

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1149  
Judiciary I Committee Substitute Adopted 6/16/99

Short Title: Prohibit Predatory Lending.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"§ 24-1.1A. **Contract rates on home loans secured by first mortgages or first deeds of trust.**

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

(1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

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

21                On the fifteenth day of each month, the Commissioner of Banks  
22                shall announce and publish the maximum rate of interest permitted by  
23                this subdivision. Such rate shall be the latest published noncompetitive  
24                rate for U.S. Treasury bills with a six-month maturity as of the fifteenth  
25                day of the month plus six percent (6%), rounded upward or downward,  
26                as the case may be, to the nearest one-half of one percent (1/2 of 1%) or  
27                fifteen percent (15%), whichever is greater. If there is no nearest one-  
28                half of one percent (1/2 of 1%), the Commissioner shall round  
29                downward to the lower one-half of one percent (1/2 of 1%). The rate so  
30                announced shall be the maximum rate permitted for the term of loans  
31                made under this section during the following calendar month when the  
32                parties to such loans have agreed that the rate of interest to be charged  
33                by the lender and paid by the borrower shall not vary or be adjusted  
34                during the term of the loan. The parties to a loan made under this section  
35                may agree to a rate of interest which shall vary or be adjusted during the  
36                term of the loan in which case the maximum rate of interest permitted  
37                on such loans during a month during the term of the loan shall be the  
38                rate announced by the Commissioner in the preceding calendar month.

39                An affiliate operating in the same office or subsidiary operating in  
40                the same office of a licensee under the North Carolina Consumer  
41                Finance Act may not make a home loan for a term in excess of six (6)  
42                months which provides for a balloon payment. For purposes of this  
43                subdivision, a balloon payment means any scheduled payment that is

1 more than twice as large as the average of earlier scheduled payments.  
2 This subsection does not apply to equity lines of credit as defined in  
3 G.S. 45-81.

4 (b) No prepayment fees shall be contracted by the borrower and lender with  
5 respect to any home loan where the principal amount borrowed is one hundred fifty  
6 thousand dollars ~~(\$100,000)–(\$150,000)~~ or less; otherwise a lender and a borrower may  
7 agree on any terms as to the prepayment of a home loan.

8 (c) ~~Except as limited by subsection (b) above, a lender may charge to the borrower~~  
9 ~~the fees described in G.S. 24-10. Provided, if the loan is one described in subsection~~  
10 ~~(a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points,~~  
11 ~~commitment fees, finance charges, or other similar charges agreed upon by the parties~~  
12 ~~notwithstanding the provisions of any state law limiting the amount of discount points,~~  
13 ~~commitment fees, finance charges or other similar charges which may be charged, taken,~~  
14 ~~received or reserved with respect to a home loan. Provided further, that no lender on~~  
15 ~~loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other~~  
16 ~~than the interest permitted in G.S. 24-1.1A(a)(3). If the home loan is one described in~~  
17 ~~subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the~~  
18 ~~borrower the following fees and charges in addition to interest and other fees and charges~~  
19 ~~as permitted in this section and late payment charges as permitted in G.S. 24-10.1:~~

20 (1) At or before loan closing, the lender may charge such of the following  
21 fees and charges as may be agreed upon by the parties notwithstanding  
22 the provisions of any State law, other than G.S. 24-1.1E, limiting the  
23 amount of such fees or charges:

- 24 a. Loan application, origination, and commitment fees;  
25 b. Discount points, but only to the extent the discount points are  
26 paid for the purpose of reducing, and in fact result in a bona fide  
27 reduction of the interest rate or time-price differential;  
28 c. Assumption fees to the extent permitted by G.S. 24-10(d);  
29 d. Appraisal fees to the extent permitted by G.S. 24-10(h);  
30 e. To the extent permitted by G.S. 24-8(d), sums for the payment of  
31 bona fide loan-related goods, products, and services provided or  
32 to be provided by third parties and sums for the payment of taxes,  
33 filing fees, recording fees, and other charges, and fees paid or to  
34 be paid to public officials; and  
35 f. Additional fees and charges, however denominated, payable to  
36 the lender which, in the aggregate, do not exceed the greater of  
37 (i) one quarter of one percent (1/4 of 1%) of the principal amount  
38 of the loan, or (ii) one hundred fifty dollars (\$150.00).

