GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 1817
Committee Substitute Favorable 5/16/07

Short Title: Protect Consumers - Covered Loans. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS REGARDING COVERED LOANS AND TO INCREASE THE COMMISSIONER'S DISCIPLINARY AUTHORITY OVER LICENSEES UNDER THE MORTGAGE LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-10.2 is amended by adding a new subsection to read:

"(d1) For purposes of this subsection, the term "obligor" means a borrower, co-borrower, cosigner, or guarantor obligated to repay a consumer home loan. No lender shall make a consumer home loan based predominantly on the foreclosure value of the real property taken as collateral rather than on the obligor's ability to repay the loan according to its terms, unless the lender reasonably and in good faith believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, has or have the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. The lender's analysis of an obligor's ability to repay the loan according to its terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the obligor's FICO or other comparable risk score, credit history, current and expected income, current obligations, employment status, and other financial resources. However, the lender's analysis shall not rely primarily on the obligor's equity in the real property that secures repayment of the loan unless the obligor is required by the terms of the loan to make a balloon payment at maturity and either (i) the obligor has expressed an intent to sell the real property that secures repayment of the loan before maturity and apply the proceeds of sale to the satisfaction of the loan, or (ii) the lender reasonably and in good faith believes at the time the loan is closed that the obligor is sufficiently creditworthy to refinance the loan at maturity.

(1) In determining an obligor's ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums, the lender shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the

obligor. Acceptable methods of verification may include one or more of the following: determination of the obligor's FICO or other comparable risk score, verification of employment with the obligor's employer, verification of deposit and investment assets with financial institutions and brokerage firms, the review of public records, and the review of reasonably available financial records such as credit reports, tax returns, bank and brokerage account statements, and payroll receipts. A lender's failure to verify the accuracy and completeness of information provided by or on behalf of the obligor as required by this subdivision shall not in and of itself subject the lender to liability or to the penalties provided in subsection (e) of this section.

(2) In determining an obligor's ability to repay the loan according to its terms when the loan has an adjustable rate feature, the lender shall (i) take into consideration any balance increase that may accrue from any negative amortization provision, and (ii) assume that the loan proceeds are fully disbursed on the date of the loan closing and that the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed interest rate at the time of the loan closing. For purposes of this subdivision, the fully indexed interest rate at the time of the loan closing is the interest rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula that applies under the terms of the loan documents to subsequent interest rate adjustments.

(3) This subsection shall not apply to equity lines of credit as defined in G.S. 24-9(a)(2), or to consumer home loans underwritten and approved by a lender (i) on the basis of an obligor's FICO or other comparable risk score considered in conjunction with one or more other underwriting factors, such as the ratio obtained by dividing the loan amount by the value of the real property that will secure repayment of the loan, or (ii) on the basis of other commercially reasonable and prudent underwriting standards."

SECTION 2. G.S. 53-243.04 reads as rewritten:

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

The Banking Commission may adopt any rules ~~when~~ it deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, ~~and~~ to instruct mortgage lenders or brokers in interpreting this ~~Article.~~Article, and to implement and interpret the provisions of G.S. 24-1.1E and G.S. 24-10.2 as they apply to licensees under this Article."

SECTION 3. G.S. 53-243.12 is amended by adding a new subsection to read:

"(m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order, prohibit licensees under this Article from engaging in acts and practices in connection with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public."

SECTION 4. This act becomes effective October 1, 2007. Section 1 of this act applies to consumer home loans entered into on or after that date.