

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE (919) 733-6834



TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE (919) 733-2578

MARGARET WEBB
LEGISLATIVE INFORMATION OFFICER
TELEPHONE (919) 733-4200

May 10, 1991

MEMORANDUM

TO: House Committee on Commerce

FROM: Robin S. Johnson, Committee Counsel *Robin*

RE: House Bill 869 (H869-CSRH-6): Committee Substitute Summary

The proposed committee substitute for House Bill 869 incorporates and modifies language from HB 53 (Assumption Fee Changes), HB 155 (Interest Rates/Revolving Credit), HB 242 (Credit Card Deregulation & Banks), HB 869 (Commercial Loans/Fees), and HB 1103 (Property Exemptions). Section 1 (from HB 1103) rewrites G.S. 1C-1601 by increasing the dollar amounts for property that a debtor is entitled to keep free of the debtor's creditors' claims, and by clarifying that the effect of the exemptions is that a creditor cannot repossess the debtor's household items in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor fully complies with statutory procedures in G.S. 1C-1603.

Sections 2-4 (from HB 869) rewrite G.S. 24-1.1, G.S. 24-1.2, and G.S. 24-1.2A to allow lenders to charge a party to a loan or extension of a loan a renewal fee not to exceed the greater of 1/4 of 1% of the outstanding balance at the time of modification, renewal, extension, or amendment of terms, or \$50.00. If a loan or extension of credit is not secured by real property, these sections will also permit lenders to charge an origination fee not to exceed the greater of 1/4 of 1% of the outstanding balance, or \$50.00 (currently, no provision for either fee).

Section 5 (from HB 53) rewrites G.S. 24-10 to allow a lender to charge the following assumption fees where a party assumes a loan secured by real property:

MEMORANDUM

PAGE 2

May 10, 1991

1. \$400 -- The mortgage or deed of trust has a due on sale clause (defined in the section) and the original obligor is released from liability on the original obligation.
2. \$125 -- The mortgage or deed of trust (a) does not have a due on sale clause, or (b) has a due on sale clause, but does not release original obligor from liability on the original obligation.

(Current law allows a fee of \$175 if the original obligor is released from liability, or a fee of \$100 if not released.) This section also will allow a lender to charge a party to a loan secured by real property a reasonable appraisal fee. The lender will be required to provide a copy of the appraisal report, if the borrower requests, and to provide notice to the party that the borrower has a right to obtain an independent third-party appraisal.

Sections 6 and 7 (from HB 155 & 242) will authorize the following charges on the extension of credit under open-end credit plans, including revolving credit card plans (i.e., bank cards) and consumer credit sales (i.e., retail credit cards):

1. \$5.00 late charge when a payment is more than 30 days late (currently, no provision).
2. Either a \$24.00 annual fee (currently \$20.00 and not allowed on consumer credit sales) or a \$2.00 monthly service charge on the balance of any account not paid in full within 25 days from the billing date (currently no provision is made for monthly service charges).

The act would be effective October 1, 1991.

MEMORANDUM

PAGE 2

May 10, 1991

1. \$400 -- The mortgage or deed of trust has a due on sale clause (defined in the section) and the original obligor is released from liability on the original obligation.
2. \$125 -- The mortgage or deed of trust (a) does not have a due on sale clause, or (b) has a due on sale clause, but does not release original obligor from liability on the original obligation.

(Current law allows a fee of \$175 if the original obligor is released from liability, or a fee of \$100 if not released.) This section also will allow a lender to charge a party to a loan secured by real property a reasonable appraisal fee. The lender will be required to provide a copy of the appraisal report, if the borrower requests, and to provide notice to the party that the borrower has a right to obtain an independent third-party appraisal.

Sections 6 and 7 (from HB 155 & 242) will authorize the following charges on the extension of credit under open-end credit plans, including revolving credit card plans (i.e., bank cards) and consumer credit sales (i.e., retail credit cards):

1. \$5.00 late charge when a payment is more than 30 days late (currently, no provision).
2. Either a \$24.00 annual fee (currently \$20.00 and not allowed on consumer credit sales) or a \$2.00 monthly service charge on the balance of any account not paid in full within 25 days from the billing date (currently no provision is made for monthly service charges).

