

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 1182  
Committee Substitute Favorable 4/30/03  
Senate Finance Committee Substitute Adopted 7/16/03

Short Title: Expand Usury Exemption.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO EXPAND THE USURY EXEMPTION.

3 The General Assembly of North Carolina enacts:

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

5 "~~§ 24-9. Loans to certain entities organized for profit not subject to claim or~~  
6 ~~defense of usury. Loans exempt from rate and fee limitations.~~

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

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

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

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

25 a. The lender is a bank.

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

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

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

16           e.     The initial loan amount is ten thousand dollars (\$10,000) or  
17               more. On January 1, 2010, and on January 1 every seven years  
18               thereafter, the minimum initial loan amount sufficient to qualify  
19               a loan closed on or after that date as an equity line of credit  
20               under this section shall be increased by one thousand dollars  
21               (\$1,000). For example, a loan closed on or after January 1,  
22               2010, but prior to January 1, 2017, shall not be considered an  
23               equity line of credit unless the initial loan amount is eleven  
24               thousand dollars (\$11,000) or more, and a loan closed on or  
25               after January 1, 2017, but prior to January 1, 2024, shall not be  
26               considered an equity line of credit unless the initial loan amount  
27               is twelve thousand dollars (\$12,000) or more.

28           An equity line of credit shall cease being an equity line of credit  
29           subject to the provisions of this section from and after the date the loan  
30           amount is reduced below the equity line of credit's initial loan amount  
31           unless (i) the loan amount was reduced for one or more of the reasons  
32           or pursuant to one or more of the methods specified in section  
33           226.5b(f)(2) or section 226.5b(f)(3)(vi) of Title 12 of the Code of  
34           Federal Regulations and the official commentaries and rulings issued  
35           pursuant thereto, as the same may be amended from time to time,  
36           without regard to whether that section of the Code of Federal  
37           Regulations would otherwise apply to the loan, or (ii) the loan amount  
38           was reduced at the request of the borrower because the borrower was  
39           engaged in the refinancing of a loan secured by a superior lien on the  
40           same real property and the reduction in the loan amount of the equity  
41           line of credit is no greater than the difference between the loan amount  
42           secured by the refinancing mortgage and the outstanding principle  
43           balance of the loan being refinanced.

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

- 1           a.     The loan amount is three hundred thousand dollars (\$300,000)  
2                 or more; or  
3           b.     The borrower is a person other than a natural person; or  
4           c.     The loan is obtained by a natural person primarily for a purpose  
5                 other than a personal, family, or household purpose. Whether a  
6                 loan is obtained primarily for a purpose other than a personal,  
7                 family, or household purpose shall be determined under the  
8                 standards established by the federal Truth In Lending Act (Title  
9                 1 of Public Law 90-321; 82 Stat. 146; 15 U.S.C. § 160, et seq.)  
10                and all regulations and rulings issued pursuant to that Act, as  
11                the same may be amended from time to time.
- 12           (4)    "Loan" means an advance of money or an extension of credit that is  
13                made to or on behalf of a borrower, the principal amount of which the  
14                borrower has an obligation to pay the lender. The term includes lines  
15                of credit, open-end loans, revolving credit plans, and revolving credit  
16                card plans in addition to closed-end loans.
- 17           (5)    "Loan amount" means the principal amount of a loan or, in the case of  
18                a line of credit, open-end loan, revolving credit plan, or revolving  
19                credit card plan, the maximum credit limit.
- 20           (b)    Notwithstanding any other provision of this Chapter or any other provision of  
21                State law, any borrower in an exempt loan transaction may agree to pay, and any lender,  
22                including a bank, may charge and collect from the borrower, interest at any rate and fees  
23                and other charges in any amount that the borrower agrees to pay. A claim or defense of  
24                usury is prohibited in an exempt loan transaction.
- 25           (c)    The provisions of G.S. 24-1.2A shall not apply to equity lines of credit  
26                offered by banks. Except as provided in this subsection and notwithstanding any other  
27                provision of this Chapter or any other provision of State law, any bank may charge and  
28                collect from any borrower interest at any rate and fees and other charges in any amount  
29                that the borrower agrees to pay in connection with an equity line of credit. However, an  
30                equity line of credit made by a bank shall be subject to the following, to the extent  
31                otherwise applicable:
- 32                (1)    The provisions of G.S. 24-1.1E (relating to restrictions and limitations  
33                    on high-cost home loans).
- 34                (2)    The provisions of G.S. 24-10.2 (relating to consumer protections in  
35                    certain home loans).
- 36                (3)    Notwithstanding the limitation against prepayment penalties contained  
37                    in G.S. 45-81(c), a bank may charge and collect prepayment fees or  
38                    penalties following the borrower's voluntary exercise of a right or  
39                    option to repay all or any portion of the outstanding balance of the  
40                    equity line of credit at a fixed interest rate over a specified period of  
41                    time, subject to the following limitations:
- 42                    a.     Prepayment fees or penalties may be charged only with respect  
43                        to the prepayment of that portion of the outstanding balance the

