowers alike are subject only to the two criminal usury rates and thus they are likely to be aware of them. Second, as a practical matter, the repeal should have absolutely no effect on interest rates. As already explained, most rates on loans and extensions of credit are not subject to the civil usury statute. This freedom from regulatory control has not led to the establishment of punitive interest rates. Rather, the borrowing community has had access to a wider range of interest rates and lenders.

RECOMMENDED REVISIONS TO NEW JERSEY STATUTES

The repeal of the usury statute would require the Legislature to adopt the following recommendations of the Commission: (1) a style modification of the New Jersey criminal usury statute to reflect the repeal of its civil counterpart, (2) a statute authorizing the Commissioner of Banking and Insurance to regulate interest rates in an emergency, (3) a statute defining the term lawful interest rate, and (4) technical conforming amendments to numerous laws that refer to the usury statute.

1. Recommended Amendment to Title 2C of the Code of Criminal Justice

2C:21-19. Wrongful Credit Practices and Related Offenses.

a. Criminal usury. A person is guilty of criminal usury when not being authorized or permitted by law to do so, he:

(1) lends money or other property to a natural person at an interest rate exceeding 30% per year, or,

(2) lends money or other property to a business entity with limited liability at an interest rate exceeding 50% per year.

The phrase "lends money or other property" includes: (1) making a loan directly or indirectly, (2) agreeing to lend money or other property, (3) taking money or other property as interest on a loan or (4) agreeing to take money or other property as interest on a loan.

[(1) Loans or agrees to loan, directly or indirectly, any money or other property[at a rate exceeding the maximum rate permitted by law; or

(2) Takes, agrees to take, or receives any money or other property as interest on the loan or on the forbearance of any money or other interest] in excess of the maximum rate permitted by law.

For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, any loan or forbearance with an interest rate which exceeds 30% per annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation any rate not in excess of 50% per annum shall be a rate authorized or permitted by law**]**

Criminal usury is a crime of the second degree if the rate of interest on any loan made to any person exceeds 50% per annum or the equivalent rate for a longer or shorter period. It is a crime of the third degree if the interest rate on any loan made to any person except a corporation does not exceed 50% per annum but the amount of the loan or forbearance exceeds $1,000.00. Otherwise, making a loan to any person in violation of subsection a.(1) and a.(2) of this section is a disorderly persons offense.

b. Business of criminal usury. Any person who knowingly engages in the business of making loans or forbearances in violation of subsection a. of this section is guilty of a crime of the second degree and, notwithstanding the provisions of N.J.S.A. 2C:43-3, shall be subject to a fine of not more than $250,000.00 and any other appropriate disposition authorized by N.J.S.A. 2C:43-2b.

c. Possession of usurious loan records. A person is guilty of a crime of the third degree when, with knowledge of the nature thereof, he possesses any writing, paper instrument or article used to record criminally usurious transactions prohibited by subsection a. of this section.

d. Unlawful collection practices. A person is guilty of a disorderly persons offense when, with purpose to enforce a claim or judgment for money or property, he sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance simulates a summons, complaint, court order or process or an insignia, seal or printed form of a federal, State or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

e. Making a false statement of credit terms. A person is guilty of a disorderly persons offense when he understates or fails to state the interest rate, or makes a false or inaccurate or incomplete statement of any other credit terms.

f. Debt adjusters. Any person who shall act or offer to act as a debt adjuster shall be guilty of a crime of the fourth degree.

"Debt adjuster" means a person who either (1) acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (2) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor.

"Debtor" means an individual or two or more individuals who are jointly and severally, or jointly or severally indebted.

The following persons shall not be deemed debt adjusters for the purposes of this section: an attorney at law of this State who is not principally engaged as a debt adjuster; a nonprofit social service or consumer credit counseling agency licensed pursuant to P.L. 1979, c. 16 (C. 17:16G-1 et seq.); a person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts; a person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this State or of the United States; a person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; or a person who, at the request of the debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such debts.

Comment

This amendment is necessitated by the repeal of the civil usury statute, N.J.S.A. 31:1-1 et seq. It establishes a criminal rate of 30% for natural persons and 50% for corporations unless other law, such as DIDA, is interpreted to permit the charging of interest at a rate greater than the rates stated in the criminal statute.

2. Recommended Amendment of Title I. Acts, Laws and Statutes

[New Section] Definition of lawful interest rate

The terms “lawful interest,” legal interest,” or any equivalent term, means the annual rate of interest equal to the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating June 30 of the New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

Comment

This statute is necessitated by the repeal of the civil usury statute, N.J.S.A. 31:1-1 et seq. The terms “lawful” or “legal” interest rate, which appear in several statutes, depend the civil usury statute for their meaning, generally understood to mean the 6% civil usury rate. The repeal of the civil usury statute has the potential to call into question the meaning of the terms “lawful” or “legal” interest. Hence, this statute provides a meaning for these terms based on the standard used in New Jersey Court Rule 4:42-11(a)(ii).

3. Recommended New Section

[New section] Regulation of interest rates

If the Commissioner of the Department of Banking and Insurance finds that there is a market dislocation that restricts the public's access to credit, the Commissioner may adopt a regulation limiting the rate of interest charged by lenders. The Commissioner shall not regulate interest rates unless the benefit of the regulation outweighs any negative impact of the rate on the operation of the free market. The regulation shall expire twenty four months after the date it is adopted unless sooner repealed by the Commissioner.

