

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1149

Short Title: Prohibit Predatory Lending.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN
2 CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR
3 FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON
4 HIGH COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND
5 CHARGES ON CERTAIN LOANS, AND TO PROHIBIT UNFAIR OR
6 DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 24-1.1A reads as rewritten:

10 "**§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds**
11 **of trust.**

12 (a) Notwithstanding any other provision of this ~~Chapter~~, Chapter (but subject to the
13 provisions of G.S. 24-1.1E), parties to a home loan may contract in writing as follows:

14 (1) Where the principal amount is ten thousand dollars (\$10,000) or more
15 the parties may contract for the payment of interest as agreed upon by
16 the parties;

17 (2) Where the principal amount is less than ten thousand dollars (\$10,000)
18 the parties may contract for the payment of interest as agreed upon by
19 the parties, if the lender is either (i) approved as a mortgagee by the
20 Secretary of Housing and Urban Development, the Federal Housing

1 Administration, the ~~Veterans Administration~~, Department of Veterans
2 Affairs, a national mortgage association or any federal agency; or (ii) a
3 local or foreign bank, savings and loan association or service
4 corporation wholly owned by one or more savings and loan associations
5 and permitted by law to make home loans, credit union or insurance
6 company; or (iii) a State or federal agency;

7 (3) Where the principal amount is less than ten thousand dollars (\$10,000)
8 and the lender is not a lender described in the preceding subdivision (2)
9 the parties may contract for the payment of interest not in excess of
10 sixteen percent (16%) per annum.

11 (4) Notwithstanding any other provision of law, where the lender is an
12 affiliate operating in the same office or subsidiary operating in the same
13 office of a licensee under the North Carolina Consumer Finance Act, the
14 lender may charge interest to be computed only on the following basis:
15 monthly on the outstanding principal balance at a rate not to exceed the
16 rate provided in this subdivision.

17 On the fifteenth day of each month, the Commissioner of Banks
18 shall announce and publish the maximum rate of interest permitted by
19 this subdivision. Such rate shall be the latest published noncompetitive
20 rate for U.S. Treasury bills with a six-month maturity as of the fifteenth
21 day of the month plus six percent (6%), rounded upward or downward,
22 as the case may be, to the nearest one-half of one percent (1/2 of 1%) or
23 fifteen percent (15%), whichever is greater. If there is no nearest one-
24 half of one percent (1/2 of 1%), the Commissioner shall round
25 downward to the lower one-half of one percent (1/2 of 1%). The rate so
26 announced shall be the maximum rate permitted for the term of loans
27 made under this section during the following calendar month when the
28 parties to such loans have agreed that the rate of interest to be charged
29 by the lender and paid by the borrower shall not vary or be adjusted
30 during the term of the loan. The parties to a loan made under this section
31 may agree to a rate of interest which shall vary or be adjusted during the
32 term of the loan in which case the maximum rate of interest permitted
33 on such loans during a month during the term of the loan shall be the
34 rate announced by the Commissioner in the preceding calendar month.

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

1 ~~-(b) No prepayment fees shall be contracted by the borrower and lender with respect to~~
2 ~~any home loan where the principal amount borrowed is one hundred thousand dollars~~
3 ~~(\$100,000) or less; otherwise a lender and a borrower may agree on any terms as to the~~
4 ~~prepayment of a home loan.~~

5 (b) (1) Except as provided in subdivision (2) of the subsection (b), a
6 lender and a borrower may agree on any terms as to the prepayment of
7 a home loan.

8 (2) No prepayment fees or penalties shall be contracted by the borrower and
9 lender with respect to any home loan in which: (i) the borrower is a
10 natural person, (ii) the debt is incurred by the borrower primarily for
11 personal, family, or household purposes; and (iii) the loan is secured by
12 a first mortgage or first deed of trust on real estate upon which there is
13 located or there is to be located a structure or structures designed
14 principally for occupancy of from one to four families which is or will
15 be occupied by the borrower as the borrower's principal dwelling.

16 The limitations on prepayment fees and penalties contained in this
17 subdivision (b)(2) shall not apply to the extent state law limitations on
18 prepayment fees and penalties are preempted by federal law or
19 regulation.

