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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 Article 19 of Chapter 53 of the General Statutes is repealed.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. – The act, for compensation or gain, or in
13 the expectation of compensation or gain, either directly or indirectly,
14 of 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. – The act of engaging in the business of
22 making 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.
- 26 (4) Branch office. – An office of the licensee acting as a mortgage broker
27 or mortgage banker that is separate and distinct from the licensee's
28 principal office.

- 1 (5) Commissioner. – The North Carolina Commissioner of Banks and the
2 Commissioner's designees. For purposes of compliance with this
3 Article by credit unions, Commissioner means the Administrator of the
4 Credit Union Division of the Department of Commerce.
- 5 (6) Control. – The power to vote more than twenty percent (20%) of
6 outstanding voting shares or other interests of a corporation,
7 partnership, limited liability company, association, or trust.
- 8 (7) Employee. – An individual, who has an employment relationship,
9 acknowledged by both the individual and the mortgage broker or
10 mortgage banker and is treated as an employee for purposes of
11 compliance with the federal income tax laws.
- 12 (8) Exempt person. – The term includes any of the following:
- 13 a. Any agency of the federal government or any state or municipal
14 government granting first mortgage loans under specific
15 authority of the laws of any state or the United States.
- 16 b. Any employee of a licensee whose responsibilities are limited
17 to clerical and administrative tasks for his or her employer and
18 who does not solicit borrowers, accept applications, or negotiate
19 the terms of loans on behalf of the employer.
- 20 c. Any lender authorized to engage in business as a bank or a
21 wholly owned subsidiary of a bank, a farm credit system,
22 savings institution, or credit union, under the laws of the United
23 States, this State, or any other state; and with regard to
24 provisions concerning mortgage lenders, life insurance
25 companies licensed to do business in North Carolina.
- 26 d. Any licensed real estate agent or broker who is performing
27 those activities subject to the regulation of the North Carolina
28 Real Estate Commission. Notwithstanding the above, an exempt
29 person does not include a real estate agent or broker who
30 receives compensation of any kind in connection with the
31 referral, placement, or origination of a mortgage loan.
- 32 e. Any officer or employee of an exempt person described in sub-
33 subdivision c. of this subdivision when acting in the scope of
34 employment for the exempt person.
- 35 f. Any person who, as seller, receives in one calendar year no
36 more than five mortgages, deeds of trust, or other security
37 instruments on real estate as security for a purchase money
38 obligation.
- 39 g. The North Carolina Housing Finance Agency as established by
40 Article 122A of the General Statutes and the North Carolina
41 Agricultural Finance Authority as established by Article 122D
42 of the General Statutes.

- 1 h. Any nonprofit corporation qualifying under section 501(c)(3) of
2 the Internal Revenue Code which makes mortgage loans to
3 promote home ownership or home improvements for the
4 disadvantaged, provided that such corporation is not primarily
5 in the business of soliciting or brokering mortgage loans.
- 6 (9) Licensee. – A loan officer, mortgage broker, or mortgage banker who
7 is licensed pursuant to this Article.
- 8 (10) Loan officer. – An individual who, in exchange for compensation as an
9 employee of another person, accepts or offers to accept applications
10 for mortgage loans. The definition of loan officer shall not include any
11 exempt person described in sub-subdivision (8)b. of this section.
- 12 (11) Make a mortgage loan. – To close a mortgage loan, to advance funds,
13 to offer to advance funds, or to make a commitment to advance funds
14 to a borrower under a mortgage loan.
- 15 (12) Managing principal. – A person who meets the requirements of G.S.
16 53-243.05(c) and who agrees to be primarily responsible for the
17 operations of a licensed mortgage broker or mortgage banker.
- 18 (13) Mortgage banker. – A person who acts as a mortgage lender as that
19 term is defined in subdivision (2) of this section. However, the
20 definition does not include a person who acts as a mortgage lender
21 only in tablefunding transactions.
- 22 (14) Mortgage broker. – A person who acts as a mortgage broker as that
23 term is defined in subdivision (1) of this section.
- 24 (15) Mortgage loan. – A loan made to a natural person or persons primarily
25 for personal, family, or household use, primarily secured by either a
26 mortgage or a deed of trust on residential real property located in
27 North Carolina.
- 28 (16) Person. – An individual, partnership, limited liability company, limited
29 partnership, corporation, association, or other group engaged in joint
30 business activities however organized.
- 31 (17) Qualified lender. – A person who is engaged as a mortgage lender in
32 North Carolina and is either a supervised or a nonsupervised
33 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
34 by the United States Department of Housing and Urban Development.
- 35 (18) Qualified person. – A person who is employed as a loan officer by a
36 qualified lender, or by a mortgage banker or broker registered with the
37 Commissioner under former Article 19 of this Chapter, or who is a
38 general partner, manager, or officer of a qualified lender, registered
39 mortgage banker, or registered mortgage broker.
- 40 (19) Residential real property. – Real property located in the State of North
41 Carolina upon which there is located or is to be located one or more
42 single-family dwellings or dwelling units.

