

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 2043
Finance Committee Substitute Adopted 6/22/06
Third Edition Engrossed 6/29/06**

Short Title: Increase Mortgage Lending Fees.

(Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

1 AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY CHANGING THE
2 REGISTRATION FEES FOR MORTGAGE LICENSING AND RENEWAL AND
3 BY AUTHORIZING THE COMMISSIONER TO PARTICIPATE IN A
4 NATIONAL LICENSING SYSTEM AND DATABASE.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 53-243.05 reads as rewritten:

8 **"§ 53-243.05. Qualifications for licensure; issuance.**

9 (a) Any person, other than an exempt person, desiring to obtain a license
10 pursuant to this Article shall make written application for licensure to the Commissioner
11 on forms prescribed by the Commissioner. In accordance with rules adopted by the
12 Commission, the application shall contain any information the Commissioner deems
13 necessary regarding the following:

- 14 (1) The applicant's name and address and social security number.
15 (2) The applicant's form and place of organization, if applicable.
16 (3) The applicant's proposed method of and locations for doing business,
17 if applicable.
18 (4) The qualifications and business history of the applicant and, if
19 applicable, the business history of any partner, officer, or director, any
20 person occupying a similar status or performing similar functions, or
21 any person directly or indirectly controlling the applicant, including:
22 (i) a description of any injunction or administrative order by any state
23 or federal authority to which the person is or has been subject; (ii) a
24 conviction of a misdemeanor involving fraudulent dealings or moral
25 turpitude or relating to any aspect of the residential mortgage lending
26 business; (iii) any felony convictions.
27 (5) With respect to an application for licensing as a mortgage banker or
28 broker, the applicant's financial condition, credit history, and business

1 history; and with respect to the application for licensing as a loan
2 officer, the applicant's credit history and business history.

- 3 (6) The applicant's consent to a federal and State criminal history record
4 check and a set of the applicant's fingerprints in a form acceptable to
5 the Commissioner. In the case of an applicant that is a corporation,
6 partnership, limited liability company, association, or trust, each
7 individual who has control of the applicant or who is the managing
8 principal or a branch manager shall consent to a federal and State
9 criminal history record check and submit a set of that individual's
10 fingerprints pursuant to this subdivision. Refusal to consent to a
11 criminal history record check constitutes grounds for the
12 Commissioner to deny licensure to the applicant as well as to any
13 entity (i) by whom or by which the applicant is employed, (ii) over
14 which the applicant has control, or (iii) as to which the applicant is the
15 current or proposed managing principal or a current or proposed
16 branch manager.

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

- 20 (1) Be at least 18 years of age.
21 (2) Have satisfactorily completed, within the three years immediately
22 preceding the date application is made, a mortgage lending
23 fundamentals course approved by the Commissioner. The course shall
24 consist of at least eight hours of classroom instruction in subjects
25 related to mortgage lending approved by the Commissioner. In
26 addition, the applicant shall have satisfactorily completed a written
27 examination approved by the Commissioner or possess residential
28 mortgage lending education or experience in residential mortgage
29 lending transactions that the Commissioner deems equivalent to the
30 course.

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

- 34 (1) Except as provided for in subdivision (1a) of this subsection, if the
35 applicant is a sole proprietor, the applicant shall have at least three
36 years of experience in residential mortgage lending or other experience
37 or competency requirements as the Commissioner may impose.
38 Experience as an exclusive mortgage broker or as a limited loan officer
39 shall not constitute mortgage-lending experience under this
40 subdivision.

- 41 (1a) If an individual applicant to be licensed as a mortgage broker meets all
42 other requirements for licensure under this section but does not meet
43 the requirements of subdivision (1) of this subsection, the individual

1 applicant may be licensed as an exclusive mortgage broker upon
2 compliance with all of the following:

3 a. Successfully complete both a residential mortgage-lending
4 course approved by the Commissioner of not less than 40 hours
5 of classroom instruction, and a written examination approved
6 by the Commissioner.

