

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 332
Second Edition Engrossed 4/26/95
House Committee Substitute Favorable 6/8/95
House Committee Substitute #2 Favorable 6/14/95
House Committee Substitute #3 Favorable 6/21/95

Short Title: Amend Certain Loan Procedures.

(Public)

Sponsors:

Referred to:

March 8, 1995

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW LENDERS TO COLLECT FEES, INTEREST, AND CHARGES
2 FOR CERTAIN LOANS AND EXTENSIONS OF CREDIT IN AMOUNTS
3 AGREED UPON BY THE PARTIES, WITH NO STATUTORY MAXIMUM
4 LIMIT, AND TO AUTHORIZE COMPUTATION OF REBATES BY THE SIMPLE
5 INTEREST METHOD ON CONTRACTS GOVERNED BY THE RETAIL
6 INSTALLMENT SALES ACT.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 24-1.1 is amended by adding two new subsections to read:

10 "(g) Notwithstanding subsections (d) and (e) of this section, a State or federally
11 chartered bank, savings bank, and savings and loan association may charge a party to a
12 loan or extension of credit governed by this section a fee for the modification, renewal,
13 extension or amendment of any terms of the loan or extension of credit, such fee not to
14 exceed the greater of: (i) one percent (1%) of the outstanding balance at the time of the
15 modification, renewal, extension, or amendment of terms, or (ii) one hundred dollars
16 (\$100.00).

1 (h) Notwithstanding subsections (d) and (e) of this section, a State or federally
2 chartered bank, savings bank, and savings and loan association may charge a party to a
3 loan or extension of credit not secured by real property governed by this section an
4 origination fee not to exceed the greater of: (i) one percent (1%) of the principal
5 advanced or committed, or (ii) one hundred dollars (\$100.00)."

6 Sec. 2. G.S. 24-1.2 is repealed.

7 Sec. 3. G.S. 24-1.2A reads as rewritten:

8 **"§ 24-1.2A. Equity lines of credit.**

9 (a) Notwithstanding Except as provided in subsection (c) of this section and
10 notwithstanding any other provision of this Chapter, the parties to an equity line of credit,
11 as defined in G.S. 45-81, may contract in writing for interest at rates which shall not
12 exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided,
13 however, that the parties may contract for interest rates which shall be adjustable or
14 variable, so long as for adjustable or variable rate contracts the rate in effect for a given
15 period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c)
16 for the same period.

17 (b) Fees Except as provided in subsection (c) of this section, fees may be charged
18 on equity lines of credit which in the aggregate, over the life of the contract based on the
19 maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10.
20 Any lender may charge a party to a loan or extension of credit governed by this section a
21 fee for the modification, renewal, extension, or amendment of any terms of the loan or
22 extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4
23 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or
24 amendment of terms, or fifty dollars (\$50.00).

25 (c) State and federally chartered banks, savings banks, and savings and loan
26 associations may charge a party to an equity line of credit interest and fees as agreed
27 upon in writing by the parties. The parties may contract for interest rates which are fixed,
28 adjustable, or variable."

29 Sec. 4. G.S. 24-9 reads as rewritten:

30 **"§ 24-9. Loans to corporations organized for profit not subject to claim or defense**
31 **or usury.**

32 Notwithstanding any other provision of this Chapter or any other provision of law, any
33 foreign or domestic corporation substantially engaged in commercial, manufacturing or
34 industrial pursuits for pecuniary gain may agree to pay, and any lender may charge and
35 collect from such corporation, interest ~~at any rate and fees~~ which such corporation may
36 agree to pay in writing, and as to any such transaction the claim or defense of usury by
37 such corporation and its successors or anyone else in its behalf is prohibited."

38 Sec. 5. G.S. 24-11(b) reads as rewritten:

39 "(b) On revolving credit loans (including check loans, check credit or other
40 revolving credit plans whereby a ~~bank, banking institution or other~~ lending agency makes
41 direct loans to a borrower), if agreed to in writing by the borrower, such lender may
42 collect interest and service charges by application of a monthly periodic rate computed on

1 the average daily balance outstanding during the billing period, such rate not to exceed
2 one and one-half percent (1 1/2%)."

3 Sec. 6. G.S. 24-10.1(a) reads as rewritten:

4 "(a) Subject to the limitations contained in subsection (b) of this section, any lender
5 may charge a party to a loan or extension of credit governed by the provisions of G.S. 24-
6 1.1, 24-1.2, or 24-1.1A-24-1.1 or G.S. 24-1.1A a late payment charge as agreed upon by the
7 parties in the loan contract."

