

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 242

Short Title: Credit Card Deregulation and Banks.

(Public)

Sponsors: Representative Hege.

Referred to: Commerce.

March 14, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CREDIT CARD BANKS, TO AMEND THE RATE OF INTEREST AND FEES APPLICABLE TO CREDIT CARD ACCOUNTS, OPEN-END CREDIT, AND REVOLVING CHARGE ACCOUNTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-11 reads as rewritten:

~~"§24 of credit under an open-end credit or similar plan (including revolving credit card plans, and revolving charge accounts, but excluding any loan made directly by a lender under a check loan, check credit or other such plan) under which no service charge shall be imposed upon the consumer or debtor if the account is paid in full within 25 days from the billing date, but upon which there may be imposed an annual charge not to exceed twenty dollars (\$20.00), there may be charged and collected interest, finance charges or other fees at a rate in the aggregate not to exceed one and one-half percent (1 1/2%) per month computed on the unpaid portion of the balance of the previous month less payments or credit within the billing cycle or the average daily balance outstanding during the current billing period. No person, firm or corporation may charge a discount or fee in excess of six percent (6%) of the principal amount of the accounts acquired from or through any vendors or others providing services who participate in such plan.~~

(b) ~~On revolving credit loans (including check loans, check credit or other revolving credit plans whereby a bank, banking institution or other lending agency makes direct loans to a borrower), if agreed to in writing by the borrower, such lender~~

1 may collect interest and service charges by application of a monthly periodic rate
2 computed on the average daily balance outstanding during the billing period, such rate
3 not to exceed one and one-half percent (1 1/2%).

4 (e) Any extension of credit under an open-end or similar plan under which there
5 is charged a monthly periodic rate greater than one and one-quarter percent (1 1/4%)
6 may not be secured by real or personal property or any other thing of value, provided,
7 that this subsection shall not apply to consumer credit sales regulated by Chapter 25A,
8 the Retail Installment Sales Act; provided further, that in any action initiated for the
9 possession of property in which a security interest has been taken, a judgement for the
10 possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-
11 105(6)) for which the cash price was one hundred dollars (\$100.00) or more.

12 (d) The term "billing date" shall mean any date selected by the creditor and the
13 bill for the balance of the account must be mailed to the customer at least 14 days prior
14 to the date specified in the statement as being the date by which payment of the new
15 balance must be made in order to avoid the imposition of any finance charge.

16 (e) An annual charge pursuant to this section upon an existing credit card account
17 upon which an annual charge has not previously been imposed may not be imposed
18 unless the lender has given the cardholder at least 30 days notice of the proposed
19 charge, and has advised the cardholder of his right not to accept the new charge. This
20 notice shall be bold and conspicuous, and shall be on the face of the periodic billing
21 statement or on a separate statement which is clearly noted on the face of the periodic
22 billing statement provided to the cardholder. If the cardholder does not accept the new
23 charge upon an existing credit card account, the lender may require that the cardholder
24 make no further use of the account beyond the 30-day period in order to avoid paying
25 the annual charge, but the cardholder shall be entitled to pay off any remaining balance
26 according to the terms of the credit agreement. Nothing in this subsection shall limit the
27 lender from decreasing any rates or fees to the cardholder forthwith. Should any
28 cardholder within 12 months of the initial imposition of an annual charge rescind his
29 credit card contract and surrender all cards issued under the contract to the lender, he
30 shall be entitled to a prorated refund of the annual fee previously charged, credited to
31 the cardholder's credit card account.

32 **§ 24-11. Open-end credit other than credit card accounts.**

33 (a) The following definitions apply in this section:

34 (1) Open-end credit. Credit extended by a creditor under a plan in which
35 the creditor reasonably contemplates repeated transactions, the creditor
36 may impose a finance charge from time to time on an outstanding
37 unpaid balance, and the amount of credit that may be extended to the
38 debtor during the term of the plan, up to any limit agreed upon by the
39 parties, is generally made available to the extent that any outstanding
40 balance is repaid.

41 (2) Consumer open-end credit. Open-end credit that is extended for
42 personal, family, or household purposes in an amount of twenty-five
43 thousand dollars (\$25,000) or less.

1 (3) Domestic lender. A bank, savings and loan association, savings bank,
2 or credit union organized under the laws of this State or the United
3 States which has its principal place of business in this State.