The act would be effective October 1, 1991.

MEMORANDUM

PAGE 2

May 10, 1991

1. \$400 -- The mortgage or deed of trust has a due on sale clause (defined in the section) and the original obligor is released from liability on the original obligation.
2. \$125 -- The mortgage or deed of trust (a) does not have a due on sale clause, or (b) has a due on sale clause, but does not release original obligor from liability on the original obligation.

(Current law allows a fee of \$175 if the original obligor is released from liability, or a fee of \$100 if not released.) This section also will allow a lender to charge a party to a loan secured by real property a reasonable **appraisal fee**. The lender will be required to provide a copy of the appraisal report, if the borrower requests, and to provide notice to the party that the borrower has a right to obtain an independent third-party appraisal.

Sections 6 and 7 (from HB 155 & 242) will authorize the following charges on the extension of credit under open-end credit plans, including revolving credit card plans (i.e., bank cards) and consumer credit sales (i.e., retail credit cards):

1. \$5.00 **late charge** when a payment is more than 30 days late (currently, no provision).
2. **Either a \$24.00 annual fee** (currently \$20.00 and not allowed on consumer credit sales) or a **\$2.00 monthly service charge** on the balance of any account not paid in full within 25 days from the billing date (currently no provision is made for monthly service charges).

The act would be effective October 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 869

Short Title: Commercial Loans/Fees.

(Public)

Sponsors: Representative Brubaker.

Referred to: Commerce.

April 18, 1991

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE CERTAIN LOAN AND APPRAISAL FEES AND TO
3 AMEND THE USURY LAWS APPLICABLE TO COMMERCIAL LOANS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 24-10 is amended by adding the following new subsection
6 to read:

7 "(h) A bank, savings and loan association, savings bank, or credit union, or any
8 subsidiary or affiliate thereof organized under the laws of this State or the United
9 States, may charge a party to a loan secured by real property a fee as may be agreed
10 upon by the parties for an appraisal performed by an employee of the bank, savings
11 and loan association, savings bank, or credit union, or any subsidiary or affiliate
12 thereof."

13 Sec. 2. G.S. 24-9 reads as rewritten:

14 "**§ 24-9. Loans to corporations organized for profit not subject**
15 **to claim or defense of usury.**

16 Notwithstanding any other provision of this Chapter or any other provision of law,
17 ~~any foreign or domestic corporation substantially engaged in commercial,~~
18 ~~manufacturing or industrial pursuits for pecuniary gain may agree to pay, and any~~
19 ~~lender may charge and collect from such corporation, interest at any rate which such~~
20 ~~corporation may agree to pay in writing, and as to any such transaction the claim or~~
21 ~~defense of usury by such corporation and its successors or anyone else in its behalf is~~
22 ~~prohibited: the parties to a loan, extension of credit, or commitment for a loan may~~
23 ~~contract in writing for the payment of interest and fees as may be agreed upon by the~~
24 ~~parties where the loan, extension of credit, or commitment for a loan is primarily for~~

1 a business or commercial purpose. As to any such transaction, the claim or defense
2 of usury is prohibited."

3 Sec. 3. Chapter 24 of the General Statutes is amended by adding the
4 following new section to read:

5 "§ 24-10.2. Loan fees.

6 (a) Any lender may charge a party to a loan or extension of credit governed by the
7 provisions of G.S. 24-1.1, G.S. 24-1.2, or G.S. 24-1.2A a fee for the modification,
8 renewal, extension, or amendment of any terms of the loan or extension of credit,
9 such fee not to exceed the greater of one percent (1%) of the balance outstanding at
10 the time of the modification, renewal, extension, or amendment of terms, or twenty-
11 five dollars (\$25.00).

12 (b) Any lender may charge a party to a loan or extension of credit governed by the
13 provisions of G.S. 24-1.1 or G.S. 24-1.2 an origination fee:

14 (1) as may be agreed upon by the parties where the principal amount
15 of the loan or extension of credit is more than twenty-five
16 thousand dollars (\$25,000), or

17 (2) not to exceed the greater of two percent (2%) or fifty dollars
18 (\$50.00) where the principal amount of the loan or extension of
19 credit is twenty-five thousand dollars (\$25,000) or less."