Comment

This statute replaces the civil usury statute, N.J.S.A. 31:1-1 et seq. Its purpose is to give the Commissioner of Banking and Insurance authority to set a maximum interest rate in cases of emergency. The term market dislocation means that the ordinary forces of supply and demand for credit no longer operate to set the price of money. Increases in the cost of credit alone are inadequate to meet this standard. Rather, to use this authority, the Commissioner must make two findings based on reliable evidence. First, the Commissioner must find that the market has lost its capacity for self-correction. Second, the Commissioner must find that the benefit of regulation outweighs the harm of state intervention in the marketplace. The premise of the statute is that this emergency authority will rarely, if ever, be exercised. To make certain that this emergency authority is not abused, any regulation promulgated hereunder expires automatically twenty four months after its adoption.

4. Recommended Conforming Amendments

12A:10-104. Statutes saved from repeal.

The following statutes and parts of statutes and all amendments thereof are hereby specifically saved from repeal and shall remain effective as provided in section 12A:9-203:

Uniform Act for Simplification of Fiduciary Security Transfers

1959 laws, chapter 200 (14:18-1 through 14:18-12),

The Banking Act of 1948

1948 laws, chapter 67, §54 (17:9A-54), §55 (17:9A-55), §59 (17:9A-59),

Small Loan Law

R.S. 17:10-1 through R.S. 17:10-26, 1958 laws, chapter 107 supplementing the same,

Provident Loan Associations

R.S. 17:11-1 through R.S. 17:11-12, 1953 laws, chapter 353 (17:11-13 through 17:11-18),

Savings and Loan Act

1946 laws, chapter 56, §78 (17:12A-78), §79 (17:12A-79),

(Deleted by amendment, P.L. [1984], c. [171]),

Safe Deposit Companies Law

R.S. 17:14-1 throughR.S. 17:14-8,

Investment Companies Law

1938 laws, chapter 322, §§1 through 20 (17:16A-1 through 17:16A-20),

Retail Installment Sales Act of 1960

1960 laws, chapter 40 (17:16C-1 through 17:16C-61),

Home Repair Financing Act

1960 laws, chapter 41 (17:16C-62 through 17:16C-94),

[Usury Law

R.S. 31:1-1 throughR.S. 31:1-6**,]**

Assignment or Purchase of Wages Law

R.S. 34:11-25,R.S. 34:11-26,

Motor Vehicle Certificate of Ownership Law

R.S. 39:10-1 throughR.S. 39:10-25,

Pawnbrokers and Dealers in Secondhand Goods Law

R.S. 45:22-1 through R.S. 45:22-34, 1939 laws, chapter 55, §§1 through 7 (45:22-35 through 45:22-41),

Chattel Mortgages Included in Realty Mortgages

R.S. 46:28-10,R.S. 46:28-14,

Bridge Companies Law

R.S. 48:5-18,

Railroads Law

R.S. 48:12-18,

Street Railways Law

R.S. 48:15-15.

L. 1961, c. 120. Amended. L. 1962, c. 203, L. 1967, c. 146, L. 1984, c. 171.

17:2-6. General powers.

Savings banks, banks, banking institutions, trust companies, building and loan associations, savings and loan associations, mortgage companies and insurance companies organized under any general or special law of this State, all boards, commissions and

departments of the State Government and of the various counties and municipalities thereof, and executors, administrators, trustees, guardians and other fiduciaries are authorized:

a. To make such real estate mortgage loans as may be guaranteed or insured in whole or in part by the United States of America or the State of New Jersey, or by any officer, agency or instrumentality of either of them, or for which a commitment to so guarantee or insure has been made, and to invest in, purchase or otherwise acquire, own or hold, mortgage notes or bonds so guaranteed or insured;

b. To cause such mortgage securities to be and be kept so guaranteed or insured and to pay for and receive the benefits of such guarantees or insurance;

c. To invest in, purchase or otherwise acquire, own and hold notes, bonds, debentures, capital stock or other such obligations of any national mortgage association; provided, the issuance of such notes, bonds, debentures, capital stock or other such obligations has been approved by the Federal Housing Administrator. Nothing in sections 17:2-5 to 17:2-8 of this Title contained shall be construed to empower any fiduciary to make any investment or commitment in capital stock pursuant to paragraph "c" of this section;

d. To make loans for the purpose of financing the purchase of or refinancing an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of real estate in this State.

Such institutions may, subject to such regulations as the commissioner finds necessary and proper, invest to an amount not exceeding 85% per annum of the purchase price or, in the case of a refinancing, the appraised value of certificates of stock or other evidence of an ownership interest in and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate within the State, for the purpose of financing a purchase of or refinancing an existing ownership interest in such a corporation or partnership, provided (1) such investment is secured within 90 days from the making of the loan by an assignment or transfer of the stock or other evidence of an ownership interest of the borrower and a proprietary lease; and (2) repayment of principal and interest shall be effected within 30 years. **[**Notwithstanding any other provision of law, the maximum rate of interest which may be charged, taken or received upon any loan or forbearance made pursuant to this subsection may exceed by no more than 1 1/2% per annum the rate of interest prescribed by the commissioner which is applicable to mortgage loans on one-to-six family dwellings a portion of which may be used for commercial purposes, pursuant to the provisions of R.S. 31:1-1 et seq.**]**

Amended. L. 1938, c. 52; L. 1968, c. 33; L. 1977, c. 94.

17:3B-7. Interest.

[Notwithstanding the provisions of R.S. 31:1-1, a**]** A lender may, subject to the criminal usury provisions of N.J.S.A. 2C:21-19, charge and collect interest under a revolving credit plan on outstanding unpaid indebtedness in the borrower's account under

the plan at daily, weekly, monthly, annual or other periodic percentage rates as the agreement governing the plan provides or as established in the manner provided in the agreement governing the plan. If the applicable periodic percentage rate under the agreement governing the plan is other than daily, interest may be calculated on an amount not in excess of the average of outstanding unpaid indebtedness for the applicable billing period, determined by dividing the total of the amounts of outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period. If the applicable periodic percentage rate under the agreement governing the plan is monthly, a billing period shall be deemed to be a month or monthly if the last day of each billing period is on the same day of each month or does not vary by more than four days therefrom.

