New Jersey Statutes

17:11C-1. Short title; New Jersey Consumer Finance Licensing Act

Sections 1 through 49[1] of this act , previously known and cited as the "New Jersey Licensed Lenders Act," shall be known and may be cited as the "New Jersey Consumer Finance Licensing Act," on or after the effective date of P.L.2009, c. 53 (C.17:11C-51 et al.).

Credits
L.1996, c. 157, § 1, eff. July 1, 1997. Amended by L.2009, c. 53, § 40.

17:11C-2. Definitions

As used in this act:

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

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

"Closed-end loan" means a consumer loan which meets the requirements of section 35 of P.L.1996, c. 157 (C.17:11C-35) and pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer lender" means a person licensed, or a person who should be licensed, under P.L.1996, c. 157 (C.17:11C-1 et al.) to engage in the consumer loan business.

"Consumer loan" means a loan of $50,000 or less made by a consumer lender, payable in one or more installments, pursuant to the terms of P.L.1996, c. 157 (C.17:11C-1 et al.), and not a residential mortgage loan as defined by section 3 of P.L.2009, c. 53 (C.17:11C-53).

"Consumer loan business" means the business of making loans of money, credit, goods or things in action, which are to be used primarily for personal, family or household purposes, in the amount or value of $50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this act and without first obtaining a license from the commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of $50,000 or less, or in the business of

negotiating or arranging or aiding the borrower or lender in procuring or making such loans of $50,000 or less, or in the business of buying, discounting or endorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of $50,000 or less, shall be deemed to be engaging in the consumer loan business.

“Controlling interest” means ownership, control or interest of 25% or more of the licensee or applicant.

“Department” means the Department of Banking and Insurance.

“Depository institution” means a state or federally chartered bank, savings bank, savings and loan association, building and loan association or credit union, irrespective of whether the entity accepts deposits.

“Individual” means a natural person.

“Licensee” means a person who is licensed under this act, or who should be so licensed.

“Open-end loan” means a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

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

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

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

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

“Person” means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

“Sales finance company” shall have the meaning ascribed to that term in section 1 of P.L.1960, c. 40 (C.17:16C-1).

Credits
L.1996, c. 157, § 2, eff. July 1, 1997. Amended by L.1999, c. 250, § 1, eff. Nov. 14, 1999; L.2001, c. 294, § 1, eff. Dec. 31, 2001; L.2009, c. 53, § 41.

17:11C-3. License required; consumer lender or sales finance company

a. No person shall engage in business as a consumer lender or sales finance company without first obtaining a license or licenses under this act.

b. The department shall issue licenses under this act which specify whether a licensee may act as a consumer lender or a sales finance company. A licensee may not engage in a licensed activity under this act or the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.), unless the license issued by the department specifies that the licensee may engage in that licensed activity.

c. (Deleted by amendment, P.L.2009, c. 53)

d. (Deleted by amendment, P.L.2009, c. 53)

Credits
L.1996, c. 157, § 3, eff. July 1, 1997. Amended by L.2009, c. 53, § 42.

17:11C-6. Consumer loan business exemption

A depository institution, trust company, insurance company, or pawnbroker operating under R.S. 45:22-1 et seq., may conduct consumer loan business without obtaining a license under this act and without being subject to this act.

Credits
L.1996, c. 157, § 6, eff. July 1, 1997.

17:11C-7. Issuance of license; qualifications; application

The commissioner shall issue a license under this act if the following conditions are met:

a. An application for a new license or for a renewal of a license shall be submitted to the commissioner on the forms and in the manner, and accompanied by such evidence in support of the application, as required by this act and as may be prescribed by the commissioner, and shall be accompanied by the required fees.

b. (Deleted by amendment, P.L.2009, c. 53)

c. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a new license or for a renewal of a license demonstrate that the business will be operated honestly, fairly, and efficiently within the purposes of this act, and if all other licensing requirements of this act and regulations promulgated by the commissioner are met, the commissioner shall issue the license of the type sought by the applicant.

d. A person already holding a license under this act, or a business license as a residential mortgage lender or residential mortgage broker under the "New Jersey Residential Mortgage

Lending Act," sections 1 through 39 of P.L.2009, c. 53 (C.17:11C-51 et seq.), may apply to the commissioner to act as a consumer lender or as a sales finance company pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.), by filing with the commissioner an abbreviated application containing the information which the commissioner deems necessary when considering whether to license that person for that specific type of license along with an application fee for the amount set forth in subsection e. of section 8 of P.L.1996, c. 157 (C.17:11C-8).

e. Any person filing for licensure shall submit to the commissioner the name, address, fingerprints and written consent for a criminal history record background check to be performed on any officer, director, partner or owner of a controlling interest of that person. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility for the person, based upon any findings related to an officer, director, partner or owner. The applicant shall bear the cost for the criminal history record background check. The Division of State Police shall promptly notify the commissioner in the event an officer, director, partner or owner of the person, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed, whether the person is a prospective new licensee, or subsequently, a current license holder.