39 (2) Except as provided in subsection (g) of this section with respect to the  
40 deferral of loan payments, upon modification, renewal, extension, or  
41 amendment of any of the terms of a home loan, the lender may charge  
42 such of the following fees and charges as may be agreed upon by the

1 parties notwithstanding the provisions of any State law, other than G.S.  
2 24-1.1E, limiting the amount of such fees or charges:

3 a. Discount points, but only to the extent the discount points are  
4 paid for the purpose of reducing, and in fact result in a bona fide  
5 reduction of, the interest rate or time-price differential;

6 b. Assumption fees to the extent permitted by G.S. 24-10(d);

7 c. Appraisal fees to the extent permitted by G.S. 24-10(h);

8 d. To the extent permitted by G.S. 24-8(d), sums for the payment of  
9 bona fide loan-related goods, products, and services provided or  
10 to be provided by third parties and sums for the payment of taxes,  
11 filing fees, recording fees, and other charges, and fees paid or to  
12 be paid to public officials; and

13 e. Additional fees and charges, however denominated, payable to  
14 the lender which, in the aggregate, do not exceed the greater of  
15 (i) one quarter of one percent (1/4 of 1%) of the balance  
16 outstanding at the time of the modification, renewal, extension,  
17 or amendment of terms, or (ii) one hundred fifty dollars  
18 (\$150.00). The fees and charges permitted by this sub-  
19 subdivision may be charged only pursuant to a written agreement  
20 which states the amount of the fee or charge and is made at the  
21 time of the specific modification, renewal, extension, or  
22 amendment, or at the time the specific modification, renewal,  
23 extension, or amendment is requested.

24 (c1) No lender on home loans under subdivision (a)(3) of this section may charge or  
25 receive any interest, fees, charges, or discount points other than: (i) to the extent  
26 permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods,  
27 products, and services provided or to be provided by third parties and sums for the  
28 payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be  
29 paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and  
30 (iii) late payment charges to the extent permitted by G.S. 24-10.1.

31 (c2) No lender on home loans under subdivision (a)(4) of this section may charge or  
32 receive any interest, fees, charges, or discount points other than: (i) the fees described in  
33 G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona  
34 fide loan-related goods, products, and services provided or to be provided by third parties  
35 and sums for the payment of taxes, filing fees, recording fees, and other charges and fees,  
36 paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this  
37 section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

38 (d) The loan or investments regulated by G.S. 53-45 shall not be subject to the  
39 provisions of this section.

40 (e) The term "home loan" shall mean a ~~loan~~-loan, other than an open-end credit  
41 plan, where the principal amount is less than three hundred thousand dollars (\$300,000)  
42 secured by a first mortgage or first deed of trust on real estate upon which there is located  
43 or there is to be located one or more single-family dwellings or dwelling units.

1 (f) Any home loan obligation existing before June 13, 1977, shall be construed  
2 with regard to the law existing at the time the home loan or commitment to lend was  
3 made and this act shall only apply to home loans or loan commitments made from and  
4 after June 13, 1977; provided, however, that variable rate home loan obligations executed  
5 prior to April 3, 1974, which by their terms provide that the interest rate shall be  
6 decreased and may be increased in accordance with a stated cost of money formula or  
7 other index shall be enforceable according to the terms and tenor of said written  
8 obligations.

9 (g) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2) subdivision~~  
10 (a)(1) or (2) of this section may contract in writing to defer payments of interest the  
11 payment of all or part of one or more unpaid installments and for payment of interest on  
12 deferred interest as agreed upon by the parties. The parties may agree in writing that said  
13 deferred interest may be added to the principal balance of the loan. This subsection shall  
14 not be construed to limit payment of interest upon interest in connection with other types  
15 of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as  
16 may be agreed upon by the parties to defer the payment of one or more unpaid  
17 installments. If the home loan is of a type described in subdivision (1) of this subsection,  
18 the deferral fees shall be subject to the limitations set forth in subdivision (2) of this  
19 subsection:

20 (1) A home loan will be subject to the deferral fee limitations set forth in  
21 subdivision (2) of this subsection if:

- 22 a. The borrower is a natural person;  
23 b. The debt is incurred by the borrower primarily for personal,  
24 family, or household purposes; and  
25 c. The loan is secured by a first mortgage or first deed of trust on  
26 real estate upon which there is located or there is to be located a  
27 structure or structures designed principally for occupancy of  
28 from one to four families which is or will be occupied by the  
29 borrower as the borrower's principal dwelling.

