

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 869
Committee Substitute Favorable 5/10/91

Short Title: Loans/Fees.

(Public)

Sponsors:

Referred to:

April 18, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND CLARIFY THE
3 EFFECT OF EXEMPTIONS, TO AUTHORIZE CERTAIN LOAN AND
4 APPRAISAL FEES, TO AMEND THE USURY LAWS APPLICABLE TO
5 COMMERCIAL LOANS, TO AUTHORIZE THE IMPOSITION OF AN
6 ANNUAL FEE OR MONTHLY SERVICE CHARGE ON CREDIT PLANS, AND
7 TO AMEND THE LAW REGARDING ASSUMPTION FEES IN CONNECTION
8 WITH CERTAIN REAL ESTATE LOANS.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 1C-1601 reads as rewritten:

11 **"§ 1C-1601. What property exempt; waiver; exceptions.**

12 (a) Exempt property. – Each individual, resident of this State, who is a debtor is
13 entitled to retain free of the enforcement of the claims of his creditors:

14 (1) The debtor's aggregate interest, not to exceed ~~seven thousand five~~
15 ~~hundred dollars (\$7,500)~~ ten thousand dollars (\$10,000) in value, in real
16 property or personal property that the debtor or a dependent of the
17 debtor uses as a residence, in a cooperative that owns property that the
18 debtor or a dependent of the debtor uses as a residence, or in a burial
19 plot for the debtor or a dependent of the debtor.

20 (2) The debtor's aggregate interest in any property, not to exceed ~~two~~
21 ~~thousand five hundred dollars (\$2,500)~~ three thousand five hundred
22 dollars (\$3,500) in value less any amount of the exemption used under
23 subdivision (1).

- 1 (3) The debtor's interest, not to exceed one thousand five hundred dollars
2 (~~\$1,000~~)(~~\$1,500~~) in value, in one motor vehicle.
- 3 (4) The debtor's aggregate interest, not to exceed ~~two thousand five hundred~~
4 dollars (~~\$2,500~~) three thousand five hundred dollars (\$3,500) in value
5 for the debtor plus ~~five hundred dollars (\$500)~~ seven hundred fifty
6 dollars (\$750.00) for each dependent of the debtor, not to exceed ~~two~~
7 three thousand dollars (\$2,000) (~~\$3,000~~) total for dependents, in
8 household furnishings, household goods, wearing apparel, appliances,
9 books, animals, crops, or musical instruments, that are held primarily
10 for the personal, family, or household use of the debtor or a dependent
11 of the debtor.
- 12 (5) The debtor's aggregate interest, not to exceed ~~five hundred dollars (\$500)~~
13 seven hundred fifty dollars (\$750.00) in value, in any implements,
14 professional books, or tools of the trade of the debtor or the trade of a
15 dependent of the debtor.
- 16 (6) Life insurance as provided in Article X, Section 5 of the Constitution
17 of North Carolina.
- 18 (7) Professionally prescribed health aids for the debtor or a dependent of
19 the debtor.
- 20 (8) Compensation for personal injury or compensation for the death of a
21 person upon whom the debtor was dependent for support, but such
22 compensation is not exempt from claims for funeral, legal, medical,
23 dental, hospital, and health care charges related to the accident or
24 injury giving rise to the compensation.
- 25 (b) Definition. – 'Value' as used in this Article means fair market value of an
26 individual's interest in property, less valid liens superior to the judgment lien sought to
27 be enforced.
- 28 (c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of
29 Article X of the North Carolina Constitution, cannot be waived except by:
- 30 (1) Transfer of property allocated as exempt (and in that event only as to
31 the specific property transferred), or
- 32 (2) Written waiver, after judgment, approved by the clerk or district court
33 judge. The clerk or district court judge must find that the waiver is
34 made freely, voluntarily, and with full knowledge of the debtor's rights
35 to exemptions and that he is not required to waive them;
- 36 (3) Failure to assert the exemption after notice to do so pursuant to G.S.
37 1C-1603. The clerk or district court judge may relieve such a waiver
38 made by reason of mistake, surprise or excusable neglect, to the extent
39 that the rights of innocent third parties are not affected.
- 40 (d) Recent purchases. – The exemptions provided in subdivisions (2), (3), (4)
41 and (5) of subsection (a) of this section are inapplicable with respect to tangible
42 personal property purchased by the debtor less than 90 days preceding the initiation of
43 judgment collection proceedings or the filing of a petition for bankruptcy.

