

GENERAL ASSEMBLY OF NORTH CAROLINA  
1993 SESSION

CHAPTER 339  
SENATE BILL 681

AN ACT TO PERMIT LENDERS TO CURE LOAN DOCUMENTS WHICH MIGHT VIOLATE THE RESTRICTIONS ON LATE CHARGES AS INTERPRETED BY THE NORTH CAROLINA SUPREME COURT AND TO AMEND THE LOAN BROKER ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-10.1 is amended by adding the following subsection:

"(c) The provisions of this subsection apply only to home loans made by lenders described in G.S. 24-1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late payment charge in excess of that permitted in this section, the loan shall not be deemed to be unlawful if:

- (1) No late fee in excess of those permitted in this section has been assessed or collected by the lender; and
- (2) a. If the loan is executed on or after the effective date of this act, the lender provides written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan shall be four percent (4%) or less; or
  - b. If the loan was executed prior to the effective date of this subsection, the lender provides written notice to the borrower within six months of that date that the late payment charge with respect to the loan shall be four percent (4%) or less."

Sec. 2. G.S. 66-106 reads as rewritten:

**"§ 66-106. Definitions.**

For purposes of this Article the following definitions apply:

- (1) A 'loan broker' is any person, firm, or corporation who, in return for any consideration from any person, promises to (i) procure for such person, or assist such person in procuring, a loan from any third party; or (ii) consider whether or not it will make a loan to such person.
- (2) A 'loan' is an agreement to advance money or property in return for the promise to make payments therefor, whether such agreement is styled as a loan, credit card, line of credit, a lease or otherwise.

Provided, that this Article shall not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any party currently designated and compensated by a North Carolina licensed insurance

company as its agent to service loans it makes in this State; nor to any insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage banker or mortgage broker registered with the Commissioner of Banks pursuant to Article 19 of Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); nor to any attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which such attorney-at-law, public accountant, or dealer is registered or licensed under the laws of the State of North Carolina. Provided further that subdivision (1)(ii) above shall not apply to any lender whose loans or advances to any person, firm or corporation in North Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar year."

Sec. 3. G.S. 66-108 is amended by adding a new subsection to read:

"(c) No loan broker shall collect any advance fee or other valuable consideration from a borrower prior to the closing of the loan. This prohibition shall not preclude the loan broker from collecting reasonable and necessary fees payable to third parties for appraisal, property survey, title examination, and credit reports."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1993.

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Dennis A. Wicker  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives