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SENATE BILL 904
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Short Title: Enact Mortgage Lending Act.

(Public)

Sponsors:

Referred to:

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN
3 MORTGAGE BROKERS AND BANKERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 19 of Chapter 53 of the General Statutes is repealed.

6 SECTION 2. Chapter 53 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 19A.

9 "Mortgage Lending Act.

10 "**§ 53-243.01. Definitions.**

11 The following definitions apply in this Article:

12 (1) Act as a mortgage broker. – To act, for compensation or gain, or in the
13 expectation of compensation or gain, either directly or indirectly, by
14 accepting or offering to accept an application for a mortgage loan,
15 soliciting or offering to solicit a mortgage loan, negotiating the terms
16 or conditions of a mortgage loan, issuing mortgage loan commitments
17 or interest rate guarantee agreements to borrowers, or engaging in
18 tablefunding of mortgage loans, whether such acts are done through
19 contact by telephone, by electronic means, by mail, or in person with
20 the borrowers or potential borrowers.

21 (2) Act as a mortgage lender. – To engage in the business of making
22 mortgage loans for compensation or gain.

23 (3) Branch manager. – The individual whose principal office is physically
24 located in, who is in charge of, and who is responsible for the business
25 operations of a branch office of a mortgage broker or mortgage banker.

- 1 (4) Branch office. – An office of the licensee acting as a mortgage broker
2 or mortgage banker that is separate and distinct from the licensee's
3 principal office.
- 4 (5) Commissioner. – The North Carolina Commissioner of Banks and the
5 Commissioner's designees. For purposes of compliance with this
6 Article by credit unions, Commissioner means the Administrator of the
7 Credit Union Division of the Department of Commerce.
- 8 (6) Control. – The power to vote more than twenty percent (20%) of
9 outstanding voting shares or other interests of a corporation,
10 partnership, limited liability company, association, or trust.
- 11 (7) Employee. – An individual, who has an employment relationship,
12 acknowledged by both the individual and the mortgage broker or
13 mortgage banker and is treated as an employee for purposes of
14 compliance with the federal income tax laws.
- 15 (8) Exempt person. – The term includes any of the following:
- 16 a. Any agency of the federal government or any state or municipal
17 government granting first mortgage loans under specific
18 authority of the laws of any state or the United States.
- 19 b. Any employee of a licensee whose responsibilities are limited
20 to clerical and administrative tasks for his or her employer and
21 who does not solicit borrowers, accept applications, or negotiate
22 the terms of loans on behalf of the employer.
- 23 c. Any lender authorized to engage in business as a bank or a
24 wholly owned subsidiary of a bank, a farm credit system,
25 savings institution, or credit union, under the laws of the United
26 States, this State, or any other state; and with regard to
27 provisions concerning mortgage lenders, life insurance
28 companies licensed to do business in North Carolina.
- 29 d. Any licensed real estate agent or broker who is performing
30 those activities subject to the regulation of the North Carolina
31 Real Estate Commission. Notwithstanding the above, an exempt
32 person does not include a real estate agent or broker who
33 receives compensation of any kind in connection with the
34 referral, placement, or origination of a mortgage loan.
- 35 e. Any officer or employee of an exempt person described in sub-
36 subdivision c. of this subdivision when acting in the scope of
37 employment for the exempt person.
- 38 f. Any person who, as seller, receives in one calendar year no
39 more than five mortgages, deeds of trust, or other security
40 instruments on real estate as security for a purchase money
41 obligation.

1 g. The North Carolina Housing Finance Agency as established by
2 Article 122A of the General Statutes and the North Carolina
3 Agricultural Finance Authority as established by Article 122D
4 of the General Statutes.

5 h. Any nonprofit corporation qualifying under section 501(c)(3) of
6 the Internal Revenue Code which makes mortgage loans to
7 promote home ownership or home improvements for the
8 disadvantaged, provided that such corporation is not primarily
9 in the business of soliciting or brokering mortgage loans.

10 (9) Licensee. – A loan officer, mortgage broker, or mortgage banker who
11 is licensed pursuant to this Article.

12 (10) Loan officer. – An individual who, in exchange for compensation as an
13 employee of another person, accepts or offers to accept applications
14 for mortgage loans. The definition of loan officer shall not include any
15 exempt person described in sub-subdivision (8)b. of this section.

16 (11) Make a mortgage loan. – To close a mortgage loan, to advance funds,
17 to offer to advance funds, or to make a commitment to advance funds
18 to a borrower under a mortgage loan.