1 (e) Exceptions. – The exemptions provided in this Article are inapplicable to
2 claims

- 3 (1) Of the United States or its agencies as provided by federal law;
- 4 (2) Of the State or its subdivisions for taxes, appearance bonds or
5 fiduciary bonds;
- 6 (3) Of lien by a laborer for work done and performed for the person
7 claiming the exemption, but only as to the specific property affected;
- 8 (4) Of lien by a mechanic for work done on the premises, but only as to
9 the specific property affected;
- 10 (5) For payment of obligations contracted for the purchase of the specific
11 real property affected;
- 12 (6) Repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1224, s. 6,
13 effective September 1, 1982;
- 14 (7) For contractual security interests in the specific property affected;
15 provided, that the exemptions shall apply to the debtor's household
16 goods notwithstanding any contract for a nonpossessory, nonpurchase
17 money security interest in any such goods;
- 18 (8) For statutory liens, on the specific property affected, other than judicial
19 liens;
- 20 (9) For child support, alimony or distributive award order pursuant to
21 Chapter 50 of the General Statutes.

22 (f) Federal Bankruptcy Act. – The exemptions provided in The Bankruptcy Act,
23 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions
24 provided by this Article shall apply for purposes of The Bankruptcy Act, 11 U.S.C. §
25 522(b).

26 (g) Effect of exemptions. – Notwithstanding any other provision of law, a
27 creditor shall not obtain possession of a debtor's household goods and furnishings in
28 which the creditor holds a nonpossessory, nonpurchase money security interest until the
29 creditor has fully complied with the procedures required by G.S. 1C-1603."

30 Sec. 2. G.S. 24-1.1 reads as rewritten:

31 "**§ 24-1.1. Contract rates and fees.**

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

- 36 (1) Where the principal amount is twenty-five thousand dollars (\$25,000)
37 or less, the rate set under ~~subdivision (3)~~ subsection (c) of this section;
38 or
- 39 (2) Any rate agreed upon by the parties where the principal amount is
40 more than twenty-five thousand dollars (\$25,000).

41 (b) As used in this section, interest shall not be deemed in excess of the rates
42 provided where interest is computed monthly on the outstanding principal balance and
43 is collected not more than 31 days in advance of its due date. Nothing in this section

1 shall be construed to authorize the charging of interest on committed funds prior to the
2 disbursement of said funds.

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

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

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

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

29 "**§ 24-1.2. Installment rates and fees.**

30 Except as otherwise provided in this Chapter or other applicable law, the parties to a
31 loan, purchase money loan, advance, commitment for a loan, or forbearance, may
32 contract in writing for the payment of interest not in excess of:

- 33 (1) On installment loans not exceeding five thousand dollars (\$5,000),
34 which are not secured by a security interest in any degree on real
35 property, which are for periods of not less than six months nor more
36 than 120 months, which are repayable in substantially equal
37 consecutive monthly payments, which shall not be collected in
38 advance, and which shall be computed monthly on the outstanding
39 principal balance, the rate shall not exceed the rates set under
40 subdivision (2a) of this section; provided, a minimum charge of ten
41 dollars (\$10.00) or one dollar (\$1.00) per payment may be agreed to
42 and charged in lieu of interest. The borrower may prepay all or any
43 part of this loan without penalty. The due date of the first monthly

