

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 692
Committee Substitute Favorable 5/6/13
Third Edition Engrossed 5/8/13

Short Title: Amend Predatory Lending Law.

(Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA ANTI-PREDATORY LENDING LAW,
3 AND TO LIMIT THE PROVISIONS OF STATE MORTGAGE LENDING LAW TO
4 BEING NO MORE RESTRICTIVE THAN FEDERAL LAW.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 24-1.1E(a)(5) reads as rewritten:

7 "(5) "Points and fees" is defined as provided in this subdivision.

8 a. The term includes all of the following:

- 9 1. All items paid by a borrower at or before closing and that are
10 required to be disclosed under sections 226.4(a) and 226.4(b)
11 of Title 12 of the Code of Federal Regulations, as amended
12 from time to time, except interest or the time-price
13 differential. However, the meaning of the term "points and
14 fees" shall not include either (i) the portion of the any up-front
15 fees collected and paid to the Federal Housing
16 Administration, the Veterans' Administration, or the U.S.
17 Department of Agriculture to insure or guarantee a home loan
18 loan that exceeds one and one quarter percent (1.25%) of the
19 total loan amount or (ii) the portion of any up-front private
20 mortgage insurance premium, charge, or fee that exceeds one
21 and one quarter percent (1.25%) of the total loan amount,
22 provided that the private mortgage insurance premium,
23 charge or fee is required to be refundable on a prorated basis,
24 the refund is automatically issued upon notification of the
25 satisfaction of the underlying mortgage loan, and the
26 borrower has the right to request or receive a prorated refund
27 in accordance with state or federal law.

- 28 2. All charges paid by a borrower at or before closing and that
29 are for items listed under section 226.4(c)(7) of Title 12 of the
30 Code of Federal Regulations, as amended from time to time,
31 but only if the lender receives direct or indirect compensation
32 in connection with the charge or the charge is paid to an
33 affiliate of the lender; otherwise, the charges are not included
34 within the meaning of the phrase "points and fees".



1 3. To the extent not otherwise included in sub-subdivision a.1.
 2 or a.2. of this subdivision, all compensation paid from any
 3 source to a mortgage broker, including compensation paid to
 4 a mortgage broker in a table-funded transaction. A bona fide
 5 sale of a loan in the secondary mortgage market shall not be
 6 considered a table-funded transaction, and a table-funded
 7 transaction shall not be considered a secondary market
 8 transaction.

9 4. The maximum prepayment fees and penalties which may be
 10 charged or collected under the terms of the loan documents.

11 b. Notwithstanding the remaining provisions of this subdivision, the
 12 term does not include (i) taxes, filing fees, recording and other
 13 charges and fees paid or to be paid to public officials for determining
 14 the existence of or for perfecting, releasing, or satisfying a security
 15 interest; and (ii) fees paid to a person other than a lender or an
 16 affiliate of the lender or to the mortgage broker or an affiliate of the
 17 mortgage broker for the following: fees for tax payment services;
 18 fees for flood certification; fees for pest infestation and flood
 19 determinations; appraisal fees; fees for inspections performed prior to
 20 closing; credit reports; surveys; attorneys' fees (if the borrower has
 21 the right to select the attorney from an approved list or otherwise);
 22 notary fees; escrow charges, so long as not otherwise included under
 23 sub-subdivision a. of this subdivision; title insurance premiums; and
 24 premiums for insurance against loss or damage to property, including
 25 hazard insurance and flood insurance premiums, provided that the
 26 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal
 27 Regulations are met.

28 c. For open-end credit plans, the term includes those points and fees
 29 described in sub-subdivisions a.1. through a.3. of this subdivision,
 30 plus (i) the minimum additional fees the borrower would be required
 31 to pay to draw down an amount equal to the total loan amount, and
 32 (ii) the maximum prepayment fees and penalties which may be
 33 charged or collected under the terms of the loan documents."