19 (12) Managing principal. – A person who meets the requirements of G.S.
20 53-243.05(c) and who agrees to be primarily responsible for the
21 operations of a licensed mortgage broker or mortgage banker.

22 (13) Mortgage banker. – A person who acts as a mortgage lender as that
23 term is defined in subdivision (2) of this section. However, the
24 definition does not include a person who acts as a mortgage lender
25 only in tablefunding transactions.

26 (14) Mortgage broker. – A person who acts as a mortgage broker as that
27 term is defined in subdivision (1) of this section.

28 (15) Mortgage loan. – A loan made to a natural person or persons primarily
29 for personal, family, or household use, primarily secured by either a
30 mortgage or a deed of trust on residential real property located in
31 North Carolina.

32 (16) Person. – An individual, partnership, limited liability company, limited
33 partnership, corporation, association, or other group engaged in joint
34 business activities however organized.

35 (17) Qualified lender. – A person who is engaged as a mortgage lender in
36 North Carolina and is either a supervised or a nonsupervised
37 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
38 by the United States Department of Housing and Urban Development.

39 (18) Qualified person. – A person who is employed as a loan officer by a
40 qualified lender, or by a mortgage banker or broker registered with the
41 Commissioner under former Article 19 of this Chapter, or who is a

1 general partner, manager, or officer of a qualified lender, registered
2 mortgage banker, or registered mortgage broker.

3 (19) Residential real property. – Real property located in the State of North
4 Carolina upon which there is located or is to be located one or more
5 single-family dwellings or dwelling units.

6 (20) Tablefunding. – A transaction where a licensee closes a loan in its own
7 name with funds provided by others, and the loan is assigned
8 simultaneously to the mortgage lender providing the funding within
9 one business day of the funding of the loan.

10 **"§ 53-243.02. License required; licensee records.**

11 (a) Other than an exempt person, it is unlawful for any person in this State to act
12 as a mortgage broker or mortgage banker, or directly or indirectly to engage in the
13 business of a mortgage broker or a mortgage banker, without first obtaining a license
14 from the Commissioner under the provisions of this Article.

15 (b) It is unlawful for any natural person to engage in the solicitation and
16 acceptance of applications for mortgage loans without first obtaining a license as a loan
17 officer issued by the Commissioner under the provisions of this Article. It is unlawful
18 for any person to employ, to compensate, or to appoint as its agent a loan officer unless
19 the loan officer is licensed as a loan officer under this Article. Exempt persons shall not
20 be subject to this subsection.

21 (c) The license of a loan officer is not effective during any period when that
22 person is not employed by a mortgage broker or mortgage banker licensed under this
23 Article. When a loan officer ceases to be employed by a mortgage broker or mortgage
24 banker licensed under this Article, the loan officer and the mortgage broker or mortgage
25 banker licensed under this Article by whom that person is employed shall promptly
26 notify the Commissioner in writing. A loan officer shall not be employed
27 simultaneously by more than one mortgage broker or mortgage banker licensed under
28 this Article.

29 (d) Each mortgage broker and mortgage banker licensed under this Article shall
30 maintain on file with the Commissioner a list of all loan officers who are employed with
31 the mortgage broker or mortgage banker.

32 (e) No person, other than an exempt person, shall hold himself or herself out as a
33 mortgage banker, a mortgage broker, or loan officer unless such person is licensed in
34 accordance with this Article.

35 **"§ 53-243.03. Review by Banking Commission.**

36 The Banking Commission may review any rule, regulation, order, or article of the
37 Commissioner adopted pursuant to or with respect to the provisions of this Article, and
38 any person aggrieved by any rule, regulation, order, or article may appeal to the
39 Banking Commission for review upon giving notice in writing 20 days after the rule,
40 regulation, order, or article that is the subject of the complaint is adopted or issued.
41 Notwithstanding any other provision of law, any party aggrieved by a decision of the
42 Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

1 **"§ 53-243.04. Rule-making authority.**

2 The Banking Commission may adopt any rules when it deems necessary to carry out
3 the provisions of this Article, to provide for the protection of the borrowing public, and
4 to instruct mortgage lenders or brokers in interpreting this Article.

