

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE BILL 559*

Short Title: Fair Compensation for Mortgage Broker/Lender. (Public)

Sponsors: Senator Meredith.

Referred to: Finance.

April 12, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE HOME MORTGAGE LENDING MORE COMPETITIVE IN NORTH
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 24-1.1A(c) is amended by adding a new subdivision to read:

6 "(3) The term "discount points" shall include any fees paid by or on behalf of a
7 borrower to the Federal National Mortgage Association, the Federal Home
8 Loan Mortgage Corporation, Government National Mortgage Association,
9 the Veterans Administration, the United States Department of Agriculture,
10 or any federal agency as loan level price adjustments, adverse market
11 delivery charges, or other charges levied by such agency to compensate for
12 increased risks and costs which vary based upon credit score, loan size, or
13 property or housing types."

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

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

16 a. The term includes all of the following:

- 17 1. All items paid by a borrower at or before closing and that are
18 required to be disclosed under sections 226.4(a) and 226.4(b)
19 of Title 12 of the Code of Federal Regulations, as amended
20 from time to time, except interest or the time-price
21 differential. However, the meaning of the term "points and
22 fees" shall not include either (i) the portion of the up-front
23 fees collected and paid to the Federal Housing
24 Administration, the Veterans' Administration, or the U.S.
25 Department of Agriculture to insure or guarantee a home loan
26 that exceeds one and one-quarter percent (1.25%) of the total
27 loan amount or (ii) the portion of any up-front private
28 mortgage insurance premium, charge, or fee that exceeds one
29 and one-quarter percent (1.25%) of the total loan amount,
30 provided that the private mortgage insurance premium,
31 charge or fee is required to be refundable on a prorated basis,
32 the refund is automatically issued upon notification of the
33 satisfaction of the underlying mortgage loan, and the
34 borrower has the right to request or receive a prorated refund
35 in accordance with state or federal law.
36 2. All charges paid by a borrower at or before closing and that
37 are for items listed under section 226.4(c)(7) of Title 12 of the



- 1 Code of Federal Regulations, as amended from time to time,
2 but only if the lender receives direct or indirect compensation
3 in connection with the charge or the charge is paid to an
4 affiliate of the lender; otherwise, the charges are not included
5 within the meaning of the phrase "points and fees".
- 6 3. To the extent not otherwise included in sub-subdivision a.1.
7 or a.2. of this subdivision, all compensation paid from any
8 source to a mortgage broker, including compensation paid to
9 a mortgage broker in a table-funded transaction. A bona fide
10 sale of a loan in the secondary mortgage market shall not be
11 considered a table-funded transaction, and a table-funded
12 transaction shall not be considered a secondary market
13 transaction.
- 14 4. The maximum prepayment fees and penalties which may be
15 charged or collected under the terms of the loan documents.
- 16 b. Notwithstanding the remaining provisions of this subdivision, the
17 term does not include (i) taxes, filing fees, recording and other
18 charges and fees paid or to be paid to public officials for determining
19 the existence of or for perfecting, releasing, or satisfying a security
20 interest; and (ii) fees paid to a person other than a lender or an
21 affiliate of the lender or to the mortgage broker or an affiliate of the
22 mortgage broker for the following: fees for tax payment services;
23 fees for flood certification; fees for pest infestation and flood
24 determinations; appraisal fees; fees for inspections performed prior to
25 closing; credit reports; surveys; attorneys' fees (if the borrower has
26 the right to select the attorney from an approved list or otherwise);
27 notary fees; escrow charges, so long as not otherwise included under
28 sub-subdivision a. of this subdivision; title insurance premiums; and
29 premiums for insurance against loss or damage to property, including
30 hazard insurance and flood insurance premiums, provided that the
31 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal
32 Regulations are met.
- 33 c. For open-end credit plans, the term includes those points and fees
34 described in sub-subdivisions a.1. through a.3. of this subdivision,
35 plus (i) the minimum additional fees the borrower would be required
36 to pay to draw down an amount equal to the total loan amount, and
37 (ii) the maximum prepayment fees and penalties which may be
38 charged or collected under the terms of the loan documents.
- 39 d. Notwithstanding the other provisions of this subdivision, the term
40 "points and fees" shall not include fees paid by a borrower to an
41 agency of the United States Government in connection with a home
42 loan, if (i) the home loan is made, insured, or guaranteed by such
43 agency and (ii) the fee is for making, insuring, or guaranteeing the
44 loan. A charge shall be considered to have been paid by a borrower if
45 the charge is paid (i) by the borrower directly, (ii) by a settlement
46 agent or lender on behalf of the borrower, or (iii) by a lender with
47 respect to the borrower's loan from funds loaned to or received from
48 the borrower. For purposes of this sub-subdivision, the term "agency
49 of the United States Government" includes, without limitation, the
50 Federal National Mortgage Association, the Federal Home Loan
51 Mortgage Corporation, the Government National Mortgage