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

21 "§ 24-1.2A. Equity lines of credit.

22 Notwithstanding any other provision of this Chapter, the parties to an equity line
23 of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which
24 shall not exceed the maximum rates permitted under G.S. 24-1.2(2a); provided,
25 however, that the parties may contract for interest rates which shall be adjustable or
26 variable, so long as for adjustable or variable rate contracts the rate in effect for a
27 given period does not exceed the maximum rate permitted under G.S. 24-1.2(2a) for
28 the same period. Fees may be charged on equity lines of credit which in the
29 aggregate, over the life of the contract based on the maximum limit of the line of
30 credit, do not exceed those permitted under G.S. 24-10. Fees may be charged for the
31 modification, renewal, extension, or amendment of any terms of an equity line of
32 credit which do not exceed those permitted by G.S. 24-10.2(a)."

33 Sec. 5. This act becomes effective October 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

H869-CSRH-6
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 869
THIS IS A DRAFT 9-MAY-91 09:47:28
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Loans/Fees.

(Public)

Sponsors:

Referred to: Commerce.

April 18, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND CLARIFY THE EFFECT
3 OF EXEMPTIONS, TO AUTHORIZE CERTAIN LOAN AND APPRAISAL FEES, TO
4 AMEND THE USURY LAWS APPLICABLE TO COMMERCIAL LOANS, TO
5 AUTHORIZE THE IMPOSITION OF AN ANNUAL FEE OR MONTHLY SERVICE
6 CHARGE ON CREDIT PLANS, AND TO AMEND THE LAW REGARDING
7 ASSUMPTION FEES IN CONNECTION WITH CERTAIN REAL ESTATE LOANS.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 1C-1601 reads as rewritten:
10 "§1C-1601. What property exempt; waiver; exceptions.
11 (a) Exempt property. -- Each individual, resident of this
12 State, who is a debtor is entitled to retain free of the
13 enforcement of the claims of his creditors:
14 (1) The debtor's aggregate interest, not to exceed ~~seven~~
15 ~~thousand five hundred dollars (\$7,500)~~ ten thousand dollars
16 (\$10,000) in value, in real property or personal property that
17 the debtor or a dependent of the debtor uses as a residence, in a
18 cooperative that owns property that the debtor or a dependent of
19 the debtor uses as a residence, or in a burial plot for the
20 debtor or a dependent of the debtor.

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

5 (3) The debtor's interest, not to exceed one thousand
6 five hundred dollars (\$1,000) (\$1,500) in value, in one motor
7 vehicle.

8 (4) The debtor's aggregate interest, not to exceed ~~two~~
9 ~~thousand five hundred dollars (\$2,500)~~ three thousand five
10 hundred dollars (\$3,500) in value for the debtor plus ~~five~~
11 ~~hundred dollars (\$500)~~ seven hundred fifty dollars (\$750.00) for
12 each dependent of the debtor, not to exceed ~~two~~ three thousand
13 ~~dollars (\$2,000)~~ (\$3,000) total for dependents, in household
14 furnishings, household goods, wearing apparel, appliances, books,
15 animals, crops, or musical instruments, that are held primarily
16 for the personal, family, or household use of the debtor or a
17 dependent of the debtor.

18 (5) The debtor's aggregate interest, not to exceed ~~five~~
19 ~~hundred dollars (\$500)~~ seven hundred fifty dollars (\$750.00) in
20 value, in any implements, professional books, or tools of the
21 trade of the debtor or the trade of a dependent of the debtor.

22 (6) Life insurance as provided in Article X, Section 5
23 of the Constitution of North Carolina.

24 (7) Professionally prescribed health aids for the debtor
25 or a dependent of the debtor.

26 (8) Compensation for personal injury or compensation for
27 the death of a person upon whom the debtor was dependent for
28 support, but such compensation is not exempt from claims for
29 funeral, legal, medical, dental, hospital, and health care
30 charges related to the accident or injury giving rise to the
31 compensation.