20 ~~(c) Except as limited by subsection (b) above, a lender may charge to the borrower~~
21 ~~the fees described in G.S. 24-10. Provided, if the loan is one described in subsection~~
22 ~~(a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points,~~
23 ~~commitment fees, finance charges, or other similar charges agreed upon by the parties~~
24 ~~notwithstanding the provisions of any state law limiting the amount of discount points,~~
25 ~~commitment fees, finance charges or other similar charges which may be charged, taken,~~
26 ~~received or reserved with respect to a home loan. Provided further, that no lender on~~
27 ~~loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other~~
28 ~~than the interest permitted in G.S. 24-1.1A(a)(3).~~

29 (c) (1) If the home loan is one described in subsection (a)(1) or
30 subsection (a)(2) above, the lender may charge the borrower the
31 following fees and charges in addition to interest and other fees and
32 charges as permitted in this section and late payment charges as
33 permitted in G.S. 24-10.1:

34 a. At or before loan closing, the lender may charge such of the
35 following fees and charges as may be agreed upon by the parties
36 notwithstanding the provisions of any state law (other than G.S.
37 24-1.1E) limiting the amount of such fees or charges:

- 38 1. Loan application, origination, and commitment fees;
- 39 2. Discount points, but only to the extent such discount
40 points are paid for the purpose of reducing, and in fact
41 result in a bona fide reduction of the interest rate or time-
42 price differential;
- 43 3. Assumption fees to the extent permitted by G.S. 24-10(d);

- 1 4. Appraisal fees to the extent permitted by G.S. 24-10(h);
2 5. Sums for the payment of bona fide loan-related goods,
3 products and services provided or to be provided by third
4 parties and sums for the payment of taxes, filing fees,
5 recording fees and other charges and fees paid or to be
6 paid to public officials to the extent permitted by G.S. 24-
7 8(d); and
8 6. Additional fees and charges payable to the lender which,
9 in the aggregate, do not exceed the greater of (i) one
10 quarter of one percent (.25%) of the principal amount of
11 the loan, or (ii) one hundred fifty dollars (\$150.00). The
12 fees and charges permitted by this subdivision (f) may be
13 charged only by those lenders identified in subdivision
14 (a)(2) of this section, without regard to the loan amount.
15 b. Except as provided in subsection (g) of this section with respect
16 to the deferral of loan payments, upon modification, renewal,
17 extension, or amendment of any of the terms of a home loan, the
18 lender may charge such of the following fees and charges as may
19 be agreed upon by the parties notwithstanding the provisions of
20 any State law (other than G.S. 24-1.1E) limiting the amount of
21 such fees or charges:
22 1. Discount points, but only to the extent such discount
23 points are paid for the purpose of reducing, and in fact
24 result in a bona fide reduction of, the interest rate or time-
25 price differential;
26 2. Assumption fees to the extent permitted by G.S. 24-10(d);
27 3. Appraisal fees to the extent permitted by G.S. 24-10(h);
28 4. Sums for the payment of bona fide loan-related goods,
29 products, and services provided or to be provided by third
30 parties and sums for the payment of taxes, filing fees,
31 recording fees, and other charges and fees paid or to be
32 paid to public officials to the extent permitted by G.S. 24-
33 8(d); and
34 5. Additional fees and charges payable to the lender which,
35 in the aggregate, do not exceed the greater of (i) one
36 quarter of one percent(.25%) of the balance outstanding at
37 the time of the modification, renewal, extension, or
38 amendment of terms, or (ii) one hundred fifty dollars
39 (\$150.00). The fees and charges permitted by this
40 subdivision (e) may be charged (i) only pursuant to a
41 written agreement made at the time of the modification,
42 renewal, extension, or amendment, and (ii) only by those

1 lenders identified in subsection (a)(2) of this section,
2 without regard to the loan amount.

3 (2) No lender on home loans under G.S. 24-1.1A(a)(3) may charge or
4 receive any interest, fees, charges, or discount points other than: (i)
5 sums for the payment of bona fide loan-related goods, products, and
6 services provided or to be provided by third parties and sums for the
7 payment of taxes, filing fees, recording fees, and other charges and fees,
8 paid or to be paid to public officials to the extent permitted by G.S. 24-
9 8(d); (ii) interest as permitted in G.S. 24-1.1A(a)(3); and (iii) late
10 payment charges to the extent permitted by G.S. 24-10.1.

11 (3) No lender on home loans under G.S. 24-1.1(a)(4) may charge or receive
12 any interest, fees, charges, or discount points other than: (i) the fees
13 described in G.S. 24-10; (ii) sums for the payment of bona fide loan-
14 related goods, products, and services provided or to be provided by third
15 parties and sums for the payment of taxes, filing fees, recording fees and
16 other charges and fees, paid or to be paid to public officials to the extent
17 permitted by G.S. 24-8(d); (iii) interest as permitted in G.S. 24-
18 1.1A(a)(4); and (iv) late payment charges to the extent permitted by
19 G.S. 24-10.1.