30 (2) Deferral fees for home loans identified in subdivision (1) of this  
31 subsection shall be subject to the following limitations:

- 32 a. Deferral fees may be charged only pursuant to an agreement  
33 which states the amount of the fee and is made at the time of the  
34 specific deferral or at the time the specific deferral is requested;  
35 provided, that if the agreement relates to an installment which is  
36 then past due for 15 days or more, the agreement must be in  
37 writing and signed by at least one of the borrowers. For purposes  
38 of this subdivision an agreement will be considered a signed  
39 writing if the lender receives from at least one of the borrowers a  
40 facsimile or computer-generated message confirming or  
41 otherwise accepting the agreement.

- 42 b. Deferral fees may not exceed the greater of five percent (5%) of  
43 each installment deferred or fifty dollars (\$50.00), multiplied by

1           the number of complete months in the deferral period. A month  
2           shall be measured from the date an installment is due. The  
3           deferral period is that period during which no payment is  
4           required or made as measured from the date on which the  
5           deferred installment would otherwise have been due to the date  
6           the next installment is due under the terms of the deferral  
7           agreement.

8           c. If a deferral fee has once been imposed with respect to a  
9           particular installment, no deferral fee may be imposed with  
10           respect to any future payment which would have been timely and  
11           sufficient but for the previous deferral.

12           d. If a deferral fee is charged pursuant to a deferral agreement, a  
13           late charge may be imposed with respect to the deferred payment  
14           only if the amount deferred is not paid when due under the terms  
15           of the deferral agreement and no new deferral agreement is  
16           entered into with respect to that installment.

17           e. No lender may charge a deferral fee for modifying or extending  
18           the maturity date of a loan or the date a balloon payment is due;  
19           provided, however, that any such modification or extension of  
20           the loan maturity date or the date a balloon payment is due shall,  
21           to the extent applicable, be considered a modification or  
22           extension subject to the provisions of subdivision (c)(2) of this  
23           section.

24           (h) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) subdivision  
25           (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which  
26           provides that periodic payments may be graduated during parts of or over the entire term  
27           of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of  
28           trust which provides that periodic disbursements of part of the loan proceeds may be  
29           made by the lender over a period of time agreed upon by the parties, or over a period of  
30           time agreed upon by the parties ending with the death of the borrower(s). Such mortgages  
31           or deeds of trust may include provisions for adding deferred interest to principal or  
32           otherwise providing for charging of interest on deferred interest as agreed upon by the  
33           parties. This subsection shall not be construed to limit other types of mortgages or deeds  
34           of trust or methods or plans of disbursement or repayment of loans that may be agreed  
35           upon by the parties.

36           (i) Nothing in this section shall be construed to authorize or prohibit a lender, a  
37           borrower, or any other party to pay compensation to a mortgage broker or a mortgage  
38           banker for services provided by the mortgage broker or the mortgage banker in  
39           connection with a home loan."

40           Section 2. Chapter 24 of the General Statutes is amended by adding a new  
41           section to read:

42           "**§ 24-1.1E. Restrictions and limitations on high-cost home loans.**

43           (a) Definitions. – The following definitions apply for the purposes of this section:

- 1           (1) 'Affiliate' means any company that controls, is controlled by, or is under  
2 common control with another company, as set forth in the Bank Holding  
3 Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time  
4 to time.
- 5           (2) 'Annual percentage rate' means the annual percentage rate for the loan  
6 calculated according to the provisions of the federal Truth-in-Lending  
7 Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated  
8 thereunder by the Federal Reserve Board (as said Act and regulations  
9 are amended from time to time).
- 10          (3) 'Bona fide loan discount points' are loan discount points knowingly paid  
11 by the borrower for the purpose of reducing, and which in fact result in  
12 a bona fide reduction of, the interest rate or time-price differential  
13 applicable to the loan, provided the amount of the interest rate reduction  
14 purchased by the discount points is reasonably consistent with  
15 established industry norms and practices for secondary mortgage market  
16 transactions.
- 17          (4) A 'high-cost home loan' is a loan other than an open-end credit plan or a  
18 reverse mortgage transaction in which:
- 19           a. The principal amount of the loan does not exceed the lesser of (i)  
20 the conforming loan size limit for a single-family dwelling as  
21 established from time to time by the Federal National Mortgage  
22 Association, or (ii) three hundred thousand dollars (\$300,000);
- 23           b. The borrower is a natural person;
- 24           c. The debt is incurred by the borrower primarily for personal,  
25 family, or household purposes;
- 26           d. The loan is secured by either (i) a security interest in a  
27 manufactured home (as defined in G.S. 143-147(7)) which is or  
28 will be occupied by the borrower as the borrower's principal  
29 dwelling, or (ii) a mortgage or deed of trust on real estate upon  
30 which there is located or there is to be located a structure or  
31 structures designed principally for occupancy of from one to four  
32 families which is or will be occupied by the borrower as the  
33 borrower's principal dwelling; and
- 34           e. The terms of the loan exceed one or more of the thresholds as  
35 defined in subdivision (6) of this section.
- 36          (5) 'Points and fees' means:
- 37           a. All items required to be disclosed under sections 226.4(a) and  
38 226.4(b) of Title 12 of the Code of Federal Regulations, as  
39 amended from time to time, except interest or the time-price  
40 differential;
- 41           b. All charges for items listed under section 226.4(c)(7) of Title 12  
42 of the Code of Federal Regulations, as amended from time to  
43 time, but only if the lender receives direct or indirect

1                   compensation in connection with the charge or the charge is paid  
2                   to an affiliate of the lender; otherwise, the charges are not  
3                   included within the meaning of the phrase 'points and fees';

4                   c. All compensation paid directly by the borrower to a mortgage  
5                   broker not otherwise included in sub-subdivision a. or b. of this  
6                   subdivision; and

7                   d. The maximum prepayment fees and penalties which may be  
8                   charged or collected under the terms of the loan documents.

9                   (6) 'Thresholds' means:

10                   a. Without regard to whether the loan transaction is or may be a  
11                   'residential mortgage transaction' (as the term 'residential  
12                   mortgage transaction' is defined in section 226.2(a)(24) of Title  
13                   12 of the Code of Federal Regulations, as amended from time to  
14                   time), the annual percentage rate of the loan at the time the loan  
15                   is consummated is such that the loan is considered a 'mortgage'  
16                   under section 152 of the Home Ownership and Equity Protection  
17                   Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the  
18                   same may be amended from time to time, and regulations  
19                   adopted pursuant thereto by the Federal Reserve Board, including  
20                   section 226.32 of Title 12 of the Code of Federal Regulations, as  
21                   the same may be amended from time to time;

22                   b. The total points and fees payable by the borrower at or before the  
23                   loan closing exceed (i) five percent (5%) of the principal amount  
24                   of the loan if the principal amount of the loan is twenty thousand  
25                   dollars (\$20,000) or more, or (ii) the lesser of eight percent (8%)  
26                   of the principal amount of the loan or one thousand dollars  
27                   (\$1,000), if the principal amount of the loan is less than twenty  
28                   thousand dollars (\$20,000); provided, the following discount  
29                   points and prepayment fees and penalties shall be excluded from  
30                   the calculation of the total points and fees payable by the  
31                   borrower:

32                   1. Up to and including two bona fide loan discount points  
33                   payable by the borrower in connection with the loan  
34                   transaction, but only if the interest rate from which the  
35                   loan's interest rate will be discounted does not exceed by  
36                   more than one percentage point (1%) the required net  
37                   yield for a 90-day standard mandatory delivery  
38                   commitment for a reasonably comparable loan from either  
39                   the Federal National Mortgage Association or the Federal  
40                   Home Loan Mortgage Corporation, whichever is greater;

41                   2. Up to and including one bona fide loan discount point  
42                   payable by the borrower in connection with the loan  
43                   transaction, but only if the interest rate from which the



1                    loan's interest rate will be discounted does not exceed by  
2                    more than two percentage points (2%) the required net  
3                    yield for a 90-day standard mandatory delivery  
4                    commitment for a reasonably comparable loan from either  
5                    the Federal National Mortgage Association or the Federal  
6                    Home Loan Mortgage Corporation, whichever is greater;