5 **"§ 53-243.05. Qualifications for licensure; issuance.**

6 (a) Any person, other than an exempt person, desiring to obtain a license as a
7 loan officer, mortgage banker, or mortgage broker shall make written application for
8 licensure to the Commissioner on forms prescribed by the Commissioner. In accordance
9 with rules adopted by the Commission, the application shall contain any information the
10 Commissioner deems necessary regarding the following:

- 11 (1) The applicant's name and address and social security number.
- 12 (2) The applicant's form and place of organization, if applicable.
- 13 (3) The applicant's proposed method of and locations for doing business,
14 if applicable.
- 15 (4) The qualifications and business history of the applicant and, if
16 applicable, the business history of any partner, officer, or director, any
17 person occupying a similar status or performing similar functions, or
18 any person directly or indirectly controlling the applicant, including:
19 (i) a description of any injunction or administrative order by any state
20 or federal authority to which the person is or has been subject; (ii) a
21 conviction of a misdemeanor involving fraudulent dealings or moral
22 turpitude or relating to any aspect of the residential mortgage lending
23 business; (iii) any felony convictions.
- 24 (5) With respect to an application for licensing as a mortgage banker or
25 broker, the applicant's financial condition, credit history, and business
26 history; and with respect to the application for licensing as a loan
27 officer, the applicant's credit history and business history.

28 (b) In addition to the requirements imposed by the Commissioner under
29 subsection (a) of this section, each individual applicant for licensure as a loan officer
30 shall:

- 31 (1) Be at least 18 years of age.
- 32 (2) Have satisfactorily completed, within the three years immediately
33 preceding the date application is made, a mortgage lending
34 fundamentals course approved by the Commissioner. The course shall
35 consist of at least eight hours of classroom instruction in subjects
36 related to mortgage lending approved by the Commissioner. In
37 addition, the applicant shall have satisfactorily completed a written
38 examination approved by the Commissioner or possess residential
39 mortgage lending education or experience in residential mortgage
40 lending transactions that the Commissioner deems equivalent to the
41 course.

1 (c) In addition to the requirements under subsection (a) of this section, each
2 applicant for licensure as a mortgage broker or mortgage banker at the time of
3 application and at all times thereafter shall comply with the following requirements:

4 (1) If the applicant is a sole proprietor, the applicant shall have at least
5 three years of experience in residential mortgage lending or other
6 experience or competency requirements as the Commissioner may
7 impose by rule.

8 (2) If the applicant is a general or limited partnership, at least one of its
9 general partners shall have the experience as described under
10 subdivision (1) of this subsection.

11 (3) If the applicant is a corporation, at least one of its principal officers
12 shall have the experience as described under subdivision (1) of this
13 subsection.

14 (4) If the applicant is a limited liability company, at least one of its
15 managers shall have the experience as described under subdivision (1)
16 of this subsection.

17 (d) Each applicant shall identify one person meeting the requirements of
18 subsection (c) of this section to serve as the applicant's managing principal.

19 (e) Every applicant for initial licensure shall pay a filing fee of one thousand
20 dollars (\$1,000) for licensure as a mortgage broker or mortgage banker, or fifty dollars
21 (\$50.00) for licensure as a loan officer.

22 (f) A mortgage banker shall post a surety bond in the amount of one hundred
23 fifty thousand dollars (\$150,000) and a mortgage broker shall post a surety bond in the
24 amount of fifty thousand dollars (\$50,000). The surety bond shall be in a form
25 satisfactory to the Commissioner and shall run to the State for the benefit of any
26 claimants against the licensee to secure the faithful performance of the obligations of
27 the licensee under this Article. The aggregate liability of the surety shall not exceed the
28 principal sum of the bond. A party having a claim against the licensee may bring suit
29 directly on the surety bond, or the Commissioner may bring suit on behalf of any
30 claimants, either in one action or in successive actions. Consumer claims shall be given
31 priority in recovering from the bond. Any appropriate deposit of cash or securities shall
32 be accepted in lieu of any bond that is required. An audited financial statement from a
33 qualified lender showing a net worth of two hundred fifty thousand dollars (\$250,000)
34 or more shall be accepted in lieu of any bond required.

35 (g) Any general partner, manager of a limited liability company, or officer of a
36 corporation who individually meets the experience requirements under subsection (c) of
37 this section shall, upon payment of the applicable fee, meet the qualifications for
38 licensure as a loan officer subject to the provisions of subsection (i) of this section.