Nothing in this section shall be construed to authorize the charging of interest on the amount of any accrued interest remaining unpaid on the account.

L. 1985, c. 81.

17:3B-17. Interest.

[Notwithstanding the provisions of R.S. 31:1-1, a**]** A lender extending closed end credit may, subject to the criminal usury provisions of N.J.S.A. 2C:21-19, charge and collect interest with respect to a note or loan at daily, weekly, monthly, annual or other periodic percentage rates established in accordance with the terms of the loan agreement, except that the interest shall be calculated on a simple interest basis. In no instance shall the precomputed interest method be used. Nothing in this section shall be construed to authorize the charging of interest on any accrued interest remaining unpaid on the account.

For purposes of this section, a year may be, but need not be, a calendar year and shall be a period of 365 days. "Precomputed interest" means an amount equal to the whole amount of interest payable on a loan for the period from the making of the loan to the date scheduled by the terms of the loan for the repayment of the loan in full.

L. 1985, c. 81.

17:9A-53. Scope of article; definitions; interest.

A. In addition to such other loans which banks are authorized to make, a bank may make secured and unsecured installment loans upon the terms and conditions prescribed by this article, but this article shall not be construed as prescribing an exclusive method for the making of loans which are payable in installments.

B. As used in this article:

(1) "Bank" means a banking institution as defined in section 1 (C. 17:9A-1) of this act;

(2) "Installment loan" means a loan (1) which is required by its terms to be repaid in two or more installments; (2) upon which interest is contracted for at a rate in excess of

that authorized pursuant to R.S. 31:1-1; (3) the amount of which does not exceed the amounts authorized by subsection D. of section 54 of this act (C. 17:9A-54D); and (4) the final installment of which is payable not more than 12 years and 3 months subsequent to the date upon which such loan is made. The terms "installment loan" and "installment loans" as used in this article include both precomputed and nonprecomputed installment loans unless otherwise expressly stated;

(3) (Deleted by amendment.)

(4) (Deleted by amendment.)

(5) "Person" means an individual, a partnership and an association;

(6) (Deleted by amendment.)

(7) (Deleted by amendment.)

(8) (Deleted by amendment.)

(9) "Actuarial method" means the method of applying payments made on a loan between principal and interest pursuant to which a payment is applied first to accumulated interest on the principal amount of the loan and the remainder is applied to the unpaid principal balance of the loan in reduction thereof;

(10) "Precomputed interest" means an amount equal to the whole amount of interest payable on an installment loan for the period from the making of the loan to the date scheduled by the terms of the loan for the payment of the final installment;

(11) "Precomputed loan" means an installment loan which is evidenced by a note the face amount of which consists of the aggregate of the principal amount of the loan so evidenced, and theprecomputed interest thereon;

(12) "Nonprecomputed loan" means an installment loan which is evidenced by a note the face amount of which consists solely of the principal amount of the loan so evidenced;

(13) "Unpaid balance" of an installment loan means the aggregate of the following:

(i) The face amount of the note evidencing such loan;

(ii) All amounts paid by the bank and added to such loan as provided in paragraph (2) of subsection A of section 55 [17:9A-55];

(iii) All interest accrued and unpaid;

(iv) Such further charges as the bank may make pursuant to law in protecting or enforcing a security interest in any property securing the payment of such loan or otherwise;

(v) In the case of precomputed loans, the amount of all late charges imposed pursuant to section 55;

less the aggregate of the following:

(vi) All installment payments made in the case of a precomputed loan, or all payments made in reduction of principal in the case of a nonprecomputed loan;

(vii) All payments made on account of or in payment in full of any charges or amounts referred to in subparagraphs (ii), (iii), (iv) and (v) of this paragraph (13); and

(viii) In the case of a precomputed loan, the amount of the credit to which the borrower is entitled pursuant to section 56 [17:9A-56];

(14) "Class I installment loan" means an installment loan which is unsecured, and also means an installment loan which is secured by an interest in tangible or intangible personal property;

(15) "Class II installment loan" means an installment loan which is secured by an interest in real property.

C. **[**Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, a**]** A bank may contract for and receive interest on installment loans calculated according to the actuarial method, at a rate or rates agreed to by the bank and the borrower. This subsection shall not limit or restrict the manner of contracting for the interest charge, whether by way of add-on, discount or otherwise **[**, so long as the interest rate does not exceed that permitted by this subsection**]**. In the case of a precomputed loan, the interest may be computed on the assumption that all scheduled payments will be made when due, and all scheduled installment payments made on a precomputed loan may be applied as if they were received on their scheduled due dates. In the case of nonprecomputed loans, all installment payments shall be applied no later than the next day, other than a public holiday, after the date of receipt, and a day shall be counted as one three-hundred-sixty-fifth of a year.

D. (Deleted by amendment.)

E. (Deleted by amendment.)

F. (Deleted by amendment.)

G. The commissioner may prepare and distribute to such banks as shall make a request therefor, a schedule or schedules to be used in ascertaining precomputed interest, or he may approve a subsisting schedule or schedules, and interest taken pursuant to such

schedule or schedules shall constitute a complete compliance with this section. A copy of such schedule or schedules, certified by the commissioner, shall be evidence in all courts and places.

L. 1948, c. 67. Amended. L. 1950, c. 311; L. 1959, c. 180; L. 1965, c. 171; L. 1968, c. 436; L. 1973, c. 228; L. 1976, c. 128; L. 1981, c. 103.

17:9A-53.4. Educational loans.

[Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, a**]** A banking institution may make educational loans and may charge and collect interest thereon at a rate or rates agreed to by the banking institution and the borrower. Interest shall be calculated according to the actuarial method, pursuant to which payments made on the loan are applied first to accumulated interest on the principal amount of the loan and the remainder applied to the unpaid principal balance of the loan in reduction thereof. All payments shall be applied no later than the next day, other than a Sunday or a public holiday, after the date of receipt, and a day shall be counted as one three-hundred-sixty-fifth of a year. The note or other evidence of the loan may provide for an increase, or may provide for a decrease, or both, in the rate of interest applicable to the loan. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the note provides for the possibility of an increase or decrease, or both, in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the note. No rate increase shall take effect during the first 3 years of the term of the loan, or thereafter, (a) unless at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (b) unless at least 365 days have elapsed without any increase in the rate. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period.

L. 1975, c. 287. Amended. L. 1981, c. 103.

17:9A-58. Exempt transactions.

Nothing in this article applies to

(1) any loan or extension of credit which a bank may make pursuant to any other law of this State or any regulation promulgated pursuant to such law, nor does this article apply to any loan or other extension of credit otherwise authorized or not prohibited by law, or otherwise enforceable at lawor

(2) [any loan which bears interest at a rate not in excess of a rate authorized pursuant to R.S. 31:1-1 computed upon its unpaid balances; or] deleted by amendment

(3) any instrument or obligation, lawful upon its face, which is purchased or discounted by a bank pursuant to paragraph (1) of section 25 [17:9A-25], and which represents, evidences, or secures an existing indebtedness having its inception in a transaction to which the bank is not a party; regardless whether such instrument or obligation is acquired by the bank with or without rights of recourse against the person from whom the bank obtains such instrument through such purchase or discount. A bank shall not be deemed to be a party to a transaction within the meaning of this paragraph, because prior to the inception of rights in any instrument, obligation or indebtedness purchased or discounted by it, the bank approves the credit of any person liable for the payment of such instrument, obligation or indebtedness at the request of the person who supplies the consideration which supports the liability of any person to pay such instrument, obligation or indebtedness.

L. 1948, c. 67. Amended. L. 1950, c. 311; L. 1968, c. 436; L. 1976, c. 128.

17:9A-59.6. Advance loan interest rates; annual fees.

A. [Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, the] The rate or rates on advance loans shall be as agreed to by the bank and the borrower. [Interest may be reckoned according to any method authorized by R.S. 31:1-1.]

The contract may provide that the interest rate may be increased, or may be decreased, or both, from time to time; provided, however, that no increase in interest shall be effective unless: (a) at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such change and the indebtedness to which it applies and states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the plan to which the agreement relates on or after the effective date of the increase specified in the notice shall constitute acceptance of the increase and (b) either the borrower agrees in writing to the increase or the borrower or another person authorized by him incurs such further indebtedness on or after the effective date of the increase stated in the notice. The provisions of this paragraph permitting an increase in a rate of interest shall not apply in the case of an agreement which expressly prohibits changing of interest rates or which provides limitations on changing of interest rates which are more restrictive than the requirements of this paragraph. If the contract provides for the possibility of an increase or decrease, or both, in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the contract.

B. For the purposes of this section, charges for premiums advanced by the bank for credit life insurance, or credit accident and health insurance, or both, shall be treated as part of the principal balance owing on an advance loan, but no such charge shall be included in determining the maximum permissible indebtedness as limited by section 11 of this act [17:9A-59.11].

C. Notwithstanding the provisions of any other law to the contrary, a bank which issues a credit card in connection with an advance loan contract in effect between the bank and the borrower as authorized by this act [17:9A-59.1 et seq.] may charge the borrower a fee not exceeding $15.00 per annum on an annual or monthly basis; except that, if under the advance loan contract, the bank may lend the borrower an amount of $5,000.00 or more, the bank may charge the borrower a fee not exceeding $50.00 per annum on an annual or monthly basis. The charge so made (1) may be collected in advance, (2) shall be in addition to and not in substitution of any other fee or charge authorized by this act, and (3) shall not be deemed to be an interest charge.

L. 1959, c. 91. Amended. L. 1968, c. 64; L. 1981, c. 37; L. 1981, c. 103; L. 1984, c. 225.

17:9A-59.27. Small business loans.

(a) **[**Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, a**]** A bank may contract for and receive interest on a small business loan calculated according to the actuarial method, at a rate or rates agreed on by the bank and the borrower. This subsection shall not limit or restrict the manner of contracting for the interest charge, whether by way of add-on, discount or otherwise**[**, so long as such charge does not exceed the limitation imposed by this section**]**. In the case of a precomputed loan, the interest charge may be computed on the assumption that all scheduled payments will be made when due, and all scheduled installment payments made on a precomputed loan may be applied as if they were received on their scheduled due dates. In the case of nonprecomputed loans, all installment payments shall be applied no later than the next day, other than a public holiday, after the date of receipt, and a day shall be counted as one three-hundred-sixty-fifth of a year.

(b) (Deleted by amendment.)

L. 1964, c. 162. Amended. L. 1968, c. 36; L. 1972, c. 119; L. 1979, c. 319; L. 1981, c. 103.

17:9A-59.40. Loan to depositor in amount of and guaranteed by deposit.