34 **SECTION 2.** G.S. 24-1.1E(a)(6) reads as rewritten:

35 "(6) "Thresholds" means:

36 a. Without regard to whether the loan transaction is or may be a
 37 "residential mortgage transaction" (as the term "residential mortgage
 38 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
 39 of Federal Regulations, as amended from time to time), the annual
 40 percentage rate of the loan at the time the loan is consummated is
 41 such that the loan is considered a "mortgage" under section 152 of
 42 the Home Ownership and Equity Protection Act of 1994 (Pub. Law
 43 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from
 44 time to time, and regulations adopted pursuant thereto by the Federal
 45 Reserve Board, including section 226.32 of Title 12 of the Code of
 46 Federal Regulations, as the same may be amended from time to time;

47 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed
 48 ~~four percent (4%)~~ five percent (5%) of the total loan amount if the
 49 total loan amount is twenty thousand dollars (\$20,000) or more, or
 50 (ii) the lesser of eight percent (8%) of the total loan amount or one
 51 thousand dollars (\$1,000), if the total loan amount is less than twenty

1 thousand dollars (\$20,000); provided, the following discount points
2 and prepayment fees and penalties shall be excluded from the
3 calculation of the total points and fees payable by the borrower:

4 1. Up to and including two bona fide loan discount points
5 payable by the borrower in connection with the loan
6 transaction, but only if the interest rate from which the loan's
7 interest rate will be discounted does not exceed by more than
8 one percentage point (1%) the required net yield for a 90-day
9 standard mandatory delivery commitment for a reasonably
10 comparable loan from either Fannie Mae or the Federal Home
11 Loan Mortgage Corporation, whichever is greater;

12 2. Up to and including one bona fide loan discount point
13 payable by the borrower in connection with the loan
14 transaction, but only if the interest rate from which the loan's
15 interest rate will be discounted does not exceed by more than
16 two percentage points (2%) the required net yield for a
17 90-day standard mandatory delivery commitment for a
18 reasonably comparable loan from either Fannie Mae or the
19 Federal Home Loan Mortgage Corporation, whichever is
20 greater;

21 3. For a closed-end loan, prepayment fees and penalties which
22 may be charged or collected under the terms of the loan
23 documents which do not exceed one percent (1%) of the
24 amount prepaid, provided the loan documents do not permit
25 the lender to charge or collect any prepayment fees or
26 penalties more than 30 months after the loan closing;

27 4. For an open-end credit plan, prepayment fees and penalties
28 which may be charged or collected under the terms of the
29 loan documents which do not exceed one percent (1%) of the
30 amount prepaid, provided the loan documents do not permit
31 the lender to charge or collect any prepayment fees or
32 penalties more than (i) 30 months after the loan closing if the
33 borrower has no right or option under the loan documents to
34 repay all or any portion of the outstanding balance of the
35 open-end credit plan at a fixed interest rate over a specified
36 period of time or, (ii) if the borrower has a right or option
37 under the loan documents to repay all or any portion of the
38 outstanding balance of the open-end credit plan at a fixed
39 interest rate over a specified period of time, 30 months after
40 the date the borrower voluntarily exercises that right or
41 option; or

42 c. If the loan is a closed-end loan, the loan documents permit the lender
43 to charge or collect prepayment fees or penalties more than 30
44 months after the loan closing or which exceed, in the aggregate, more
45 than two percent (2%) of the amount prepaid. If the loan is an
46 open-end credit plan, the loan documents permit the lender to charge
47 or collect prepayment fees or penalties (i) more than 30 months after
48 the loan closing if the borrower has no right or option under the loan
49 documents to repay all or any portion of the outstanding balance of
50 the open-end credit plan at a fixed interest rate over a specified
51 period of time or, (ii) if the borrower has a right or option under the

1 loan documents to repay all or any portion of the outstanding balance
2 of the open-end credit plan at a fixed interest rate over a specified
3 period of time, more than 30 months after the date the borrower
4 voluntarily exercises that right or option, or (iii) which exceed, in the
5 aggregate, more than two percent (2%) of the amount prepaid."