39 (h) Each principal office and each branch office of a mortgage broker or
40 mortgage banker licensed under the provisions of this Article shall be issued a separate
41 license. A licensed mortgage broker or mortgage banker shall file with the
42 commissioner an application on a form prescribed by the Commissioner that identifies

1 the address of the principal office and each branch office and branch manager. A filing
2 fee of one hundred dollars (\$100.00) shall be assessed by the Commissioner for each
3 office issued a license.

4 (i) If the Commissioner determines that an applicant meets the qualifications for
5 licensure and finds that the financial responsibility, character, and general fitness of the
6 applicant are such as to command the confidence of the community and to warrant
7 belief that the business will be operated honestly and fairly, the Commissioner shall
8 issue a license to the applicant.

9 **"§ 53-243.06. License renewal; termination.**

10 (a) All licenses issued by the Commissioner under the provisions of this Article
11 shall expire annually on the 30th day of June following issuance or on any other date that
12 the Commissioner may determine. The license shall become invalid after that date
13 unless renewed. A license may be renewed 45 days prior to the expiration date by
14 paying to the Commissioner a renewal fee as follows:

15 (1) Licensed mortgage bankers shall pay an annual fee of five hundred
16 dollars (\$500.00) and one hundred dollars (\$100.00) for each branch
17 office.

18 (2) Licensed mortgage brokers shall pay an annual fee of five hundred
19 dollars (\$500.00) and one hundred dollars (\$100.00) for each branch
20 office.

21 (3) Licensed loan officers shall pay an annual fee of fifty dollars (\$50.00).

22 (b) If a license is not renewed prior to the applicable expiration date, then an
23 additional two hundred fifty dollars (\$250.00) in addition to the renewal fee under
24 subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a
25 licensee fails to obtain a reinstatement of the license within 90 days after the date the
26 license expires, the Commissioner may require the licensee to comply with the
27 requirements for the initial issuance of a license under the provisions of this Article.

28 (c) Licenses issued under this Article are not assignable. Control of a licensee
29 shall not be acquired through a stock purchase or other device without the prior written
30 consent of the Commissioner. The Commissioner shall not give written consent if the
31 Commissioner finds that any of the grounds for denial, revocation, or suspension of a
32 license pursuant to G.S. 53-243.12 are applicable to the acquiring person.

33 **"§ 53-243.07. Continuing education.**

34 (a) As a condition of license renewal, the Commissioner may adopt rules to
35 require continuing education of licensees under this Article for the purpose of enhancing
36 the professional competence and professional responsibility of mortgage bankers,
37 mortgage brokers, and loan officers. The rules may include criteria for:

38 (1) The content of continuing education courses.

39 (2) Accreditation of continuing education sponsors and programs.

40 (3) Accreditation of videotape or other audiovisual programs.

41 (4) Computation of credit.

42 (5) Special cases and exemptions.

1 (6) General compliance procedures.

2 (7) Sanctions for noncompliance.

3 (b) Annual continuing professional education requirements shall be determined
4 by the Commissioner. However, the requirements shall not exceed eight credit hours
5 within a one-year period.

6 **"§ 53-243.08. Managing principals and branch managers.**

7 Each mortgage broker or mortgage banker licensed under this Article shall have a
8 managing principal who operates the business under that person's full charge, control,
9 and supervision. Each principal and branch office of a mortgage broker or mortgage
10 banker licensed under this Article shall have a manager who meets the experience
11 requirements under G.S. 53-243.05(c)(1). The managing principal for a licensee's
12 business may also serve as the branch manager of one of the licensee's branch offices.
13 Each mortgage broker or mortgage banker licensed under this Article shall file a form as
14 prescribed by the Commissioner indicating the business's designation of managing
15 principal and branch manager for each branch and each individual's acceptance of the
16 responsibility. Each mortgage broker or mortgage banker licensed under this Article
17 shall notify the Commissioner of any change in its managing principal or branch
18 manager designated for each branch. Any licensee who does not comply with this
19 provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until
20 the licensee complies with this section. Any individual licensee who operates as a sole
21 proprietorship shall be considered a managing principal for the purposes of this Article.

22 **"§ 53-243.09. Offices; address changes; display of license.**

23 (a) Each mortgage broker licensee shall maintain and transact business from a
24 principal place of business in this State. A principal place of business in this State shall
25 consist of at least one enclosed room or building of stationary construction in which
26 negotiations of mortgage loan transactions of others may be conducted and carried on in
27 privacy and in which all of the books, records, and files pertaining to mortgage loan
28 transactions relating to borrowers in this State are maintained. However, the
29 Commissioner may, by rule, impose terms and conditions under which the records and
30 files may be maintained outside of this State.