7                    3.    Prepayment fees and penalties which may be charged or  
8                    collected under the terms of the loan documents which do  
9                    not exceed one percent (1%) of the amount prepaid,  
10                   provided the loan documents do not permit the lender to  
11                   charge or collect any prepayment fees or penalties more  
12                   than 30 months after the loan closing; or

13                   c.    The loan documents permit the lender to charge or collect  
14                   prepayment fees or penalties more than 30 months after the loan  
15                   closing or which exceed, in the aggregate, more than two percent  
16                   (2%) of the amount prepaid.

17                   (b) Limitations. – A high-cost home loan shall be subject to the following  
18 limitations:

19                   (1)    No call provision. – No high-cost home loan may contain a provision  
20                   which permits the lender, in its sole discretion, to accelerate the  
21                   indebtedness. This provision does not apply when repayment of the  
22                   loan has been accelerated by default, pursuant to a due-on-sale  
23                   provision, or pursuant to some other provision of the loan documents  
24                   unrelated to the payment schedule.

25                   (2)    No balloon payment. – No high-cost home loan may contain a  
26                   scheduled payment that is more than twice as large as the average of  
27                   earlier scheduled payments. This provision does not apply when the  
28                   payment schedule is adjusted to the seasonal or irregular income of the  
29                   borrower.

30                   (3)    No negative amortization. – No high-cost home loan may contain a  
31                   payment schedule with regular periodic payments that cause the  
32                   principal balance to increase.

33                   (4)    No increased interest rate. – No high-cost home loan may contain a  
34                   provision which increases the interest rate after default. This provision  
35                   does not apply to interest rate changes in a variable rate loan otherwise  
36                   consistent with the provisions of the loan documents, provided the  
37                   change in the interest rate is not triggered by the event of default or the  
38                   acceleration of the indebtedness.

39                   (5)    No advance payments. – No high-cost home loan may include terms  
40                   under which more than two periodic payments required under the loan  
41                   are consolidated and paid in advance from the loan proceeds provided to  
42                   the borrower.

- 1           (6) No modification or deferral fees. – A lender may not charge a borrower  
2           any fees to modify, renew, extend, or amend a high-cost home loan or to  
3           defer any payment due under the terms of a high-cost home loan.
- 4           (c) Prohibited Acts and Practices. – The following acts and practices are  
5 prohibited in the making of a high-cost home loan:
- 6           (1) No lending without home-ownership counseling. – A lender may not  
7           make a high-cost home loan without first receiving certification from a  
8           counselor approved by the North Carolina Housing Finance Agency that  
9           the borrower has received counseling on the advisability of the loan  
10           transaction and the appropriate loan for the borrower.
- 11           (2) No lending without due regard to repayment ability. – As used in this  
12           subsection, the term 'obligor' refers to each borrower, co-borrower,  
13           cosigner, or guarantor obligated to repay a loan. A lender may not make  
14           a high-cost home loan unless the lender reasonably believes at the time  
15           the loan is consummated that one or more of the obligors, when  
16           considered individually or collectively, will be able to make the  
17           scheduled payments to repay the obligation based upon a consideration  
18           of their current and expected income, current obligations, employment  
19           status, and other financial resources (other than the borrower's equity in  
20           the dwelling which secures repayment of the loan). An obligor shall be  
21           presumed to be able to make the scheduled payments to repay the  
22           obligation if, at the time the loan is consummated, the obligor's total  
23           monthly debts, including amounts owed under the loan, do not exceed  
24           fifty percent (50%) of the obligor's monthly gross income as verified by  
25           the credit application, the obligor's financial statement, a credit report,  
26           financial information provided to the lender by or on behalf of the  
27           obligor, or any other reasonable means; provided, no presumption of  
28           inability to make the scheduled payments to repay the obligation shall  
29           arise solely from the fact that, at the time the loan is consummated, the  
30           obligor's total monthly debts (including amounts owed under the loan)  
31           exceed fifty percent (50%) of the obligor's monthly gross income.
- 32           (3) No financing of fees or charges. – In making a high-cost home loan, a  
33           lender may not directly or indirectly finance:
- 34           a. Any prepayment fees or penalties payable by the borrower in a  
35           refinancing transaction if the lender or an affiliate of the lender is  
36           the noteholder of the note being refinanced;
- 37           b. Any points and fees; or
- 38           c. Any other charges payable to third parties.
- 39           (4) No benefit from refinancing existing high-cost home loan with new  
40           high-cost home loan. – A lender may not charge a borrower points and  
41           fees in connection with a high-cost home loan if the proceeds of the  
42           high-cost home loan are used to refinance an existing high-cost home  
43           loan held by the same lender as noteholder.