4 (4) Other lenders. Persons, corporations, partnerships, or other entities
5 other than a domestic lender, that extend open-end credit.

6 (b) On the extension of open-end credit, whether secured or unsecured, a
7 domestic lender may charge and collect finance charges and interest, transaction fees,
8 overlimit charges, late payment fees or delinquency charges, charges for each return of
9 a dishonored check or draft in payment of any portion of an outstanding balance,
10 membership fees, whether assessed on an annual or other periodic basis, and any other
11 fees and charges. In addition, an extension of open-end credit, whether secured or
12 unsecured, by a domestic lender may provide for such terms and conditions as may be
13 agreed upon by the parties. All fees and charges authorized by this section are material
14 to the determination of interest under the most favored lender doctrine and under section
15 85 of the National Bank Act, 12 U.S.C. § 85, or section 521 of the Depository
16 Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. § 1831d.

17 (c) On the extension of open-end credit which is not secured by real or personal
18 property or any other thing of value, other lenders may charge and collect interest,
19 finance charges or other fees at a rate in the aggregate not to exceed one and one-half
20 percent (1 1/2%) per month computed on the unpaid portion of the balance of the
21 previous month less payments or credit within the billing cycle or the average daily
22 balance outstanding during the current billing period.

23 (d) On the extension of open-end credit which is secured by real or personal
24 property or any other thing of value, other lenders may charge and collect a monthly
25 periodic rate not to exceed one and one-quarter percent (1 1/4%).

26 (e) No interest or finance charge may be imposed upon an extension of secured
27 or unsecured open-end credit, other than a direct loan to a debtor, by other lenders if the
28 account is paid in full within 25 days from the billing date.

29 (f) If a creditor proposes an amendment to a consumer open-end credit plan
30 which has the effect of increasing any charges, rate of interest, or fee to be paid by the
31 debtor and the plan is subject to the requirements of the federal Truth-in-Lending Act
32 (Title 1 of the Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.), as amended,
33 and as implemented by Regulation Z, 12 C.F.R. § 226 of the Federal Reserve System,
34 the creditor shall notify the debtor in writing at least 30 days before the effective date of
35 the amendment of the amended terms and of the debtor's right to cancel the plan. The
36 debtor may cancel the plan and pay the account in accordance with the terms and
37 conditions of the plan that are then in effect. Cancellation by the debtor is effective
38 upon receipt by the creditor of written notification of cancellation at an address
39 designated by the creditor. Failure to cancel the plan before the effective date of the
40 amendment constitutes consent by the debtor to the amendment.

41 (g) This section does not apply to credit cards and credit card accounts as defined
42 in G.S. 53-244."

43 Sec. 2. Chapter 53 of the General Statutes is amended by adding a new
44 Article to read:

"ARTICLE 21.**"CREDIT CARD AND CREDIT CARD BANK ACT.****"§ 53-243. Title.**

This Article shall be known and may be cited as the North Carolina Credit Card and Credit Card Bank Act.

"§ 53-244. Definitions.

The following definitions apply in this Article:

- (1) Banking Commission. The Banking Commission of this State.
- (2) Commissioner. The Commissioner of Banks of this State.
- (3) Control. Defined in section 2(a)(2) of the Bank Holding Company Act of 1956, 12 U.S.C. § 1841(a)(2), as amended.
- (4) Credit card. Defined in Title 1 of the Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq., as amended, and as implemented by section 226.2(a) of Regulation Z issued by the Board of Governors of the Federal Reserve System.
- (5) Credit card account. An arrangement or agreement between a domestic lender, credit card bank, or other credit card issuer and a debtor pursuant to which open-end credit is accessed by a credit card.
- (6) Credit card bank. A bank organized under the laws of the United States whose principal place of business is located in this State or a bank organized under the laws of this State, the activities of which are limited to those authorized in G.S. 53-246.
- (7) Domestic lender. A bank, savings and loan association, savings bank, or credit union organized under the laws of this State or the United States which is authorized by law to accept deposits and make loans and has its principal place of business in this State.
- (8) Foreign lender. A bank, savings and loan association, savings bank, or credit union organized under the laws of the United States, any state other than this State, or the District of Columbia, which is authorized by law to accept deposits and make loans and has its principal place of business outside this State.
- (9) Holding company. A company that controls a domestic or foreign lender.
- (10) Open-end credit. Credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the debtor during the term of the plan, up to any limit agreed upon by the parties, is generally made available to the extent that any outstanding balance is repaid.
- (11) Other credit card issuer. A corporation, partnership, or other entity, other than a domestic lender, foreign lender, or credit card bank, that issues a credit card.