31 (b) A mortgage banker or mortgage broker licensee shall report any change of
32 address of the principal place of business or any branch office within 15 days after the
33 change.

34 (c) Each mortgage broker or mortgage banker licensed under this Article shall
35 display in plain view the certificate of licensure issued by the Commissioner in its
36 principal office and in each branch office. Each loan officer licensed under this Article
37 shall display in each branch office in which the officer acts as a loan officer the
38 certificate of licensure issued by the Commissioner.

39 **"§ 53-243.10. Mortgage broker duties.**

40 A mortgage broker, including any mortgage broker licensee and any person required
41 to be licensed as a mortgage broker under this Article, shall, in addition to duties
42 imposed by other statutes or at common law:

- 1 (1) Safeguard and account for any money handled for the borrower;
- 2 (2) Follow reasonable and lawful instructions from the borrower;
- 3 (3) Act with reasonable skill, care, and diligence; and
- 4 (4) Make reasonable efforts, with lenders with whom the broker regularly
5 does business to secure a loan that is reasonably advantageous to the
6 borrower considering all the circumstances, including the rates,
7 charges, and repayment terms of the loan and the loan options for
8 which the borrower qualifies with such lenders.

9 "**§ 53-243.11. Prohibited activities.**

10 In addition to the activities prohibited under other provisions of this Article, it shall
11 be unlawful for any person in the course of any mortgage loan transaction:

- 12 (1) To misrepresent or conceal the material facts or make false promises
13 likely to influence, persuade, or induce an applicant for a mortgage
14 loan or a mortgagor to take a mortgage loan, or to pursue a course of
15 misrepresentation through agents or otherwise.
- 16 (2) To refuse improperly to issue a satisfaction of a mortgage.
- 17 (3) To fail to account for or to deliver to any person any funds, documents,
18 or other thing of value obtained in connection with a mortgage loan,
19 including money provided by a borrower for a real estate appraisal or a
20 credit report, which the mortgage banker, broker, or loan officer is not
21 entitled to retain under the circumstances.
- 22 (4) To pay, receive, or collect in whole or in part any commission, fee, or
23 other compensation for brokering a mortgage loan in violation of this
24 Article, including a mortgage loan brokered by any unlicensed person
25 other than an exempt person.
- 26 (5) To charge or collect any fee or rate of interest or to make or broker any
27 mortgage loan with terms or conditions or in a manner contrary to the
28 provisions of Chapter 24 of the General Statutes.
- 29 (6) To advertise mortgage loans, including rates, margins, discounts,
30 points, fees, commissions, or other material information, including
31 material limitations on the loans, unless the person is able to make the
32 mortgage loans available to a reasonable number of qualified
33 applicants.
- 34 (7) To fail to disburse funds in accordance with a written commitment or
35 agreement to make a mortgage loan.
- 36 (8) To engage in any transaction, practice, or course of business that is not
37 in good faith or fair dealing or that constitutes a fraud upon any
38 person, in connection with the brokering or making of, or purchase or
39 sale of, any mortgage loan.
- 40 (9) To fail promptly to pay when due reasonable fees to a licensed
41 appraiser for appraisal services that are:

- 1 a. Requested from the appraiser in writing by the mortgage broker
2 or mortgage banker or an employee of the mortgage broker or
3 mortgage banker; and
4 b. Performed by the appraiser in connection with the origination or
5 closing of a mortgage loan for a customer or the mortgage
6 broker or mortgage banker.
7 (10) To broker a mortgage loan which contains a prepayment penalty if the
8 principal amount of the loan is one hundred fifty thousand dollars
9 (\$150,000) or less.