6 **SECTION 3.** G.S. 24-1.1F reads as rewritten:

7 **"§ 24-1.1F. Rate spread home loans.**

8 (a) **Definitions.**—The following definitions apply for purposes of this section:

9 (1) **Annual percentage rate.**—~~The annual percentage rate for the loan calculated~~
10 ~~according to the provisions of the federal Truth in Lending Act (15 U.S.C. §~~
11 ~~1601, et seq.) and the regulations promulgated thereunder by the Federal~~
12 ~~Reserve Board, as that Act and regulations are amended from time to time.~~

13 (2) **Average prime offer rate.**—~~An annual percentage rate published by the~~
14 ~~Federal Reserve Board and that is derived from average interest rates, points,~~
15 ~~and other loan pricing terms currently offered to consumers by a~~
16 ~~representative sample of creditors for mortgage transactions that have~~
17 ~~low-risk pricing characteristics.~~

18 (3) ~~Repealed by Session Laws 2009-457, s. 2, effective October 1, 2009.~~

19 (4) ~~Mortgage broker.~~—A mortgage broker as defined in G.S. 53-243.01.

20 (5),(6) ~~Repealed by Session Laws 2009-457, s. 2, effective October 1, 2009.~~

21 (7) **Rate spread home loan.**—A loan in which all the following apply:

22 a. ~~The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)~~
23 ~~a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage~~
24 ~~transaction, or (iv) a bridge loan with a term of 12 months or less,~~
25 ~~such as a loan to purchase a new dwelling where the borrower plans~~
26 ~~to sell a current dwelling within 12 months.~~

27 b. ~~The borrower is a natural person.~~

28 e. ~~The debt is incurred by the borrower primarily for personal, family,~~
29 ~~or household purposes.~~

30 d. ~~The principal amount of the loan does not exceed the conforming~~
31 ~~loan size limit for a single family dwelling as established from time~~
32 ~~to time by Fannie Mae.~~

33 e. ~~The loan is secured by (i) a security interest in a manufactured home,~~
34 ~~as defined in G.S. 143-145, in the State which is or will be occupied~~
35 ~~by the borrower as the borrower's principal dwelling, (ii) a mortgage~~
36 ~~or deed of trust on real property in the State upon which there is~~
37 ~~located an existing structure designed principally for occupancy of~~
38 ~~from one to four families that is or will be occupied by the borrower~~
39 ~~as the borrower's principal dwelling, or (iii) a mortgage or deed of~~
40 ~~trust on real property in the State upon which there is to be~~
41 ~~constructed using the loan proceeds a structure or structures designed~~
42 ~~principally for occupancy of from one to four families which, when~~
43 ~~completed, will be occupied by the borrower as the borrower's~~
44 ~~principal dwelling.~~

45 f. ~~The loan's annual percentage rate exceeds each of the following:~~

46 1. ~~The average prime offer rate for a comparable transaction as~~
47 ~~of the date the interest rate for the loan is set by (i) one and~~
48 ~~one-half percentage points (1.5%) or more, if the loan is~~
49 ~~secured by a first lien mortgage or deed of trust or (ii) three~~
50 ~~and one-half percentage points (3.5%) or more, if the loan is~~
51 ~~secured by a subordinate lien mortgage or deed of trust.~~

1 2. ~~The conventional mortgage rate by (i) one and three quarters~~
2 ~~percentage points (1.75%) or more, if the loan is secured by a~~
3 ~~first lien mortgage or deed of trust, or (ii) three and~~
4 ~~three quarters percentage points (3.75%) or more, if the loan~~
5 ~~is secured by a subordinate lien mortgage or deed of trust. For~~
6 ~~purposes of this calculation, the "conventional mortgage rate"~~
7 ~~means the most recent daily contract interest rate on~~
8 ~~commitments for fixed-rate first mortgages published by the~~
9 ~~Board of Governors of the Federal Reserve System in its~~
10 ~~Statistical Release H. 15, or any publication that may~~
11 ~~supersede it, during the week preceding the week in which~~
12 ~~the interest rate for the loan is set.~~

