

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 293

Short Title: Mortgages/S.A.F.E. Act. (Public)

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

Referred to: Judiciary Subcommittee A, if favorable, Banking.

March 14, 2013

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE SECURE AND FAIR ENFORCEMENT MORTGAGE
3 LICENSING ACT TO REDUCE REGULATORY BURDENS, MAKING CLARIFYING
4 AND TECHNICAL CHANGES, AND MODIFYING CERTAIN FORECLOSURE
5 PROCEEDINGS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 53-244.050 reads as rewritten:
8 **"§ 53-244.050. License and registration application; claim of exemption.**

9 ...
10 (b) The eligibility requirements for an application for licensure under this Article are as
11 follows:

12 (1) Each individual applicant for licensure as a mortgage loan originator or
13 qualifying individual shall:

14 ...

15 c. Have passed, within the ~~three~~-five years immediately preceding the
16 date of application, the test required under G.S. 53-244.080.

17 ...

18 (3) If an individual applicant to be licensed as a mortgage broker is a licensed
19 mortgage loan originator and meets the requirements for licensure as a
20 mortgage broker, but is not an employee as defined in G.S. 53-244.030(10)
21 and does not meet the experience requirements of G.S. 53-244.050(b)(2)a.,
22 the individual may be licensed as an exclusive mortgage broker upon
23 compliance with all of the following:

24 a. Successfully completes a ~~16-hour residential mortgage lending~~
25 ~~course approved by the Commissioner supplementing~~ the prelicensing
26 education required under G.S. 53-244.070."

27 **SECTION 2.** G.S. 53-244.080 reads as rewritten:
28 **"§ 53-244.080. Testing requirements for mortgage loan originators.**

29 ...
30 (e) An applicant may retake a test three consecutive times with each consecutive test
31 occurring at least 30 days after the preceding test. After failing three consecutive tests, an
32 applicant must wait at least six months before retaking the test. A licensed mortgage loan
33 originator who fails to maintain a valid license for a period of ~~three~~-five years or longer must
34 retake the test."

35 **SECTION 3.** G.S. 53-244.102 reads as rewritten:



1 **"§ 53-244.102. Continuing education for mortgage loan originators.**

2 ...

3 (d) A licensed mortgage loan originator:

- 4 (1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may ~~only~~
5 receive credit for a continuing education course ~~in the year in which the~~
6 ~~course is taken; and~~ taken prior to the end of the reinstatement period under
7 G.S. 53-244.101(d); and

8"

9 **SECTION 4.** G.S. 53-244.114 reads as rewritten:

10 **"§ 53-244.114. Licensure authority.**

11 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
12 renew a license of a licensee or applicant under this Article, or may restrict or limit the manner
13 in which a licensee, applicant, or any person who owns an interest in or participates in the
14 business of a licensee engages in the mortgage business, if the Commissioner finds both of the
15 following:

16 ...

- 17 (2) That any of the following circumstances apply to the applicant, licensee, or
18 any partner, member, manager, officer, director, loan ~~officer, limited loan~~
19 ~~officer, originator,~~ qualifying individual, or any person occupying a similar
20 status or performing similar functions or any person directly or indirectly
21 controlling the applicant or licensee. The person:

22 ...

- 23 e. Is the subject of an order entered within the past five years by the
24 authority of any state or federal agency with jurisdiction over ~~that~~
25 ~~state's~~ the mortgage brokerage, mortgage lending, or mortgage
26 servicing ~~industry denying that person's license as a mortgage loan~~
27 ~~originator, mortgage broker, mortgage lender, or mortgage~~
28 ~~servicer;~~ industry;

29"

30 **SECTION 5.** G.S. 53-244.116 reads as rewritten:

31 **"§ 53-244.116. Disciplinary authority.**

32 ...

33 (b) When a licensee is accused of any act, omission, or misconduct that would subject
34 the licensee to disciplinary action, the licensee, with the consent and approval of the
35 Commissioner, may surrender the license and all the rights and privileges pertaining to it. A
36 person who surrenders a license shall not be eligible for or submit any application for licensure
37 under this ~~Article.~~ Article during any period specified by the Commissioner.

38"

39 **SECTION 6.** G.S. 53-244.117 is repealed.

40 **SECTION 7.** G.S. 45-21.16B is repealed.

41 **SECTION 8.** G.S. 45-94 reads as rewritten:

42 **"§ 45-94. Remedies.**

43 In addition to any equitable remedies and any other remedies at law, any borrower injured
44 by any violation of this Article may bring an action for recovery of actual damages, including
45 reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a
46 home loan may enforce the provisions of this section. ~~The Clerk of Superior Court shall also~~
47 ~~suspend foreclosure proceedings for 60 days if notified by the Commissioner of Banks as~~
48 ~~provided in G.S. 53-243.12(n).~~ With the exception of an action by the Commissioner of Banks
49 or the Attorney General, at least 30 days before a borrower or a borrower's representative
50 institutes a civil action for damages against a servicer for a violation of this Article, the
51 borrower or a borrower's representative shall notify the servicer in writing of any claimed errors

1 or disputes regarding the borrower's home loan that forms the basis of the civil action. The
2 notice must be sent to the address as designated on any of the servicer's bills, statements,
3 invoices, or other written communication, and must enable the servicer to identify the name and
4 loan account of the borrower. For purposes of this section, notice shall not include a complaint
5 or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action,
6 or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be
7 in violation of this Article if the servicer shows by a preponderance of evidence that:

8 (1) The violation was not intentional or the result of bad faith; and

9 (2) Within 30 days after discovering or being notified of an error, and prior to
10 the institution of any legal action by the borrower against the servicer under
11 this section, the servicer corrected the error and compensated the borrower
12 for any fees or charges incurred by the borrower as a result of the violation."

13 **SECTION 9.** This act is effective when it becomes law.