10 **"§ 53-243.12. Disciplinary 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
13 activities relating to mortgage loans of any licensee or any person who owns an interest
14 in or participates in the business of a licensee, if the Commissioner finds both of the
15 following:

- 16 (1) That the order is in the public interest.
17 (2) That any of the following circumstances apply to the applicant,
18 licensee, or any partner, member, manager, officer, director, loan
19 officer, managing broker, or any person occupying a similar status or
20 performing similar functions or any person directly or indirectly
21 controlling the applicant or licensee. The person:
22 a. Has filed an application for license that, as of its effective date
23 or as of any date after filing, contained any statement that, in
24 light of the circumstances under which it was made, is false or
25 misleading with respect to any material fact.
26 b. Has violated or failed to comply with any provision of this
27 Article, rule adopted by the Commissioner, or order of the
28 Commissioner.
29 c. Has been convicted of any felony, or, within the past 10 years,
30 has been convicted of any misdemeanor involving mortgage
31 lending or any aspect of the mortgage lending business, or any
32 offense involving breach of trust, moral turpitude, or fraudulent
33 or dishonest dealing.
34 d. Is permanently or temporarily enjoined by any court of
35 competent jurisdiction from engaging in or continuing any
36 conduct or practice involving any aspect of the mortgage
37 lending business.
38 e. Is the subject of an order of the Commissioner denying,
39 suspending, or revoking that person's license as a mortgage
40 broker or mortgage banker.
41 f. Is the subject of an order entered within the past five years by
42 the authority of any state with jurisdiction over that state's

1 mortgage brokerage or mortgage banking industry denying or
2 revoking that person's license as a mortgage broker or mortgage
3 banking industry or denying or revoking that person's license as
4 a mortgage broker or mortgage banker.

5 g. Does not meet the qualifications, or the financial responsibility,
6 character, or general fitness requirements under G.S. 53-243.05
7 or any bond or capital requirements under this Article.

8 h. Has been the executive officer or controlling shareholder or
9 owned a controlling interest in any mortgage broker or
10 mortgage banker who has been subject to an order or injunction
11 described in sub-subdivision d., e., or f. of this subdivision.

12 i. Has failed to pay the proper filing or renewal fee under this
13 Article. However, the Commissioner may enter only a denial
14 order under this sub-subdivision, and the Commissioner shall
15 vacate the order when the deficiency has been corrected.

16 (b) The Commissioner may, by order, summarily postpone or suspend the license
17 of a licensee pending final determination of any proceeding under this section. Upon
18 entering the order, the Commissioner shall promptly notify the applicant or licensee that
19 the order has been entered and the reasons for the order. The Commissioner shall
20 calendar a hearing within 15 days after the Commissioner receives a written request for
21 a hearing. If a licensee does not request a hearing and the Commissioner does not
22 request a hearing, the order will remain in effect until it is modified or vacated by the
23 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of
24 and opportunity for hearing, the Commissioner may modify or vacate the order or
25 extend it until final determination.

26 (c) The Commissioner may, by order, impose a civil penalty upon a licensee or
27 any partner, officer, director, or other person occupying a similar status or performing
28 similar functions on behalf of a licensee for any violation of this Article. The civil
29 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article
30 by a mortgage broker or mortgage banker. The Commissioner may impose a civil
31 penalty of up to ten thousand dollars (\$10,000) for each violation of this Article by a
32 person other than a licensee or exempt person.

33 (d) In addition to other powers under this Article, upon finding that any action of
34 a person is in violation of this Article, the Commissioner may order the person to cease
35 from the prohibited action. If the person subject to the order fails to appeal the order of
36 the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the
37 appeal is denied or dismissed, and the person continues to engage in the prohibited
38 action in violation of the Commissioner's order, the person shall be subject to a civil
39 penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the
40 Commissioner's order. The penalty provision of this section shall be in addition to and
41 not in lieu of any other provision of law applicable to a licensee for the licensee's failure
42 to comply with an order of the Commissioner.

1 (e) Unless otherwise provided, all actions and hearings under this Article shall be
2 governed by Chapter 150B of the General Statutes.

3 (f) When a licensee is accused of any act, omission, or misconduct that would
4 subject the licensee to disciplinary action, the licensee, with the consent and approval of
5 the Commissioner, may surrender the license and all the rights and privileges pertaining
6 to it for a period of time established by the Commissioner. A person who surrenders a
7 license shall not be eligible for or submit any application for licensure under this
8 Article.

9 (g) If the Commissioner has reasonable grounds to believe that a licensee or other
10 person has violated the provisions of this Article or that facts exist that would be the
11 basis for an order against a licensee or other person, the Commissioner may at any time,
12 either personally or by a person duly designated by the Commissioner, investigate or
13 examine the loans and business of the licensee and examine the books, accounts,
14 records, and files of any licensee or other person relating to the complaint or matter
15 under investigation. The reasonable cost of this investigation or examination shall be
16 charged against the licensee.

17 (h) The Commissioner may issue subpoenas to require the attendance of and to
18 examine under oath all persons whose testimony the Commissioner deems relative to
19 the person's business.

