

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 542

Short Title: Amend Certain Loan Procedures.

(Public)

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Sponsors: Representative Tallent.

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Referred to: Financial Institutions, if favorable, Finance.

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March 23, 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 reads as rewritten:

10 **"§ 24-1.1. Contract rates and fees.**

11 (a) Except as otherwise provided in this Chapter or other applicable law, the  
12 parties to a loan, purchase money loan, advance, commitment for a loan or forbearance  
13 other than a credit card, open-end, or similar loan may contract in writing for the payment  
14 of interest not in excess of:

- 15 (1) Where the principal amount is twenty-five thousand dollars (\$25,000) or  
16 less, the rate set under subsection (c) of this section; or  
17 (2) Any rate agreed upon by the parties where the principal amount is more  
18 than twenty-five thousand dollars (\$25,000).

19 (b) As used in this section, interest shall not be deemed in excess of the rates  
20 provided where interest is computed monthly on the outstanding principal balance and is

1 collected not more than 31 days in advance of its due date. Nothing in this section shall  
2 be construed to authorize the charging of interest on committed funds prior to the  
3 disbursement of said funds.

4 (c) On the fifteenth day of each month, the Commissioner of Banks shall  
5 announce and publish the maximum rate of interest permitted by subdivision (1) of this  
6 section on that date. Such rate shall be the latest published noncompetitive rate for U.S.  
7 Treasury bills with a six-month maturity as of the fifteenth day of the month plus six  
8 percent (6%), rounded upward or downward, as the case may be, to the nearest one-half  
9 of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no  
10 nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to  
11 the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the  
12 maximum rate permitted for the term of loans made under this section during the  
13 following calendar month when the parties to such loans have agreed that the rate of  
14 interest to be charged by the lender and paid by the borrower shall not vary or be adjusted  
15 during the term of the loan. The parties to a loan made under this section may agree to a  
16 rate of interest which shall vary or be adjusted during the term of the loan in which case  
17 the maximum rate of interest permitted on such loans during a month during the term of  
18 the loan shall be the rate announced by the Commissioner in the preceding calendar  
19 month.

20 (d) Any lender may charge a party to a loan or extension of credit governed by this  
21 section a fee as agreed upon by the parties for the modification, renewal, extension, or  
22 amendment of any terms of the loan or extension of credit, ~~such fee not to exceed the greater~~  
23 ~~of one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the~~  
24 ~~modification, renewal, extension, or amendment of terms, or fifty dollars (\$50.00). credit.~~

25 (e) Any lender may charge a party to a loan or extension of credit not secured by  
26 real property governed by this section an origination fee ~~not to exceed the greater of one~~  
27 ~~quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars (\$50.00) as agreed~~  
28 upon by the parties.

29 (f) This section shall not be construed to limit fees on loans or extensions of credit  
30 in excess of three hundred thousand dollars (\$300,000)."

31 Sec. 2. G.S. 24-1.2 (7) reads as rewritten:

32 "(7) Any lender may charge a party to a loan or extension of credit governed  
33 by this section a fee as agreed upon by the parties for the modification,  
34 renewal, extension, or amendment of any terms of the loan or extension  
35 of credit, ~~such fee not to exceed the greater of one quarter of one percent (1/4~~  
36 ~~of 1%) of the balance outstanding at the time of the modification, renewal,~~  
37 ~~extension, or amendment of terms, or fifty dollars (\$50.00). credit."~~

38 Sec. 3. G.S. 24-1.2(8) reads as rewritten:

39 "(8) Any lender may charge a party to a loan or extension of credit not  
40 secured by real property governed by this section an origination fee as  
41 agreed upon by the parties. ~~not to exceed the greater of one quarter of one~~  
42 ~~percent (1/4 of 1%) of the outstanding balance or fifty dollars (\$50.00)."~~

43 Sec. 4. G.S. 24-1.2A reads as rewritten:

1 **"§ 24-1.2A. Equity lines of credit.**

2 (a) Notwithstanding any other provision of this Chapter, the parties to an equity  
3 line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which  
4 shall not exceed the maximum rates permitted under G.S. 24-1.2(2a); provided, however, that the  
5 as agreed upon by the parties. The parties may contract for interest rates which shall be  
6 adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a  
7 given period does not exceed the maximum rate permitted under G.S. 24-1.2(2a) for the same  
8 period. are fixed, adjustable, or variable.

