

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 692

Short Title: Amend Predatory Lending Law. (Public)

Sponsors: Representatives Szoka, Hanes, Dockham, and Samuelson (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Commerce and Job Development, if favorable, Judiciary Subcommittee A.

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. 24-1.1A(a) reads as rewritten:

7 "(a) Notwithstanding any other provision of this Chapter, but subject to the provisions of
8 G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

- 9 (1) Where the principal amount is ~~ten thousand dollars (\$10,000)~~twenty
10 thousand dollars (\$20,000) or more the parties may contract for the payment
11 of interest as agreed upon by the parties;
- 12 (2) Where the principal amount is less than ~~ten thousand dollars (\$10,000)~~
13 twenty thousand dollars (\$20,000) the parties may contract for the payment
14 of interest as agreed upon by the parties, if the lender is either (i) approved
15 as a mortgagee by the Secretary of Housing and Urban Development, the
16 Federal Housing Administration, the Department of Veterans Affairs, a
17 national mortgage association or any federal agency; or (ii) a local or foreign
18 bank, savings and loan association or service corporation wholly owned by
19 one or more savings and loan associations and permitted by law to make
20 home loans, credit union or insurance company; or (iii) a State or federal
21 agency;
- 22 (3) Where the principal amount is less than ~~ten thousand dollars (\$10,000)~~
23 twenty thousand dollars (\$20,000) and the lender is not a lender described in
24 the preceding subdivision (2) the parties may contract for the payment of
25 interest not in excess of sixteen percent (16%) per annum.
- 26 (4) Notwithstanding any other provision of law, where the lender is an affiliate
27 operating in the same office or subsidiary operating in the same office of a
28 licensee under the North Carolina Consumer Finance Act, the lender may
29 charge interest to be computed only on the following basis: monthly on the
30 outstanding principal balance at a rate not to exceed the rate provided in this
31 subdivision.

32 On the fifteenth day of each month, the Commissioner of Banks shall
33 announce and publish the maximum rate of interest permitted by this
34 subdivision. Such rate shall be the latest published noncompetitive rate for
35 U.S. Treasury bills with a six-month maturity as of the fifteenth day of the



1 month plus six percent (6%), rounded upward or downward, as the case may
2 be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent
3 (15%), whichever is greater. If there is no nearest one-half of one percent
4 (1/2 of 1%), the Commissioner shall round downward to the lower one-half
5 of one percent (1/2 of 1%). The rate so announced shall be the maximum
6 rate permitted for the term of loans made under this section during the
7 following calendar month when the parties to such loans have agreed that the
8 rate of interest to be charged by the lender and paid by the borrower shall not
9 vary or be adjusted during the term of the loan. The parties to a loan made
10 under this section may agree to a rate of interest which shall vary or be
11 adjusted during the term of the loan in which case the maximum rate of
12 interest permitted on such loans during a month during the term of the loan
13 shall be the rate announced by the Commissioner in the preceding calendar
14 month.

15 An affiliate operating in the same office or subsidiary operating in the
16 same office of a licensee under the North Carolina Consumer Finance Act
17 may not make a home loan for a term in excess of six (6) months which
18 provides for a balloon payment. For purposes of this subdivision, a balloon
19 payment means any scheduled payment that is more than twice as large as
20 the average of earlier scheduled payments. This subsection does not apply to
21 equity lines of credit as defined in G.S. 45-81."

22 **SECTION 2.** G.S. 24-1.1E(a)(5) reads as rewritten:

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

24 a. The term includes all of the following:

- 25 1. All items paid by a borrower at or before closing and that are
26 required to be disclosed under sections 226.4(a) and 226.4(b)
27 of Title 12 of the Code of Federal Regulations, as amended
28 from time to time, except interest or the time-price
29 differential. However, the meaning of the term "points and
30 fees" shall not include either (i) ~~the portion of the~~ up-front fees
31 collected and paid to the Federal Housing Administration, the
32 Veterans' Administration, or the U.S. Department of
33 Agriculture to insure or guarantee a home loan ~~that exceeds~~
34 ~~one and one-quarter percent (1.25%) of the total loan amount~~
35 or (ii) ~~the portion of any~~ up-front private mortgage insurance
36 premium, charge, or fee ~~that exceeds one and one-quarter~~
37 ~~percent (1.25%) of the total loan amount, fee,~~ provided that
38 the private mortgage insurance premium, charge or fee is
39 required to be refundable on a prorated basis, the refund is
40 automatically issued upon notification of the satisfaction of
41 the underlying mortgage loan, and the borrower has the right
42 to request or receive a prorated refund in accordance with
43 state or federal law.
- 44 2. All charges paid by a borrower at or before closing and that
45 are for items listed under section 226.4(c)(7) of Title 12 of the
46 Code of Federal Regulations, as amended from time to time,
47 but only if the lender receives direct or indirect compensation
48 in connection with the charge or the charge is paid to an
49 affiliate of the lender; otherwise, the charges are not included
50 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 3.** 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 4.** G.S. 24-1.1F is repealed.

7 **SECTION 5.** This act becomes effective July 1, 2013.