

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  
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Fifth Edition Engrossed 7/18/13

Short Title: Amend Predatory Lending Law.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA ANTI-PREDATORY LENDING LAW,  
AND TO LIMIT THE PROVISIONS OF STATE MORTGAGE LENDING LAW TO  
BEING NO MORE RESTRICTIVE THAN FEDERAL LAW.

The General Assembly of North Carolina enacts:

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

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

a. The term includes all of the following:

1. All items paid by a borrower at or before closing and that are required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential. However, the meaning of the term "points and fees" shall not include ~~either (i) the portion of the any up-front fees collected and paid to the Federal Housing Administration, the Veterans' Administration, or the U.S. Department of Agriculture to insure or guarantee a home loan loan that exceeds one and one-quarter percent (1.25%) of the total loan amount or (ii) the portion of any up front private mortgage insurance premium, charge, or fee that exceeds one and one-quarter percent (1.25%) of the total loan amount, provided that the private mortgage insurance premium, charge or fee is required to be refundable on a prorated basis, the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan, and the borrower has the right to request or receive a prorated refund in accordance with state or federal law.~~
2. All charges paid by a borrower at or before closing and that are for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an



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- 1 affiliate of the lender; otherwise, the charges are not included  
 2 within the meaning of the phrase "points and fees".
- 3 3. To the extent not otherwise included in sub-subdivision a.1.  
 4 or a.2. of this subdivision, all compensation paid from any  
 5 source to a mortgage broker, including compensation paid to  
 6 a mortgage broker in a table-funded transaction. A bona fide  
 7 sale of a loan in the secondary mortgage market shall not be  
 8 considered a table-funded transaction, and a table-funded  
 9 transaction shall not be considered a secondary market  
 10 transaction.
- 11 4. The maximum prepayment fees and penalties which may be  
 12 charged or collected under the terms of the loan documents.
- 13 b. Notwithstanding the remaining provisions of this subdivision, the  
 14 term does not include (i) taxes, filing fees, recording and other  
 15 charges and fees paid or to be paid to public officials for determining  
 16 the existence of or for perfecting, releasing, or satisfying a security  
 17 interest; and (ii) fees paid to a person other than a lender or an  
 18 affiliate of the lender or to the mortgage broker or an affiliate of the  
 19 mortgage broker for the following: fees for tax payment services;  
 20 fees for flood certification; fees for pest infestation and flood  
 21 determinations; appraisal fees; fees for inspections performed prior to  
 22 closing; credit reports; surveys; attorneys' fees (if the borrower has  
 23 the right to select the attorney from an approved list or otherwise);  
 24 notary fees; escrow charges, so long as not otherwise included under  
 25 sub-subdivision a. of this subdivision; title insurance premiums; and  
 26 premiums for insurance against loss or damage to property, including  
 27 hazard insurance and flood insurance premiums, provided that the  
 28 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal  
 29 Regulations are met.
- 30 c. For open-end credit plans, the term includes those points and fees  
 31 described in sub-subdivisions a.1. through a.3. of this subdivision,  
 32 plus (i) the minimum additional fees the borrower would be required  
 33 to pay to draw down an amount equal to the total loan amount, and  
 34 (ii) the maximum prepayment fees and penalties which may be  
 35 charged or collected under the terms of the loan documents."

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

37 "(6) "Thresholds" means:

- 38 a. Without regard to whether the loan transaction is or may be a  
 39 "residential mortgage transaction" (as the term "residential mortgage  
 40 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code  
 41 of Federal Regulations, as amended from time to time), the annual  
 42 percentage rate of the loan at the time the loan is consummated is  
 43 such that the loan is considered a "mortgage" under section 152 of  
 44 the Home Ownership and Equity Protection Act of 1994 (Pub. Law  
 45 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from  
 46 time to time, and regulations adopted pursuant thereto by the Federal  
 47 Reserve Board, including section 226.32 of Title 12 of the Code of  
 48 Federal Regulations, as the same may be amended from time to time;
- 49 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed  
 50 ~~four percent (4%)~~ five percent (5%) of the total loan amount if the  
 51 total loan amount is twenty thousand dollars (\$20,000) or more, or

1 (ii) the lesser of eight percent (8%) of the total loan amount or one  
2 thousand dollars (\$1,000), if the total loan amount is less than twenty  
3 thousand dollars (\$20,000); provided, the following discount points  
4 and prepayment fees and penalties shall be excluded from the  
5 calculation of the total points and fees payable by the borrower:

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

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

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

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

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

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

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

9 **"§ 24-1.1F. Rate spread home loans.**

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

11 (1) ~~Annual percentage rate.—The annual percentage rate for the loan calculated~~  
12 ~~according to the provisions of the federal Truth in Lending Act (15 U.S.C. §~~  
13 ~~1601, et seq.) and the regulations promulgated thereunder by the Federal~~  
14 ~~Reserve Board, as that Act and regulations are amended from time to time.~~

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

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

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

22 (5),(6) ~~Repealed by Session Laws 2009 457, s. 2, effective October 1, 2009.~~

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

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

29 b: ~~The borrower is a natural person.~~

30 c: ~~The debt is incurred by the borrower primarily for personal, family,~~  
31 ~~or household purposes.~~

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

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

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

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

1 and one-half percentage points (3.5%) or more, if the loan is  
2 secured by a subordinate lien mortgage or deed of trust.

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

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

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

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

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

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

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

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

1 ~~broker who brokers a rate spread home loan that violates the provisions of this section shall be~~  
2 ~~jointly and severally liable with the lender.~~

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

9 ...."

10 **SECTION 4.** This act becomes effective October 1, 2013.