9 (b) Fees may be charged on equity lines of credit which in the aggregate, over the  
10 life of the contract based on the maximum limit of the line of credit, do not exceed those  
11 permitted under G.S. 24-10. as agreed upon by the parties. Any lender may charge a  
12 party to a loan or extension of credit governed by this section a fee as agreed upon by the  
13 parties for the modification, renewal, extension, or amendment of any terms of the loan  
14 or extension of credit, such fee not to exceed the greater of one quarter of one percent  
15 (1/4 of 1%) of the balance outstanding at the time of the modification, renewal,  
16 extension, or amendment of terms, or fifty dollars (\$50.00). credit."

17 Sec. 5. G.S. 24-9 reads as rewritten:

18 **"§ 24-9. Loans to corporations organized for profit not subject to claim or defense of**  
19 **usury.**

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

26 Sec. 6. G.S. 24-11 reads as rewritten:

27 **"§ 24-11. ~~Certain revolving credit charges.~~ Open-end credit.**

28 (a) ~~On the extension of credit under an open end credit or similar plan (including~~  
29 ~~revolving credit card plans, and revolving charge accounts, but excluding any loan made~~  
30 ~~directly by a lender under a check loan, check credit or other such plan) under which no~~  
31 ~~service charge shall be imposed upon the consumer or debtor if the account is paid in full~~  
32 ~~within 25 days from the billing date, but upon which there may be imposed an annual~~  
33 ~~charge not to exceed twenty four dollars (\$24.00), there may be charged and collected~~  
34 ~~interest, finance charges or other fees at a rate in the aggregate not to exceed one and one-~~  
35 ~~half percent (1 1/2%) per month computed on the unpaid portion of the balance of the~~  
36 ~~previous month less payments or credit within the billing cycle or the average daily~~  
37 ~~balance outstanding during the current billing period.~~

38 (a1) ~~If the lender chooses not to impose an annual charge under this section, the~~  
39 ~~lender may impose a service charge not to exceed two dollars (\$2.00) per month on the~~  
40 ~~balance of any account which is not paid in full within 25 days from the billing date.~~

41 (a2) ~~No person, firm or corporation may charge a discount or fee in excess of six~~  
42 ~~percent (6%) of the principal amount of the accounts acquired from or through any~~  
43 ~~vendors or others providing services who participate in such plan.~~

1       ~~(b) On revolving credit loans (including check loans, check credit or other~~  
2 ~~revolving credit plans whereby a bank, banking institution or other lending agency makes~~  
3 ~~direct loans to a borrower), if agreed to in writing by the borrower, such lender may~~  
4 ~~collect interest and service charges by application of a monthly periodic rate computed on~~  
5 ~~the average daily balance outstanding during the billing period, such rate not to exceed~~  
6 ~~one and one-half percent (1-1/2%).~~

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

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

19       ~~(d1) A lender may charge a party to a loan or extension of credit governed by this~~  
20 ~~section a late payment charge not to exceed five dollars (\$5.00) for any payment past due~~  
21 ~~for 30 days or more. If a late payment charge has been once imposed with respect to a~~  
22 ~~late payment, no late charge shall be imposed with respect to any future payment which~~  
23 ~~would have been timely and sufficient but for the previous default.~~

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

40       (a) The term 'open-end credit' means credit extended by a creditor under a plan in  
41 which the creditor reasonably contemplates repeated transactions, the creditor may  
42 impose a finance charge from time to time on an outstanding unpaid balance, and the  
43 amount of credit that may be extended to the debtor during the term of the plan, up to any

1 limit agreed upon by the parties, is generally made available to the extent that any  
2 outstanding balance is repaid. The term 'open-end credit' includes revolving credit card  
3 plans, revolving charge accounts, and revolving credit loans made directly by a lender  
4 under a check loan, check credit, or other similar plan.

5 (b) On the extension of open-end credit, whether secured or unsecured, a lender  
6 may charge and collect finance charges, interest, and fees as agreed upon by the parties.  
7 An extension of open-end credit may provide for the terms and conditions agreed upon  
8 by the parties.

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

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

15 (e) All fees and charges authorized by this section are deemed to be interest and  
16 are material to the determination of the rate of interest for purposes of (i) 12 U.S.C. § 85,  
17 the National Bank Act, (ii) 12 U.S.C. § 1831(d), the Federal Deposit Insurance Act, (iii)  
18 12 U.S.C. § 1463(g), the Federal Savings and Loan Act, and (iv) 12 U.S.C. § 1785(g), the  
19 Federal Credit Union Act, as may be amended."