1           (5) Restrictions on home-improvement contracts. – A lender may not pay a  
2 contractor under a home-improvement contract from the proceeds of a  
3 high-cost home loan other than (i) by an instrument payable to the  
4 borrower or jointly to the borrower and the contractor, or (ii) at the  
5 election of the borrower, through a third-party escrow agent in  
6 accordance with terms established in a written agreement signed by the  
7 borrower, the lender, and the contractor prior to the disbursement.

8           (d) Unfair and Deceptive Acts or Practices. – Except as provided in subsection (e)  
9 of this section, the making of a high-cost home loan which violates any provisions of  
10 subsection (b) or (c) of this section is hereby declared usurious in violation of the  
11 provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or  
12 affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this  
13 section shall apply to any person who in bad faith attempts to avoid the application of this  
14 section by (i) the structuring of a loan transaction as an open-end credit plan for the  
15 purpose and with the intent of evading the provisions of this section when the loan would  
16 have been a high-cost home loan if the loan had been structured as a closed-end loan, or  
17 (ii) dividing any loan transaction into separate parts for the purpose and with the intent of  
18 evading the provisions of this section, or (iii) any other such subterfuge. The Attorney  
19 General, the Commissioner of Banks, or any party to a high-cost home loan may enforce  
20 the provisions of this section. Any person seeking damages or penalties under the  
21 provisions of this section may recover damages under either this Chapter or Chapter 75,  
22 but not both.

23           (e) Corrections and Unintentional Violations. – A lender in a high-cost home loan  
24 who, when acting in good faith, fails to comply with subsections (b) and (c) of this  
25 section, will not be deemed to have violated this section if the lender establishes that  
26 either:

27           (1) Within 30 days of the loan closing and prior to the institution of any  
28 action under this section, the borrower is notified of the compliance  
29 failure, appropriate restitution is made, and whatever adjustments are  
30 necessary are made to the loan to either, at the choice of the borrower,  
31 (i) make the high-cost home loan satisfy the requirements of subsections  
32 (b) and (c) of this section, or (ii) change the terms of the loan in a  
33 manner beneficial to the borrower so that the loan will no longer be  
34 considered a high-cost home loan subject to the provisions of this  
35 section; or

36           (2) The compliance failure was not intentional and resulted from a bona  
37 fide error notwithstanding the maintenance of procedures reasonably  
38 adapted to avoid such errors, and within 60 days after the discovery of  
39 the compliance failure and prior to the institution of any action under  
40 this section or the receipt of written notice of the compliance failure, the  
41 borrower is notified of the compliance failure, appropriate restitution is  
42 made, and whatever adjustments are necessary are made to the loan to  
43 either, at the choice of the borrower, (i) make the high-cost home loan

1           satisfy the requirements of subsections (b) and (c) of this section, or (ii)  
2           change the terms of the loan in a manner beneficial to the borrower so  
3           that the loan will no longer be considered a high-cost home loan subject  
4           to the provisions of this section. Examples of a bona fide error include  
5           clerical, calculation, computer malfunction and programming, and  
6           printing errors. An error of legal judgment with respect to a person's  
7           obligations under this section is not a bona fide error.

8           (f) Severability. – The provisions of this section shall be severable, and if any  
9           phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal  
10           law or regulation, the validity of the remainder of this section shall not be affected  
11           thereby. If any provision of this section is declared to be inapplicable to any specific  
12           category, type, or kind of points and fees, the provisions of this section shall nonetheless  
13           continue to apply with respect to all other points and fees."