Notwithstanding any other provision of law, a banking institution may contract with a depositor for the loan of money in an amount not to exceed such depositor's deposit and secured by a pledge of such deposit, upon such terms and conditions as may be mutually agreed upon between the banking institution and such depositor**[**; provided, however, that the rate of interest charged with respect to any such loan shall not exceed the maximum permitted under the provisions of R.S. 31:1-1 or 2% in excess of the interest rate then paid with respect to the deposit which secures such loan whichever is greater**]**

L. 1977, c. 64.

17:11C-5. Exemptions from licensing.

a. Depository institutions and insurance companies are exempt from licensing as secondary mortgage lenders; but subsidiaries and service corporations of these institutions or companies shall not be exempt.

b. A real estate broker or salesperson licensed in New Jersey pursuant to R.S.45:15-1 et seq. is not required to obtain a license to negotiate a secondary mortgage loan in the normal course of business as a real estate broker or salesman.

c. An attorney authorized to practice law in New Jersey is not required to obtain a license to negotiate a secondary mortgage loan in the normal course of business as an attorney.

d. Any person who makes one or two secondary mortgage loans in this State during any calendar year **[**which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and**]** on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest, shall not be required to obtain a license under this act.

e. Any employer who provides secondary mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, is not required to be licensed.

f. A municipality, its officer, employee or any agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et seq.), or in fulfillment of a regional contribution agreement with a municipality that has received such certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated, is not required to be licensed.

L. 1996, c. 157.

17:11C-24. Secondary lenders permitted to make closed-end loans.

a. **[**Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, a**]** <u>A</u> person licensed as a secondary lender may make closed-end loans, and may charge, contract for and receive thereon interest at an annual percentage rate agreed to by the licensee and the borrower.

b. The note evidencing a closed-end loan may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. If the note provides for a variation in the interest rate, that fact shall be clearly described in plain language, in at least eight-point bold face type on the face of the note. If the note provides for a final payment which is substantially greater than the previous installments, that fact, together with a statement that the lender is under no obligation to refinance the loan, unless the lender unconditionally obligates itself to do so, shall be clearly disclosed in plain language, in at least eight-point bold face type on the face of the note. No rate increase or decrease shall take effect during the first six months of the term of the loan. Thereafter, no rate increase or decrease shall take effect unless at least 30 days prior to the effective date of that increase or decrease, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the increase or decrease, and unless at least six months have elapsed without any increase in the rate.

c. Upon written request from the borrower, a secondary lender shall give to the borrower, without charge, within five days from the date of receipt of that request, a written statement of the borrower's account, which shall show the dates and amounts of all installment payments on a closed-end loan credited to the borrower's account, the dates, amounts and explanation of all other charges or credits to the account and the unpaid balance thereof. A secondary lender shall not be required to furnish more than two such statements in any 12-month period.

L. 1996, c. 157.

17:12B-160. Charges on such loans.

[Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, the**]** <u>The</u> maximum charge which an association may contract for and receive on loans as defined in section 158 of P.L.1963, c. 144 (C. 17:12B-158) shall not exceed an amount calculated according to the actuarial method at a rate or rates agreed to by the association and the borrower. The evidence of indebtedness may provide for an increase, or may provide for a decrease, or both, in the rate of interest applicable to the loan. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12 month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the evidence of indebtedness provides for the possibility of an increase or decrease, or both, in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the evidence of indebtedness. No rate increase shall take effect during the first 3 years of the term of the loan, or thereafter, (a) unless at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously

describes such increase, and (b) unless at least 365 days have elapsed without any increase in the rate. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. Where the evidence of indebtedness provides for an increase or decrease in the rate of interest, the provision of subsection (4) of section 159 of P.L.1963, c. 144 (C. 17:12B-159(4)) requiring that the amount of any installment shall not be greater or less than any other installment shall not apply. If the evidence of indebtedness does provide that the interest rate may be increased then, notwithstanding the provisions of section 163 of P.L.1963, c. 144 (C. 17:12B-163), when the unpaid balance owing upon a precomputed loan is repaid in full or the maturity of the unpaid balance of such loan is accelerated before the date scheduled for the payment of the final installment, the association shall allow a credit on account of the precomputed interest, calculated according to the actuarial refund method, as if all payments were made as scheduled, or if deferred, as deferred; provided, however, that if the loan is prepaid within 12 months after the first payment is due, an association may charge a prepayment penalty of not more than (a) $20.00 on any loan up to and including $2,000.00; (b) an amount equal to 1% of the loan on any loan greater than $2,000.00 and up to and including $5,000.00; and (c) $100.00 on any loan exceeding $5,000.00. Effective on the first day of the twelfth month following the effective date of this act [17:12B-1 et seq.], notwithstanding the provisions of section 163 of P.L.1963, c. 144 (C. 17:12B-163), when the unpaid balance owing upon a precomputed loan is repaid in full or the maturity of the unpaid balance of such loan is accelerated before the date scheduled for the payment of the final installment, the association shall allow a credit on account of the precomputed interest, calculated according to the actuarial refund method, as if all payments were made as scheduled, or if deferred, as deferred; provided, however, that if the loan is prepaid within 12 months after the first payment is due, an association may charge a prepayment penalty of not more than (a) $20.00 on any loan up to and including $2,000.00; (b) an amount equal to 1% of the loan on any loan greater than $2,000.00 and up to and including $5,000.00; and (c) $100.00 on any loan exceeding $5,000.00. In the case of a precomputed loan, the interest may be computed on the assumption that all scheduled payments will be made when due, and all scheduled installment payments made on a precomputed loan may be applied as if they were received on their scheduled due dates. In the case of nonprecomputed loans, all installment payments shall be applied no later than the next day, other than a public holiday, after the date of receipt, and a day shall be counted as one three-hundred-sixty-fifth of a year.