20 Sec. 7. G.S. 25A-11 reads as rewritten:

21 **"§ 25A-11. 'Revolving charge account contract' defined.**

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

28 Sec. 8. G.S. 25A-14 reads as rewritten:

29 **"§ 25A-14. Finance charge rates and service charge for revolving charge account**  
30 **contracts.**

31 (a) ~~The finance charge rate and either the annual charge or the monthly service~~  
32 ~~charge for a consumer credit sale made under a revolving charge account contract may~~  
33 ~~not exceed the rates and charge provided for revolving credit by G.S. 24-11.~~

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

37 (c) ~~No default or deferral charge shall be imposed by the seller in connection with~~  
38 ~~a revolving charge account contract, except as specifically provided for in G.S. 24-~~  
39 ~~11(d1).~~

40 On a consumer credit sale made under a revolving charge account contract a seller  
41 may charge and collect finance charges and fees as agreed upon by the parties to the  
42 revolving charge account contract."

43 Sec. 9. G.S. 25A-17 reads as rewritten:

1 **"§ 25A-17. Additional charges for insurance.**

2 (a) As to revolving charge account contracts defined in G.S. 25A-11, in addition to  
3 the finance charges permitted in ~~G.S. 24-11(a)~~, G.S. 25A-14, a seller in a consumer credit  
4 sale may contract for and receive additional charges or premiums (i) for insurance written  
5 in connection with any consumer credit sale, against loss of or damage to property  
6 securing the debt pursuant to G.S. 25A-23, provided a clear, conspicuous and specific  
7 statement in writing is furnished by the seller to the buyer setting forth the cost of the  
8 insurance if obtained from or through the seller and stating that the buyer may choose the  
9 insurer through which the insurance is obtained; (ii) for credit life, credit accident and  
10 health, or credit unemployment insurance, written in connection with any consumer  
11 credit sale, provided the insurance coverage is not required by the seller and this fact is  
12 clearly disclosed to the buyer, and any buyer desiring such insurance coverage gives  
13 affirmative indication of such desire after disclosure of the cost of such insurance.

14 (b) As to revolving charge account contracts defined in G.S. 25A-11, insurance  
15 that is required by a seller and is not an additional charge permitted by subsection (a) of  
16 this section, shall be included in the finance charge as computed according to ~~G.S. 24-~~  
17 ~~11(a)~~-G.S. 25A-14.

18 (c) As to consumer credit installment sale contracts defined in G.S. 25A-12, in  
19 addition to the finance charges permitted in G.S. 25A-15, a seller in a consumer credit  
20 sale may contract for and receive additional charges or premiums (i) for insurance written  
21 in connection with any consumer credit sale, for loss of or damage to property or against  
22 liability arising out of the ownership or use of property, provided a clear, conspicuous  
23 and specific statement in writing is furnished by the seller to the buyer setting forth the  
24 cost of the insurance if obtained from or through the seller and stating that the buyer may  
25 choose the person through which the insurance is to be obtained; (ii) for credit life, credit  
26 accident and health, or credit unemployment insurance, written in connection with any  
27 consumer credit sale, provided the insurance coverage is not required by the seller and  
28 this fact is clearly and conspicuously disclosed in writing to the buyer; and any buyer  
29 desiring such insurance coverage gives specific dated and separately signed affirmative  
30 written indication of such desire after receiving written disclosure to him of the cost of  
31 such insurance."

32 Sec. 10. G.S. 25A-23(d) is repealed.

33 Sec. 11. G.S. 25A-32 reads as rewritten:

34 **"§ 25A-32. Rebates on prepayment.**

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

40 "The amount of such rebate shall represent as great a proportion of the finance charge  
41 (less a prepayment charge of ten percent (10%) of the unpaid balance, not to exceed twenty-  
42 five dollars (\$25.00)) as agreed upon by the parties as the sum of the periodical time  
43 balances after the date of prepayment in full bears to the sum of all the periodical time

1 balances under the schedule of payments in the original contract.' No rebate is required if  
2 the amount thereof is less than one dollar (\$1.00).

3 A prepayment charge as agreed upon by the parties may be imposed when a rebate is  
4 determined by the simple interest method.

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

8 If a seller obtains a judgment on a debt arising out of a consumer credit installment  
9 sale or the seller repossesses the collateral securing the debt, the seller shall credit the  
10 buyer with a rebate as if the payment in full had been made on the date the judgment was  
11 obtained or 15 days after the repossession occurred. If the seller obtains a judgment and  
12 repossesses the collateral, the seller shall credit the buyer with a rebate as if payment in  
13 full had been made on the date of the judgment or 15 days after the repossession,  
14 whichever occurs earlier."

15 Sec. 12. This act becomes effective July 1, 1995, and applies to loans and  
16 extensions of credit made, renewed, extended, or modified on or after that date.