Credits
L.1996, c. 157, § 7, eff. July 1, 1997. Amended by L.2003, c. 199, § 10, eff. Dec. 24, 2003; L.2009, c. 53, § 43.

17:11C-8. Application fees

a. (Deleted by amendment, P.L.2009, c. 53)

b. (Deleted by amendment, P.L.2007, c. 81).

c. (Deleted by amendment, P.L.2009, c. 53)

d. An applicant for a new license or for a renewal of a license to be a consumer lender or a sales finance company shall pay to the commissioner at the time of the application a nonrefundable application fee not to exceed the amounts specified in this subsection. The nonrefundable application fee is also required for each branch office license of a consumer lender or sales finance company. The nonrefundable application fee shall be:

(1) For an application for one license, an application fee not to exceed $700;

(2) For an application for two licenses, an application fee not to exceed $1,000.

(3) (Deleted by amendment, P.L.2009, c. 53)

(4) (Deleted by amendment, P.L.2009, c. 53)

e. A licensee that seeks to add an additional license to an existing license held, which activity is regulated under the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.) or the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.), shall pay an application fee not to exceed $300 per activity.

f. Fee amounts shall be prescribed by the commissioner by regulation.

Credits
L.1996, c. 157, § 8, eff. July 1, 1997. Amended by L.2005, c. 199, § 17; L.2007, c. 81, § 7, eff. May 4, 2007, retroactive to July 1, 2006; L.2009, c. 53, § 44.

17:11C-9. Branch office licenses

a. A consumer lender or sales finance company may maintain a branch office or offices. The licensee shall obtain a license for each branch office from which the licensee has direct contact with New Jersey consumers regarding any consumer loan business or sales finance company business regulated under the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.) or the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.), as appropriate.

b. The commissioner shall issue a branch office license if:

(1) The licensee has submitted a completed branch office application form, which includes any information required by the commissioner concerning the branch office, and an application fee pursuant to the schedule provided in subsection d. of section 8 of P.L.1996, c. 157 (C.17:11C-8); and

(2) The application for the branch office demonstrates that the office is in a suitable location.

(3) (Deleted by amendment, P.L.2009, c. 53)

c. (Deleted by amendment, P.L.2007, c. 81).

Credits
L.1996, c. 157, § 9, eff. July 1, 1997. Amended by L.2007, c. 81, § 8, eff. May 4, 2007, retroactive to July 1, 2006; L.2009, c. 53, § 45.

17:11C-10. Information contained on license; posting

a. The consumer lender or sales finance company license shall state the name of the licensee and the licensee's place of business or businesses, as applicable, and shall contain any other

information as the commissioner may see fit to require. No licensee shall transact business regulated by the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.) or the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.) under any name other than that named in the license.

b. The license shall be posted conspicuously in the place or places of business of the licensee.

c. A licensee or any other person shall not photocopy or otherwise reproduce the license except for legitimate business purposes.

d. Licenses issued pursuant to this act or, previously, the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.), shall not be transferable or assignable, other than as provided by section 12 of this act.[1]

e. No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner.

Credits
L.1996, c. 157, § 10, eff. July 1, 1997. Amended by L.2009, c. 53, § 46.

17:11C-11. Duration of license; payment of fee; renewals

a. (1) Each consumer lender or sales finance company license issued pursuant to this act shall expire at the end of the license period of not less than two years as set by the commissioner by regulation.

> (2) A licensee may surrender any license by delivering to the commissioner written notice that the license is surrendered, along with the license, and complying with any regulation set forth by the commissioner concerning the license surrender, but the surrender shall not affect the licensee's civil or criminal liability for an act committed prior to the surrender.

b. (Deleted by amendment, P.L.2007, c. 81).

c. (Deleted by amendment, P.L.2009, c. 53)

d. Each mortgage banker, correspondent mortgage banker, mortgage broker, and secondary lender license, and each mortgage solicitor registration issued pursuant to the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c. 53 (C.17:11C-51 et al.), shall expire in accordance with the following schedule:

> (1) For any license or registration issued before the effective date of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c. 53 (C.17:11C-51 et seq.), the license or registration shall expire on June 30, 2009.