8 Sec. 7. Article 1 of Chapter 24 of the General Statutes is amended by adding a
9 new section to read:

10 "**§ 24-11A. Open-end credit for certain lenders.**

11 (a) This section applies to open-end credit extended only by State or federally
12 chartered banks, savings banks, and savings and loan associations.

13 (b) The term 'open-end credit' means credit extended by a creditor under a plan in
14 which the creditor reasonably contemplates repeated transactions, the creditor may
15 impose a finance charge from time to time on an outstanding unpaid balance, and the
16 amount of credit that may be extended to the debtor during the term of the plan, up to any
17 limit agreed upon by the parties, is generally made available to the extent that any
18 outstanding balance is repaid. The term 'open-end credit' includes revolving credit card
19 plans, revolving charge accounts, and revolving credit loans made directly by a lender
20 under a check loan, check credit, or other similar plan.

21 (c) On the extension of open-end credit, whether secured or unsecured, a bank,
22 savings bank, and savings and loan association may charge and collect finance charges,
23 interest, and fees as agreed upon by the parties. An extension of open-end credit may
24 provide for the terms and conditions agreed upon by the parties.

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

28 (e) Any person, firm, or corporation may charge discounts and fees agreed upon
29 by the parties on accounts acquired from or through vendors or others providing services
30 under a credit card plan.

31 (f) All fees and charges authorized by this section are deemed to be interest and
32 are material to the determination of the rate of interest for purposes of (i) 12 U.S.C. § 85,
33 the National Bank Act, (ii) 12 U.S.C. § 183(d), the Federal Deposit Insurance Act, (iii) 12
34 U.S.C. § 1463(g), the Federal Savings and Loan Act, and (iv) 12 U.S.C. § 1785(g), the
35 Federal Credit Union Act, as may be amended."

36 Sec. 8. G.S. 25A-14(a) reads as rewritten:

37 ~~"(a) The finance charge rate and either the annual charge or the monthly service~~
38 ~~charge for a consumer credit sale made under a revolving charge account contract may~~
39 ~~not exceed the rates and charge provided for revolving credit by G.S. 24-11. The finance~~
40 ~~charge rate for a consumer credit sale made under a revolving charge account contract~~
41 ~~may not exceed twenty-one percent (21%) per annum. The annual charge or monthly~~
42 ~~service charge for a consumer credit sale made under a revolving charge account contract~~
43 ~~may not exceed the charge set forth for the revolving credit in G.S. 24-11."~~

1 Sec. 9. G.S. 25A-32 reads as rewritten:

2 **"§ 25A-32. Rebates on prepayment.**

3 Notwithstanding any provision in a consumer credit installment sale contract to the
4 contrary, any buyer may satisfy the debt in full at any time before maturity, and in so
5 satisfying such debt, shall receive a rebate, the amount of which shall be computed by the
6 simple interest method or under the 'rule of 78's, -78's.' A rebate determined by the 'rule of
7 78's' shall be computed as follows:

8 'The amount of such rebate shall represent as great a proportion of the finance charge
9 ~~(less a prepayment charge of ten percent (10%) of the unpaid balance, not to exceed twenty five~~
10 ~~dollars (\$25.00))~~ as the sum of the periodical time balances after the date of prepayment in
11 full bears to the sum of all the periodical time balances under the schedule of payments in
12 the original contract.' No rebate is required if the amount thereof is less than one dollar
13 (\$1.00).

14 A prepayment charge of ten percent (10%) of the unpaid balance, not to exceed fifty
15 dollars (\$50.00), may be imposed when the debt is satisfied before maturity and a rebate
16 is computed by the simple interest method or under the 'rule of 78's'.

17 If the prepayment is made otherwise than on the due date of an installment, it shall be
18 deemed to have been made on the installment due date nearest in time to the actual date
19 of payment.

20 If a seller obtains a judgment on a debt arising out of a consumer credit installment
21 sale or the seller repossesses the collateral securing the debt, the seller shall credit the
22 buyer with a rebate as if the payment in full had been made on the date the judgment was
23 obtained or 15 days after the repossession occurred. If the seller obtains a judgment and
24 repossesses the collateral, the seller shall credit the buyer with a rebate as if payment in
25 full had been made on the date of the judgment or 15 days after the repossession,
26 whichever occurs earlier."

27 Sec. 10. The Commissioner of Banks shall study the impact on the banking
28 industry and the consuming public of the provisions of this act.

29 Sec. 11. This act becomes effective July 1, 1995, and applies to loans and
30 extension of credit made, renewed, extended, or modified on or after that date. Sections
31 3, 5, and 7 of this act shall expire on July 1, 1999.