32 (b) Definition. -- "Value" as used in this Article means fair
33 market value of an individual's interest in property, less valid
34 liens superior to the judgment lien sought to be enforced.

35 (c) Waiver. -- The exemptions provided in this Article and in
36 Sections 1 and 2 of Article X of the North Carolina Constitution,
37 cannot be waived except by:

38 (1) Transfer of property allocated as exempt (and in
39 that event only as to the specific property transferred), or

40 (2) Written waiver, after judgment, approved by the
41 clerk or district court judge. The clerk or district court judge
42 must find that the waiver is made freely, voluntarily, and with
43 full knowledge of the debtor's rights to exemptions and that he
44 is not required to waive them;

1 (3) Failure to assert the exemption after notice to do
2 so pursuant to G.S. 1C-1603. The clerk or district court judge
3 may relieve such a waiver made by reason of mistake, surprise or
4 excusable neglect, to the extent that the rights of innocent
5 third parties are not affected.

6 (d) Recent purchases. -- The exemptions provided in
7 subdivisions (2), (3), (4) and (5) of subsection (a) of this
8 section are inapplicable with respect to tangible personal
9 property purchased by the debtor less than 90 days preceding the
10 initiation of judgment collection proceedings or the filing of a
11 petition for bankruptcy.

12 (e) Exceptions. -- The exemptions provided in this Article are
13 inapplicable to claims

14 (1) Of the United States or its agencies as provided by
15 federal law;

16 (2) Of the State or its subdivisions for taxes,
17 appearance bonds or fiduciary bonds;

18 (3) Of lien by a laborer for work done and performed for
19 the person claiming the exemption, but only as to the specific
20 property affected;

21 (4) Of lien by a mechanic for work done on the premises,
22 but only as to the specific property affected;

23 (5) For payment of obligations contracted for the
24 purchase of the specific real property affected;

25 (6) Repealed by Session Laws 1981 (Reg. Sess., 1982), c.
26 1224, s. 6, effective September 1, 1982;

27 (7) For contractual security interests in the specific
28 property affected; provided, that the exemptions shall apply to
29 the debtor's household goods notwithstanding any contract for a
30 nonpossessory, nonpurchase money security interest in any such
31 goods;

32 (8) For statutory liens, on the specific property
33 affected, other than judicial liens;

34 (9) For child support, alimony or distributive award
35 order pursuant to Chapter 50 of the General Statutes.

36 (f) Federal Bankruptcy Act. -- The exemptions provided in
37 The Bankruptcy Act, 11 U.S.C. § 522(d), are not applicable to
38 residents of this State. The exemptions provided by this Article
39 shall apply for purposes of The Bankruptcy Act, 11 U.S.C. §
40 522(b).

41 (g) Effect of exemptions.--- Notwithstanding any other
42 provision of law, a creditor shall not obtain possession of a
43 debtor's household goods and furnishings in which the creditor
44 holds a nonpossessory, nonpurchase money security interest until

1 the creditor has fully complied with the procedures required by
2 G.S. 1C-1603."

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

4 "§24-1.1. Contract rates and fees.

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

10 (1) Where the principal amount is twenty-five thousand
11 dollars (\$25,000) or less, the rate set under ~~subdivision (3)~~
12 subsection (c) of this section; or

13 (2) Any rate agreed upon by the parties where the
14 principal amount is more than twenty-five thousand dollars
15 (\$25,000).

16 (b) As used in this section, interest shall not be deemed in
17 excess of the rates provided where interest is computed monthly
18 on the outstanding principal balance and is collected not more
19 than 31 days in advance of its due date. Nothing in this section
20 shall be construed to authorize the charging of interest on
21 committed funds prior to the disbursement of said funds.