20 (d) The loan or investments regulated by G.S. 53-45 shall not be subject to the
21 provisions of this section.

22 (e) The term "home loan" shall mean a loan (other than an open-end credit plan)
23 where the principal amount is less than three hundred thousand dollars (\$300,000)
24 secured by a first mortgage or first deed of trust on real estate upon which there is located
25 or there is to be located one or more single-family dwellings or dwelling units.

26 (f) Any home loan obligation existing before June 13, 1977, shall be construed
27 with regard to the law existing at the time the home loan or commitment to lend was
28 made and this act shall only apply to home loans or loan commitments made from and
29 after June 13, 1977; provided, however, that variable rate home loan obligations executed
30 prior to April 3, 1974, which by their terms provide that the interest rate shall be
31 decreased and may be increased in accordance with a stated cost of money formula or
32 other index shall be enforceable according to the terms and tenor of said written
33 obligations.

34 (g) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) may
35 contract in writing to ~~defer payments of interest~~ the payment of all or part of one or more
36 unpaid installments and for payment of interest on deferred interest as agreed upon by the
37 parties. The parties may agree in writing that ~~said~~ deferred interest may be added to the
38 principal balance of the loan. This subsection shall not be construed to limit payment of
39 interest upon interest in connection with other types of loans. The lender may charge
40 deferral fees as may be agreed upon by parties to defer the payment of all or part of one
41 or more unpaid installments. If the home loan is of a type described in subsection (b)(2)
42 of this section, the deferral fees shall be subject to the following limitations:

- 1 (1) Deferral fees may be charged only pursuant to a written agreement
2 made at the time of the deferral.
- 3 (2) Deferral fees may not exceed the greater of:
- 4 a. Five percent (5%) of each installment (or part thereof) deferred,
5 multiplied by the number of months in the deferral period (the
6 period in which no payment is required or made by reason of the
7 deferral as measured from the date on which the deferred
8 installment (or part thereof) would otherwise have been payable
9 to the date the next installment (or part thereof) is payable under
10 the terms of the deferral agreement), or
- 11 b. Fifty dollars (\$50.00) multiplied by the number of months in the
12 deferral period (the period in which no payment is required or
13 made by reason of the deferral as measured from the date on
14 which the deferred installment (or part thereof) would otherwise
15 have been payable to the date the next installment (or part
16 thereof) is payable under the terms of the deferral agreement).
- 17 (3) If a deferral fee has once been imposed with respect to a particular
18 installment (or part thereof), no deferral fee may be imposed with
19 respect to any future payment which would have been timely and
20 sufficient but for the previous deferral.
- 21 (4) If a deferral fee is charged pursuant to a deferral agreement, a late
22 charge may be imposed with respect to the deferred payment only if the
23 amount deferred is not paid when due under the terms of the deferral
24 agreement and no new deferral agreement is entered into with respect to
25 that installment.
- 26 (5) No lender may charge a deferral fee for modifying or extending the
27 maturity date of a loan or the date a balloon payment is due; provided,
28 however, that any such modification or extension of the loan maturity
29 date or the date a balloon payment is due shall, to the extent applicable,
30 be considered a modification or extension subject to the provisions of
31 subsection (c)(1)(ii) of this section.
- 32 (h) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) may agree
33 in writing to a mortgage or deed of trust which provides that periodic payments may be
34 graduated during parts of or over the entire term of the loan. The parties to such a loan
35 may also agree in writing to a mortgage or deed of trust which provides that periodic
36 disbursements of part of the loan proceeds may be made by the lender over a period of
37 time agreed upon by the parties, or over a period of time agreed upon by the parties
38 ending with the death of the borrower(s). Such mortgages or deeds of trust may include
39 provisions for adding deferred interest to principal or otherwise providing for charging of
40 interest on deferred interest as agreed upon by the parties. This subsection shall not be
41 construed to limit other types of mortgages or deeds of trust or methods or plans of
42 disbursement or repayment of loans that may be agreed upon by the parties.

1 (i) Nothing in this section shall be construed to authorize or prohibit a lender, a
2 borrower, or any other party to pay compensation to a mortgage broker or a mortgage
3 banker for services provided by the mortgage broker or the mortgage banker in
4 connection with a home loan."

5 Section 2. Chapter 24 of the General Statutes is amended by adding a new
6 section to read:

7 **"§ 24-1.1E. Restrictions and limitations on high cost home loans.**

8 (a) Definitions. The following definitions apply for the purposes of this section:

9 (1) 'Affiliate' means any company that controls, is controlled by, or is under
10 control with another company, as set forth in the Bank Holding
11 Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time
12 to time.