1 Association, the Veterans Administration, the United States
2 Department of Agriculture, or any federal agency."

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

4 "(6) "Thresholds" ~~means:~~ means one of the following:

5 a. Without regard to whether the loan transaction is or may be a
6 "residential mortgage transaction" (as the term "residential mortgage
7 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
8 of Federal Regulations, as amended from time to time), the annual
9 percentage rate of the loan at the time the loan is consummated is
10 such that the loan is considered a "mortgage" under section 152 of
11 the Home Ownership and Equity Protection Act of 1994 (Pub. Law
12 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from
13 time to time, and regulations adopted pursuant thereto by the Federal
14 Reserve Board, including section 226.32 of Title 12 of the Code of
15 Federal Regulations, as the same may be amended from time to ~~time;~~
16 time.

17 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed
18 four percent (4%) of the total loan amount if the total loan amount is
19 twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight
20 percent (8%) of the total loan amount or one thousand dollars
21 (\$1,000), if the total loan amount is less than twenty thousand dollars
22 (\$20,000); provided, the following discount points and prepayment
23 fees and penalties shall be excluded from the calculation of the total
24 points and fees payable by the borrower:

25 1. Up to and including two bona fide loan discount points
26 payable by the borrower in connection with the loan
27 transaction, but only if the interest rate from which the loan's
28 interest rate will be discounted does not exceed by more than
29 one percentage point (1%) the required net yield for a 90-day
30 standard mandatory delivery commitment for a reasonably
31 comparable loan from either Fannie Mae or the Federal Home
32 Loan Mortgage Corporation, whichever is ~~greater;~~ greater.

33 2. Up to and including one bona fide loan discount point
34 payable by the borrower in connection with the loan
35 transaction, but only if the interest rate from which the loan's
36 interest rate will be discounted does not exceed by more than
37 two percentage points (2%) the required net yield for a
38 90-day standard mandatory delivery commitment for a
39 reasonably comparable loan from either Fannie Mae or the
40 Federal Home Loan Mortgage Corporation, whichever is
41 ~~greater;~~ greater.

42 3. For a closed-end loan, prepayment fees and penalties which
43 may be charged or collected under the terms of the loan
44 documents which do not exceed one percent (1%) of the
45 amount prepaid, provided the loan documents do not permit
46 the lender to charge or collect any prepayment fees or
47 penalties more than 30 months after the loan ~~closing;~~ closing.

48 4. For an open-end credit plan, prepayment fees and penalties
49 which may be charged or collected under the terms of the
50 loan documents which do not exceed one percent (1%) of the
51 amount prepaid, provided the loan documents do not permit

1 the lender to charge or collect any prepayment fees or
2 penalties more than (i) 30 months after the loan closing if the
3 borrower has no right or option under the loan documents to
4 repay all or any portion of the outstanding balance of the
5 open-end credit plan at a fixed interest rate over a specified
6 period of time or, (ii) if the borrower has a right or option
7 under the loan documents to repay all or any portion of the
8 outstanding balance of the open-end credit plan at a fixed
9 interest rate over a specified period of time, 30 months after
10 the date the borrower voluntarily exercises that right or
11 ~~option; or option.~~

12 As used in this sub-subdivision, the term "discount points"
13 shall not include any fees paid by or on behalf of a borrower
14 to the Federal National Mortgage Association, the Federal
15 Home Loan Mortgage Corporation, Government National
16 Mortgage Association, the Veterans Administration, the
17 United States Department of Agriculture, or any federal
18 agency as loan level price adjustments, adverse market
19 delivery charges, or other charges levied by such agency to
20 compensate for increased risks and costs which vary based
21 upon credit score, loan size, or property or housing types.