L. 1963, c. 144. Amended. L. 1975, c. 313; L. 1981, c. 103.

17:13-104. Loans to members.

a. A credit union may make loans to its members, evidenced by a written instrument, upon terms and upon any security, including, but not limited to, the endorsement of a note by a surety, comaker, or guarantor, assignment of an interest in real or personal property, or assignment of shares, as the board may provide. The adequacy of any security shall be determined by the credit committee. No loan shall be made to any

member when the aggregate amount of all that member's loans outstanding exceeds 10% of the credit union's total assets. The board, in its discretion, may fix a lower amount.

b. [Notwithstanding the provisions of R.S. 31:1-1 to the contrary, a] A credit union may charge, contract for, and receive interest in loans at a rate or rates agreed to by the credit union and the member. A credit union may charge late fees and lawful fees paid to any public officer for filing, recording, or releasing a document, and may charge collection fees, not to exceed 20% of the principal balance and interest outstanding, which may be added to the principal balance of any loan placed for collection after default thereon.

c. A credit union shall have a lien on the shares, share certificates, deposits, deposit certificates, and accumulated interest or dividends of a member in any individual, joint, or trust account, for any sum past due the credit union from the member or for any loan endorsed by him. The credit union shall have a right of immediate set-off with respect to these accounts.

L. 1984, c. 171.

17:16C-40.1. Passenger motor vehicle loans.

A sales finance company licensed under the provisions of the "Retail Installment Sales Act" of 1960 (P.L.1960, c. 40), as amended and supplemented, or any act replacing or succeeding thereto which regulates "retail installment sales," may loan to any one person any sum of money up to a maximum of $10,000.00 secured by a purchase money security interest to finance the purchase of a passenger motor vehicle not intended to be used for the transportation of passengers for hire or upon a contract basis. The principal amount of such loan may be repaid in not more than 48 substantially equal monthly installments. [Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, the] The sales finance company may charge interest at a rate or rates agreed to by the sales finance company and the borrower. Such interest shall be computed on the full amount of such loan for the period from the making of the loan to the date of maturity of the final installment, and shall be added to the principal amount of the loan. For the purpose of this act [17:16C-40.1 and 17:16C-40.2], a purchase money security interest is hereby defined to be a security interest taken by a sales finance company, pursuant to the provisions of chapter 9 of Title 12A of the New Jersey Statutes, in connection with and as security for an advance of money on behalf of a retail buyer of a motor vehicle of the motor vehicle dealer in payment of the unpaid balance of the cash price.

Effective on the first day of the twelfth month following the effective date of this act, when the unpaid balance owing upon a precomputed loan is repaid in full or the maturity of the unpaid balance of such loan is accelerated before the date scheduled for the payment of the final installment, the association shall allow a credit on account of the precomputed interest, calculated according to the actuarial refund method, as if all payments were made as scheduled, or if deferred, as deferred; provided, however, that if the loan is prepaid within 12 months after the first payment is due, an association may charge a prepayment penalty of not more than (a) $20.00 on any loan up to and including

$2,000.00; (b) an amount equal to 1% of the loan on any loan greater than $2,000.00 and up to and including $5,000.00; and (c) $100.00 on any loan exceeding $5,000.00.

L. 1961, c. 95. Amended. L. 1970, c. 200; L. 1980, c. 16; L. 1981, c. 103.

17:16D-3. Application. The provisions of this act [17:16D-1 et seq.] shall not apply with respect to:

(a) Any insurance company authorized to do business in the State of New Jersey,

(b) State associations and Federal associations, as defined in P.L.1963, chapter 144, section 5 (C. 17:12B-5),

(c) The inclusion or deduction of a charge for insurance made pursuant to any other law of this State expressly or impliedly authorizing the financing of insurance premiums in connection with transactions of loan or of the sale of goods or services, or both goods and services, including, but not limited to charges for premiums for either or both credit life insurance and credit accident and health insurance issued pursuant to "An act to provide for the regulation of credit life insurance and credit accident and health insurance, as defined, and supplementing Title 17 of the Revised Statutes," approved January 27, 1959 (P.L.1958, c. 169).

[(d) The financing of insurance premiums in New Jersey in accordance with the provisions of Revised Statutes 31:1-1 relating to legal interest rate.**]** deleted by amendment

L. 1968, c. 221. Amended. L. 1969, c. 101.

17:16D-10. Maximum finance charge.

A premium finance company shall not charge, contract for, receive, or collect a finance charge other than as permitted by this act [17:16D-1 et seq.].

The finance charge shall be computed, using the actuarial method on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

[Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, the**]** The finance charge shall be computed at a rate or rates agreed to by the premium finance company and the insured plus an additional charge of $12.00 per premium finance agreement which additional charge need not be refunded upon prepayment. However, any insured may prepay his premium finance agreement in full at any time before due date of the final installment and in such event the unearned finance charge shall be refunded.

Effective on the first day of the twelfth month following the effective date of this act, when the unpaid balance of a premium finance agreement is paid in full, or the maturity of the unpaid balance of each agreement is accelerated before the date scheduled for the payment of the final installment, the holder of the agreement shall allow a credit on

account of the finance charge, calculated according to the actuarial refund method, as if all payments were made as scheduled, or if deferred, as deferred; provided, however, that if the contract is prepaid within 12 months after the first payment is due, a holder may charge a prepayment penalty of not more than (a) $20.00 on any contract up to and including $2,000.00; (b) an amount equal to 1% of the loan on any contract greater than $2,000.00 and up to and including $5,000.00; and (c) $100.00 on any contract exceeding $5,000.00.

