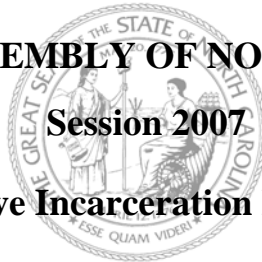


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 817 (Fourth Edition)

SHORT TITLE: Residential Mortgage Fraud Act.

SPONSOR(S): Representative Blue

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
<b>GENERAL FUND</b>					
Correction	<b>Some fiscal impact expected; exact amount cannot be determined.</b>				
Judicial	<b>See Assumptions and Methodology.</b>				
<b>TOTAL EXPENDITURES:</b>	<b>Amount cannot be determined.</b>				
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>	<b>Amount cannot be determined.</b>				
<b>POSITIONS: (cumulative)</b>	<b>Amount cannot be determined.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Department of Correction; Judicial Branch.				
<b>EFFECTIVE DATE:</b>	December 1, 2007.				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

**BILL SUMMARY:** Enacts new Article 20A, "Residential Mortgage Fraud Act," within Chapter 14 of the General Statutes.

New G.S. 14-118.11 establishes definitions for the act (e.g. mortgage loan, mortgage lending process, pattern of residential mortgage fraud, person, and residential real property). A "pattern of residential mortgage fraud" is defined as residential mortgage fraud that involves two or more

mortgage loans, and which is interrelated by distinguishing characteristics – similar intents, results, accomplices, victims, or methods of commission.

New G.S. 14-118.12(a) makes it unlawful for any person, for financial gain and with the intent to defraud, to do any of the following:

- 1 Knowingly make or attempt to make any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity that is involved in the mortgage lending process rely on it.
- 2 Knowingly use or facilitate or attempt to use or facilitate the use of any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity that is involved in the mortgage lending process rely on it.
- 3 Receive or attempt to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew resulted from a violation of subdivision (1) or (2) of this subsection.
- 4 Conspire or solicit another to violate any of the provisions of subdivision (1), (2), or (3) of the subsection.

G.S. 14-118.12(b) provides that it is unnecessary for the prosecution to demonstrate financial harm from a transaction, or another's reliance on a deliberate misstatement, misrepresentation, or omission.

New G.S. 14-118.13 establishes venue in: 1) the county where residential real property for which a mortgage loan is sought is located; 2) any county where an act was performed in furtherance of the offense; 3) any county where a person alleged to have violated the Act had control or possession of proceeds of the violation; 4) any county where a closing occurred for a property transaction involving a violation of the act; or, 5) any county where a document containing a deliberate misstatement, misrepresentation, or omission is filed with the register of deeds.

New G.S. 14-118.14 authorizes the appropriate district attorney to institute criminal proceedings under the Article upon its own investigation, or upon referral by the Office of the Commissioner of Banks, the North Carolina Real Estate Commission, the Attorney General, the North Carolina Appraisal Board, or other parties.

New G.S. 14-118.15 provides for the following criminal punishments: 1) an offense involving a single mortgage loan as a Class H felony; and 2) an offense involving a "pattern of residential mortgage fraud" is a Class C felony. Also designates that each residential loan and property transaction involving fraudulent activity constitutes a separate offense that does not merge with other crimes.

New G.S. 14-118.16 provides for forfeiture to the state of real and personal property used or derived from a violation of the Act. Also makes forfeiture subordinate to good faith security interest or interest of an owner who made a bona fide purchase without the knowledge of fraud.

New G.S. 14-118.17 exempts from civil liability a person who, in the absence of fraud, bad faith, or malice, reports suspected residential mortgage fraud.

Effective December 1, 2007, for offenses committed on or after that date.

House amendments make the following changes to the second edition:

- Amendment #1 modifies proposed G.S. 14-118.11 to provide that unless otherwise provided in the Article, the listed definitions apply, removing the provision that the definitions apply unless the context clearly indicates that a different meaning is intended.
- Amendment #2 modifies proposed G.S. 14-118.15 to decrease the proposed penalty for violations involving a pattern of residential mortgage fraud from a Class C to a Class F felony.