- 1 payment shall not be more than 45 days following disbursement of
2 funds under any such installment loan.
- 3 (2) On installment loans not exceeding twenty-five thousand dollars
4 (\$25,000), which are not secured by a first security instrument on real
5 property, and which are payable at least quarterly in substantially equal
6 payments of principal and interest, or in substantially equal payments
7 of principal, the rate of interest, computed on the outstanding balance,
8 shall not exceed the rate set under subdivision (2a) of this section:
9 provided a minimum charge of ten dollars (\$10.00) or one dollar
10 (\$1.00) per payment may be agreed to and charged in lieu of interest.
11 The borrower may prepay all or any part of the loan without penalty.
- 12 (2a) On the fifteenth day of each month, the Commissioner of Banks shall
13 announce and publish the maximum rate of interest permitted by
14 subdivisions (1) and (2) of this section. Such rate shall be the latest
15 published noncompetitive rate for U.S. Treasury bills with a six-month
16 maturity as of the fifteenth day of the month plus six percent (6%),
17 rounded upward or downward, as the case may be, to the nearest one-
18 half of one percent ($1/2$ of 1%) or sixteen percent (16%), whichever is
19 greater. If there is no nearest one-half of one percent ($1/2$ of 1%), the
20 Commissioner shall round downward to the lower one-half of one
21 percent ($1/2$ of 1%). The rate so announced shall be the maximum rate
22 permitted for the term of loans made under this section during the
23 following calendar month when the parties to such loans have agreed
24 that the rate of interest to be charged by the lender and paid by the
25 borrower shall not vary or be adjusted during the term of the loan. The
26 parties to a loan made under this section may agree to a rate of interest
27 which shall vary or be adjusted during the term of the loan in which
28 case the maximum rate of interest permitted on such loans during a
29 month during the term of the loan shall be the rate announced by the
30 Commissioner in the preceding calendar month.
- 31 (3),(4) Repealed by Session Laws 1979, c. 138, s. 3.
- 32 (5) Nothing in this section shall be construed to authorize the charging of
33 interest on committed funds prior to the disbursement of said funds.
- 34 (6) Notwithstanding the foregoing provisions of this section, on an
35 installment loan not exceeding twenty-five thousand dollars (\$25,000)
36 which is secured by a first lien on a residential manufactured home, the
37 parties may contract in writing for the payment of interest as agreed
38 upon by the parties; Provided, however, that this paragraph shall only
39 apply if the parties would have been entitled to so contract by the
40 provisions of section 501 of United States Public Law 96-221 and have
41 complied with the regulations promulgated thereunder. The borrower
42 may prepay all or any part of the loan without penalty.

1 For the purpose of this paragraph (6), a 'residential manufactured
2 home' means a mobile home as defined in G.S. 143-145(7) which is
3 used as a dwelling.

4 (7) Any lender may charge a party to a loan or extension of credit
5 governed by this section a fee for the modification, renewal,
6 extension, or amendment of any terms of the loan or extension of
7 credit, such fee not to exceed the greater of one-quarter of one percent
8 (1/4 of 1%) of the balance outstanding at the time of the modification,
9 renewal, extension, or amendment of terms, or fifty dollars (\$50.00).

10 (8) Any lender may charge a party to a loan or extension of credit not
11 secured by real property governed by this section an origination fee not
12 to exceed the greater of one-quarter of one percent (1/4 of 1%) of the
13 outstanding balance or fifty dollars (\$50.00)."

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

15 **"§ 24-1.2A. Equity lines of credit.**

16 (a) Notwithstanding any other provision of this Chapter, the parties to an equity
17 line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates
18 which shall not exceed the maximum rates permitted under G.S. 24-1.2(2a); provided,
19 however, that the parties may contract for interest rates which shall be adjustable or
20 variable, so long as for adjustable or variable rate contracts the rate in effect for a given
21 period does not exceed the maximum rate permitted under G.S. 24-1.2(2a) for the same
22 period.