- 22 c. If the loan is a closed-end loan, the loan documents permit the lender
23 to charge or collect prepayment fees or penalties more than 30
24 months after the loan closing or which exceed, in the aggregate, more
25 than two percent (2%) of the amount prepaid. If the loan is an
26 open-end credit plan, the loan documents permit the lender to charge
27 or collect prepayment fees or penalties (i) more than 30 months after
28 the loan closing if the borrower has no right or option under the loan
29 documents to repay all or any portion of the outstanding balance of
30 the open-end credit plan at a fixed interest rate over a specified
31 period of time or, (ii) if the borrower has a right or option under the
32 loan documents to repay all or any portion of the outstanding balance
33 of the open-end credit plan at a fixed interest rate over a specified
34 period of time, more than 30 months after the date the borrower
35 voluntarily exercises that right or option, or (iii) which exceed, in the
36 aggregate, more than two percent (2%) of the amount prepaid."

37 **SECTION 4.** G.S. 53-244.101 is amended by adding a new subsection to read:

38 "(f) The Commissioner may not refuse the renewal of a loan originator's license based
39 on the credit score at the time of the renewal. The Commissioner may establish a desired
40 minimum credit score for renewal, but the Commissioner may not refuse to renew the license
41 of a loan originator with a credit score less than the minimum unless the loan originator has
42 exhibited a credit history which reflects a material disregard for creditors' rights and debtors'
43 obligations."

44 **SECTION 5.** G.S. 53-244.103(b) reads as rewritten:

45 "(b) Licensees shall be required to post a surety bond with the Commissioner at
46 application to be subsequently adjusted as follows:

- 47 (1) A mortgage broker shall post a minimum surety bond of ~~seventy-five~~
48 ~~thousand dollars (\$75,000).~~ fifty thousand dollars (\$50,000). Provided,
49 however, if a mortgage broker has originated mortgage loans in North
50 Carolina in a 12-month period ending December 31 in excess of ten million
51 dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then

1 the mortgage broker's minimum bond amount shall be ~~one hundred~~
2 ~~twenty five thousand dollars (\$125,000)~~, seventy-five thousand dollars
3 (\$75,000), and if a mortgage broker has originated mortgage loans in North
4 Carolina in a 12-month period ending December 31 of fifty million dollars
5 (\$50,000,000) or more, the mortgage broker's minimum bond shall be ~~two~~
6 ~~hundred fifty thousand dollars (\$250,000)~~. one hundred thousand dollars
7 (\$100,000).

8 (2) A mortgage lender or mortgage servicer shall post a minimum surety bond
9 of ~~one hundred fifty thousand dollars (\$150,000)~~. seventy-five thousand
10 dollars (\$75,000). Provided, however, if a mortgage lender has originated
11 mortgage loans in North Carolina in a 12-month period ending December 31
12 in excess of ten million dollars (\$10,000,000) but less than fifty million
13 dollars (\$50,000,000), then the mortgage lender's minimum bond amount
14 shall be ~~two hundred fifty thousand dollars (\$250,000)~~, one hundred
15 twenty-five thousand dollars (\$125,000), and if a mortgage lender has
16 originated mortgage loans in North Carolina in a 12-month period ending
17 December 31 of fifty million dollars (\$50,000,000) or more, then the
18 mortgage lender's minimum bond shall be ~~five hundred thousand dollars~~
19 ~~(\$500,000)~~. two hundred thousand dollars (\$200,000).

20 (3) Any increased surety bond required under subdivision (1) or (2) of this
21 subsection shall be filed with the Commissioner on or before May 31
22 immediately following the end of the 12-month December 31 period."

23 **SECTION 6.** G.S. 53-244.115(b) reads as rewritten:

24 "(b) For purposes of investigating violations or complaints arising under this Article, or
25 for the purposes of examination, the Commissioner may review, investigate, or examine any
26 licensee, individual, or person subject to this Article as often as necessary in order to carry out
27 the purposes of this Article. The Commissioner may interview the officer, principals, person
28 with control, qualified individual, mortgage loan originators, employees, independent
29 contractors, agents, and customers of the licensee, individual, or person concerning their
30 business. The Commissioner may direct, subpoena, or order the attendance of and examine
31 under oath all persons whose testimony may be required about the loans or the business or
32 subject matter of any examination or investigation and may direct, subpoena, or order the
33 person to produce books, accounts, records, files, and any other documents the Commissioner
34 deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be
35 charged against the licensee, individual, or person subject to this Article. The Commissioner
36 shall notify the party examined of the findings of the examination when it has been completed,
37 and the Commissioner shall be required to initiate disciplinary action, if any, under
38 G.S. 53-244.116 within 12 months of the date of such notice or such action shall be barred."

39 **SECTION 7.** This act becomes effective October 1, 2011.