22 ~~(3)~~ (c) On the fifteenth day of each month, the Commissioner
23 of Banks shall announce and publish the maximum rate of interest
24 permitted by subdivision (1) of this section on that date. Such
25 rate shall be the latest published ~~non-competitive~~
26 noncompetitive rate for U.S. Treasury bills with a six-month
27 maturity as of the fifteenth day of the month plus six percent
28 (6%), rounded upward or downward, as the case may be, to the
29 nearest one-half of one percent (1/2 of 1%) or sixteen percent
30 (16%), whichever is greater. If there is no nearest one-half of
31 one percent (1/2 of 1%), the Commissioner shall round downward to
32 the lower one-half of one percent (1/2 of 1%). The rate so
33 announced shall be the maximum rate permitted for the term of
34 loans made under this section during the following calendar month
35 when the parties to such loans have agreed that the rate of
36 interest to be charged by the lender and paid by the borrower
37 shall not vary or be adjusted during the term of the loan. The
38 parties to a loan made under this section may agree to a rate of
39 interest which shall vary or be adjusted during the term of the
40 loan in which case the maximum rate of interest permitted on such
41 loans during a month during the term of the loan shall be the
42 rate announced by the Commissioner in the preceding calendar
43 month.

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

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

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

14 "§ 24-1.2. Installment rates and fees.

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

19 (1) On installment loans not exceeding five thousand dollars
20 (\$5,000), which are not secured by a security interest in any
21 degree on real property, which are for periods of not less than
22 six months nor more than 120 months, which are repayable in
23 substantially equal consecutive monthly payments, which shall not
24 be collected in advance, and which shall be computed monthly on
25 the outstanding principal balance, the rate shall not exceed the
26 rates set under subdivision (2a) of this section; provided, a
27 minimum charge of ten dollars (\$10.00) or one dollar (\$1.00) per
28 payment may be agreed to and charged in lieu of interest. The
29 borrower may prepay all or any part of this loan without penalty.
30 The due date of the first monthly payment shall not be more than
31 45 days following disbursement of funds under any such
32 installment loan.

33 (2) On installment loans not exceeding twenty-five thousand
34 dollars (\$25,000), which are not secured by a first security
35 instrument on real property, and which are payable at least
36 quarterly in substantially equal payments of principal and
37 interest, or in substantially equal payments of principal, the
38 rate of interest, computed on the outstanding balance, shall not
39 exceed the rate set under subdivision (2a) of this section:
40 provided a minimum charge of ten dollars (\$10.00) or one dollar
41 (\$1.00) per payment may be agreed to and charged in lieu of
42 interest. The borrower may prepay all or any part of the loan
43 without penalty.

1 (2a) On the fifteenth day of each month, the Commissioner of
2 Banks shall announce and publish the maximum rate of interest
3 permitted by subdivisions (1) and (2) of this section. Such rate
4 shall be the latest published noncompetitive rate for U.S.
5 Treasury bills with a six-month maturity as of the fifteenth day
6 of the month plus six percent (6%), rounded upward or downward,
7 as the case may be, to the nearest one-half of one percent ($1/2$
8 of 1%) or sixteen percent (16%), whichever is greater. If there
9 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
11 percent ($1/2$ of 1%). The rate so announced shall be the maximum
12 rate permitted for the term of loans made under this section
13 during the following calendar month when the parties to such
14 loans have agreed that the rate of interest to be charged by the
15 lender and paid by the borrower shall not vary or be adjusted
16 during the term of the loan. The parties to a loan made under
17 this section may agree to a rate of interest which shall vary or
18 be adjusted during the term of the loan in which case the maximum
19 rate of interest permitted on such loans during a month during
20 the term of the loan shall be the rate announced by the
21 Commissioner in the preceding calendar month.

22 (3), (4) Repealed by Session Laws 1979, c. 138, s. 3.

23 (5) Nothing in this section shall be construed to authorize the
24 charging of interest on committed funds prior to the disbursement
25 of said funds.

26 (6) Notwithstanding the foregoing provisions of this section,
27 on an installment loan not exceeding twenty-five thousand dollars
28 (\$25,000) which is secured by a first lien on a residential
29 manufactured home, the parties may contract in writing for the
30 payment of interest as agreed upon by the parties; Provided,
31 however, that this paragraph shall only apply if the parties
32 would have been entitled to so contract by the provisions of
33 section 501 of United States Public Law 96-221 and have complied
34 with the regulations promulgated thereunder. The borrower may
35 prepay all or any part of the loan without penalty.

36 For the purpose of this paragraph (6), a "residential
37 manufactured home" means a mobile home as defined in G.S.
38 143-145(7) which is used as a dwelling.