(2) For any license or registration issued on or after July 1, 2009:

(a) the license or registration shall expire on July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s. 5107); and

(b) this date may be further modified by the commissioner pursuant to regulation or order, based upon any later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), providing a temporary deadline extension with respect to complying with the licensing requirements for states established pursuant to the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

(3) Thereafter, the person licensed or registered shall only continue to engage in any activities for which the license or registration was previously issued if licensed under the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c. 53 (C.17:11C-51 et seq.).

Credits
L.1996, c. 157, § 11, eff. July 1, 1997. Amended by L.2007, c. 81, § 9, eff. May 4, 2007, retroactive to July 1, 2006; L.2009, c. 53, § 47, eff. May 4, 2009.

17:11C-12. Sale or transfer of controlling interest in licensed business; prior approval; notice; hearing

Any sale or transfer of a controlling interest in a consumer lender or sales finance company licensee's or applicant's business shall be approved by the commissioner prior to the transfer or sale, after the licensee or applicant has provided an application which contains a written notice of the proposed sale or transfer to the commissioner. The application shall list each officer, director, partner or owner to receive a controlling interest as a result of the transfer or sale, and each shall be subject to a criminal history record background check as set forth in subsection e. of section 7 of P.L.1996, c. 157 (C.17:11C-7) as a condition for the commissioner's approval of the transfer or sale. The commissioner shall approve the transfer or sale unless the commissioner determines, following an opportunity for a hearing, that sufficient grounds exist to deny, revoke or suspend the license. The sale or transfer shall be deemed approved if the commissioner does not deny a completed application within 90 days after its receipt.

Credits
L.1996, c. 157, § 12, eff. July 1, 1997. Amended by L.2009, c. 53, § 48.

17:11C-16. Consumer lenders; net worth and available liquid assets

a. Every applicant for a license as a consumer lender shall prove in a form satisfactory to the commissioner, that the applicant has a net worth of at least $100,000, and has available for the purpose of making consumer loans liquid assets of at least $100,000.

b. Every consumer lender shall have at all times a net worth of at least $100,000 and shall maintain at all times assets of at least $100,000 in liquid form available for or actually used in the making of consumer loans.

Credits
L.1996, c. 157, § 16, eff. July 1, 1997.

17:11C-17. Maintenance of office within state

a. Nothing in this act or in the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C.17:16C-1 et seq.), shall be construed to require a consumer lender or a sales finance company to maintain an office in this State so long as it is qualified to do business here and has a registered agent for service of process.

b. (Deleted by amendment, P.L.2009, c. 53)

c. Whenever the licensee changes the address of its principal office or a branch office serving New Jersey consumers, it shall file , as part of its notice of address change required pursuant to subsection e. of section 10 of P.L.1996, c. 157 (C.17:11C-10), any documents required of it by regulation.

Credits
L.1996, c. 157, § 17, eff. July 1, 1997. Amended by L.2009, c. 53, § 49.

17:11C-18. Commissioner authority and powers relative to consumer lender and sales finance company licenses and licensees; enforcement authority; violations

The commissioner's authority with respect to issuing consumer lender and sales finance company licenses, and with respect to oversight of licensees and enforcement of the activities regulated under the "New Jersey Consumer Finance Licensing Act" shall include the following:

a. The commissioner may refuse to issue and may revoke, suspend or refuse to renew a license, or impose a penalty pursuant to this act, if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any person, applicant for or holder of the license has:

> (1) Violated any of the provisions of this act or any order, rule or regulation made or issued pursuant to this act;

(2) Failed at any time to meet the requirements for licensure, or withheld information or made a material misstatement in the application for the license;

(3) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, or deceit, or failure to maintain books, accounts, records and other documents as required by section 19 of P.L.1996, c. 157 (C.17:11C-19);

(4) Become insolvent, or failed to attain or maintain the required net worth;

(5) Demonstrated unworthiness, incompetence, bad faith or dishonesty in the transaction of business as a licensee; or

(6) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

b. A license may be suspended , revoked, or not renewed by the commissioner if any officer, director, partner, or owner of the licensee has committed any act which would be cause for suspending , revoking or not renewing a license if issued to that person as an individual.