Senate committee substitute makes the following changes to the third edition:

- Modifies proposed new G.S. 14-118.12 to provide that a person is guilty of residential mortgage fraud when that person receives or attempts to receive funds in connection with a residential mortgage closing that the person *should have known* resulted from a violation of subdivision (1) or (2) of G.S. 14-118-12(a) (regarding residential mortgage fraud). Also amends the definition of a “pattern of residential mortgage fraud,” defining it as residential mortgage fraud that involves *five or more* mortgage loans.
- Modifies proposed new G.S. 14-118.15 to (1) increase the proposed penalty for violation involving a pattern of residential mortgage fraud from a Class F to a Class E felony; and, (2) provide that the felonies listed apply unless the conduct is prohibited by another law that provides for a more strict punishment. Deletes the provision stating that each mortgage loan and property transaction violation constitutes a separate offense and is not to be merged with any other crimes set out in Chapter 14.
- Makes technical changes.

Source: *Bill Digest H.B. 817 (03/14/0200)*.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

Presently, those who commit crimes involving conduct similar to that addressed by this bill may be convicted under G.S. 14-100, “Obtaining property by false pretenses.” However, this current offense does not encompass all of the elements of the proposed offenses. *Thus, to the extent that the proposed offenses result in new charges and convictions, some additional fiscal impact is expected for the Courts and Corrections.*

Because these offenses are new, there is no historical data from which to accurately project future charge and conviction rates. Anecdotal assessment provided by the North Carolina Banking Commission indicates that approximately two or three mortgage fraud cases are investigated by the Banking Commission and N.C. Real Estate Commission monthly, resulting in an average of one charge per month. Offenders charged under current law are charged with “Obtaining property by false pretenses,” and most cases are disposed at the federal level.

Based on this information, Fiscal Research does not anticipate a substantial fiscal impact due to this proposal. However, the actual number of charges, potential convictions, and venue of case disposition may vary upon implementation.

### **Department of Correction – Division of Prisons**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding

existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, Fiscal Research does not assume deterrent effects for any criminal penalty bill. Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

G.S. 14-118.15 makes an offense involving a single mortgage loan a Class H felony, and an offense involving a “pattern of residential mortgage fraud” a Class E felony. Because these are new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

Violators of proposed G.S. 14-118.12(a)(3) may currently be convicted under G.S. 14-100, “Obtaining property by false pretenses.” Violation is a Class H felony if the value of the property taken is less than \$100,000, and is a Class C felony if the value of the property taken is \$100,000 or more. In FY 2005/06, there were 1,520 convictions under G.S. 14-100 (including 5 Class C convictions). It is not known if any of these convictions were for conduct covered under the proposed bill.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, *there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year; two additional prison beds the second year; and one additional employee by the second year.*

In contrast, 49% of Class E convictions resulted in active sentences, with an average estimated time served of 31 months. Accordingly, *if two additional Class E convictions were to occur per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year; two additional prison beds the second year; and one additional employee by the second year.*<sup>1</sup> In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, some impact is anticipated for Post-Release Supervision caseloads, and prison beds due to potential revocations.

Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State \$272,160 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$168,480.<sup>2</sup> These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether

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<sup>1</sup> Position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

<sup>2</sup> New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

“Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$116,391 by FY 2009-10.<sup>3</sup>

### **Department of Correction – Division of Community Corrections**

In FY 2005-06, 66% of Class H and 51% of Class E felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future convictions for the proposed offenses occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. Nor is it known how many additional Class E felony offenders will require post-release supervision.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

### **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

There is no historical data from which to estimate the number of charges that might occur for the proposed offenses. However, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. Presently, the estimated costs per Class H felony trial and plea are \$7,345 and \$325, respectively; the estimated costs per Class E felony trial and plea are \$10,551 and \$560, respectively.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION: (919) 733-4910**

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<sup>3</sup> Impact on incarcerated population is assumed for FY 2008/09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

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Fiscal Research Division

**DATE:** June 18, 2007



**Signed Copy Located in the NCGA Principal Clerk's Offices**