13 (2) 'Annual percentage rate' means the annual percentage rate for the loan
14 calculated according to the provisions of the federal Truth-in-Lending
15 Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated
16 thereunder by the Federal Reserve Board (as said Act and regulations
17 are amended from time to time.

18 (3) 'Bona fide loan discount points' are loan discount points paid for the
19 purpose of reducing, and which in fact result in a bona fide reduction of,
20 the interest rate or time-price differential applicable to the loan,
21 provided (i) the interest rate from which the loan's interest rate will be
22 discounted does not exceed by more than one percentage point (1%) the
23 required net yield for a 90-day standard mandatory delivery
24 commitment for a comparable loan from either the Federal National
25 Mortgage Association or the Federal Home Loan Mortgage
26 Corporation, whichever is greater, and (ii) the amount of the interest rate
27 reduction purchased by the discount points is reasonably consistent with
28 established industry norms and practices for secondary mortgage market
29 transactions.

30 (4) A 'high cost home loan' is a loan other than an open-end credit plan or a
31 reverse mortgage transaction in which:

32 a. The principal amount of the loan does not exceed the lesser of (i)
33 the conforming loan size limit for a single family dwelling as
34 established from time to time by the Federal National Mortgage
35 Association, or (ii) three hundred thousand dollars (\$300,000;)

36 b. The borrower is a natural person;

37 c. The debt is incurred by the borrower primarily for personal,
38 family, or household purposes;

39 d. The loan is secured by a mortgage or deed or trust on real estate
40 upon which there is located or there is to be located a structure or
41 structures designed principally for occupancy of from one to four
42 families; which is or will be occupied by the borrower as the
43 borrower's principal dwelling; and

- 1 e. The terms of the loan exceed one or more of the thresholds
2 described in subsection (b) of this section.
- 3 (5) 'Points and fees' means:
- 4 a. All items required to be disclosed under sections 226.4(a) and
5 226.4(b) of Title 12 of the Code of Federal Regulations, as
6 amended from time to time, except interest or the time price
7 differential;
- 8 b. All charges for items listed under section 226.4(c)(7) of Title 12
9 of the Code of Federal Regulations, as amended from time to
10 time (other than amounts held for future payment of taxes) unless
11 the charge is reasonable, the lender receives no direct or indirect
12 compensation in connection with the charge, and the charge is
13 not paid to an affiliate of the lender;
- 14 c. All compensation paid directly by the borrower to a mortgage
15 broker not otherwise included in subsection (a) or (b) above;
- 16 d. All insurance premiums financed by the lender as part of the
17 loan transaction other than insurance premiums for fire, casualty,
18 title, flood, or private mortgage insurance related to the loan
19 transaction; provided that insurance premiums calculated and
20 paid on a monthly or other regular, periodic basis shall not be
21 considered financed as part of the loan transaction; and
- 22 e. The maximum prepayment fees and penalties which may be
23 charged or collected under the terms of the loan documents.
- 24 (b) Thresholds. A loan will not be considered a high cost home loan unless:
- 25 (1) The loan is secured by a first mortgage or first deed of trust on the
26 borrower's principal dwelling, the borrower's principal dwelling which
27 will secure repayment of the loan is not or does not include (or will not
28 be or will not include) a manufactured home as defined in G.S. 143-
29 145(7), and the annual percentage rate at consummation will exceed by
30 more than eight percentage points (8%) the weekly average yield on
31 United States Treasury securities adjusted to a constant maturity of five
32 years (as made available by the federal reserve board) as of the week
33 immediately preceding the week in which the interest rate for the loan is
34 established; or
- 35 (2) The loan is secured by a first mortgage or first deed of trust on the
36 borrower's principal dwelling, the borrower's principal dwelling which
37 will secure repayment of the loan is or includes (or will be or will
38 include) a manufactured home as defined in G.S. 143-145(7), and the
39 annual percentage rate at consummation will exceed by more than nine
40 percentage points (9%) the weekly average yield on United States
41 Treasury securities adjusted to a constant maturity of five years (as
42 made available by the Federal Reserve Board) as of the week