c. If the license is suspended or revoked pursuant to subsection b. of this section, the license shall remain suspended or revoked, unless within the time fixed by the commissioner, in the case of a partnership, the connection therewith of the offending individual shall be severed and that individual's interest in the partnership and share in its activities brought to an end, or in the case of an association, corporation, or other legal entity, the offending individual shall be discharged and shall have no further participation in the legal entity's activities. In the case of an offending individual who is an officer or director of the corporation or other legal entity, that individual shall be required to fully divest himself of all stock, bonds or other corporate holdings

d. (Deleted by amendment, P.L.2009, c. 53)

e. (Deleted by amendment, P.L.2009, c. 53)

f. The commissioner may access and examine books, accounts, records and other documents maintained by a consumer lender or sales finance company licensee pursuant to section 19 of P.L.1996, c. 157 (C.17:11C-19).

g. The commissioner may conduct investigations, which may include the subpoena of witnesses and documents, pursuant to section 42 of P.L.1996, c. 157 (C.17:11C-42).

h. Whenever it appears to the commissioner that any person has engaged, is engaging, or is about to engage, in any practice or transaction prohibited by the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.), the commissioner may, in addition to any other remedy available, bring a summary action in a court of competent jurisdiction against the person, and any other person concerned or in any way

participating in or about to participate in a practice or transaction in violation of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.), to enjoin the person from continuing the practice or transaction engaged, or from engaging in the practice or transaction, or doing any act in furtherance of engaging in the practice or transaction.

i. The commissioner may impose a civil penalty not exceeding $25,000 on any person for a violation of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.). Each violation of the act, including any order, rule or regulation made or issued pursuant to the act, shall constitute a separate offense. Additionally, each violation which constitutes a knowing violation shall be considered a crime of the third degree.

j. The commissioner may order that any person who has been found to have knowingly violated any provision of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.), or of the rules and regulations issued pursuant thereto, and has thereby caused financial harm to consumers, be barred for a term not exceeding 10 years from acting as a consumer lender or sales finance company, or a stockholder, or an officer, director, partner or other owner, or an employee of a consumer lender or sales finance company licensee, or acting in any other capacity pursuant to the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.). Violations of this final order shall be considered a crime of the third degree.

Credits
L.1996, c. 157, § 18, eff. July 1, 1997. Amended by L.2009, c. 53, § 50.

17:11C-19. Recordkeeping requirements

a. Every consumer lender or sales finance company licensee shall identify the place of business where those books, accounts, records and other documents of the business conducted under the license, as may be prescribed by the commissioner, are maintained, to enable the commissioner to determine whether the business of the licensee is being conducted in accordance with the provisions of this act and the orders, rules and regulations issued hereunder.

b. Upon appropriate notice to the commissioner and if a change in location of records is made, the commissioner shall be notified in writing of the change within five business days of the change.

c. Every licensee shall preserve all books, accounts, records and other documents pertaining to its business, and keep them available for examination by the commissioner, for at least three years from the date of original entry, or a longer time as prescribed by the commissioner by regulation.

d. A licensee may, upon approval of the commissioner, keep records at a location, identified by the licensee, outside this State, provided that the licensee shall make the records available in this State upon request of the commissioner.

Credits
L.1996, c. 157, § 19, eff. July 1, 1997. Amended by L.2009, c. 53, § 5.

17:11C-21. Insurance obtained by licensee with borrower's consent; statements to be provided to borrower

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

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

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

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

c. If a borrower or borrowers obtain the credit insurance from or through a licensee, the licensee shall show the amount of the charge for the insurance and cause to be delivered to the borrower or borrowers a copy of the policy, certificate or other evidence of that insurance when the loan is made. Nothing in this act shall prohibit the licensee from collecting the premium or identifiable charge for insurance permitted by this section and from receiving and retaining any dividend, or any other gain or advantage resulting from that insurance.

d. (Deleted by amendment, P.L.2009, c. 53)

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

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

NOTICE TO THE BORROWER

YOU ARE NOT REQUIRED TO PURCHASE PERSONAL PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE CONSUMER LOAN. IF YOU DESIRE PERSONAL

PROPERTY INSURANCE YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.

Credits
L.1996, c. 157, § 21, eff. July 1, 1997. Amended by L.1999, c. 250, § 2, eff. Nov. 14, 1999; L.2009, c. 53, § 52.

