

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 681
House Committee Substitute Favorable 6/24/93

Short Title: Late Fee Amend/Mort. Broker Amend.

(Public)

Sponsors:

Referred to:

April 5, 1993

A BILL TO BE ENTITLED

AN ACT TO PERMIT LENDERS TO CURE LOAN DOCUMENTS WHICH MIGHT VIOLATE THE RESTRICTIONS ON LATE CHARGES AS INTERPRETED BY THE NORTH CAROLINA SUPREME COURT AND TO AMEND THE LOAN BROKER ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-10.1 is amended by adding the following subsection:

"(c) The provisions of this subsection apply only to home loans made by lenders described in G.S. 24-1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late payment charge in excess of that permitted in this section, the loan shall not be deemed to be unlawful if:

(1) No late fee in excess of those permitted in this section has been assessed or collected by the lender; and

(2) a. If the loan is executed on or after the effective date of this act, the lender provides written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan shall be four percent (4%) or less; or

b. If the loan was executed prior to the effective date of this subsection, the lender provides written notice to the borrower within six months of that date that the late payment charge with respect to the loan shall be four percent (4%) or less."

Sec. 2. G.S. 66-106 reads as rewritten:

"§ 66-106. Definitions.

1 For purposes of this Article the following definitions apply:

- 2 (1) A 'loan broker' is any person, firm, or corporation who, in return for
3 any consideration from any person, promises to (i) procure for such
4 person, or assist such person in procuring, a loan from any third party;
5 or (ii) consider whether or not it will make a loan to such person.
6 (2) A 'loan' is an agreement to advance money or property in return for the
7 promise to make payments therefor, whether such agreement is styled
8 as a loan, credit card, line of credit, a lease or otherwise.

9 Provided, that this Article shall not apply to any party approved as a mortgagee by the
10 Secretary of Housing and Urban Development, the Federal Housing Administration, the
11 Veterans Administration, a National Mortgage Association or any federal agency; nor to
12 any party currently designated and compensated by a North Carolina licensed insurance
13 company as its agent to service loans it makes in this State; nor to any insurance
14 company registered with and licensed by the North Carolina Insurance Commissioner;
15 nor, with respect to residential mortgage loans, to any residential mortgage banker or
16 mortgage broker registered with the Commissioner of Banks pursuant to Article 19 of
17 Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); nor to any
18 attorney-at-law, public accountant, or dealer registered under the North Carolina
19 Securities Act, acting in the professional capacity for which such attorney-at-law, public
20 accountant, or dealer is registered or licensed under the laws of the State of North
21 Carolina. Provided further that subdivision (1)(ii) above shall not apply to any lender
22 whose loans or advances to any person, firm or corporation in North Carolina aggregate
23 more than one million dollars (\$1,000,000) in the preceding calendar year."

24 Sec. 3. G.S. 66-108 is amended by adding a new subsection to read:

25 "(c) No loan broker shall collect any advance fee or other valuable consideration
26 from a borrower prior to the closing of the loan. This prohibition shall not preclude the
27 loan broker from collecting reasonable and necessary fees payable to third parties for
28 appraisal, property survey, title examination, and credit reports."

29 Sec. 4. This act is effective upon ratification.