- 1 immediately preceding the week in which the interest rate for the loan is
2 established; or
- 3 (3) The loan is secured by a second or subordinate mortgage or a second or
4 subordinate deed of trust on the borrower's principal dwelling, and the
5 annual percentage rate at consummation will exceed by more than nine
6 percentage points (9%) the weekly average yield on United States
7 Treasury securities adjusted to a constant maturity of five years (as
8 made available by the Federal Reserve Board) as of the week
9 immediately preceding the week in which the interest rate for the loan is
10 established; or
- 11 (4) The loan documents permit the lender to charge or collect prepayment
12 fees or penalties more than two years after loan closing or which
13 exceed, in the aggregate, more than two percent (2%) of the amount
14 prepaid; or
- 15 (5) The lender finances any prepayment fees or penalties payable by the
16 borrower in a refinancing transaction if the lender or an affiliate of the
17 lender is the noteholder of the note being refinanced; or
- 18 (6) The total points and fees payable by the borrower at or before loan
19 closing exceed five percent (5%) of the principal amount of the loan;
20 provided, up to and including two bona fide loan discount points
21 payable by the borrower in connection with the loan transaction shall be
22 excluded from the calculation of the total points and fees payable by the
23 borrower.
- 24 (c) Limitations. A high cost home loan shall be subject to the following
25 limitations:
- 26 (1) No call provision. No high cost home loan may contain a call provision
27 which permits the lender, in its sole discretion, to accelerate the
28 indebtedness. This provision does not apply when repayment of the
29 loan has been accelerated by default, pursuant to a due-on-sale
30 provision, or pursuant to some other provision of the loan documents
31 unrelated to the payment schedule.
- 32 (2) No balloon payment. No high cost loan may contain a scheduled
33 payment that is more than twice as large as the average of earlier
34 scheduled payments. This provision does not apply when the payment
35 schedule is adjusted to the seasonal or irregular income of the borrower.
- 36 (3) No negative amortization. No high cost home loan may contain a
37 payment schedule with regular periodic payments that cause the
38 principal balance to increase.
- 39 (4) No increased interest rate. No high cost home loan may contain a
40 provision which increases the interest rate after default. This provision
41 does not apply to interest rate changes in a variable rate loan otherwise
42 consistent with the provisions of the loan documents, provided the

- 1 change in the interest rate is not triggered by the event of default or the
2 acceleration of the indebtedness.
- 3 (5) No oppressive mandatory arbitration clause. No high cost home loan
4 may be subject to a mandatory arbitration clause which is oppressive,
5 unfair, unconscionable, or substantially in derogation of the rights of
6 consumers. A mandatory arbitration clause shall be presumed to be
7 unfair or oppressive if it limits legal remedies generally available to
8 consumers, limits the right of the borrower to seek relief through the
9 judicial process without a corresponding restriction on the lender's right
10 to judicial relief, and imposes terms which unreasonably favor the
11 lender as a result of a gross disparity in bargaining power between the
12 borrower and the lender.
- 13 (6) No advance payments. No high cost home loan may include terms
14 under which more than two periodic payments required under the loan
15 are consolidated and paid in advance from the loan proceeds provided to
16 the borrower.
- 17 (7) No modification or deferral fees. A lender may not charge a borrower
18 any fees to modify, renew, extend, or amend a high cost home loan or to
19 defer any payment due under the terms of a high cost home loan.
- 20 (d) Prohibited acts and practices. The following acts and practices are prohibited
21 in the making of a high cost home loan:
- 22 (1) No lending without home-ownership counseling. A lender may not
23 make a high cost loan without first receiving certification from a home-
24 ownership counselor approved by the Department of Housing and
25 Urban Development that the borrower has received counseling on the
26 advisability of the loan transaction and the appropriate loan for the
27 borrower.
- 28 (2) No lending without due regard to repayment ability. As used in this
29 subsection, the term 'obligor' refers to each borrower, co-borrower, co-
30 signer, or guarantor obligated to repay a loan. A lender may not make a
31 high cost home loan unless the lender reasonably believes at the time
32 the loan is consummated that one or more of the obligors (when
33 considered individually or collectively) will be able to make the
34 scheduled payments to repay the obligation based upon a consideration
35 of their current and expected income, current obligations, employment
36 status, and other financial resources (other than the borrower's equity in
37 the dwelling which secures repayment of the loan). An obligor shall be
38 presumed to be able to make the scheduled payments to repay the
39 obligation if, at the time the loan is consummated, the obligor's total
40 monthly debts (including amounts owed under the loan) do not exceed
41 fifty percent (50%) of the obligor's monthly gross income as verified by
42 the credit application, the obligor's financial statement, a credit report,

1 financial information provided to the lender by or on behalf of the
2 obligor, or any other reasonable means.

3 (3) No financing of fees or charges. In making a high cost home loan, a
4 lender may not directly or indirectly finance (i) points and fees, or (ii)
5 any charges payable to third parties. In making a high cost home loan, a
6 lender may not directly or indirectly finance any prepayment fees or
7 penalties payable by the borrower in a refinancing transaction if the
8 lender or an affiliate of the lender is the noteholder of the note being
9 refinanced.

