

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 692
Apr 9, 2013
HOUSE PRINCIPAL CLERK

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HOUSE DRH70240-RO-8 (03/06)

Short Title: Amend Predatory Lending Law. (Public)

Sponsors: Representatives Szoka, Hanes, Dockham, and Samuelson (Primary Sponsors).

Referred to:

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
36 month plus six percent (6%), rounded upward or downward, as the case may



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

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

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

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

23 a. The term includes all of the following:

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

1 source to a mortgage broker, including compensation paid to
2 a mortgage broker in a table-funded transaction. A bona fide
3 sale of a loan in the secondary mortgage market shall not be
4 considered a table-funded transaction, and a table-funded
5 transaction shall not be considered a secondary market
6 transaction.

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

9 b. Notwithstanding the remaining provisions of this subdivision, the
10 term does not include (i) taxes, filing fees, recording and other
11 charges and fees paid or to be paid to public officials for determining
12 the existence of or for perfecting, releasing, or satisfying a security
13 interest; and (ii) fees paid to a person other than a lender or an
14 affiliate of the lender or to the mortgage broker or an affiliate of the
15 mortgage broker for the following: fees for tax payment services;
16 fees for flood certification; fees for pest infestation and flood
17 determinations; appraisal fees; fees for inspections performed prior to
18 closing; credit reports; surveys; attorneys' fees (if the borrower has
19 the right to select the attorney from an approved list or otherwise);
20 notary fees; escrow charges, so long as not otherwise included under
21 sub-subdivision a. of this subdivision; title insurance premiums; and
22 premiums for insurance against loss or damage to property, including
23 hazard insurance and flood insurance premiums, provided that the
24 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal
25 Regulations are met.

26 c. For open-end credit plans, the term includes those points and fees
27 described in sub-subdivisions a.1. through a.3. of this subdivision,
28 plus (i) the minimum additional fees the borrower would be required
29 to pay to draw down an amount equal to the total loan amount, and
30 (ii) the maximum prepayment fees and penalties which may be
31 charged or collected under the terms of the loan documents."

32 **SECTION 3.** G.S. 24-1.1E(a)(6) reads as rewritten:

33 "(6) "Thresholds" means:

- 34 a. Without regard to whether the loan transaction is or may be a
35 "residential mortgage transaction" (as the term "residential mortgage
36 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
37 of Federal Regulations, as amended from time to time), the annual
38 percentage rate of the loan at the time the loan is consummated is
39 such that the loan is considered a "mortgage" under section 152 of
40 the Home Ownership and Equity Protection Act of 1994 (Pub. Law
41 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from
42 time to time, and regulations adopted pursuant thereto by the Federal
43 Reserve Board, including section 226.32 of Title 12 of the Code of
44 Federal Regulations, as the same may be amended from time to time;
- 45 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed
46 ~~four percent (4%)~~ five percent (5%) of the total loan amount if the
47 total loan amount is twenty thousand dollars (\$20,000) or more, or
48 (ii) the lesser of eight percent (8%) of the total loan amount or one
49 thousand dollars (\$1,000), if the total loan amount is less than twenty
50 thousand dollars (\$20,000); provided, the following discount points

1 and prepayment fees and penalties shall be excluded from the
2 calculation of the total points and fees payable by the borrower:

- 3 1. Up to and including two bona fide loan discount points
4 payable by the borrower in connection with the loan
5 transaction, but only if the interest rate from which the loan's
6 interest rate will be discounted does not exceed by more than
7 one percentage point (1%) the required net yield for a 90-day
8 standard mandatory delivery commitment for a reasonably
9 comparable loan from either Fannie Mae or the Federal Home
10 Loan Mortgage Corporation, whichever is greater;
- 11 2. Up to and including one bona fide loan discount point
12 payable by the borrower in connection with the loan
13 transaction, but only if the interest rate from which the loan's
14 interest rate will be discounted does not exceed by more than
15 two percentage points (2%) the required net yield for a
16 90-day standard mandatory delivery commitment for a
17 reasonably comparable loan from either Fannie Mae or the
18 Federal Home Loan Mortgage Corporation, whichever is
19 greater;
- 20 3. For a closed-end loan, prepayment fees and penalties which
21 may be charged or collected under the terms of the loan
22 documents which do not exceed one percent (1%) of the
23 amount prepaid, provided the loan documents do not permit
24 the lender to charge or collect any prepayment fees or
25 penalties more than 30 months after the loan closing;
- 26 4. For an open-end credit plan, prepayment fees and penalties
27 which may be charged or collected under the terms of the
28 loan documents which do not exceed one percent (1%) of the
29 amount prepaid, provided the loan documents do not permit
30 the lender to charge or collect any prepayment fees or
31 penalties more than (i) 30 months after the loan closing if the
32 borrower has no right or option under the loan documents to
33 repay all or any portion of the outstanding balance of the
34 open-end credit plan at a fixed interest rate over a specified
35 period of time or, (ii) if the borrower has a right or option
36 under the loan documents to repay all or any portion of the
37 outstanding balance of the open-end credit plan at a fixed
38 interest rate over a specified period of time, 30 months after
39 the date the borrower voluntarily exercises that right or
40 option; or
- 41 c. If the loan is a closed-end loan, the loan documents permit the lender
42 to charge or collect prepayment fees or penalties more than 30
43 months after the loan closing or which exceed, in the aggregate, more
44 than two percent (2%) of the amount prepaid. If the loan is an
45 open-end credit plan, the loan documents permit the lender to charge
46 or collect prepayment fees or penalties (i) more than 30 months after
47 the loan closing if the borrower has no right or option under the loan
48 documents to repay all or any portion of the outstanding balance of
49 the open-end credit plan at a fixed interest rate over a specified
50 period of time or, (ii) if the borrower has a right or option under the
51 loan documents to repay all or any portion of the outstanding balance

1 of the open-end credit plan at a fixed interest rate over a specified
2 period of time, more than 30 months after the date the borrower
3 voluntarily exercises that right or option, or (iii) which exceed, in the
4 aggregate, more than two percent (2%) of the amount prepaid."

5 **SECTION 4.** G.S. 24-1.1F is repealed.

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