1 (12) Qualifying organization. A corporation, partnership, or other entity
 2 that maintains an office in this State at which are employed at least 200
 3 residents of this State who are directly engaged in providing the
 4 following services, either for the qualifying organization or on behalf
 5 of other domestic or foreign lenders, credit card banks, or other credit
 6 card issuers.

7 a. The distribution of credit cards or other devices designed and
 8 effective to access credit card accounts.

9 b. The preparation of periodic statements of amounts due under
 10 credit card accounts.

11 c. The receipt from credit card holders of amounts paid with
 12 respect to credit card accounts.

13 d. The maintenance of financial records reflecting the status of
 14 credit card accounts from time to time.

15 The term 'qualifying organization' also includes any domestic bank,
 16 credit card bank, or other credit card issuer that satisfies the
 17 employment and activities requirements set forth in this subdivision.

18 **"§ 53-245. Credit card banks authorized.**

19 Subject to the provisions of this Article, a domestic lender, foreign lender, or holding
 20 company may organize, own, and control a credit card bank. Nothing contained in this
 21 Article shall be construed to amend or alter the provisions of the North Carolina
 22 Regional Reciprocal Bank Act, G.S. 53-209 et seq., or to authorize bank holding
 23 companies to acquire, own, or control any bank as defined in section 2(c) of the Bank
 24 Holding Company Act of 1956, 12 U.S.C. § 1841(c), as amended.

25 **"§ 53-246. Credit card banks: creation, powers, and duties.**

26 (a) A credit card bank:

27 (1) Shall be organized under the laws of the United States or of this State.

28 (2) May engage only in credit card operations, which may include the
 29 business of soliciting, processing, and extending credit pursuant to
 30 credit card accounts and conducting other activities as may be
 31 incidental to this business.

32 (3) May not accept demand deposits or deposits that the depositor may
 33 withdraw by check or similar means or to pay to third parties.

34 (4) May not accept a savings or time deposit of less than one hundred
 35 thousand dollars (\$100,000).

36 (5) May maintain only one office that accepts deposits.

37 (6) May not engage in the business of making commercial loans.

38 (7) Shall operate in a manner that is not likely to attract customers from
 39 the general public in this State to the substantial detriment of other
 40 domestic lenders.

41 (8) If organized under State law, shall meet the capital requirements set
 42 forth in G.S. 53-2(4).

43 (9) Shall have, within one year after the date it begins doing business, not
 44 less than 50 employees located in this State devoted to its credit card

1 activities; provided, however, that where the credit card bank contracts
2 with a qualifying organization for services incidental to offering credit
3 card accounts, the minimum number of employees located in this State
4 shall be determined by the Commissioner. The minimum number
5 determined by the Commissioner shall be sufficient to assure the
6 continued and substantive presence of the credit card bank in this State
7 for the purpose of conducting its corporate affairs and performing the
8 credit underwriting function and such other activities not subject to
9 contract with the qualifying organization as may be incidental to its
10 servicing of credit card accounts.

11 (b) The Banking Commission may make such rules relating to the organization,
12 operation and supervision of credit card banks organized pursuant to the laws of this
13 State as may be consistent with this Article. Credit card banks organized under the laws
14 of the United States are not subject to the supervisory authority or the rules and
15 regulations of the Banking Commission.

16 (c) A domestic lender or other credit card issuer is not required to establish a
17 credit card bank to issue credit cards and create credit card accounts.

18 (d) All shares of capital stock, except directors' qualifying shares, if any, of a
19 credit card bank shall be owned solely by a domestic lender, foreign lender, or a holding
20 company.

