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HOUSE BILL 1182
Committee Substitute Favorable 4/30/03
Senate Finance Committee Substitute Adopted 7/16/03
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Short Title: Expand Usury Exemption.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

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.

- 1 b. The loan is a revolving line of credit, open-end loan, revolving
2 credit plan, or revolving credit card plan, and the loan is secured
3 by a mortgage or deed of trust on real property.
- 4 c. At any time within a specified period not to exceed 30 years the
5 borrower may request and the lender is obligated to provide
6 credit advances up to the agreed aggregate credit limit. As used
7 in this sub-subdivision, "lender is obligated" means that the
8 lender is contractually bound to provide credit advances.
9 However, the equity line of credit and the lender's obligation to
10 make credit advances shall be subject to the provisions of
11 section 226.5b(f) of Title 12 of the Code of Federal Regulations
12 and the official commentaries and rulings issued pursuant
13 thereto, as the same may be amended from time to time, without
14 regard to whether that section of the Code of Federal
15 Regulations would otherwise apply to the loan.
- 16 d. Any repayments of principal by the borrower within the
17 specified time will reduce the amount of advances counted
18 against the aggregate credit limit.
- 19 e. The initial loan amount is ten thousand dollars (\$10,000) or
20 more. On January 1, 2008, and on January 1 every five years
21 thereafter, the minimum initial loan amount sufficient to qualify
22 a loan closed on or after that date as an equity line of credit
23 under this section shall be increased by one thousand dollars
24 (\$1,000). For example, a loan closed on or after January 1,
25 2008, but prior to January 1, 2013, shall not be considered an
26 equity line of credit unless the initial loan amount is eleven
27 thousand dollars (\$11,000) or more, and a loan closed on or
28 after January 1, 2013, but prior to January 1, 2018, shall not be
29 considered an equity line of credit unless the initial loan amount
30 is twelve thousand dollars (\$12,000) or more.

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

1 secured by the refinancing mortgage and the outstanding principle
2 balance of the loan being refinanced.

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

4 a. The loan amount is three hundred thousand dollars (\$300,000)
5 or more; or

6 b. The borrower is a person other than a natural person; or

7 c. The loan is obtained by a natural person primarily for a purpose
8 other than a personal, family, or household purpose. Whether a
9 loan is obtained primarily for a purpose other than a personal,
10 family, or household purpose shall be guided by the standards
11 established by the federal Truth In Lending Act (Title 1 of
12 Public Law 90-321; 82 Stat. 146; 15 U.S.C. § 160, et seq.) and
13 all regulations and rulings issued pursuant to that Act, as the
14 same may be amended from time to time.

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

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

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

28 (c) The provisions of G.S. 24-1.2A, 24-11, and 24-11.1 shall not apply to equity
29 lines of credit offered by banks. Except as provided in this subsection and
30 notwithstanding any other provision of this Chapter or any other provision of State law,
31 any bank may charge and collect from any borrower interest at any rate and fees and
32 other charges in any amount that the borrower agrees to pay in connection with an
33 equity line of credit. However, an equity line of credit made by a bank shall be subject
34 to the following, to the extent otherwise applicable:

35 (1) The provisions of G.S. 24-1.1E (relating to restrictions and limitations
36 on high-cost home loans).

37 (2) The provisions of G.S. 24-10.2 (relating to consumer protections in
38 certain home loans).

39 (3) Notwithstanding the limitation against prepayment penalties contained
40 in G.S. 45-81(c), a bank may charge and collect prepayment fees or
41 penalties following the borrower's voluntary exercise of a right or
42 option to repay all or any portion of the outstanding balance of a
43 variable interest rate equity line of credit at a fixed interest rate over a
44 specified period of time, subject to the following limitations:

- 1 a. Prepayment fees or penalties may be charged only with respect
2 to the prepayment of that portion of the outstanding balance the
3 borrower voluntarily agrees to repay at a fixed interest rate over
4 a specified time;
5 b. No prepayment fees or penalties may be charged for
6 prepayments made more than 30 months after the borrower
7 voluntarily exercises the right or option to repay that portion of
8 the outstanding balance of the equity line of credit at a fixed
9 interest rate over a specified period of time; and
10 c. The prepayment fees or penalties charged with respect to that
11 portion of the outstanding balance to be repaid at a fixed rate
12 over a specified period of time may not exceed, in the
13 aggregate, more than two percent (2%) of the amount prepaid.
14 Otherwise, no prepayment fees or penalties may be charged or
15 collected by the bank with respect to an equity line of credit.

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

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

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

- 25 (a) Definitions. – The following definitions apply for the purposes of this section:
26 (1) "Affiliate" means any company that controls, is controlled by, or is
27 under common control with another company, as set forth in the Bank
28 Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended
29 from time to time.
30 (2) "Annual percentage rate" means the annual percentage rate for the loan
31 calculated according to the provisions of the federal Truth-in-Lending
32 Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated
33 thereunder by the Federal Reserve Board (as said Act and regulations
34 are amended from time to time).
35 (3) "Bona fide loan discount points" means loan discount points
36 knowingly paid by the borrower for the purpose of reducing, and
37 which in fact result in a bona fide reduction of, the interest rate or
38 time-price differential applicable to the loan, provided the amount of
39 the interest rate reduction purchased by the discount points is
40 reasonably consistent with established industry norms and practices for
41 secondary mortgage market transactions.
42 (4) A "high-cost home loan" means a loan other than ~~an open-end credit~~
43 ~~plan or~~ a reverse mortgage transaction in which:

- 1 a. The principal amount of the loan (or, in the case of an open-end
 2 credit plan, the borrower's initial maximum credit limit) does
 3 not exceed the lesser of (i) the conforming loan size limit for a
 4 single-family dwelling as established from time to time by
 5 Fannie Mae, or (ii) three hundred thousand dollars (\$300,000);
- 6 b. The borrower is a natural person;
- 7 c. The debt is incurred by the borrower primarily for personal,
 8 family, or household purposes;
- 9 d. The loan is secured by either (i) a security interest in a
 10 manufactured home (as defined in G.S. 143-147(7)) which is or
 11 will be occupied by the borrower as the borrower's principal
 12 dwelling, or (ii) a mortgage or deed of trust on real estate upon
 13 which there is located or there is to be located a structure or
 14 structures designed principally for occupancy of from one to
 15 four families which is or will be occupied by the borrower as
 16 the borrower's principal dwelling; and
- 17 e. The terms of the loan exceed one or more of the thresholds as
 18 defined in subdivision (6) of this section.
- 19 (5) "Points and fees" ~~means~~; is defined as provided in this subdivision.
- 20 a. The term includes all of the following:
- 21 1. All items required to be disclosed under sections
 22 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
 23 Regulations, as amended from time to time, except
 24 interest or the time-price ~~differential~~; differential.
- 25 2.b. All charges for items listed under section 226.4(c)(7) of
 26 Title 12 of the Code of Federal Regulations, as amended
 27 from time to time, but only if the lender receives direct
 28 or indirect compensation in connection with the charge
 29 or the charge is paid to an affiliate of the lender;
 30 otherwise, the charges are not included within the
 31 meaning of the phrase "points and ~~fees~~"; fees".
- 32 3.e. All compensation paid directly by the borrower to a
 33 mortgage broker not otherwise included in
 34 sub-subdivision ~~a.a.1.~~ or ~~b.a.2.~~ of this
 35 ~~subdivision~~; subdivision.
- 36 4.d. The maximum prepayment fees and penalties which may
 37 be charged or collected under the terms of the loan
 38 ~~documents~~; and documents.
- 39 e.b. "~~Points and fees~~" ~~shall~~ Notwithstanding the remaining
 40 provisions of this subdivision, the term does not include (i)
 41 taxes, filing fees, recording and other charges and fees paid or
 42 to be paid to public officials for determining the existence of or
 43 for perfecting, releasing, or satisfying a security interest; and
 44 (ii) fees paid to a person other than a lender or an affiliate of the

1 lender or to the mortgage broker or an affiliate of the mortgage
2 broker for the following: fees for tax payment services; fees for
3 flood certification; fees for pest infestation and flood
4 determinations; appraisal fees; fees for inspections performed
5 prior to closing; credit reports; surveys; attorneys' fees (if the
6 borrower has the right to select the attorney from an approved
7 list or otherwise); notary fees; escrow charges, so long as not
8 otherwise included under sub-subdivision a. of this subdivision;
9 title insurance premiums; and fire insurance and flood insurance
10 premiums, provided that the conditions in section 226.4(d)(2) of
11 Title 12 of the Code of Federal Regulations are met.

12 c. For open-end credit plans, the term includes those points and
13 fees described in sub-subdivisions a.1. through a.3. of this
14 subdivision that are charged at or before loan closing, plus (i)
15 the minimum additional fees the borrower would be required to
16 pay to draw down an amount equal to the total loan amount, and
17 (ii) the maximum prepayment fees and penalties which may be
18 charged or collected under the terms of the loan documents.

19 (6) "Thresholds" means:

20 a. Without regard to whether the loan transaction is or may be a
21 "residential mortgage transaction" (as the term "residential
22 mortgage transaction" is defined in section 226.2(a)(24) of Title
23 12 of the Code of Federal Regulations, as amended from time to
24 time), the annual percentage rate of the loan at the time the loan
25 is consummated is such that the loan is considered a "mortgage"
26 under section 152 of the Home Ownership and Equity
27 Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. §
28 1602(aa)]), as the same may be amended from time to time, and
29 regulations adopted pursuant thereto by the Federal Reserve
30 Board, including section 226.32 of Title 12 of the Code of
31 Federal Regulations, as the same may be amended from time to
32 time;

33 b. The total points and fees payable by the borrower at or before
34 the loan closing exceed five percent (5%) of the total loan
35 amount if the total loan amount is twenty thousand dollars
36 (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the
37 total loan amount or one thousand dollars (\$1,000), if the total
38 loan amount is less than twenty thousand dollars (\$20,000);
39 provided, the following discount points and prepayment fees
40 and penalties shall be excluded from the calculation of the total
41 points and fees payable by the borrower:

42 1. Up to and including two bona fide loan discount points
43 payable by the borrower in connection with the loan
44 transaction, but only if the interest rate from which the

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

1 fees or penalties (i) more than 30 months after the loan closing
2 if the borrower has no right or option under the loan documents
3 to repay all or any portion of the outstanding balance of the
4 open-end credit plan at a fixed interest rate over a specified
5 period of time or, (ii) if the borrower has a right or option under
6 the loan documents to repay all or any portion of the
7 outstanding balance of the open-end credit plan at a fixed
8 interest rate over a specified period of time, more than 30
9 months after the date the borrower voluntarily exercises that
10 right or option, or (iii) which exceed, in the aggregate, more
11 than two percent (2%) of the amount prepaid.

- 12 (7) ~~"Total~~For a closed-end loan, "total loan amount" ~~means the same~~has
13 the same meaning as the term "total loan amount" as used in section
14 226.32 of Title 12 of the Code of Federal Regulations, and ~~the same~~
15 shall be calculated in accordance with the Federal Reserve Board's
16 Official Staff Commentary thereto. For an open-end credit plan, "total
17 loan amount" means the borrower's initial maximum credit limit. "

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

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

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