17:11C-32. Consumer loan contracts; interest rates

a. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, every consumer lender authorized to engage in the consumer loan business may loan any sum of money not exceeding $50,000, repayable in an installment or installments, and may charge, contract for, and receive thereon, interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A closed-end consumer loan contract 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. 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 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. No rate increase shall take effect unless (1) 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 (2) unless at least 365 days have elapsed without any increase in the rate. Where the loan contract so provides for an increase or decrease in the rate of interest, the installments may vary in amount, notwithstanding any other law to the contrary, except that if the rate increases, the borrower may request, and the lender shall provide for, either an increase in the amount of the installment payment or an extension of the term of the loan, or some combination of an increase in the amount of the installment payment and extension of the term.

c. An open-end loan agreement may provide that the lender may at any time, or from time to time, change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided however, that:

(1) the periodic interest rate shall not be changed more than once in each billing cycle;

(2) any change in the periodic interest rate shall correspond to the movement of a market interest rate index specified in the agreement which is readily verifiable by the borrower and beyond the control of the lender;

(3) a change in any term of the agreement, including the periodic interest rate, may be permitted to apply to any then-outstanding unpaid indebtedness in the borrower's account, including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change, so long as that fact is clearly and conspicuously disclosed in the agreement;

(4) if the agreement provides for the possibility of a change in any term of the agreement, including the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the written notice; and

(5) no change in any term of the agreement or of the index specified in the agreement shall be effective unless: (a) at least 30 days prior to the effective date of the change, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the 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 law to which the agreement relates on or after the effective date of the change specified in the notice shall constitute acceptance of the change; and (b) either the borrower agrees in writing to the change or the borrower or another person authorized by him incurs further indebtedness on or after the effective date of the change stated in that notice, which indebtedness may include outstanding balances. Any borrower who fails to use the borrower's account or so to indicate agreement to the change shall be permitted to pay the outstanding unpaid indebtedness in the borrower's account in accordance with the terms governing the open-end consumer loan agreement without giving effect to the change.

d. The consumer lender shall notify each affected borrower in a consumer loan agreement of any change in the manner set forth in the closed-end and open-end agreement governing the plan and in compliance with the requirements of the federal "Truth in Lending Act," Pub.L.90-321 (15 U.S.C. s.1601 et seq.), and regulations promulgated thereunder, as in effect from time to time, if applicable.

e. The interest and periodic payments for consumer loans at these rates shall be computed from the standard tables based on the actuarial or annuity method which conforms to the so-called "United States Rule of Partial Payments," which provides that interest shall be calculated whenever a payment is made and the payment shall be first applied to the payment of interest and if it exceeds the interest due, the balance is to be applied to diminish principal. If the payment is insufficient to pay the entire amount of interest, the balance of interest due shall not be added to principal, so as to produce interest thereon.

f. No interest on a consumer loan shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances. For the purpose of computing interest, all installment payments shall be applied on the date of receipt, and interest shall be charged for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

g. No consumer lender shall induce or permit any person nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of a consumer loan at the same time for the purpose of obtaining a higher rate of interest than would otherwise be permitted by this section. This prohibition shall not apply to any loan made pursuant to any other law of this State.

Credits
L.1996, c. 157, § 32, eff. July 1, 1997. Amended by L.2001, c. 294, § 2, eff. Dec. 31, 2001; L.2009, c. 53, § 53.

17:11C-33. Consumer loans; unauthorized charges; violations; penalties; unintentional errors

a. In addition to the interest herein provided for on a consumer loan, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except for any amount actually paid by a licensee to a public official for the recording of a security interest in connection with security given for the loan and: (1) amounts for insurance obtained or provided by the licensee in accordance with the provisions of this act; (2) on actual sale of the security in foreclosure proceedings or upon the entry of judgment; (3) a returned check fee in an amount not to exceed $20, which the licensee may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account; and (4) an annual fee on open-end accounts which may not exceed an amount equal to one percent of the line of credit or $50, whichever is less.

b. A consumer lender who violates or participates in the violation of any provision of section 3, 19, 21, 34, 35 or 36, or subsection a. of section 10, or subsection a., b., or c. of section 32, or subsection a. of this section, or subsection e. , f., g., or h. of section 41 of this act,[1] shall be guilty of a crime of the fourth degree. A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges unless the act was the result of a good faith error, including a good faith error made as a result of a licensee's acting in conformity with a rule or regulation of the commissioner which is later held to be invalid or in violation of any provision of this act by a judgment of a court of competent jurisdiction, and the licensee notifies the borrower of the error within 90 days after discovering it and makes adjustments in the account necessary to assure that the borrower will not be required to pay any interest, costs, or other charges which aggregate in excess of the charges permitted under this act. If any interest, consideration or charges in excess of those permitted are charged, contracted for or received, except as the result of a good faith error, the consumer lender may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. In addition, a consumer lender who knowingly and willfully violates any provision of this act shall also forfeit to the borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law.