10 (4) No benefit from refinancing existing high cost home loan with new high
11 cost home loan. A lender may not charge a borrower points and fees in
12 connection with a high cost home loan if the proceeds of the high cost
13 home loan are used to refinance an existing high cost home loan held by
14 the same lender as noteholder.

15 (5) Restrictions on home-improvement contracts. A lender may not pay a
16 contractor under a home-improvement contract from the proceeds of a
17 high cost home loan other than (i) by an instrument payable to the
18 borrower or jointly to the borrower and the contractor, or (ii) at the
19 election of the borrower, through a third-party escrow agent in
20 accordance with terms established in a written agreement signed by the
21 borrower, the lender, and the contractor prior to the disbursement.

22 (e) Unfair and deceptive acts or practices. The making of a high cost home loan
23 which violates any provision of subsection (c) or (d) of this section is hereby declared
24 usurious in violation of the provisions of this Chapter and unlawful as an unfair or
25 deceptive act or practice in or affecting commerce in violation of the provisions of G.S.
26 75-1.1. The provisions of this section shall apply to any person who seeks to avoid its
27 application by any device, subterfuge, or pretense whatsoever including, but not limited
28 to, (i) structuring a loan transaction as an open-end credit plan for the purpose and with
29 the intent of evading the provisions of this section when the loan would have been a high
30 cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any
31 loan transaction into separate parts for the purpose of or with the effect of evading the
32 provisions of this section. The Attorney General, the Commissioner of Banks, or any
33 party to a high cost home loan may enforce the provisions of this section.

34 (f) Severability. The provisions of this section shall be severable, and if any
35 phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal
36 law or regulation, the validity of the remainder of this section shall not be affected
37 thereby. If any provision of this section is declared to be inapplicable to any specific
38 category, type, or kind of points and fees, the provisions of this section shall nonetheless
39 continue to apply with respect to all other points and fees.

40 (g) Applicability. This section shall apply to loans made or entered into after the
41 effective date of this section.

42 Section 3. Chapter 24 of the General Statutes is amended by adding a new
43 section to read:

1 **"§ 24-2.5. Mortgage Bankers and Mortgage Brokers.**

2 A mortgage broker or a mortgage banker originating a loan in a table-funded loan
3 transaction in which the mortgage broker or mortgage banker is identified as the original
4 payee of the note shall be considered a lender for purposes of this Chapter."

5 Section 4. G.S. 24-8 reads as rewritten:

6 **"§ 24-8. Loans not in excess of \$300,000; what interest, fees and charges permitted.**

7 ~~No lender shall charge or receive from any borrower or require in connection with a~~
8 ~~loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise~~
9 ~~confer upon or for the benefit of the lender or any other person, firm or corporation any~~
10 ~~sum of money, thing of value or other consideration other than that which is pledged as~~
11 ~~security or collateral to secure the repayment of the full principal of the loan, together~~
12 ~~with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina~~
13 ~~General Statutes, where the principal amount of a loan is not in excess of three hundred~~
14 ~~thousand dollars (\$300,000.00); provided, this section shall not prevent a borrower from~~
15 ~~selling, transferring, or conveying property other than security or collateral to any person,~~
16 ~~firm or corporation for a fair consideration so long as such transaction is not made a~~
17 ~~condition or requirement for any loan; provided that this shall not prevent the lender from~~
18 ~~collecting from the borrower for remittance to others, money in payment of taxes,~~
19 ~~assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life,~~
20 ~~accident and health, unemployment, and mortgage insurance premiums and other such~~
21 ~~fees and costs, nor from receiving the proceeds from any insurance policies where a loss~~
22 ~~occurs under the terms of such policies. This section shall not be applicable to any~~
23 ~~corporation licensed as a "Small Business Investment Company" under the provisions of~~
24 ~~the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable~~
25 ~~to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt~~
26 ~~security with accompanying warrants, nor to the sale or purchase of other securities~~
27 ~~through an organized securities exchange.~~

28 (a) If the principal amount of a loan is less than three hundred thousand dollars
29 (\$300,000), no lender shall charge or receive from any borrower or require in connection
30 with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or
31 otherwise confer upon or for the benefit of the lender or any other person, firm, or
32 corporation any sum of money, thing of value or other consideration other than that
33 which is pledged as security or collateral to secure the repayment of the full principal of
34 the loan, together with fees and interest provided for in this Chapter, Chapter 25A, or
35 Chapter 53 of the North Carolina General Statutes.