21 **§ 53-247. Finance charges, interest, charges and fees authorized to be charged by**
22 **domestic lenders and credit card banks.**

23 Notwithstanding any other provisions of law, a domestic lender or credit card bank
24 may contract for and collect in connection with a credit card account finance charges
25 and interest, transaction fees, overlimit charges, late payment fees or delinquency
26 charges, charges for each return of a dishonored check or draft in payment of any
27 portion of an outstanding balance, membership fees, whether assessed on an annual or
28 other periodic basis, and other fees and charges and may provide for such terms and
29 conditions as may be agreed upon by the parties. All fees and charges authorized by
30 this section are material to the determination of interest under the most favored lender
31 doctrine and under section 85 of the National Bank Act, 12 U.S.C. § 85, or section 521
32 of the Depository Institutions and Monetary Control Act of 1980, 12 U.S.C. § 1831d. If
33 an amendment to a credit card account has the effect of increasing any charge, rate of
34 interest or fee to be paid by the debtor, the creditor shall notify the debtor in writing at
35 least 30 days before the effective date of the amendment of the amended terms and of
36 the debtor's right to surrender the credit card or cards. If, as directed by the creditor, the
37 debtor surrenders the credit card or cards before the effective date of the amendment the
38 debtor shall pay the account in accordance with the terms and conditions of the account
39 as are then in effect. Failure by the debtor to surrender the credit card or cards as
40 directed by the creditor constitutes consent by the debtor to the amendment. No interest
41 or finance charge may be imposed by a domestic lender or credit card bank upon an
42 extension of open-end credit, other than a direct loan to a debtor, made under a credit
43 card account if the account is paid in full within 25 days from the billing date.

1 **"§ 53-248. Finance charges, interest and fees authorized to be charged by other**
2 **credit card issuers.**

3 Other credit card issuers may charge and collect interest, finance charges or other
4 fees at a rate in the aggregate not to exceed one and one-half percent (1 1/2%) per
5 month in connection with a credit card account which is not secured by real or personal
6 property or any other thing of value and at a rate in the aggregate not to exceed one and
7 one-quarter percent (1 1/4%) per month in connection with a credit card account which
8 is secured by real or personal property or any other thing of value.

9 No interest or finance charge may be imposed by other credit issuers upon an
10 extension of open-end credit, other than a direct loan to a debtor, made under a credit
11 card account if the account is paid in full within 25 days from the billing date.

12 Other credit card issuers may impose an annual charge not to exceed twenty dollars
13 (\$20.00) on a credit card account.

14 **"§ 53-249. Discount fees.**

15 A creditor may charge discounts and fees as agreed upon by the creditor and
16 merchants and others who provide goods or services and who participate in the
17 creditor's credit card plan."

18 Sec. 3. G.S. 25A-11 reads as rewritten:

19 **"§ 25A-11. 'Revolving charge account contract' defined.**

20 'Revolving charge account contract' means an agreement or understanding between a
21 seller and a buyer under which consumer credit sales may be made from time to time,
22 under the terms of which a finance charge or service charge is to be computed in
23 relation to the buyer's unpaid balance from time to time, and under which the buyer has
24 the privilege of paying the balance in full or in installments. ~~This definition shall not affect~~
25 ~~the meaning of the term "revolving charge account" appearing in G.S. 24-11(a)."~~

26 Sec. 4. G.S. 25A-14 reads as rewritten:

27 **"§ 25A-14. Finance charge rates for revolving charge account contracts.**

28 ~~(a) The finance charge rate for a consumer credit sale made pursuant to a~~
29 ~~revolving charge account contract may not exceed the rates provided for revolving~~
30 ~~credit by G.S. 24-11(a). The annual fee provided in G.S. 24-11(a) may not be imposed.~~

31 (a) Notwithstanding any other provision of law, on the extension of consumer
32 credit made pursuant to a revolving charge account contract under which no finance
33 charge shall be imposed upon the consumer or debtor if the account is paid in full within
34 25 days from the billing date, there may be charged a finance charge at a rate not to
35 exceed one and three-quarters percent (1 3/4%) per month computed on the unpaid
36 portion of the balance of the previous month less payments or credit within the billing
37 cycle or the average daily balance outstanding during the current billing period;
38 provided, however, that a minimum charge not in excess of fifty cents (50¢) may be
39 charged and collected upon the unpaid balance of such contract, and provided, further,
40 that an annual fee may not be imposed upon such contract.

41 (b) In the event the revolving charge account contract is secured in whole or in
42 part by a security interest in real property, then the finance-charge rate shall not exceed
43 the rate set out in G.S. 25A-15(d).

1 (c) No default or deferral charge shall be imposed by the seller in connection
2 with a revolving charge-account ~~contract, except as specifically provided for in G.S. 24-~~
3 ~~H(a)-contract."~~

4 Sec. 5. This act is effective upon ratification.