14           Section 3. Chapter 24 of the General Statutes is amended by adding a new  
15           section to read:

16           "**§ 24-2.5. Mortgage bankers and mortgage brokers.**

17           A mortgage broker or a mortgage banker originating a loan in a table-funded loan  
18           transaction in which the mortgage broker or mortgage banker is identified as the original  
19           payee of the note shall be considered a lender for purposes of this Chapter."

20           Section 4. G.S. 24-8 reads as rewritten:

21           "**§ 24-8. Loans not in excess of \$300,000; what interest, fees and charges permitted.**

22           ~~No lender shall charge or receive from any borrower or require in connection with a~~  
23           ~~loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise~~  
24           ~~confer upon or for the benefit of the lender or any other person, firm or corporation any~~  
25           ~~sum of money, thing of value or other consideration other than that which is pledged as~~  
26           ~~security or collateral to secure the repayment of the full principal of the loan, together~~  
27           ~~with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina~~  
28           ~~General Statutes, where the principal amount of a loan is not in excess of three hundred~~  
29           ~~thousand dollars (\$300,000.00); provided, this section shall not prevent a borrower from~~  
30           ~~selling, transferring, or conveying property other than security or collateral to any person,~~  
31           ~~firm or corporation for a fair consideration so long as such transaction is not made a~~  
32           ~~condition or requirement for any loan; provided that this shall not prevent the lender from~~  
33           ~~collecting from the borrower for remittance to others, money in payment of taxes,~~  
34           ~~assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life,~~  
35           ~~accident and health, unemployment, and mortgage insurance premiums and other such~~  
36           ~~fees and costs, nor from receiving the proceeds from any insurance policies where a loss~~  
37           ~~occurs under the terms of such policies. This section shall not be applicable to any~~  
38           ~~corporation licensed as a "Small Business Investment Company" under the provisions of~~  
39           ~~the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable~~  
40           ~~to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt~~  
41           ~~security with accompanying warrants, nor to the sale or purchase of other securities~~  
42           ~~through an organized securities exchange.~~

1 (a) If the principal amount of a loan is less than three hundred thousand dollars  
2 (\$300,000), no lender shall charge or receive from any borrower or require in connection  
3 with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or  
4 otherwise confer upon or for the benefit of the lender or any other person, firm, or  
5 corporation any sum of money, thing of value, or other consideration other than that  
6 which is pledged as security or collateral to secure the repayment of the full principal of  
7 the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the  
8 General Statutes.

9 (b) Notwithstanding any contrary provision of State law, if the principal amount of  
10 a loan is three hundred thousand dollars (\$300,000) or more, any borrower may agree to  
11 pay, and any lender or other person may charge and collect from the borrower, interest,  
12 fees, and other charges as may be agreed upon between the parties, and the borrower and  
13 anyone claiming by or through the borrower is prohibited from asserting usury as a claim  
14 or defense.

15 (c) The provisions of this section shall not prevent a borrower from selling,  
16 transferring, or conveying property other than security or collateral to any person, firm, or  
17 corporation for a fair consideration so long as such transaction is not made a condition or  
18 requirement for any loan.

19 (d) Notwithstanding any contrary provision of State law, any lender may collect  
20 money from the borrower for the payment of (i) bona fide loan-related goods, products,  
21 and services provided or to be provided by third parties, and (ii) taxes, filing fees,  
22 recording fees, and other charges and fees paid or to be paid to public officials. No third  
23 party shall charge or receive (i) any unreasonable compensation for loan-related goods,  
24 products, and services, or (ii) any compensation for which no loan-related goods and  
25 products are provided or for which no or only nominal loan-related services are  
26 performed. Loan-related goods, products, and services include fees for tax payment  
27 services, fees for flood certification, fees for pest-infestation determinations, mortgage  
28 brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for  
29 credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees,  
30 escrow charges, and insurance premiums (including, for example, fire, title, life, accident  
31 and health, disability, unemployment, flood, and mortgage insurance).

32 (e) Notwithstanding any contrary provision of State law, any lender may receive  
33 the proceeds from any insurance policies where loss occurs under the terms of such  
34 policies.

35 (f) This section shall not be applicable to any corporation licensed as a 'Small  
36 Business Investment Company' under the provisions of the United States Code  
37 Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase  
38 of convertible debentures, nor to the sale or purchase of any debt security with  
39 accompanying warrants, nor to the sale or purchase of other securities through an  
40 organized securities exchange."