L. 1968, c. 221. Amended. L. 1979, c. 287; L. 1981, c. 103.

17:30E-8.1. Insufficient resources.

a. Beginning January 1, 1989 and annually thereafter, the commissioner shall determine whether the income of the association as provided for in paragraphs (1), (2), (3), and (5) of section 20 of P.L. 1983, c. 65 (C. 17:30E-8), and the residual market equalization charge levied pursuant to paragraph (4) of that section prior to the effective date of this 1988 amendatory and supplementary act is or will be sufficient to meet its obligations in the ensuing year. If the commissioner determines that the association has insufficient resources to meet its obligations, he shall request the board of the association to formulate a plan for the payment of no less than 50% of the aggregate residual bodily injury losses for which the association is to make payment during the ensuing 12 month period, which plan shall provide for the payment of these losses in no more than four annual installments. The board shall submit the plan to the commissioner for his approval. Interest on the balance of the unpaid claim shall be paid at the legal interest rate **[**established by subsection (a) of R.S. 31:1-1 for loans in which there is no written contract**]**.

b. In addition to the plan provided for in subsection a. of this section, the commissioner may also request the submission of a plan by the board for the deferral, for a period not to exceed 12 months, of payments by the association of property damage claims which are subject to subrogation.

c. No residual market equalization charge in excess of the charge levied prior to the effective date of this 1988 amendatory and supplementary act shall be approved by the commissioner unless the procedures established pursuant to subsection a. or b. of this section do not provide sufficient revenue for the association to pay its obligations.

L. 1988, c. 156.

17B:32-50. Powers of liquidator.

a. The liquidator shall have the power:

(1) To appoint a special deputy or deputies to act for him under this act, and to determine his reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as he may deem necessary to assist in the liquidation.

(3) To appoint, with the approval of the court, an advisory committee of policyholders, claimants or other creditors, including guaranty associations, should he deem such a committee to be necessary. Such committee shall serve at the pleasure of the commissioner and shall serve without compensation. No other committee of any nature shall be appointed by the commissioner or the court in liquidation proceedings conducted under this act.

(4) To fix the reasonable compensation of employees and agents of the insurer, and, with the approval of the court, legal counsel, actuaries, accountants, appraisers and consultants, other than employees and agents of the insurer.

(5) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the department out of the first available moneys of the insurer.

(6) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry.

(7) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.

(8) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose: (a) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against those debts; (b) To take other actions necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he deems best; and (c) To pursue any creditor's remedies available to enforce his claims.

(9) To conduct public and private sales of the property of the insurer.

(10) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 41 of this act [17B:32-71].

(11) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(12) To borrow money on the security of the insurer's assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any funds so borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution of claims pursuant to section 41 of this act.

(13) To enter into any contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.

(14) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this State or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under section 19 of this act, he shall have the power to apply to any court in this State or elsewhere for leave to substitute himself for the insurer as plaintiff.

(15) To prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any director or officer of the insurer, or any other person.

(16) To remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have reasonable access to the records of the insurer as is necessary for them to carry out their legal obligations.

(17) To deposit in one or more banks in this State any sums required for meeting current administration expenses and dividend distributions.

(18) To invest all sums not currently needed, unless the court orders otherwise.

(19) To file any necessary documents for record in the office of any recorder of deeds or record office in this State or elsewhere where property of the insurer is located.

(20) To assert all defenses available to the insurer as against third persons, including statutes of limitation**[**,**]** and statutes of frauds**[**, and the defense of usury**]**. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever the guaranty association or a foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to that obligation and may defend only in the absence of a defense by those guaranty associations.

(21) To exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member; including any power to avoid any transfer or lien that may be given by law and that is not included with sections 25 through 27 of this act [17B:32-55 through 17B:32-57].

(22) To intervene in any proceeding, wherever instituted, that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.

(23) To enter into agreements with any receiver or commissioner or insurance regulator of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

(24) To exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with the provisions of this act.

b. The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

c. Notwithstanding the powers of the liquidator as stated in subsections a. and b. of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

L. 1992, c. 65.

46:10B-10. [Interest rate limitation;] certain charges prohibited.

[Except as otherwise provided by law, no mortgage loan shall be made at an interest rate in excess of the rate authorized by section 31:1-1 of the Revised Statutes. The charging of points in connection with a mortgage loan is prohibited.**]** For the purposes of this act, "points" means an amount of money or other consideration paid for the making of a mortgage loan, other than interest payable pursuant to the terms of the mortgage loan, but does not include any such sum paid pursuant to a statute of this State or of the United States, nor does it include reasonable expenses and charges.

L. 1968, c. 54.

46:10B-14. Securing of mortgage; interest.

Graduated payment mortgages may be secured only by real estate on which there is erected or to be erected a structure containing one, two, three, four, five, or six dwelling units, a portion of which structure may be used for non-residential purposes**[**, and interest thereon shall not exceed the usury rate established pursuant to R.S. 31:1-1 at any time during the term of the mortgage**]**.

L. 1979, c. 139.

46:10B-18. Reverse annuity mortgages and reverse direct payment mortgages; conditions.

Notwithstanding any law, rule, regulation, or opinion to the contrary, it shall be lawful for any institution authorized in the State to make first lien loans secured by a mortgage on real property to make reverse annuity mortgages and reverse direct payment mortgages subject to the following conditions:

a. Said mortgages shall be made to a mortgagor who is at least 60 years old; provided, however, that the Commissioner of Banking may by regulation raise or lower the age limit for eligibility. Such mortgages shall not be made in an amount to exceed 70% of the value of the mortgaged property, or such amount as is established by the commissioner by regulation.

b. Said mortgages shall be made voidable at the option of the mortgagor upon payment of the principal and interest to date, with no penalty.

[c. Interest on said mortgages shall not exceed the usury rate.**]** deleted by amendment

L. 1979, c. 140.

48:5-18. General powers.

Every company incorporated, organized or existing under this article [48:5-13 to 48:5-25] shall have power:

Construction and maintaining bridges. a. To construct, maintain and operate its bridge or bridges.

Surveys; entry on land. b. To locate and determine its route and works, and, for that purpose, to make such surveys and tests for its proposed bridge or bridges as may be necessary to the selection of the most advantageous location, and to enter upon lands and waters of any person, doing no unnecessary injury to private or other property, and subject to responsibility for all damages which shall be done thereto.