39 (7) Any lender may charge a party to a loan or extension of
40 credit governed by this section a fee for the modification,
41 renewal, extension, or amendment of any terms of the loan or
42 extension of credit, such fee not to exceed the greater of one-
43 quarter of one percent ($1/4$ of 1%) of the balance outstanding at

1 the time of the modification, renewal, extension, or amendment of
2 terms, or fifty dollars (\$50.00).

3 (8) Any lender may charge a party to a loan or extension of
4 credit not secured by real property governed by this section an
5 origination fee not to exceed the greater of one-quarter of one
6 percent (1/4 of 1%) of the outstanding balance or fifty dollars
7 (\$50.00)."

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

9 "§ 24-1.2A. Equity lines of credit.

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

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

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

30 "§24-10. Maximum fees on loans secured by real property.

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

1 (b) Any loan made under G.S. 24-1.1 in an original principal
2 amount of one hundred thousand dollars (\$100,000.00) or less may
3 be prepaid in part or in full, after 30 days notice to the
4 lender, with a maximum prepayment fee of two percent (2%) of the
5 outstanding balance at any time within three years after the
6 first payment of principal and thereafter there shall be no
7 prepayment fee, provided that there shall be no prepayment fee
8 charged or received in connection with any repayment of a
9 construction loan; and except as herein provided, any lender and
10 any borrower may agree on any terms as to prepayment of a loan.

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

23 (d) (1) Any lender may charge to any person, persons, firm or
24 corporation that assumes a loan, made under the provisions of
25 G.S. 24-1.1 and secured by real property, a fee not to exceed
26 one hundred seventy-five dollars (\$175.00); provided, however,
27 that if the original obligor is not released from liability on
28 the obligation, the fee shall not exceed one hundred dollars
29 (\$100.00). property the following fee:

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

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

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

42 (2) For purposes of this subsection, the term 'due on
43 sale clause' means a contract provision that authorizes a lender
44 to declare immediately due and payable all sums secured by the

1 lender's security instrument if all or any part of the secured
2 property, or an interest therein, is sold or transferred without
3 the lender's prior written consent or contrary to the
4 requirements of the mortgage or the deed of trust. For purposes
5 of this subsection, no lender shall exercise its rights under the
6 due on sale clause if prohibited by federal law as of the date of
7 execution of the contract containing the clause.

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

10 (g) Notwithstanding the limitations contained in subsection (a)
11 of this section, a lender described in G.S. 24-1.1A(a)(2) may
12 charge or receive from any borrower or any agent for a borrower,
13 fees or discounts which in the aggregate do not exceed two
14 percent (2%) on loans made under G.S. 24-1.1 or G.S. 24-1.2(2)
15 when such loans are secured by a second or junior lien on real
16 property. The fees or discounts are fully earned when the loan is
17 made and are not a prepayment penalty under this Chapter or any
18 other law of this State.

19 (h) A bank, savings and loan association, savings bank, or
20 credit union, or any subsidiary or affiliate thereof organized
21 under the laws of this State or the United States, may charge a
22 party to a loan secured by real property a reasonable fee as may
23 be agreed upon by the parties for an appraisal performed by an
24 employee of the bank, savings and loan association, savings bank,
25 or credit union, or any subsidiary or affiliate thereof. Upon
26 the request of the borrower, the lender shall provide at no
27 additional charge to the borrower a copy of any appraisal for
28 which the lender has collected a fee under this subsection.
29 Provision of the copy of an appraisal shall not be construed to
30 create or imply any warranty which does not otherwise exist by
31 the lender as to the accuracy of the appraisal. A lender
32 collecting a fee under this subsection shall provide notice in
33 writing to the borrower of the borrower's right to select a
34 qualified appraiser, acceptable to the lender, but not employed
35 by or affiliated with the lender."

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

37 "§24-11. Certain revolving credit charges.