23 (b) Fees may be charged on equity lines of credit which in the aggregate, over the
24 life of the contract based on the maximum limit of the line of credit, do not exceed those
25 permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of
26 credit governed by this section a fee for the modification, renewal, extension, or
27 amendment of any terms of the loan or extension of credit, such fee not to exceed the
28 greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time
29 of the modification, renewal, extension, or amendment of terms, or fifty dollars
30 (\$50.00)."

31 Sec. 5. G.S. 24-10 reads as rewritten:

32 **"§ 24-10. Maximum fees on loans secured by real property.**

33 (a) No lender on loans made under G.S. 24-1.1 shall charge or receive from any
34 borrower or any agent for a borrower, any fees or discounts unless otherwise allowed
35 where the principal amount is less than three hundred thousand dollars (\$300,000) and
36 is secured by real property, which fees or discounts in the aggregate shall exceed two
37 percent (2%) if a construction loan on other than a one or two family dwelling, and one
38 percent (1%) on any other type of loan; provided, however, if a single lender makes
39 both the construction loan and a permanent loan utilizing one note, the lender may
40 collect the fees as if they were two separate loans. Except as provided herein or
41 otherwise allowed, no party shall pay for the benefit of the lender any other fees or
42 discounts.

43 (b) Any loan made under G.S. 24-1.1 in an original principal amount of one
44 hundred thousand dollars (\$100,000.00) or less may be prepaid in part or in full, after 30

1 days notice to the lender, with a maximum prepayment fee of two percent (2%) of the
2 outstanding balance at any time within three years after the first payment of principal
3 and thereafter there shall be no prepayment fee, provided that there shall be no
4 prepayment fee charged or received in connection with any repayment of a construction
5 loan; and except as herein provided, any lender and any borrower may agree on any
6 terms as to prepayment of a loan.

7 (c) 'Construction loan' means a loan which is obtained for the purpose of
8 financing fully, or in part, the cost of constructing buildings or other improvements
9 upon real property and the proceeds of which, under the terms of a written contract
10 between a lender and a borrower, are to be disbursed periodically as such construction
11 work progresses; and such loan shall be payable in full not later than 18 months in case
12 of a loan made under the provisions of G.S. 24-1.1(1) or 36 months in case of any other
13 construction loan made after the execution of the note by the borrower. A construction
14 loan may include advances for the purchase price of the property upon which such
15 improvements are to be constructed.

16 (d) (1) Any lender may charge to any person, ~~persons,~~ firm or
17 corporation that assumes a loan, ~~made under the provisions of G.S.~~
18 ~~24-1.1 and~~ secured by real property, a fee not to exceed one
19 hundred seventy five dollars (\$175.00); provided, however, that if
20 the original obligor is not released from liability on the obligation,
21 ~~the fee shall not following fee:~~

22 a. Where the mortgage or deed of trust contains a due on sale
23 clause, a fee not to exceed four hundred dollars (\$400.00);
24 provided, however, that if the original obligor is not released
25 from liability on the obligation, the fee shall not exceed one
26 hundred twenty-five dollars (\$125.00).

27 b. Where the mortgage or deed of trust does not contain a due on
28 sale clause, a fee not to exceed one hundred twenty-five dollars
29 (\$125.00).

30 The fees authorized by this subsection may be paid in whole or in part by any party
31 but the total shall not exceed the maximum fees set forth herein.

32 (2) For purposes of this subsection, the term 'due on sale clause' means a
33 contract provision that authorizes a lender to declare immediately due
34 and payable all sums secured by the lender's security instrument if all
35 or any part of the secured property, or an interest therein, is sold or
36 transferred without the lender's prior written consent or contrary to the
37 requirements of the mortgage or the deed of trust. For purposes of this
38 subsection, no lender shall exercise its rights under the due on sale
39 clause if prohibited by federal law as of the date of execution of the
40 contract containing the clause.