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

5 **"§ 53-243.02. License required; licensee records.**

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

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

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

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

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

30 **"§ 53-243.03. Review by Banking Commission.**

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

38 **"§ 53-243.04. Rule-making authority.**

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

42 **"§ 53-243.05. Qualifications for licensure; issuance.**

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

6 (1) The applicant's name and address and social security number.

7 (2) The applicant's form and place of organization, if applicable.

8 (3) The applicant's proposed method of and locations for doing business,
9 if applicable.

10 (4) The qualifications and business history of the applicant and, if
11 applicable, the business history of any partner, officer, or director, any
12 person occupying a similar status or performing similar functions, or
13 any person directly or indirectly controlling the applicant, including:
14 (i) a description of any injunction or administrative order by any state
15 or federal authority to which the person is or has been subject; (ii) a
16 conviction of a misdemeanor involving fraudulent dealings or moral
17 turpitude or relating to any aspect of the residential mortgage lending
18 business; (iii) any felony convictions.

19 (5) With respect to an application for licensing as a mortgage banker or
20 broker, the applicant's financial condition, credit history, and business
21 history; and with respect to the application for licensing as a loan
22 officer, the applicant's credit history and business history.

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

26 (1) Be at least 18 years of age.

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

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

40 (1) If the applicant is a sole proprietor, the applicant shall have at least
41 three years of experience in residential mortgage lending or other

1 experience or competency requirements as the Commissioner may
2 impose by rule.

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

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

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

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

14 (e) Every applicant for initial licensure shall pay a filing fee of one thousand
15 dollars (\$1,000) for licensure as a mortgage broker or mortgage banker, or fifty dollars
16 (\$50.00) for licensure as a loan officer.

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

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

34 (h) Each principal office and each branch office of a mortgage broker or
35 mortgage banker licensed under the provisions of this Article shall be issued a separate
36 license. A licensed mortgage broker or mortgage banker shall file with the
37 commissioner an application on a form prescribed by the Commissioner that identifies
38 the address of the principal office and each branch office and branch manager. A filing
39 fee of one hundred dollars (\$100.00) shall be assessed by the Commissioner for each
40 office issued a license.

41 (i) If the Commissioner determines that an applicant meets the qualifications for
42 licensure and finds that the financial responsibility, character, and general fitness of the

1 applicant are such as to command the confidence of the community and to warrant
2 belief that the business will be operated honestly and fairly, the Commissioner shall
3 issue a license to the applicant.

4 **"§ 53-243.06. License renewal; termination.**

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

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

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

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

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

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

28 **"§ 53-243.07. Continuing education.**

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

33 (1) The content of continuing education courses.

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

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

36 (4) Computation of credit.

37 (5) Special cases and exemptions.

38 (6) General compliance procedures.

39 (7) Sanctions for noncompliance.

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

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

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

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

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

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

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

"§ 53-243.10. Mortgage broker duties.

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

- (1) Safeguard and account for any money handled for the borrower;
- (2) Follow reasonable and lawful instructions from the borrower;
- (3) Act with reasonable skill, care, and diligence; and
- (4) Make reasonable efforts, with lenders with whom the broker regularly does business to secure a loan that is reasonably advantageous to the

1 borrower considering all the circumstances, including the rates,
2 charges, and repayment terms of the loan and the loan options for
3 which the borrower qualifies with such lenders.

4 **"§ 53-243.11. Prohibited activities.**

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

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

1 (10) To broker a mortgage loan which contains a prepayment penalty if the
2 principal amount of the loan is one hundred fifty thousand dollars
3 (\$150,000) or less.

4 **"§ 53-243.12. Disciplinary authority.**

5 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
6 renew a license of a licensee or applicant under this Article or may restrict or limit the
7 activities relating to mortgage loans of any licensee or any person who owns an interest
8 in or participates in the business of a licensee, if the Commissioner finds both of the
9 following:

10 (1) That the order is in the public interest.

11 (2) That any of the following circumstances apply to the applicant,
12 licensee, or any partner, member, manager, officer, director, loan
13 officer, managing broker, or any person occupying a similar status or
14 performing similar functions or any person directly or indirectly
15 controlling the applicant or licensee. The person:

16 a. Has filed an application for license that, as of its effective date
17 or as of any date after filing, contained any statement that, in
18 light of the circumstances under which it was made, is false or
19 misleading with respect to any material fact.

20 b. Has violated or failed to comply with any provision of this
21 Article, rule adopted by the Commissioner, or order of the
22 Commissioner.

23 c. Has been convicted of any felony, or, within the past 10 years,
24 has been convicted of any misdemeanor involving mortgage
25 lending or any aspect of the mortgage lending business, or any
26 offense involving breach of trust, moral turpitude, or fraudulent
27 or dishonest dealing.