c. A consumer lender shall have no liability on a consumer loan for an unintentional error if within 90 days after discovering an error the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs or other charges which aggregate in excess of the charges permitted under this act for consumer loans. The discovery of an unintentional error within the meaning of this section shall include an entry of a judgment by a court of competent jurisdiction, holding that a rule or regulation with which the consumer lender acted in conformity was invalid or in violation of this act, and a consumer lender shall have no liability for such unintentional error if the consumer lender takes the actions required by this section upon discovery of such an error, within the time stated therein following entry of such a judgment.

Credits
L.1996, c. 157, § 33, eff. July 1, 1997. Amended by L.2009, c. 53, § 54.

17:11C-34. Duties of lender incident to closed-end consumer loan

Every consumer lender, incident to a closed-end consumer loan, shall:

a. Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the payment schedule, the amount of interest charges, and the annual percentage rate of interest;

b. Give to any borrower who makes a payment in cash a plain and complete receipt for all payments made on account of the loan at the time payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid balance, if any of the loan;

c. Permit payment to be made in advance in any amount on any contract of a loan at any time, but the licensee may apply the payment first to all interest in full at the agreed rate up to the date of payment;

d. Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower, or a copy thereof, with the word “paid” or “canceled,” and release, or give the borrower evidence to release any mortgage, or security interest which no longer secures an obligation to the licensee, restore any pledge, cancel and return any note or a copy thereof, and cancel and return any assignment or a copy thereof given to the licensee by the borrower.

No consumer lender shall take any confession of judgment incident to a closed-end consumer loan. No consumer lender shall, incident to a closed-end consumer loan take any note, promise to pay, or security that does not accurately disclose the amount of the loan, the date of the loan, the payment schedule, the amount of interest charges, and the annual percentage rate of interest, nor any instrument in which blanks are left to be filled in after the loan is made.

Credits
L.1996, c. 157, § 34, eff. July 1, 1997. Amended by L.2009, c. 53, § 55.

17:11C-35. Maximum time periods for closed-end consumer loans

a. No closed-end consumer loan in an amount of $1,000 or less shall be made for a greater period of time than 36 months and 15 days.

b. No closed-end consumer loan in an amount in excess of $1,000, but not exceeding $2,500, shall be made for a greater period of time than 48 months and 15 days.

c. No closed-end consumer loan in an amount in excess of $2,500, but not exceeding $5,000, shall be made for a greater period of time than 60 months and 15 days.

d. No closed-end consumer loan in an amount in excess of $5,000, but not exceeding $10,000, shall be made for a greater period of time than 84 months and 15 days.

e. No closed-end consumer loan in an amount in excess of $10,000 shall be made for a greater period of time than 120 months and 15 days.

Credits
L.1996, c. 157, § 35, eff. July 1, 1997.

17:11C-36. Interest on open-end consumer loans; minimum payments; charges; security interests

a. A licensee authorized to engage in the consumer loan business may make open-end consumer loans and may contract for, and receive thereon, interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A consumer lender shall not compound interest on an open-end consumer loan by adding any unpaid interest authorized by this act to the principal balance of the borrower's account but the unpaid principal balance may include other charges permitted by this act.

c. Interest on an open-end consumer loan shall be computed in each billing cycle by one of the following methods:

(1) By converting each yearly rate to a daily rate and multiplying that daily rate by the applicable portion of the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing each yearly rate by 365; or

(2) By multiplying one-twelfth of each yearly rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(3) By converting each yearly rate to a daily rate and multiplying that daily rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case each daily rate is determined by dividing each yearly rate by

365, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

d. For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

e. In an open-end consumer loan, the borrower may at any time pay all or any part of the unpaid balance in his account; or, if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to the following minimum payment requirements. Minimum monthly payments shall be in an amount which would result in the full repayment of the initial loan advance, exclusive of any interest, within the maximum term set forth for other loans of the same amount in section 35 of this act,[1] except that the minimum payment for any initial advance not exceeding $2,500 shall be in an amount which would result in full repayment of the initial loan advance within the maximum term of 48 months and 15 days. This minimum payment shall continue at that amount until such time as an additional advance to the borrower is made, other than for permitted charges, at which time the minimum monthly payment shall be determined and shall be in that amount which would result in the full repayment of the unpaid principal balance of the loan, after the advance and including the advance, within the maximum term set forth for the other loans of the same amount, except that if the principal balance of the loan, after the advance and including the advance, does not exceed $2,500, the minimum payment shall be in that amount which would result in full repayment of the principal balance of the loan within the maximum term of 48 months and 15 days. Minimum payments after each subsequent advance shall be determined in the same manner. No minimum payment shall exceed the amount required to pay the balance in full, including unpaid interest and charges to date.