Condemnation. c. Upon obtaining written permission of the board of public utility commissioners, to condemn and take the land necessary for its business, in accordance with chapter one of the Title Eminent Domain (§20:1-1 et seq.).

Acquisition of real estate. d. To acquire from time to time and to hold, operate and use all such real estate and other property or any interest therein, and any existing ferry companies or the rights and properties thereof, or any interest therein as may, in the judgment of its directors, be necessary for the purpose of the construction, maintenance and operation of its bridges, or to accomplish the objects of its incorporation, and to sell land, rights or property thus acquired, when not necessary for such purposes and objects.

Bonds and mortgages**[**; usury as defense**]**. e. To borrow such sums of money as shall be necessary to construct, improve, extend or repair its bridges, and to furnish all lands and other property necessary for its purposes, and for such purpose to issue and sell

its bonds secured by mortgage on its lands, bridges, chattels, franchises and appurtenances. **[**No such company shall plead any statute against usury in any action at law or in equity to enforce the payment of a bond or mortgage executed under the provisions of this section.**]** In the case of any such company in this State, the amount of whose debts shall have been limited by special law, the written consent of the holders of at least two-thirds of all of who shall issue bonds of any such company to an amount greater than that its stock shall be obtained before any mortgage shall be executed. A person who shall issue bonds of any such company to an amount greater than that authorized by law shall be guilty of a misdemeanor. Where a mortgage on a bridge right of way and franchise includes chattels, it shall be sufficient notice and evidence thereof to record the same as a mortgage on real estate.

Real and personal property; mortgages; sale or lease; stock of other corporations; successors' right. f. In the manner or mode of procedure and with the effect and subject to the restrictions and liabilities prescribed by Title 14, Corporations, General, and as fully and completely as a corporation organized under said Title 14, to purchase, take by devise or bequest, hold and convey real and personal property, inside or outside of this State, and mortgage any such real or personal property, and its franchises, to sell or exchange all or substantially all of its property and assets, including its good-will, to lease its property and franchises to any other corporation, to purchase and dispose of the stock of any other corporation and pay therefor, to enter into, effect and carry out a joint agreement with any other corporation or corporations for their merger or consolidation, and to dissolve or be dissolved and be wound up.

The powers and privileges conferred upon any such company and described in subparagraph f of this section shall be vested in such company and may be fully and completely exercised by it at its discretion notwithstanding any restriction, limitation, condition or other provision in this article contained or implied, but in the event of conveyance or mortgage of any bridge constructed by such company or the sale or exchange of all or substantially all of its property and assets or the effecting and carrying out of a joint agreement with any other corporation or corporations for their merger or consolidation or the dissolution and winding up of such company, any person, partnership, corporation or public body thereby acquiring such bridge or otherwise succeeding to the rights, privileges, powers and franchises of such company with respect to such bridge (hereinafter called "successor") and the successor's right, title and interest in and to such bridge shall be subject to and governed by all of the restrictions, limitations, conditions or other provisions in this article contained or implied and such successor shall, for all the purposes of this section and sections 48:5-19 to 48:5-24, inclusive, of this article, be deemed to be a company incorporated, organized or existing under this article; provided, however, that if such successor be this State, or any county or municipality thereof, or any bridge commission, bridge authority, public officer, board, commission or agency or other public body, created by or in any such State, county or municipality, then and in such case (1) the power and privilege conferred by the provisions of section 48:5-19 of this article upon the company and any successor to demand and receive sums of money for the use of such bridge and for other services connected with such bridge shall cease and determine at the expiration of forty-five years after the opening of such bridge for public use, and in

consideration thereof (2) such bridge and the necessary approaches and appurtenances thereto shall not be subject to acquisition by, or be subject to becoming the property of, any State or States, municipality or municipalities, under the terms and provisions of sections 48:5-22, 48:5-23 or 48:5-24 of this article, and the right, title and interest of such State, county, municipality, bridge commission, bridge authority, or public officer, board, commission, agency or body in and to such bridge shall be perpetual.

Amended. L. 1947, c. 401.

48:12-18. Borrowing money; bonds; mortgages; [usury as defense;] penalty.

Every railroad company may borrow such sums of money from time to time as shall be necessary to construct, improve, extend and repair its road and furnish all necessary lands, chattels, engines, cars and equipments. To secure repayment thereof it may issue bonds secured by mortgage on any of its railroad, lands, chattels, franchises and appurtenances.

[Such company shall not plead any statute against usury in any action at law or in equity to enforce the payment of any bond or mortgage executed pursuant to this section.**]**

If the amount of the mortgage debt of any railroad company of this state is limited by special law, the written consent of the holders of at least two-thirds in value of all of its stock shall be obtained before any such mortgage shall be executed. Any person issuing bonds of a railroad company in an amount greater than that authorized by law shall be guilty of a misdemeanor.

Where a mortgage on a railroad right of way and franchises includes chattels, it shall be sufficient evidence and notice thereof to record the same as a mortgage on real estate.

5. Recommended Repeals

17:3B-1. Short Title

17:3B-2. Bank, savings bank, savings and loan association or credit union; rate on interest on loans

31:1-1. Contract rate; rate on mortgages on dwellings and other loans; computation of interest or discount; determination of rates

31:1-1.1. Loans; rate of interest; regulations; exceptions

31:1-2. Persons offending may be examined as witnesses

31:1-3. Forfeiture of all interest; deduction from recovery

31:1-4. Borrower may compel discovery, and acceptance of principal alone

31:1-5. Canal and railroad securities sold under par

31:1-6. Corporation not to make defense of usury

31:1-7. Interest rate limitations applicable to counties, municipalities, etc.; suspension

31:1-8. Liberal construction

31:1-9. Nature and affect of act