7 b. Act exclusively as a mortgage broker for a single mortgage
8 banker licensee or single exempt mortgage banker for whom the
9 broker shall be deemed an agent, who shall be responsible for
10 supervising the broker as required by this Article, who shall
11 sign the license application of the applicant, and who shall be
12 jointly and severally liable with the broker for any claims
13 arising out of the broker's mortgage lending activities.

14 c. Shall be compensated for the broker's mortgage brokering
15 activities on a basis that is not dependent upon the loan amount,
16 interest rate, fees, or other terms of the loans brokered.

17 d. Shall not handle borrower or other third-party funds in
18 connection with the brokering or closing of mortgage loans.

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

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

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

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

30 (e) Every applicant for initial licensure shall pay a filing fee ~~of not to exceed one~~
31 ~~thousand dollars (\$1,000)~~ one thousand two hundred fifty dollars (\$1,250) for licensure
32 as a mortgage broker or mortgage banker or ~~fifty dollars (\$50.00)~~ sixty-seven dollars
33 and fifty cents (\$67.50) for licensure as a loan officer or limited loan officer, in addition
34 to the actual cost of obtaining credit reports and State and national criminal history
35 record checks.

36 (f) A mortgage banker shall post a surety bond in the amount of one hundred
37 fifty thousand dollars (\$150,000), and a mortgage broker shall post a surety bond in the
38 amount of fifty thousand dollars (\$50,000). The surety bond shall be in a form
39 satisfactory to the Commissioner and shall run to the State for the benefit of any
40 claimants against the licensee to secure the faithful performance of the obligations of
41 the licensee under this Article. The aggregate liability of the surety shall not exceed the
42 principal sum of the bond. A party having a claim against the licensee may bring suit
43 directly on the surety bond, or the Commissioner may bring suit on behalf of any
44 claimants, either in one action or in successive actions. Consumer claims shall be given

1 priority in recovering from the bond. Any appropriate deposit of cash or securities shall
2 be accepted in lieu of any bond that is required. An audited financial statement from a
3 qualified lender showing a net worth of two hundred fifty thousand dollars (\$250,000)
4 or more shall be accepted in lieu of any bond required.

5 (g) Any general partner, manager of a limited liability company, or officer of a
6 corporation who individually meets the requirements under subsection (b) of this
7 section shall, upon payment of the applicable fee, meet the qualifications for licensure
8 as a loan officer subject to the provisions of subsection (i) of this section.

9 (h) Each principal office and each branch office of a mortgage broker or
10 mortgage banker licensed under the provisions of this Article shall be issued a separate
11 license. A licensed mortgage broker or mortgage banker shall file with the
12 Commissioner an application on a form prescribed by the Commissioner that identifies
13 the address of the principal office and each branch office and branch manager. A filing
14 fee of ~~not to exceed one hundred dollars (\$100.00)~~ one hundred twenty-five dollars
15 (\$125.00) shall be assessed by the Commissioner for each branch office issued a
16 license.

17 (i) If the Commissioner determines that an applicant meets the qualifications for
18 licensure and finds that the financial responsibility, character, and general fitness of the
19 applicant are such as to command the confidence of the community and to warrant
20 belief that the business will be operated honestly and fairly, the Commissioner shall
21 issue a license to the applicant. In addition, for an applicant qualifying as an exclusive
22 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage
23 banker relationship is in the public interest."

24 **SECTION 2.** G.S. 53-243.06 reads as rewritten:

25 **"§ 53-243.06. License renewal; termination.**

26 (a) All licenses issued by the Commissioner under the provisions of this Article
27 shall expire annually on the 30th day of June following issuance or on any other date
28 that the Commissioner may determine. The license shall become invalid after that date
29 unless renewed. A license may be renewed 45 days prior to the expiration date by
30 compliance with subsection (b1) of this section and by paying to the Commissioner, in
31 addition to the actual cost of obtaining credit reports and State and national criminal
32 history record checks as the Commissioner may require, a renewal fee as follows:

33 (1) Licensed mortgage bankers shall pay an annual fee of ~~not to exceed~~
34 ~~five hundred dollars (\$500.00)~~ six hundred twenty-five dollars
35 (\$625.00) and ~~one hundred dollars (\$100.00)~~ one hundred twenty-five
36 dollars (\$125.00) for each branch office.