36 (b) Notwithstanding any contrary provision of State law, if the principal amount of
37 a loan is three hundred thousand dollars (\$300,000) or more, any borrower may agree to
38 pay, and any lender or other person may charge and collect from the borrower, interest,
39 fees, and other charges as may be agreed upon between the parties, and the borrower and
40 anyone claiming by or through the borrower is prohibited from asserting usury as a claim
41 or defense.

42 (c) The provisions of this section shall not prevent a borrower from selling,
43 transferring, or conveying property other than security or collateral to any person, firm, or

1 corporation for a fair consideration so long as such transaction is not made a condition or
2 requirement for any loan.

3 (d) Notwithstanding any contrary provision of State law, any lender may collect
4 money from the borrower for the payment of (i) bona fide loan-related goods, products,
5 and services provided or to be provided by third parties, and (ii) taxes, filing fees,
6 recording fees, and other charges and fees paid or to be paid to public officials. No third
7 party shall charge or receive (i) any unreasonable compensation for loan-related goods,
8 products, and services, or (ii) any compensation for which no loan-related goods and
9 products are provided or for which no or only nominal loan-related services are
10 performed. Examples of loan-related goods, products, and services include the
11 following: fees for tax payment services; fees for flood certification; fees for pest-
12 infestation determinations; mortgage brokers' fees; appraisal fees; inspection fees;
13 environmental assessment fees; fees for credit report services; assessments; costs of
14 upkeep; surveys; attorneys' fees; notary fees; escrow charges; and insurance premiums
15 (including, for example, fire, title, life, accident, and health, disability, unemployment,
16 flood, and mortgage insurance).

17 (e) Notwithstanding any contrary provision of State law, any lender may receive
18 the proceeds from any insurance policies where loss occurs under the terms of such
19 policies.

20 (f) This section shall not be applicable to any corporation licensed as a 'Small
21 Business Investment Company' under the provisions of the United States Code
22 Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase
23 of convertible debentures, nor to the sale or purchase of any debt security with
24 accompanying warrants, nor to the sale or purchase of other securities through an
25 organized securities exchange."

26 Section 5. Chapter 75 of the General Statutes is amended by adding a new
27 Article to read:

28 **"ARTICLE 4.**

29 **"UNFAIR MORTGAGE BROKERING AND LENDING PRACTICES.**

30 **"§ 75-90. Purpose and construction.**

31 Home ownership and the preservation of equity in homesteads are vital to the
32 economic and social welfare of North Carolina citizens and their communities. The
33 General Assembly declares that regulation of certain mortgage brokering and lending
34 practices is in the best interests of North Carolina homeowners and in the best interests of
35 ethical mortgage lenders and brokers, and will further free and fair competition in real
36 estate lending in this State. This Article shall be construed to protect homeowners from
37 unfair or deceptive mortgage brokering and lending practices.

38 **"§ 75-91. Definitions.**

39 The following definitions apply in this Article:

- 40 (1) 'Mortgage broker' means a person or entity (other than a mortgage
41 lender and the employees of a mortgage lender working in their capacity
42 as employees of a mortgage lender) in the business of soliciting,

1 processing, placing, or negotiating mortgage loans for others or offering
2 to process, place, or negotiate mortgage loans for others.

3 (2) 'Mortgage lender' means a person or entity who or which for
4 compensation or gain, either directly or indirectly, advances funds,
5 offers to advance funds, or makes a commitment to advance funds to an
6 applicant for a mortgage loan.

7 (3) 'Mortgage loan' means a loan or other extension of credit to a natural
8 person or persons made primarily for personal, family or household
9 purposes, secured by a mortgage or deed of trust on real estate upon
10 which there is located or there is to be located a structure or structures
11 designed principally for occupancy of from one to four families, which
12 is or will be occupied by the borrower as the borrower's principal
13 dwelling.

14 (4) 'Unconscionable' means oppressive or totally unreasonable, considering
15 all of the circumstances.

16 **"§ 75-92. Unfair or deceptive acts or practices by mortgage brokers or lenders**
17 **prohibited.**

18 No mortgage broker or mortgage lender shall engage in any unfair or deceptive
19 practices in the course of brokering or making mortgage loans to residents of this State.
20 Such practices include, but are not limited to, the following:

21 (1) Brokering or making a mortgage loan which includes points, fees, or
22 other finance charges which, considering the loan transaction as a whole
23 (including the creditworthiness of the borrower, the terms of the loan,
24 the value of the collateral, and the owner's equity in the collateral), so
25 significantly exceed the usual and customary charges incurred by
26 reasonably-informed consumers in this state for such points, fees, or
27 other finance charges as to be unconscionable.