- 1                    borrower voluntarily agrees to repay at a fixed interest rate over  
2                    a specified time;  
3                    b. No prepayment fees or penalties may be charged for  
4                    prepayments made more than 30 months after the borrower  
5                    voluntarily exercises the right or option to repay that portion of  
6                    the outstanding balance of the equity line of credit at a fixed  
7                    interest rate over a specified period of time; and  
8                    c. The prepayment fees or penalties charged with respect to that  
9                    portion of the outstanding balance to be repaid at a fixed rate  
10                   over a specified period of time may not exceed, in the  
11                   aggregate, more than two percent (2%) of the amount prepaid.  
12                   Otherwise, no prepayment fees or penalties may be charged or  
13                   collected by the bank with respect to an equity line of credit.  
14                   (d) The provisions of G.S. 24-11 and G.S. 24-11.1 shall not apply to revolving  
15                   credit card plans offered by banks. Notwithstanding any other provision of this Chapter  
16                   or any other provision of State law, any bank may charge and collect from any borrower  
17                   interest at any rate, as well as fees and other charges in any amount that the borrower  
18                   agrees to pay in connection with a revolving credit card plan."

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

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

- 21                   "(a) Definitions. – The following definitions apply for the purposes of this section:
- 22                   (1) "Affiliate" means any company that controls, is controlled by, or is  
23                   under common control with another company, as set forth in the Bank  
24                   Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended  
25                   from time to time.
- 26                   (2) "Annual percentage rate" means the annual percentage rate for the loan  
27                   calculated according to the provisions of the federal Truth-in-Lending  
28                   Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated  
29                   thereunder by the Federal Reserve Board (as said Act and regulations  
30                   are amended from time to time).
- 31                   (3) "Bona fide loan discount points" means loan discount points  
32                   knowingly paid by the borrower for the purpose of reducing, and  
33                   which in fact result in a bona fide reduction of, the interest rate or  
34                   time-price differential applicable to the loan, provided the amount of  
35                   the interest rate reduction purchased by the discount points is  
36                   reasonably consistent with established industry norms and practices for  
37                   secondary mortgage market transactions.
- 38                   (4) A "high-cost home loan" means a loan other than ~~an open-end credit~~  
39                   ~~plan or~~ a reverse mortgage transaction in which:
- 40                   a.                   The principal amount of the loan (or, in the case of an open-end  
41                   credit plan, the borrower's initial maximum credit limit) does  
42                   not exceed the lesser of (i) the conforming loan size limit for a  
43                   single-family dwelling as established from time to time by  
44                   Fannie Mae, or (ii) three hundred thousand dollars (\$300,000);

- 1                   b.     The borrower is a natural person;
- 2                   c.     The debt is incurred by the borrower primarily for personal,
- 3                   family, or household purposes;
- 4                   d.     The loan is secured by either (i) a security interest in a
- 5                   manufactured home (as defined in G.S. 143-147(7)) which is or
- 6                   will be occupied by the borrower as the borrower's principal
- 7                   dwelling, or (ii) a mortgage or deed of trust on real estate upon
- 8                   which there is located or there is to be located a structure or
- 9                   structures designed principally for occupancy of from one to
- 10                  four families which is or will be occupied by the borrower as
- 11                  the borrower's principal dwelling; and
- 12                  e.     The terms of the loan exceed one or more of the thresholds as
- 13                  defined in subdivision (6) of this section.
- 14       (5)     "Points and fees" ~~means:~~ is defined as provided in this subdivision.
- 15             a.     The term includes all of the following:
- 16                   1.     All items required to be disclosed under sections
- 17                   226.4(a) and 226.4(b) of Title 12 of the Code of Federal
- 18                   Regulations, as amended from time to time, except
- 19                   interest or the time-price ~~differential;~~differential.
- 20                   2.b.   All charges for items listed under section 226.4(c)(7) of
- 21                   Title 12 of the Code of Federal Regulations, as amended
- 22                   from time to time, but only if the lender receives direct
- 23                   or indirect compensation in connection with the charge
- 24                   or the charge is paid to an affiliate of the lender;
- 25                   otherwise, the charges are not included within the
- 26                   meaning of the phrase "points and fees";fees".
- 27                   3.e.   All compensation paid directly by the borrower to a
- 28                   mortgage broker not otherwise included in
- 29                   sub-subdivision ~~a.a.1.~~ or ~~b.a.2.~~ of this
- 30                   subdivision;subdivision.
- 31                   4.d.   The maximum prepayment fees and penalties which may
- 32                   be charged or collected under the terms of the loan
- 33                   documents;and documents.
- 34             e.b.   ~~"Points and fees" shall~~Notwithstanding the remaining
- 35                   provisions of this subdivision, the term does not include (i)
- 36                   taxes, filing fees, recording and other charges and fees paid or
- 37                   to be paid to public officials for determining the existence of or
- 38                   for perfecting, releasing, or satisfying a security interest; and
- 39                   (ii) fees paid to a person other than a lender or an affiliate of the
- 40                   lender or to the mortgage broker or an affiliate of the mortgage
- 41                   broker for the following: fees for tax payment services; fees for
- 42                   flood certification; fees for pest infestation and flood
- 43                   determinations; appraisal fees; fees for inspections performed
- 44                   prior to closing; credit reports; surveys; attorneys' fees (if the

