

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 692

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H692-ARO-16 [v.4]

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Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____, 2013

Representative Szoka

1 moves to amend the bill on page 4, line 5, by rewriting the line to read:

2
3 "SECTION 3. G.S. 24-1.1F reads as rewritten:

4 "§ 24-1.1F. Rate spread home loans.

5 (a) ~~Definitions.—The following definitions apply for purposes of this section:~~

6 (1) ~~Annual percentage rate.—The annual percentage rate for the loan calculated~~
7 ~~according to the provisions of the federal Truth in Lending Act (15 U.S.C. §~~
8 ~~1601, et seq.) and the regulations promulgated thereunder by the Federal~~
9 ~~Reserve Board, as that Act and regulations are amended from time to time.~~

10 (2) ~~Average prime offer rate.—An annual percentage rate published by the~~
11 ~~Federal Reserve Board and that is derived from average interest rates, points,~~
12 ~~and other loan pricing terms currently offered to consumers by a~~
13 ~~representative sample of creditors for mortgage transactions that have~~
14 ~~low-risk pricing characteristics.~~

15 (3) ~~Repealed by Session Laws 2009 457, s. 2, effective October 1, 2009.~~

16 (4) ~~Mortgage broker.—A mortgage broker as defined in G.S. 53-243.01.~~

17 (5),(6) ~~Repealed by Session Laws 2009 457, s. 2, effective October 1, 2009.~~

18 (7) ~~Rate spread home loan.—A loan in which all the following apply:~~

19 a. ~~The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)~~
20 ~~a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage~~
21 ~~transaction, or (iv) a bridge loan with a term of 12 months or less,~~
22 ~~such as a loan to purchase a new dwelling where the borrower plans~~
23 ~~to sell a current dwelling within 12 months.~~

24 b. ~~The borrower is a natural person.~~

25 c. ~~The debt is incurred by the borrower primarily for personal, family,~~
26 ~~or household purposes.~~

27 d. ~~The principal amount of the loan does not exceed the conforming~~
28 ~~loan size limit for a single family dwelling as established from time~~
29 ~~to time by Fannie Mae.~~

30 e. ~~The loan is secured by (i) a security interest in a manufactured home,~~
31 ~~as defined in G.S. 143-145, in the State which is or will be occupied~~
32 ~~by the borrower as the borrower's principal dwelling, (ii) a mortgage~~



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~~or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.~~

f. ~~The loan's annual percentage rate exceeds each of the following:~~

~~1. The average prime offer rate for a comparable transaction as of the date the interest rate for the loan is set by (i) one and one-half percentage points (1.5%) or more, if the loan is secured by a first lien mortgage or deed of trust or (ii) three and one-half percentage points (3.5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust.~~

~~2. The conventional mortgage rate by (i) one and three-quarters percentage points (1.75%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three-quarters percentage points (3.75%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H. 15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

~~3. The yield on U.S. Treasury securities having comparable periods of maturity by (i) three percentage points (3%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act 12 U.S.C. § 2801, et seq. (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

(a1) A rate spread home loan is a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. §1639c(c)(1)(B)(ii) and any regulations promulgated thereunder.

~~(b) No prepayment fees or penalties shall be charged or collected on a rate spread home loan.~~

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1 (b1) The making of a rate spread home loan that violates 15 U.S.C. §1639c(c) and any
2 regulations promulgated thereunder, is hereby declared usurious in violation of the provisions
3 of this Chapter.

4 ~~(e) No lender shall make a rate spread home loan to a borrower based on the value of~~
5 ~~the borrower's collateral without due regard to the borrower's repayment ability as of~~
6 ~~consummation, including the borrower's current and reasonably expected income, employment,~~
7 ~~assets other than the collateral, current obligations, and mortgage-related obligations. Without~~
8 ~~regard to whether the loan is a "higher-priced mortgage loan" as defined in section 226.35 of~~
9 ~~Title 12 of the Code of Federal Regulations, the methodology and standards for the~~
10 ~~determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of~~
11 ~~the Code of Federal Regulations and the related Federal Reserve Board's Official Staff~~
12 ~~Commentary on Regulation Z, as the regulation and commentary may be amended from time to~~
13 ~~time, shall be applied to determine a lender's compliance with this requirement.~~

14 (c1) Any prepayment penalty in violation of 15 U.S.C. §1639c(c) and any regulations
15 promulgated thereunder, shall be unenforceable.

16 ~~(d) The making of a rate spread home loan which violates subsection (b) or (e) of this~~
17 ~~section is hereby declared usurious in violation of the provisions of this Chapter. In addition,~~
18 ~~any prepayment penalty in violation of this section shall be unenforceable. However, a~~
19 ~~borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the~~
20 ~~Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of~~
21 ~~this section. This section establishes specific consumer protections in rate spread home loans in~~
22 ~~addition to other consumer protections that may be otherwise available by law. A mortgage~~
23 ~~broker who brokers a rate spread home loan that violates the provisions of this section shall be~~
24 ~~jointly and severally liable with the lender.~~

25 (d1) Notwithstanding the foregoing, a borrower shall not be entitled to recover twice for
26 the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate
27 spread home loan may enforce the provisions of this section. This section establishes specific
28 consumer protections in rate spread home loans in addition to other consumer protections that
29 may be otherwise available by law. A mortgage broker who brokers a rate spread home loan
30 that violates the provisions of this section shall be jointly and severally liable with the lender.

31 ... "".

32
SIGNED _____

Amendment Sponsor

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and vote information, is available in the
House Principal Clerk's Office**