28 (2) Brokering or making a mortgage loan in which the broker or lender
29 charges and retains fees paid by the borrower (i) for services which are
30 not actually performed, or (ii) for which the fees bear no reasonable
31 relationship to the value of the services actually performed, or (iii)
32 which are otherwise unconscionable.

33 (3) Brokering or making a mortgage loan with repayment terms that so
34 clearly exceed the borrower's financial capacity to repay as to be
35 unconscionable. In the case of any amortizing mortgage loan which
36 calls for substantially equal monthly payments of principal and interest,
37 a loan that requires a borrower with a household income below the area
38 median income, as determined by the U.S. Department of Housing and
39 Urban Development, to make monthly amortizing payments (excluding
40 any balloon payment) in excess of fifty percent (50%) of the borrower's
41 monthly gross income shall be prima facie evidence that the payments
42 exceed the borrower's reasonable capacity to repay. In the case of any

1 mortgage loan, evidence that the repayment terms exceed the borrower's
2 reasonable capacity to repay may be rebutted by:

3 a. A showing that the mortgage broker or mortgage banker
4 reasonably believed at the time the loan was consummated that
5 the borrower and any coborrowers, cosigners, or guarantors
6 collectively had the capacity to repay the loan based upon a
7 consideration of their current and expected income, current
8 obligations, employment status, and other financial resources,
9 including the owner's equity in any dwelling and any other
10 collateral securing repayment of the loan; or

11 b. A showing that other compelling circumstances existed which
12 justified the making of the loan notwithstanding the borrower's
13 apparent lack of capacity to repay the loan.

14 (4) 'Flipping' mortgage loans; that is, brokering or making a mortgage loan
15 to a borrower which refinances an existing mortgage loan when,
16 considering all the circumstances of the refinancing, the refinancing is
17 unconscionable. This provision shall apply without regard to whether
18 the interest rate, points, fees, and charges paid or payable by the
19 borrower in connection with the refinancing exceed those thresholds
20 specified in G.S. 24-1.1E(b).

21 (5) Charging a borrower points, fees, or other charges in connection with
22 the modification, renewal, extension, or amendment of a mortgage loan
23 when the points, fees, and other charges are so excessive as to be
24 unconscionable or are charged so repeatedly as to be unconscionable.
25 This provision shall apply without regard to whether such points, fees,
26 and other charges paid or payable by the borrower in connection with
27 such modification, renewal, extension, or amendment exceed the usury
28 limitations set forth in Chapter 24 or those thresholds set forth in G.S.
29 24-1.1E(b).

30 (6) 'Packing' mortgage loans; that is, the practice of selling credit life,
31 accident and health, disability or unemployment insurance products or
32 unrelated goods or services in conjunction with a mortgage loan without
33 the informed and independent request of the borrower and where:

34 a. The broker or lender solicits the sale of such insurance, goods or
35 services;

36 b. The broker or lender receives direct or indirect compensation for
37 the sale of such insurance, goods or services; and

38 c. The charges for such insurance, goods or services are prepaid
39 with the proceeds of the loan and financed as part of the principal
40 amount of the loan.

41 Provided, it shall not constitute the practice of 'packing' if the broker or
42 lender, at least three business days before the loan is closed, makes a
43 separate oral and a separate clear and conspicuous written disclosure to

1 the borrower containing the following information: (i) the cost of the
2 credit insurance or other goods and services, (ii) the fact that the
3 insurance, goods, or services will be prepaid and financed at the interest
4 rate provided for in the loan, (iii) whether the cost of the insurance,
5 goods, or services significantly exceeds the price of comparable
6 insurance, goods, or services reasonably available to the borrower in a
7 nonloan transaction; and (iv) that the purchase of such insurance, goods
8 or services is not required to obtain the mortgage loan. Provided
9 further, insurance premiums shall not be considered financed as part of
10 the loan transaction if insurance premiums are calculated, earned, and
11 paid on a monthly or other regular, periodic basis.

12 (7) Recommending or encouraging default or further default by a borrower
13 on an existing loan or other debt prior to the closing of a mortgage loan
14 that refinances all or any portion of such existing loan or debt.

15 "**§ 75-93. Remedies.**

16 A violation of this Article shall constitute a violation of G.S. 75-1.1. The remedies
17 under this Article shall be in addition to any other rights, authority, or causes of actions
18 otherwise available.

19 "**§ 75-94. Severability.**

20 The provisions of this Article shall be severable, and if any phrase, clause, sentence,
21 or provision is declared to be invalid or is preempted by federal law or regulation, the
22 validity of the remainder of this section shall not be affected thereby."

23 Section 6. This act becomes effective October 1, 1999.