38 (a) On the extension of credit under an open-end credit or
39 similar plan (including revolving credit card plans, and
40 revolving charge accounts, but excluding any loan made directly
41 by a lender under a check loan, check credit or other such plan)
42 under which no service charge shall be imposed upon the consumer
43 or debtor if the account is paid in full within 25 days from the
44 billing date, but upon which there may be imposed an annual

1 charge not to exceed ~~twenty~~ twenty-four dollars ~~(\$20.00)~~,
2 (\$24.00), there may be charged and collected interest, finance
3 charges or other fees at a rate in the aggregate not to exceed
4 one and one-half percent (1 1/2%) per month computed on the
5 unpaid portion of the balance of the previous month less payments
6 or credit within the billing cycle or the average daily balance
7 outstanding during the current billing period.

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

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

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

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

36 (d) The term "billing date" shall mean any date selected by the
37 creditor and the bill for the balance of the account must be
38 mailed to the customer at least 14 days prior to the date
39 specified in the statement as being the date by which payment of
40 the new balance must be made in order to avoid the imposition of
41 any finance charge.

42 (d1) A lender may charge a party to a loan or extension of
43 credit governed by this section a late payment charge not to
44 exceed five dollars (\$5.00) for any payment past due for 30 days

1 or more. If a late payment charge has been once imposed with
2 respect to a late payment, no late charge shall be imposed with
3 respect to any future payment which would have been timely and
4 sufficient but for the previous default.

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

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

28 "§25A-14. Finance charge rates and service charge for revolving
29 charge account contracts.

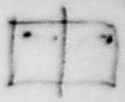
30 (a) The finance-charge rate and either the annual charge or the
31 monthly service charge for a consumer credit sale made pursuant
32 to ~~under~~ a revolving charge account contract may not exceed the
33 rates and charge provided for revolving credit by ~~G.S. 24-11(a).~~
34 ~~G.S. 24-11. The annual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

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

40 (c) No default or deferral charge shall be imposed by the
41 seller in connection with a revolving charge-account contract,
42 except as specifically provided for in ~~G.S. 24-11(a).~~ G.S. 24-
43 11(d1)."

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

* Mtn:



For: TCS HR 869
Unfav 869, 242, ~~869~~
original 53, 155

13%
*
*
— Amend
Submitt on 17th
work —

1991 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Rep. Hardaway for the Committee on

Commerce

Committee Substitute for

H.B. 869 , S.B. _____ A BILL TO BE ENTITLED AN ACT
H.J.R. _____ , S.J.R. _____ A JOINT RESOLUTION
H.R. _____ A HOUSE RESOLUTION

TO AUTHORIZE CERTAIN LOAN AND APPRAISAL FEES AND TO AMEND THE USURY LAWS
APPLICABLE TO COMMERCIAL LAONS.

- With a favorable report.
- With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations Finance _____.
- With a favorable report, as amended.
- With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations Finance _____.
- With an unfavorable report.
- With a favorable report as to committee substitute bill () which changes the title, unfavorable as to original bill. (and recommendation that the committee substitute bill be re-referred to the Committee on _____.)
- With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.
- With recommendation that the House concur.
- With recommendation that the House do not concur.
- With recommendation that the House do not concur; request conferees.
- With recommendation that the House concur; committee believes bill to be material.
- With an unfavorable report, with a Minority Report attached.
- Without prejudice.
- With an indefinite postponement report.
- With an indefinite postponement report, with a Minority Report attached.
- With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
NOTICE
ASSIGNMENT OF BILLS TO SUBCOMMITTEE

COMMITTEE: COMMERCE COMMITTEE
(Name of STANDING COMMITTEE)

Date: APRIL 23, 1991

Chairman: REPRESENTATIVE THOMAS C. HARDAWAY

.....

Bill Number (Indicate H or S): HB869 (Representative Brubaker)

Short Title: COMMERCIAL LOANS FEES

Assigned to Subcommittee on: FINANCIAL INSTITUTIONS

Re-assigned to Subcommittee on:

Bill Number (Indicate H or S): HB955 (Representative Dawkins)

Short Title: CONSUMER FINANCE ACT CHANGES

Assigned to Subcommittee on: FINANCIAL INSTITUTIONS

Re-assigned to Subcommittee on:

Bill Number (Indicate H or S): <>

Short Title: <>

Assigned to Subcommittee on: <>

Re-assigned to Subcommittee on: <>