20 (i) The Commissioner may from time to time, at the expense of the
21 Commissioner's office, conduct routine examinations of the books and records of any
22 licensee in order to determine the compliance with this Article and any rules adopted
23 pursuant to the authority of G.S. 53-243.04.

24 (j) In addition to the rights described under this section, the Commissioner may
25 require a licensee to pay to a borrower or other individual any amounts received by the
26 licensee or its employees in violation of Chapter 24 of the General Statutes.

27 (k) If the Commissioner finds that the managing principal, branch manager, or
28 loan officer of a licensee had knowledge or reasonably should have had knowledge of,
29 or participated in, any activity that results in the entry of an order under this section
30 suspending or withdrawing the license of a licensee, the Commissioner may prohibit the
31 managing broker or loan officer from serving as a managing broker or loan officer for
32 any period of time the Commissioner deems necessary.

33 **"§ 53-243.13. Records; escrow funds or trust accounts.**

34 (a) The Commissioner shall keep a list of all applicants for licensure under this
35 Article that includes the date of application, name, and place of residence and whether
36 the license was granted or refused.

37 (b) The Commissioner shall keep a current roster showing the names and places
38 of business of all licensees that shows their respective loan officers and a roster of
39 exempt persons required to file a notice under G.S. 53-243.02. The rosters shall: (i) be
40 kept on file in the office of the Commissioner; (ii) contain information regarding all
41 orders or other action taken against the licensees, loan officers, and other persons; and
42 (iii) be open to public inspection.

1 (c) Every licensee shall make and keep the accounts, correspondence,
2 memoranda, papers, books, and other records as prescribed in rules adopted by the
3 Commissioner. All records shall be preserved for three years unless the Commissioner,
4 by rule, prescribes otherwise for particular types of records. The recordkeeping
5 requirements imposed by the Commissioner or this subsection shall not be greater than
6 those imposed by applicable federal law.

7 (d) If the information contained in any document filed with the Commissioner is
8 or becomes inaccurate or incomplete in any material respect, the licensee shall promptly
9 file a correcting amendment to the information contained in the document.

10 (e) A licensee shall maintain in a segregated escrow fund or trust account any
11 funds which come into the licensee's possession, but which are not the licensee's
12 property and which the licensee is not entitled to retain under the circumstances. The
13 escrow fund or trust account shall be held on deposit in a federally insured financial
14 institution.

15 **"§ 53-243.14. Criminal penalty.**

16 A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the
17 unlawful making or brokering of a mortgage loan is a separate offense."

18 **SECTION 3.** G.S. 53-99(b)(7b) reads as rewritten:

19 "(7b) Records of examinations and investigations of registrants under the
20 Mortgage Bankers and Brokers Act, Article 19 of this
21 Chapter; Lending Act, Article 19A of this Chapter;"

22 **SECTION 4.** G.S. 66-106 reads as rewritten:

23 **"§ 66-106. Definitions.**

24 (a) For purposes of this Article the following definitions apply:

- 25 (1) A "loan broker" is any person, firm, or corporation who, in return for
26 any consideration from any person, promises to (i) procure for such
27 person, or assist such person in procuring, a loan from any third party;
28 or (ii) consider whether or not it will make a loan to such person.
29 (2) A "loan" is an agreement to advance money or property in return for
30 the promise to make payments therefor, whether such agreement is
31 styled as a loan, credit card, line of credit, a lease or otherwise.

32 (b) ~~Provided, that~~ Except for mortgage loans as defined in G.S. 53-243.01(15),
33 this Article shall not apply to any party approved as a mortgagee by the Secretary of
34 Housing and Urban Development, the Federal Housing Administration, the Veterans
35 Administration, a National Mortgage Association or any federal agency; nor to any
36 party currently designated and compensated by a North Carolina licensed insurance
37 company as its agent to service loans it makes in this State; nor to any insurance
38 company registered with and licensed by the North Carolina Insurance Commissioner;
39 nor, with respect to residential mortgage loans, to any residential mortgage banker or
40 mortgage broker registered with the Commissioner of Banks pursuant to Article 19 of
41 Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); licensed
42 pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure

1 pursuant to G.S. 53-243.01(8) and G.S. 53-243.02; nor to any attorney-at-law, public
2 accountant, or dealer registered under the North Carolina Securities Act, acting in the
3 professional capacity for which such attorney-at-law, public accountant, or dealer is
4 registered or licensed under the laws of the State of North Carolina. Provided further
5 that subdivision (1)(ii) above shall not apply to any lender whose loans or advances to
6 any person, firm or corporation in North Carolina aggregate more than one million
7 dollars (\$1,000,000) in the preceding calendar year."

