

April 15, 1999

S 1149. PROHIBIT PREDATORY LENDING (=H 1285). *TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, AND TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS.* Revises provisions of current law regulating prepayment penalties, application fee, discount points, etc. for consumer loans under GS 24-1.1A. Enacts new GS 24-1.1E imposing additional restrictions and limitations on high cost home loans (as defined in act). Rewrites provisions of GS 24-8 regulating interest and fees that may be changed with respect to consumer loans not exceeding \$300,000. Adds new GS 75-90 prohibiting specified unfair mortgage brokering and lending practices and providing remedies pursuant to GS 75-1.1. Effective Oct. 1, 1999.

Intro. by Cooper, Rand, and Hoyle.

Ref. to Judiciary I

GS 24, 75

June 16, 1999

S 1149. PROHIBIT PREDATORY LENDING. Intro. 4/15/99. Senate committee substitute makes the following changes to 1st edition. Adds GS 24-1.1A(b) providing that no prepayment fees may be contracted by a borrower and a lender on a home loan where the principal amount borrowed is \$150,000 or less. Deletes all other provisions of GS 24-1.1A(b).

Adds proposed GS 24-1.1A(g)(1) that places restrictions on which home loans will be subject to the deferral fee limitations set forth in subdivision (2). Provides in GS 24-1.1A(g)(2) that deferral fees for home loan may be charged only pursuant to an agreement which not only is made at the time of the deferral but also states the amount of the fee.

Amends GS 24-1.1E(a)(5) to delete insurance premiums financed by the lender as a part of the loan transaction from the definition of points and fees. Amends the definition of thresholds in GS 25-1.1E(a)(6). Deletes no oppressive mandatory arbitration clause from the limitations on a high cost home loan in GS 25-1.1E(b). Amends paragraph GS 24-1.1E relating to prohibited acts and practices to provide that a person seeking damages under the provision relating to unfair and deceptive acts may recover under this Chapter or Chapter 75, but not both. Also adds provision relating to corrections and unintentional violations that provides that a lender will not be deemed to have violated this section if within 30 days lender notifies the borrower of the compliance failure and makes appropriate restitution. Similarly, there will be no violation if the compliance failure was not intentional, resulted from a bona fide error and within 60 days after discovery of the error, the borrower is notified of the compliance failure and appropriate restitution is made.

Adds new GS 24-10.2 regarding consumer protections in consumer home loans. Defines consumer home loan as a loan in which the borrower is a natural person, the debt is incurred for personal, family or household purposes, and the loan is secured by a mortgage or deed of trust upon real estate on which there is a structure designed for occupancy by one to four families which will be occupied by the borrower as his principal dwelling. Makes it unlawful for a lender in a consumer loan to finance certain insurance premiums. Provides that no lender may knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. Provides that no lender shall recommend default on an existing loan or other prior debt so that the amount can be refinanced with the consumer home loan. Any consumer home loan violating these provisions is declared usurious and unlawful as an unfair and deceptive trade act. In a suit alleging a violation of this section, the prevailing party may be entitled to reasonable attorneys' fees, at the discretion of the presiding judge, provided that the lender willfully engaged in unlawful act or practices or the party instituting the suit knew, or should have known, that the action was frivolous and malicious.

Deletes all provisions of proposed GS 75-90 relating to unfair mortgage brokering and lending practices.

June 22, 1999

S 1149. PROHIBIT PREDATORY LENDING. Intro. 4/15/99. Senate amendment makes the following changes to 2nd edition. (1) Rewrites GS 24-1.1A(b) to provide that no prepayment fees or penalties shall be contracted by the borrower and lender with respect to a home loan in which the principal amount borrowed is \$150,000 or less; the borrower is a natural person; the debt is primarily for personal, family, or household purposes; and the loan is secured by a first mortgage or first deed of trust on real estate on which there is or is to be located a structure designed principally for occupancy of from one to four families which is or will be occupied by the borrower as a principal dwelling. (2) Amends GS 24-1.1A(g)(2)b. to define the "deferral period" in relation to the date the next installment is due under the terms of the note or the deferral agreement (underlined words added). (3) Rewrites GS 24-1.1E(a)(5) to specify that taxes and certain fees, premiums, or payments are not included in the definition of "points and fees". (4) Rewrites the definition of "thresholds" in GS 24-1.1E(a)(6) to reference total points and fees in relation to percentages of the "total loan amount" (was, principal amount of the loan). (5) Adds new GS 24-1.1E(a)(7) defining "total loan amount" in reference to the Code of Federal Regulations. (6) Deletes appropriation provision and instead directs that of funds appropriated to the Office of Commissioner of Banks for fiscal year 1999-2000, \$100,000 be used for specified purposes; makes that directive effective only if funds are appropriated for that purpose; and specifies that the section does not obligate the General Assembly to appropriate funds.

July 6, 1999

S 1149. PROHIBIT PREDATORY LENDING. Intro. 4/15/99. House committee substitute makes the following changes to 3rd edition. Provides that Legislative Research Comm'n will study this act's implementation and enforcement (was, the Attorney General and the Comm'r of Banks). Adds to topics to be studied the following: whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, now prohibited by GS 24-10.2(b). Requires report on the issue of financing credit insurance premiums to the 2000 Regular Session. Permits interim report in 2001 and requires final report to the 2002 Regular Session. Makes other technical changes.

July 8, 1999

S 1149. PROHIBIT PREDATORY LENDING. Intro. 4/15/99. House committee substitute makes the following changes to 4th edition. Provides that of funds appropriated for 1999-2000 to Dep't of Justice (was, Office of the Comm'r of Banks), \$100,000 shall be used to develop and implement public awareness and consumer counseling programs. Makes other conforming changes.