1 borrower has the right to select the attorney from an approved  
2 list or otherwise); notary fees; escrow charges, so long as not  
3 otherwise included under sub-subdivision a. of this subdivision;  
4 title insurance premiums; and fire insurance and flood insurance  
5 premiums, provided that the conditions in section 226.4(d)(2) of  
6 Title 12 of the Code of Federal Regulations are met.

7 c. For open-end credit plans, the term includes those points and  
8 fees described in sub-subdivisions a.1. through a.4. of this  
9 subdivision that are charged at or before loan closing, plus the  
10 minimum additional fees the borrower would be required to pay  
11 to draw down an amount equal to the total loan amount.

12 (6) "Thresholds" means:

13 a. Without regard to whether the loan transaction is or may be a  
14 "residential mortgage transaction" (as the term "residential  
15 mortgage transaction" is defined in section 226.2(a)(24) of Title  
16 12 of the Code of Federal Regulations, as amended from time to  
17 time), the annual percentage rate of the loan at the time the loan  
18 is consummated is such that the loan is considered a "mortgage"  
19 under section 152 of the Home Ownership and Equity  
20 Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. §  
21 1602(aa)]), as the same may be amended from time to time, and  
22 regulations adopted pursuant thereto by the Federal Reserve  
23 Board, including section 226.32 of Title 12 of the Code of  
24 Federal Regulations, as the same may be amended from time to  
25 time;

26 b. The total points and fees payable by the borrower at or before  
27 the loan closing exceed five percent (5%) of the total loan  
28 amount if the total loan amount is twenty thousand dollars  
29 (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the  
30 total loan amount or one thousand dollars (\$1,000), if the total  
31 loan amount is less than twenty thousand dollars (\$20,000);  
32 provided, the following discount points and prepayment fees  
33 and penalties shall be excluded from the calculation of the total  
34 points and fees payable by the borrower:

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

- 1                   2.     Up to and including one bona fide loan discount point  
2                   payable by the borrower in connection with the loan  
3                   transaction, but only if the interest rate from which the  
4                   loan's interest rate will be discounted does not exceed by  
5                   more than two percentage points (2%) the required net  
6                   yield for a 90-day standard mandatory delivery  
7                   commitment for a reasonably comparable loan from  
8                   either Fannie Mae or the Federal Home Loan Mortgage  
9                   Corporation, whichever is greater;
- 10                  3.     ~~Prepayment~~ For a closed-end loan, prepayment fees and  
11                  penalties which may be charged or collected under the  
12                  terms of the loan documents which do not exceed one  
13                  percent (1%) of the amount prepaid, provided the loan  
14                  documents do not permit the lender to charge or collect  
15                  any prepayment fees or penalties more than 30 months  
16                  after the loan closing; ~~or~~
- 17                  4.     For an open-end credit plan, prepayment fees and  
18                  penalties which may be charged or collected under the  
19                  terms of the loan documents which do not exceed one  
20                  percent (1%) of the amount prepaid, provided the loan  
21                  documents do not permit the lender to charge or collect  
22                  any prepayment fees or penalties more than (i) 30  
23                  months after the loan closing if the borrower has no right  
24                  or option under the loan documents to repay all or any  
25                  portion of the outstanding balance of the open-end credit  
26                  plan at a fixed interest rate over a specified period of  
27                  time or, (ii) if the borrower has a right or option under  
28                  the loan documents to repay all or any portion of the  
29                  outstanding balance of the open-end credit plan at a fixed  
30                  interest rate over a specified period of time, 30 months  
31                  after the date the borrower voluntarily exercises that  
32                  right or option; or
- 33                  c.     The loan documents permit the lender to charge or collect  
34                  prepayment fees or penalties more than 30 months after the loan  
35                  closing or which exceed, in the aggregate, more than two  
36                  percent (2%) of the amount prepaid.
- 37                  (7)    ~~Total~~ For a closed-end loan, "total loan amount" means the same as  
38                  the same meaning as the term "total loan amount" as used in section  
39                  226.32 of Title 12 of the Code of Federal Regulations, and the same  
40                  shall be calculated in accordance with the Federal Reserve Board's  
41                  Official Staff Commentary thereto. For an open-end credit plan, "total  
42                  loan amount" means the borrower's initial maximum credit limit. "

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

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

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