8 **SECTION 5.(a)** All exempt persons described in G.S. 53-243.01(8), enacted
9 by Section 2 of this act, who are engaged in the mortgage brokerage or mortgage
10 banking business shall be required to file with the Commissioner, within 90 days of the
11 effective date of this act or upon the commencement of mortgage brokerage or
12 mortgage banking business in this State, a statement on a form prescribed by the
13 Commissioner setting forth the name of the respective exempt person, the basis of the
14 exempt status of the exempt person, the principal business address of the exempt
15 person, and the State or federal regulatory authority responsible for its supervision,
16 examination, or regulation, if any.

17 **SECTION 5.(b)** In addition to any other measures the exempt person may
18 be subject to under Article 19A of Chapter 53 of the General Statutes, enacted by
19 Section 2 of this act, failure by an exempt person to file the required form shall not
20 affect the exempt status of the person. However, the entity shall be subject to a civil
21 penalty set by the Commissioner that shall not exceed the sum of two hundred fifty
22 dollars (\$250.00) for each year the form is not filed. No person required to file under
23 this section may transact business in this State as a mortgage banker or mortgage broker
24 unless the person has filed the prescribed form with the Commissioner in accordance
25 with this section.

26 **SECTION 6.(a)** Any person who, on the effective date of this act, is
27 engaged in business and registered as a mortgage broker or mortgage banker shall not
28 be required to file an application under G.S. 53-243.05, enacted by Section 2 of this act,
29 and shall be entitled to issuance of a license under Article 19A of Chapter 53 of the
30 General Statutes, enacted by Section 2 of this act.

31 **SECTION 6.(b)** Any qualified person who files, within 90 days after this act
32 becomes effective, a sworn application with the Commissioner stating that he or she has
33 met the definition of a qualified person under G.S. 53-243.01(18), enacted by Section 2
34 of this act, including a statement that he or she has not been convicted of any felony or
35 any misdemeanor involving moral turpitude, shall be issued a license as a loan officer
36 from the Commissioner without having to meet the training requirements for licensure
37 under G.S. 53-243.05(b), enacted by Section 2 of this act.

38 **SECTION 6.(c)** Any qualified lender who files, within 90 days after this act
39 becomes effective, a sworn statement with the Commissioner that consists of a list of its
40 loan officers in North Carolina, the addresses of its principal office and each of its
41 branches, and the names and addresses of the managing principal and each of its branch
42 managers and states that no employee, loan officer, or individual with a controlling

1 interest in the lender has been convicted of any felony or any misdemeanor involving
2 moral turpitude, shall be issued a license as a mortgage banker from the Commissioner
3 without having to meet the experience requirements for licensure under G.S.
4 53-243.05(c), enacted by Section 2 of this act.

5 **SECTION 7.** On or after July 1, 2003, any individual mortgage banker,
6 mortgage broker, or loan officer desiring to renew a license shall offer evidence
7 satisfactory to the Commissioner that he or she has complied with the continuing
8 professional education requirements approved by the Commissioner pursuant to G.S.
9 53-243.07, enacted by Section 2 of this act.

10 **SECTION 8.** Unless inconsistent with the provisions of Article 19 of
11 Chapter 53 of the General Statutes as enacted in Section 2 of this act, the rules adopted
12 pursuant to former Article 19 of Chapter 53 of the General Statutes governing mortgage
13 bankers and brokers shall remain in effect until superseded by rules adopted under
14 Article 19A of Chapter 53 of the General Statutes as enacted in Section 2 of this act.

15 **SECTION 9.** The Legislative Research Commission may study the
16 implementation and enforcement of this act, and the Act to Prohibit Predatory Lending
17 enacted in the 1999 Session of the General Assembly, (S.L. 1999-332), to determine
18 whether they have successfully reduced predatory lending practices and whether further
19 reforms may be necessary or appropriate. The Commission may report its findings and
20 recommendations to the 2001 General Assembly, 2002 Regular Session, or to the 2003
21 General Assembly.

22 **SECTION 10.** Sections 1 through 8 of this act become effective July 1,
23 2002. The remainder of this act is effective when it becomes law.