

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-401
HOUSE BILL 1182

AN ACT TO EXPAND THE USURY EXEMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-9 reads as rewritten:

"§ 24-9. ~~Loans to certain entities organized for profit not subject to claim or defense of usury.~~ Loans exempt from rate and fee limitations.

~~Notwithstanding any other provision of this Chapter or any other provision of law, any foreign or domestic corporation, limited liability company, or partnership substantially engaged in commercial pursuits for pecuniary gain may agree to pay, and any lender or other person may charge and collect from the entity, interest, fees, and other charges at any rate which the entity may agree or be required to pay and as to any such transaction the claim or defense of usury by the entity and its successors or anyone else in its behalf is prohibited.~~

(a) As used in this section, the following definitions apply:

(1) "Bank" means a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States. However, the term "bank" does not include any subsidiary or affiliate of a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States that is not itself a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.

(2) "Equity line of credit" means a loan, other than an exempt loan, that satisfies all of the following conditions:

a. The lender is a bank.

b. The loan is a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan, and the loan is secured by a mortgage or deed of trust on real property.

c. At any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide credit advances up to the agreed aggregate credit limit. As used in this sub-subdivision, "lender is obligated" means that the lender is contractually bound to provide credit advances. However, the equity line of credit and the lender's obligation to make credit advances shall be subject to the provisions of section 226.5b(f) of Title 12 of the Code of Federal Regulations and the official commentaries and rulings issued pursuant thereto, as the same may be amended from time to time, without regard to whether that section of the Code of Federal Regulations would otherwise apply to the loan.

d. Any repayments of principal by the borrower within the specified time will reduce the amount of advances counted against the aggregate credit limit.

e. The initial loan amount is ten thousand dollars (\$10,000) or more. On January 1, 2008, and on January 1 every five years

thereafter, the minimum initial loan amount sufficient to qualify a loan closed on or after that date as an equity line of credit under this section shall be increased by one thousand dollars (\$1,000). For example, a loan closed on or after January 1, 2008, but prior to January 1, 2013, shall not be considered an equity line of credit unless the initial loan amount is eleven thousand dollars (\$11,000) or more, and a loan closed on or after January 1, 2013, but prior to January 1, 2018, shall not be considered an equity line of credit unless the initial loan amount is twelve thousand dollars (\$12,000) or more.

An equity line of credit shall cease being an equity line of credit subject to the provisions of this section from and after the date the loan amount is reduced below the equity line of credit's initial loan amount unless (i) the loan amount was reduced for one or more of the reasons or pursuant to one or more of the methods specified in section 226.5b(f)(2) or section 226.5b(f)(3)(vi) of Title 12 of the Code of Federal Regulations and the official commentaries and rulings issued pursuant thereto, as the same may be amended from time to time, without regard to whether that section of the Code of Federal Regulations would otherwise apply to the loan, or (ii) the loan amount was reduced at the request of the borrower because the borrower was engaged in the refinancing of a loan secured by a superior lien on the same real property and the reduction in the loan amount of the equity line of credit is no greater than the difference between the loan amount secured by the refinancing mortgage and the outstanding principle balance of the loan being refinanced.

(3) "Exempt loan" means a loan in which:

- a. The loan amount is three hundred thousand dollars (\$300,000) or more; or
- b. The borrower is a person other than a natural person; or
- c. The loan is obtained by a natural person primarily for a purpose other than a personal, family, or household purpose. Whether a loan is obtained primarily for a purpose other than a personal, family, or household purpose shall be guided by the standards established by the federal Truth In Lending Act (Title 1 of Public Law 90-321; 82 Stat. 146; 15 U.S.C. § 160, et seq.) and all regulations and rulings issued pursuant to that Act, as the same may be amended from time to time.

(4) "Loan" means an advance of money or an extension of credit that is made to or on behalf of a borrower, the principal amount of which the borrower has an obligation to pay the lender. The term includes revolving lines of credit, open-end loans, revolving credit plans, and revolving credit card plans in addition to closed-end loans.

(5) "Loan amount" means the principal amount of a loan or, in the case of a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan, the initial maximum credit limit.