13 3. ~~The yield on U.S. Treasury securities having comparable periods of maturity by (i)~~
14 ~~three percentage points (3%) or more, if the loan is secured by a first lien mortgage or deed of~~
15 ~~trust, or (ii) five percentage points (5%) or more, if the loan is secured by a subordinate lien~~
16 ~~mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under~~
17 ~~the provisions of the Home Mortgage Disclosure Act 12 U.S.C. § 2801, et seq. (HMDA), the~~
18 ~~difference between the annual percentage rate and the yield on Treasury securities having~~
19 ~~comparable periods of maturity shall be determined using the same procedures and calculation~~
20 ~~methods applicable to loans that are subject to the reporting requirements of HMDA, as those~~
21 ~~procedures and calculation methods are amended from time to time, provided that the yield on~~
22 ~~Treasury securities shall be determined as of the fifteenth day of the month prior to the~~
23 ~~application for the loan.~~

24 (a1) ~~A rate spread home loan is a loan that has an annual percentage rate that exceeds~~
25 ~~the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder.~~

26 (b) ~~No prepayment fees or penalties shall be charged or collected on a rate spread home~~
27 ~~loan.~~

28 (b1) ~~The making of a rate spread home loan that violates 15 U.S.C. § 1639c(c) and any~~
29 ~~regulations promulgated thereunder is hereby declared usurious in violation of the provisions of~~
30 ~~this Chapter.~~

31 (c) ~~No lender shall make a rate spread home loan to a borrower based on the value of~~
32 ~~the borrower's collateral without due regard to the borrower's repayment ability as of~~
33 ~~consummation, including the borrower's current and reasonably expected income, employment,~~
34 ~~assets other than the collateral, current obligations, and mortgage-related obligations. Without~~
35 ~~regard to whether the loan is a "higher priced mortgage loan" as defined in section 226.35 of~~
36 ~~Title 12 of the Code of Federal Regulations, the methodology and standards for the~~
37 ~~determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of~~
38 ~~the Code of Federal Regulations and the related Federal Reserve Board's Official Staff~~
39 ~~Commentary on Regulation Z, as the regulation and commentary may be amended from time to~~
40 ~~time, shall be applied to determine a lender's compliance with this requirement.~~

41 (c1) ~~Any prepayment penalty in violation of 15 U.S.C. § 1639c(c) and any regulations~~
42 ~~promulgated thereunder shall be unenforceable.~~

43 (d) ~~The making of a rate spread home loan which violates subsection (b) or (c) of this~~
44 ~~section is hereby declared usurious in violation of the provisions of this Chapter. In addition,~~
45 ~~any prepayment penalty in violation of this section shall be unenforceable. However, a~~
46 ~~borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the~~
47 ~~Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of~~
48 ~~this section. This section establishes specific consumer protections in rate spread home loans in~~
49 ~~addition to other consumer protections that may be otherwise available by law. A mortgage~~
50 ~~broker who brokers a rate spread home loan that violates the provisions of this section shall be~~
51 ~~jointly and severally liable with the lender.~~

1 (d1) Notwithstanding the foregoing, a borrower shall not be entitled to recover twice for
2 the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate
3 spread home loan may enforce the provisions of this section. This section establishes specific
4 consumer protections in rate spread home loans in addition to other consumer protections that
5 may be otherwise available by law. A mortgage broker who brokers a rate spread home loan
6 that violates the provisions of this section shall be jointly and severally liable with the lender.

7 "

8 **SECTION 4.** This act becomes effective July 1, 2013.