f. In addition to interest, a licensee may contract for and receive on an open-end consumer loan the charges permitted under this act for other consumer loans, subject to all the conditions and restrictions on those charges, with the following variations:

(1) If credit life, disability or involuntary unemployment insurance is provided pursuant to section 21 of P.L.1996, c. 157 (C.17:11C-21) and if the insured dies or becomes disabled or involuntarily unemployed when there is an outstanding open-end loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower’s death in the case of credit life insurance, all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance or all covered minimum payments which become due on the loan during the covered period of involuntary unemployment in the case of involuntary unemployment insurance. The additional charge for credit life insurance, credit disability insurance or credit involuntary unemployment insurance shall be calculated in each billing cycle by applying the current monthly premium rate for that insurance, as determined by the commissioner, to the unpaid balances in the borrower’s account, using any of the methods specified in subsection c. of this section for the calculation of interest;

(2) No credit life, disability or involuntary unemployment insurance written in connection with an open-end loan shall be canceled by the licensee because of delinquency of the borrower in the making of the required minimum payments on the loan unless one or more of the payments is past due for a period of 90 days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

g. A consumer lender may take a security interest in personal property to secure an open-end consumer loan. Any security may be retained until the open-end account is terminated, except that if the security interest covers consumer goods, then within one month, or within 10 days following written demand by the borrower, after there is no outstanding balance in the account and no commitment by the licensee to make advances, the licensee shall release the security interest. If a security interest is taken, the open-end consumer loan agreement shall state the nature and extent of that security interest.

h. No licensee in connection with an open-end consumer loan shall take any confession of judgment or power of attorney, or take any instrument in which blanks are left to be filled in after the loan is made.

Credits
L.1996, c. 157, § 36, eff. July 1, 1997. Amended by L.2009, c. 53, § 56.

17:11C-37. Amount of charges limited

No licensee authorized to engage in the consumer loan business shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the licensee would be permitted by law to charge if he were not a licensee under this act upon the loan, use, or sale of credit, of the amount or value of more than $50,000. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both under one or more loan contracts to the licensee at any time the sum of more than $50,000 for principal.

Credits
L.1996, c. 157, § 37, eff. July 1, 1997. Amended by L.2001, c. 294, § 3, eff. Dec. 31, 2001; L.2009, c. 53, § 57.

17:11C-38. Payment in consideration of assignment

The payment of $50,000 or less in money, credit, goods or things in action, as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall, for the purposes of this act, be deemed a loan secured by the assignment. The transaction shall be governed by and subject to the provisions of this act and any such sale, assignment or order hereafter made shall, for the purposes of this act, be void and of no effect.

Credits
L.1996, c. 157, § 38, eff. July 1, 1997. Amended by L.2001, c. 294, § 4, eff. Dec. 31, 2001.

17:11C-39. Chattel mortgage on or security interest on borrower's household furniture; requirements

No chattel mortgage or security interest, as defined in N.J.S. 12A:1-201, in, or other lien on, household furniture then in the possession and use of the borrower, taken in connection with a consumer loan, shall be valid unless that chattel mortgage and the financing statement and the security agreement are in writing, signed in person by the borrower, and if the borrower is married, unless it is signed in person by both husband and wife. The written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of the mortgage or lien or security interest.

Credits
L.1996, c. 157, § 39, eff. July 1, 1997.

17:11C-40. Payment in certain cases deemed a loan

The payment of $50,000 or less in money, credit, goods or things in action as consideration for any sale of personal property which is made on condition that the property be sold back at a greater price shall, for the purposes of this act, be deemed to be a loan secured by the property and the amount by which the repurchase price exceeds the original payment actually paid shall be deemed interest or charges upon the loan from the date the original payment is made until the date the repurchase price is paid. The transaction shall be governed by and be subject to the provisions of this act as if it were a consumer loan.

Credits
L.1996, c. 157, § 40, eff. July 1, 1997. Amended by L.2001, c. 294, § 5, eff. Dec. 31, 2001.

17:11C-41. Consumer lenders; prohibited acts and practices

The following practices shall be prohibited and a violation of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c. 157 (C.17:11C-1 et seq.):

a. No consumer lender shall make any loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned, nor shall any such assignment or order be taken by a licensee at any time in connection with any consumer loan, or for the enforcement or repayment thereof, and any such assignment or order hereafter so taken or given to secure any loan made by any licensee under this act shall be void and of no effect.

b. No consumer lender shall take a lien upon real estate as security for any consumer loan, except a lien created by law upon the recording of a judgment.

c. No licensee shall conduct the consumer loan business within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner.

d. Every multiple installment consumer loan contract, other than an open-end consumer loan contract or a variable rate closed-end consumer loan contract under subsection b. of section 32 of this act,[1] shall provide for repayment of principal and interest combined in installments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no installment is substantially greater in amount than any preceding installment, except that the repayment schedule may reduce or omit installments when necessary because of the seasonal nature of the borrower's income.

e. No person, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount of $50,000 or less. This prohibition shall apply to any person who, by any device, subterfuge, or pretense, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

f. No consumer loans of the amount or value of $50,000 or less for which a greater rate of interest, consideration, or charge than is permitted by this act has been charged, contracted for, or received, whenever made, shall be enforced in this State and any person in any way participating therein in this State shall be subject to the provisions of this act. The foregoing shall not apply to loans legally made in any state which then has in effect a regulatory small loan law similar in principle to this act, but an action to enforce any loan made in any state to a person then residing in this State may be maintained in this State only if the amount of interest, discount, consideration or other charge for that loan, demanded to be paid in the action, does not exceed that permitted to a licensee authorized to engage in the consumer loan business by this act for a loan of the same amount repayable in the same manner.

g. No consumer lender shall make, advertise, print, display, publish, distribute, electronically transmit, telecast or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

h. No consumer lender shall make any statement or representation that the licensee will provide "immediate closing" of a loan or will afford unqualified access to credit.

Credits

L.1996, c. 157, § 41, eff. July 1, 1997. Amended by L.2001, c. 294, § 6, eff. Dec. 31, 2001; L.2009, c. 53, § 58.

17:11C-42. Investigation by commissioner; examination of books, records, documents
Effective: July 31, 2010

a. The commissioner may make such investigations and examinations of any licensee or other person as the commissioner deems necessary to determine compliance with this act and the orders, rules and regulations issued hereunder. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any licensee, maintained pursuant to section 19 of P.L.1996, c. 157 (C.17:11C-19), or other person. Each licensee shall be subject to an examination by the commissioner, not more than once in any 18-month period, unless the commissioner has reason to believe that the licensee is not complying with the provisions of this act or any rule or regulation promulgated thereunder, or is not transacting business in accordance with law, at which time the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, accounts, records and other documents and materials relative to an examination or investigation. Examinations conducted under the provisions of this act shall be confidential except as required in the administration, enforcement and prosecution of violations under this act or pursuant to court order.

b. The commissioner or the commissioner's designee shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, accounts, records and other evidence before him in any matter over which he has jurisdiction pursuant to this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give testimony or to produce evidence as required thereby, the commissioner may apply ex parte to any court having jurisdiction over that person for an order compelling the appearance of the witness before the commissioner to give testimony or to produce evidence as required thereby, or both.

Credits
L.1996, c. 157, § 42, eff. July 1, 1997. Amended by L.2009, c. 53, § 59.

17:11C-43. Annual report

A consumer lender or sales finance company licensee shall annually file a report with the commissioner which shall set forth such information as the commissioner shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be under oath and in a form and within the time specified by the commissioner by regulation.

A licensee that fails to make and file its annual report in the form and within the time provided in this section shall be subject to a penalty of not more than $100 for each day's failure, and the commissioner, as authorized pursuant to section 18 of P.L.1996, c. 157 (C.17:11C-18) may revoke or suspend its authority to do business in this State. The penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a summons.

Credits
L.1996, c. 157, § 43, eff. July 1, 1997. Amended by L.2007, c. 81, § 10, eff. May 4, 2007, retroactive to July 1, 2006; L.2009, c. 53, § 60.

17:11C-44. Waiver agreements void and unenforceable

Any agreement to waive any provision of this act shall be unenforceable and void.

Credits
L.1996, c. 157, § 44, eff. July 1, 1997.

17:11C-49. Rules and regulations

The commissioner may issue and promulgate rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), necessary to effectuate the provisions of this act.

Credits
L.1996, c. 157, § 49, eff. Jan. 8, 1997.