(b) Notwithstanding any other provision of this Chapter or any other provision of State law, any borrower in an exempt loan transaction may agree to pay, and any lender, including a bank, may charge and collect from the borrower, interest at any rate and fees and other charges in any amount that the borrower agrees to pay. A claim or defense of usury is prohibited in an exempt loan transaction.

(c) The provisions of G.S. 24-1.2A, 24-11, and 24-11.1 shall not apply to equity lines of credit offered by banks. Except as provided in this subsection and notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate and fees and

other charges in any amount that the borrower agrees to pay in connection with an equity line of credit. However, an equity line of credit made by a bank shall be subject to the following, to the extent otherwise applicable:

- (1) The provisions of G.S. 24-1.1E (relating to restrictions and limitations on high-cost home loans).
- (2) The provisions of G.S. 24-10.2 (relating to consumer protections in certain home loans).
- (3) Notwithstanding the limitation against prepayment penalties contained in G.S. 45-81(c), a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:
 - a. Prepayment fees or penalties may be charged only with respect to the prepayment of that portion of the outstanding balance the borrower voluntarily agrees to repay at a fixed interest rate over a specified time;
 - b. No prepayment fees or penalties may be charged for prepayments made more than 30 months after the borrower voluntarily exercises the right or option to repay that portion of the outstanding balance of the equity line of credit at a fixed interest rate over a specified period of time; and
 - c. The prepayment fees or penalties charged with respect to that portion of the outstanding balance to be repaid at a fixed rate over a specified period of time may not exceed, in the aggregate, more than two percent (2%) of the amount prepaid.
Otherwise, no prepayment fees or penalties may be charged or collected by the bank with respect to an equity line of credit.

(d) The provisions of G.S. 24-11 and G.S. 24-11.1 shall not apply to revolving credit card plans offered by banks. Notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate, as well as fees and other charges in any amount that the borrower agrees to pay in connection with a revolving credit card plan. This subsection (d) shall not apply to a revolving credit card plan that is secured by a mortgage or deed of trust on real property."

SECTION 2. G.S. 24-8(b) is repealed.

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

- "(a) Definitions. – The following definitions apply for the purposes of this section:
- (1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.
 - (2) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).
 - (3) "Bona fide loan discount points" means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

- (4) A "high-cost home loan" means a loan other than ~~an open-end credit plan or a reverse mortgage transaction~~ in which:
- a. The principal amount of the loan (or, in the case of an open-end credit plan, the borrower's initial maximum credit limit) does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae, or (ii) three hundred thousand dollars (\$300,000);
 - b. The borrower is a natural person;
 - c. The debt is incurred by the borrower primarily for personal, family, or household purposes;
 - d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and
 - e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.
- (5) "Points and fees" ~~means~~ is defined as provided in this subdivision.
- a. The term includes all of the following:
 1. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
 2. All charges 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. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision ~~a.a.1.~~ or ~~b.a.2.~~ of this subdivision;
 4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents;
 - b. "Points and fees" shall 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 fire 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 that are charged at or before loan closing, 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.

(6) "Thresholds" means:

a. Without regard to whether the loan transaction is or may be a "residential mortgage transaction" (as the term "residential mortgage transaction" is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees payable by the borrower at or before the loan closing exceed five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars (\$1,000), if the total loan amount is less than twenty thousand dollars (\$20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. ~~Prepayment~~ For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect

any prepayment fees or penalties more than 30 months after the loan closing; or

4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, 30 months after the date the borrower voluntarily exercises that right or option; or

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

(7) ~~Total~~ For a closed-end loan, "total loan amount" means the same as the term "total loan amount" as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto. For an open-end credit plan, "total loan amount" means the borrower's initial maximum credit limit."

SECTION 4. G.S. 24-10.2(a) reads as rewritten:

"(a) For purposes of this section, the term "consumer home loan" ~~shall mean a loan~~ means a loan, including an open-end credit plan but excluding a reverse mortgage transaction, in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling."

SECTION 5. This act becomes effective October 1, 2003, and applies to contracts entered into or renewed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:35 p.m. this 7th day of August, 2003