41 (e), (f) Repealed by Session Laws 1985, c. 755, s. 2, effective July 15, 1985.

42 (g) Notwithstanding the limitations contained in subsection (a) of this section, a
43 lender described in G.S. 24-1.1A(a)(2) may charge or receive from any borrower or any
44 agent for a borrower, fees or discounts which in the aggregate do not exceed two

1 percent (2%) on loans made under G.S. 24-1.1 or G.S. 24-1.2(2) when such loans are
2 secured by a second or junior lien on real property. The fees or discounts are fully
3 earned when the loan is made and are not a prepayment penalty under this Chapter or
4 any other law of this State.

5 (h) A bank, savings and loan association, savings bank, or credit union, or any
6 subsidiary or affiliate thereof organized under the laws of this State or the United States,
7 may charge a party to a loan secured by real property a reasonable fee as may be agreed
8 upon by the parties for an appraisal performed by an employee of the bank, savings and
9 loan association, savings bank, or credit union, or any subsidiary or affiliate thereof.
10 Upon the request of the borrower, the lender shall provide at no additional charge to the
11 borrower a copy of any appraisal for which the lender has collected a fee under this
12 subsection. Provision of the copy of an appraisal shall not be construed to create or
13 imply any warranty which does not otherwise exist by the lender as to the accuracy of
14 the appraisal. A lender collecting a fee under this subsection shall provide notice in
15 writing to the borrower of the borrower's right to select a qualified appraiser, acceptable
16 to the lender, but not employed by or affiliated with the lender."

17 Sec. 6. G.S. 24-11 reads as written:

18 **"§ 24-11. Certain revolving credit charges.**

19 (a) On the extension of credit under an open-end credit or similar plan (including
20 revolving credit card plans, and revolving charge accounts, but excluding any loan made
21 directly by a lender under a check loan, check credit or other such plan) under which no
22 service charge shall be imposed upon the consumer or debtor if the account is paid in
23 full within 25 days from the billing date, but upon which there may be imposed an
24 annual charge not to exceed ~~twenty~~ twenty-four dollars ~~(\$20.00), (\$24.00),~~ there may be
25 charged and collected interest, finance charges or other fees at a rate in the aggregate
26 not to exceed one and one-half percent (1 1/2%) per month computed on the unpaid
27 portion of the balance of the previous month less payments or credit within the billing
28 cycle or the average daily balance outstanding during the current billing period.

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

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

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

41 (c) Any extension of credit under an open-end or similar plan under which there
42 is charged a monthly periodic rate greater than one and one-quarter percent (1 1/4%)
43 may not be secured by real or personal property or any other thing of value, provided,
44 that this subsection shall not apply to consumer credit sales regulated by Chapter 25A,

1 the Retail Installment Sales Act; provided further, that in any action initiated for the
2 possession of property in which a security interest has been taken, a judgement for the
3 possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-
4 105(6)) for which the cash price was one hundred dollars (\$100.00) or more.

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

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

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

30 Sec. 7. G.S. 25A-14 reads as rewritten:

31 "**§ 25A-14. Finance charge rates and service charge for revolving charge account**
32 **contracts.**

33 (a) The finance-charge rate and either the annual charge or the monthly service
34 charge for a consumer credit sale made ~~pursuant to~~ under a revolving charge account
35 contract may not exceed the rates and charge provided for revolving credit by ~~G.S. 24-~~
36 ~~11(a)-G.S. 24-11. The annual fee provided in G.S. 24-11(a) may not be imposed.~~

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

40 (c) No default or deferral charge shall be imposed by the seller in connection
41 with a revolving charge-account contract, except as specifically provided for in ~~G.S. 24-~~
42 ~~11(a)-G.S. 24-11(d1).~~"

43 Sec. 8. This act becomes effective October 1, 1991.