28 d. Is permanently or temporarily enjoined by any court of
29 competent jurisdiction from engaging in or continuing any
30 conduct or practice involving any aspect of the mortgage
31 lending business.

32 e. Is the subject of an order of the Commissioner denying,
33 suspending, or revoking that person's license as a mortgage
34 broker or mortgage banker.

35 f. Is the subject of an order entered within the past five years by
36 the authority of any state with jurisdiction over that state's
37 mortgage brokerage or mortgage banking industry denying or
38 revoking that person's license as a mortgage broker or mortgage
39 banking industry or denying or revoking that person's license as
40 a mortgage broker or mortgage banker.

- 1 g. Does not meet the qualifications, or the financial responsibility,
2 character, or general fitness requirements under G.S. 53-243.05
3 or any bond or capital requirements under this Article.
4 h. Has been the executive officer or controlling shareholder or
5 owned a controlling interest in any mortgage broker or
6 mortgage banker who has been subject to an order or injunction
7 described in sub-subdivision d., e., or f. of this subdivision.
8 i. Has failed to pay the proper filing or renewal fee under this
9 Article. However, the Commissioner may enter only a denial
10 order under this sub-subdivision, and the Commissioner shall
11 vacate the order when the deficiency has been corrected.

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

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

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

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

41 (f) When a licensee is accused of any act, omission, or misconduct that would
42 subject the licensee to disciplinary action, the licensee, with the consent and approval of

1 the Commissioner, may surrender the license and all the rights and privileges pertaining
2 to it for a period of time established by the Commissioner. A person who surrenders a
3 license shall not be eligible for or submit any application for licensure under this
4 Article.

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

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

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

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

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

29 **"§ 53-243.13. Records; escrow funds or trust accounts.**

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

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

39 (c) Every licensee shall make and keep the accounts, correspondence,
40 memoranda, papers, books, and other records as prescribed in rules adopted by the
41 Commissioner. All records shall be preserved for three years unless the Commissioner,
42 by rule, prescribes otherwise for particular types of records. The recordkeeping

1 requirements imposed by the Commissioner or this subsection shall not be greater than
2 those imposed by applicable federal law.

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

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

11 **"§ 53-243.14. Criminal penalty.**

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

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

15 "(7b) Records of examinations and investigations of registrants under the
16 Mortgage Bankers and Brokers Act, Article 19 of this
17 Chapter; Lending Act, Article 19A of this Chapter;"

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

19 **"§ 66-106. Definitions.**

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

21 (1) A "loan broker" is any person, firm, or corporation who, in return for
22 any consideration from any person, promises to (i) procure for such
23 person, or assist such person in procuring, a loan from any third party;
24 or (ii) consider whether or not it will make a loan to such person.

25 (2) A "loan" is an agreement to advance money or property in return for
26 the promise to make payments therefor, whether such agreement is
27 styled as a loan, credit card, line of credit, a lease or otherwise.

28 (b) ~~Provided, that Except for mortgage loans as defined in G.S. 53-243.01(15),~~
29 this Article shall not apply to any party approved as a mortgagee by the Secretary of
30 Housing and Urban Development, the Federal Housing Administration, the Veterans
31 Administration, a National Mortgage Association or any federal agency; nor to any
32 party currently designated and compensated by a North Carolina licensed insurance
33 company as its agent to service loans it makes in this State; nor to any insurance
34 company registered with and licensed by the North Carolina Insurance Commissioner;
35 nor, with respect to residential mortgage loans, to any residential mortgage banker or
36 mortgage broker registered with the Commissioner of Banks pursuant to Article 19 of
37 Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); licensed
38 pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure
39 pursuant to G.S. 53-243.01(8) and G.S. 53-243.02; nor to any attorney-at-law, public
40 accountant, or dealer registered under the North Carolina Securities Act, acting in the
41 professional capacity for which such attorney-at-law, public accountant, or dealer is
42 registered or licensed under the laws of the State of North Carolina. Provided further

1 that subdivision (1)(ii) above shall not apply to any lender whose loans or advances to
2 any person, firm or corporation in North Carolina aggregate more than one million
3 dollars (\$1,000,000) in the preceding calendar year."

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

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

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

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

34 **SECTION 6.(c)** Any qualified lender who files, within 90 days after this act
35 becomes effective, a sworn statement with the Commissioner that consists of a list of its
36 loan officers in North Carolina, the addresses of its principal office and each of its
37 branches, and the names and addresses of the managing principal and each of its branch
38 managers and states that no employee, loan officer, or individual with a controlling
39 interest in the lender has been convicted of any felony or any misdemeanor involving
40 moral turpitude, shall be issued a license as a mortgage banker from the Commissioner
41 without having to meet the experience requirements for licensure under G.S.
42 53-243.05(c), enacted by Section 2 of this act.

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

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

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

18 **SECTION 10.** Sections 1 through 8 of this act become effective July 1,
19 2002. The remainder of this act is effective when it becomes law.