37 (2) Licensed mortgage brokers shall pay an annual fee of ~~not to exceed~~
38 ~~five hundred dollars (\$500.00)~~ six hundred twenty-five dollars
39 (\$625.00) and ~~one hundred dollars (\$100.00)~~ one hundred twenty-five
40 dollars (\$125.00) for each branch office. Licensed exclusive mortgage
41 brokers shall pay an annual fee of ~~not to exceed five hundred dollars~~
42 ~~(\$500.00)~~ six hundred twenty-five dollars (\$625.00).

43 (3) Licensed loan officers shall pay an annual fee of ~~not to exceed fifty~~
44 ~~dollars (\$50.00)~~ sixty-seven dollars and fifty cents (\$67.50).

1 (b) If a mortgage banker or mortgage broker license is not renewed prior to the
2 applicable expiration date, then an additional two hundred fifty dollars (\$250.00) in
3 addition to the renewal fee under subsection (a) of this section shall be assessed as a late
4 fee to any renewal. If a loan officer or limited loan officer license is not renewed prior
5 to the applicable expiration date, then an additional fifty dollars (\$50.00) in addition to
6 the renewal fee under subsection (a) of this section shall be assessed as a late fee to any
7 renewal. In the event a licensee fails to obtain a reinstatement of the license within 90
8 days after the date the license expires, the Commissioner may require the licensee to
9 comply with the requirements for the initial issuance of a license under the provisions of
10 this Article.

11 (b1) When required by the Commissioner, each individual described in
12 G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal
13 history record check and a set of his or her fingerprints in a form acceptable to the
14 Commissioner. Refusal to consent to a criminal history record check may constitute
15 grounds for the Commissioner to deny renewal of the license of the person as well as
16 the license of any other person by which he or she is employed, over which he or she
17 has control, or as to which he or she is the current or proposed managing principal or a
18 current or proposed branch manager.

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

24 **SECTION 3.** Article 19A of Chapter 53 of the General Statutes is amended
25 by adding two new sections to read:

26 "**§ 53-243.17. Participation in national mortgage licensing system; licensing**
27 **proprietary software.**

28 (a) The Commissioner of Banks is authorized to participate in the formation and
29 operation of a centralized and automated licensing system and data depository funded
30 by State mortgage regulators and law enforcement agencies. Pursuant to this authority,
31 the Commissioner may:

- 32 (1) Cause funds of the Office of Commissioner of Banks to be applied to
33 the initial capitalization, organizational expenses, and operating
34 expenses of a limited liability company, nonprofit corporation or
35 foundation, or other entity created to operate the licensing system and
36 data depository and to serve as a manager or director of the entity;
- 37 (2) Enter into operating agreements, information sharing agreements,
38 interstate cooperative agreements, and technology licensing
39 agreements necessary to the organization and operation of the entity
40 and the licensing system and data depository; and
- 41 (3) Take such further actions as are reasonably necessary to give effect to
42 the provisions of this section.

1 (b) The Commissioner is authorized to enter into agreements to license the use of
2 the proprietary software owned by the Office of the Commissioner of Banks to banking,
3 mortgage, or financial services supervisory agencies of other states.

4 (c) Notwithstanding any other provision of this section, the Commissioner retains
5 full authority and discretion under this Article to license mortgage brokers, mortgage
6 bankers, loan officers, and limited loan officers and to enforce this Article to its fullest
7 extent. Nothing in this section shall be deemed to be a reduction or derogation of that
8 authority and discretion.

9 **"§ 53-243.18. Payment of fees.**

10 Payment of fees specified in this Article shall be made to the Office of
11 Commissioner of Banks or, at the election of the Commissioner, to a national mortgage
12 licensing system, agency, or enterprise designated by the Commissioner."

13 **SECTION 4.** The amount set as the maximum amount that may be charged
14 for fees in this act shall be the actual amount of the fee until the Banking Commission
15 adopts rules setting the fee at a lower rate.

16 **SECTION 5.** This act becomes effective October 1, 2006.