41 Section 5. Chapter 24 of the General Statutes is amended by adding a new  
42 section to read:

43 **"§ 24-10.2. Consumer protections in consumer home loans.**

1       (a) For purposes of this section, the term 'consumer home loan' shall mean a loan  
2 in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower  
3 primarily for personal, family, or household purposes, and (iii) the loan is secured by a  
4 mortgage or deed of trust upon real estate upon which there is located or there is to be  
5 located a structure or structures designed principally for occupancy of from one to four  
6 families which is or will be occupied by the borrower as the borrower's principal  
7 dwelling.

8       (b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for  
9 any lender in a consumer home loan to finance, directly or indirectly, any credit life,  
10 disability, or unemployment insurance, or any other life or health insurance premiums;  
11 provided, that insurance premiums calculated and paid on a monthly basis shall not be  
12 considered financed by the lender.

13       (c) No lender may knowingly or intentionally engage in the unfair act or practice  
14 of 'flipping' a consumer home loan. 'Flipping' a consumer loan is the making of a  
15 consumer home loan to a borrower which refinances an existing consumer home loan  
16 when the new loan does not have reasonable, tangible net benefit to the borrower  
17 considering all of the circumstances, including the terms of both the new and refinanced  
18 loans, the cost of the new loan, and the borrower's circumstances. This provision shall  
19 apply regardless of whether the interest rate, points, fees, and charges paid or payable by  
20 the borrower in connection with the refinancing exceed those thresholds specified in G.S.  
21 24-1.1E(6).

22       (d) No lender shall recommend or encourage default on an existing loan or other  
23 debt prior to and in connection with the closing or planned closing of a consumer home  
24 loan that refinances all or any portion of such existing loan or debt.

25       (e) The making of a consumer home loan which violates the provisions of this  
26 section is hereby declared usurious in violation of the provisions of this Chapter and  
27 unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of  
28 the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any  
29 party to a consumer home loan may enforce the provisions of this section. Any person  
30 seeking damages or penalties under the provisions of this section may recover damages  
31 under either this Chapter or Chapter 75, but not both.

32       (f) In any suit instituted by a borrower who alleges that the defendant violated this  
33 section, the presiding judge may, in the judge's discretion, allow reasonable attorneys'  
34 fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a  
35 part of the court costs and payable by the losing party, upon a finding by the presiding  
36 judge that:

37           (1) The party charged with the violation has willfully engaged in the act or  
38 practice, and there was unwarranted refusal by such party to fully  
39 resolve the matter which constitutes the basis of such suit; or

40           (2) The party instituting the action knew, or should have known, that the  
41 action was frivolous and malicious.

42       (g) This section establishes specific consumer protections in consumer home loans  
43 in addition to other consumer protections that may be otherwise available by law."

1           Section 6. There is appropriated from the General Fund to the Office of  
2 Commissioner of Banks, the sum of one hundred thousand dollars (\$100,000) for the  
3 1999-2000 fiscal year to develop and implement, in consultation with the Attorney  
4 General, a program of public education and counseling, designed to inform the public  
5 about the methods by which predatory lenders impose unconscionable and  
6 noncompetitive fees and charges as part of complex home mortgage transactions, to  
7 protect the public from incurring such fees and charges, and otherwise to encourage the  
8 informed and responsible use of credit.

9           Section 7. The Attorney General and the Commissioner of Banks shall  
10 monitor the implementation and enforcement of this act to determine:

11           (1) Whether any of the provisions of this act have a measurable effect on  
12 the availability of credit in the State, and

13           (2) Whether the act is successfully reducing the predatory lending practices  
14 proscribed by the act.

15 The Attorney General and the Commissioner of Banks shall submit a written interim  
16 report of their findings and recommendations to the 2001 General Assembly on or before  
17 March 15, 2001, and a final written report to the 2002 Regular Session of the 2001  
18 General Assembly upon its convening.

19           Section 8. Section 2 of this act becomes effective July 1, 2000, and applies to  
20 loans made or entered into on or after that date. Section 6 of this act becomes effective  
21 July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder  
22 of this act becomes effective October 1, 1999, and applies to loans made or entered into,  
23 payments deferred, and loans modified, renewed, extended, or amended on or after that  
24 date.