

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2011**

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**HOUSE BILL 814\***

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

Sponsors: Representatives Collins, Stam, and Faircloth (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Banking.

April 7, 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.



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2. All charges paid by a borrower at or before closing and that are for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".
  3. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction.
  4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.
- b. Notwithstanding the remaining provisions of this subdivision, the term does not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.
- c. For open-end credit plans, the term includes those points and fees described in sub-subdivisions a.1. through a.3. of this subdivision, plus (i) the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount, and (ii) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.
- d. Notwithstanding the other provisions of this subdivision, the term "points and fees" shall not include fees paid by a borrower to an agency of the United States Government in connection with a home loan, if (i) the home loan is made, insured, or guaranteed by such agency and (ii) the fee is for making, insuring, or guaranteeing the loan. A charge shall be considered to have been paid by a borrower if the charge is paid (i) by the borrower directly, (ii) by a settlement agent or lender on behalf of the borrower, or (iii) by a lender with respect to the borrower's loan from funds loaned to or received from the borrower. For purposes of this sub-subdivision, the term "agency of the United States Government" includes, without limitation, the

1 Federal National Mortgage Association, the Federal Home Loan  
2 Mortgage Corporation, the Government National Mortgage  
3 Association, the Veterans Administration, the United States  
4 Department of Agriculture, or any federal agency."

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

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

- 7 a. Without regard to whether the loan transaction is or may be a  
8 "residential mortgage transaction" (as the term "residential mortgage  
9 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code  
10 of Federal Regulations, as amended from time to time), the annual  
11 percentage rate of the loan at the time the loan is consummated is  
12 such that the loan is considered a "mortgage" under section 152 of  
13 the Home Ownership and Equity Protection Act of 1994 (Pub. Law  
14 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from  
15 time to time, and regulations adopted pursuant thereto by the Federal  
16 Reserve Board, including section 226.32 of Title 12 of the Code of  
17 Federal Regulations, as the same may be amended from time to ~~time;~~  
18 time.
- 19 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed  
20 four percent (4%) of the total loan amount if the total loan amount is  
21 twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight  
22 percent (8%) of the total loan amount or one thousand dollars  
23 (\$1,000), if the total loan amount is less than twenty thousand dollars  
24 (\$20,000); provided, the following discount points and prepayment  
25 fees and penalties shall be excluded from the calculation of the total  
26 points and fees payable by the borrower:
- 27 1. Up to and including two bona fide loan discount points  
28 payable by the borrower in connection with the loan  
29 transaction, but only if the interest rate from which the loan's  
30 interest rate will be discounted does not exceed by more than  
31 one percentage point (1%) the required net yield for a 90-day  
32 standard mandatory delivery commitment for a reasonably  
33 comparable loan from either Fannie Mae or the Federal Home  
34 Loan Mortgage Corporation, whichever is ~~greater;~~ greater.
  - 35 2. Up to and including one bona fide loan discount point  
36 payable by the borrower in connection with the loan  
37 transaction, but only if the interest rate from which the loan's  
38 interest rate will be discounted does not exceed by more than  
39 two percentage points (2%) the required net yield for a  
40 90-day standard mandatory delivery commitment for a  
41 reasonably comparable loan from either Fannie Mae or the  
42 Federal Home Loan Mortgage Corporation, whichever is  
43 ~~greater;~~ greater.
  - 44 3. For a closed-end loan, prepayment fees and penalties which  
45 may be charged or collected under the terms of the loan  
46 documents which do not exceed one percent (1%) of the  
47 amount prepaid, provided the loan documents do not permit  
48 the lender to charge or collect any prepayment fees or  
49 penalties more than 30 months after the loan ~~closing;~~ closing.
  - 50 4. For an open-end credit plan, prepayment fees and penalties  
51 which may be charged or collected under the terms of the

1 loan documents which do not exceed one percent (1%) of the  
 2 amount prepaid, provided the loan documents do not permit  
 3 the lender to charge or collect any prepayment fees or  
 4 penalties more than (i) 30 months after the loan closing if the  
 5 borrower has no right or option under the loan documents to  
 6 repay all or any portion of the outstanding balance of the  
 7 open-end credit plan at a fixed interest rate over a specified  
 8 period of time or, (ii) if the borrower has a right or option  
 9 under the loan documents to repay all or any portion of the  
 10 outstanding balance of the open-end credit plan at a fixed  
 11 interest rate over a specified period of time, 30 months after  
 12 the date the borrower voluntarily exercises that right or  
 13 ~~option; or option.~~

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

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

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

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

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

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

- 49 (1) A mortgage broker shall post a minimum surety bond of ~~seventy five~~  
 50 ~~thousand dollars (\$75,000).~~ fifty thousand dollars (\$50,000). Provided,  
 51 however, if a mortgage broker has originated mortgage loans in North

1 Carolina in a 12-month period ending December 31 in excess of ten million  
2 dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then  
3 the mortgage broker's minimum bond amount shall be ~~one hundred~~  
4 ~~twenty five thousand dollars (\$125,000)~~, seventy-five thousand dollars  
5 (\$75,000), and if a mortgage broker has originated mortgage loans in North  
6 Carolina in a 12-month period ending December 31 of fifty million dollars  
7 (\$50,000,000) or more, the mortgage broker's minimum bond shall be ~~two~~  
8 ~~hundred fifty thousand dollars (\$250,000)~~, one hundred thousand dollars  
9 (\$100,000).

- 10 (2) A mortgage lender or mortgage servicer shall post a minimum surety bond  
11 of ~~one hundred fifty thousand dollars (\$150,000)~~, seventy-five thousand  
12 dollars (\$75,000). Provided, however, if a mortgage lender has originated  
13 mortgage loans in North Carolina in a 12-month period ending December 31  
14 in excess of ten million dollars (\$10,000,000) but less than fifty million  
15 dollars (\$50,000,000), then the mortgage lender's minimum bond amount  
16 shall be ~~two hundred fifty thousand dollars (\$250,000)~~, one hundred  
17 twenty-five thousand dollars (\$125,000), and if a mortgage lender has  
18 originated mortgage loans in North Carolina in a 12-month period ending  
19 December 31 of fifty million dollars (\$50,000,000) or more, then the  
20 mortgage lender's minimum bond shall be ~~five hundred thousand dollars~~  
21 ~~(\$500,000)~~, two hundred thousand dollars (\$200,000).
- 22 (3) Any increased surety bond required under subdivision (1) or (2) of this  
23 subsection shall be filed with the Commissioner on or before May 31  
24 immediately following the end of the 12-month December 31 period."

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

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

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