

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 810
Senate Commerce and Insurance Committee Substitute Adopted 6/7/18

Short Title: Loan Origination/Late Payment Charge Changes.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE LOAN ORIGINATION FEE FOR NORTH CAROLINA
3 BANKS AND TO ADJUST THE LATE PAYMENT CHARGE FOR CERTAIN LOANS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 24-1.1 reads as rewritten:

6 "**§ 24-1.1. Contract rates and fees.**

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

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

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

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

35 (d) Any bank or savings institution organized under the law of North Carolina or of the
36 United States may charge a party to a loan or extension of credit governed by this section a fee



1 for the modification, renewal, extension, or amendment of any terms of the loan or extension of
 2 ~~credit, such fee not to credit. The fee shall not~~ exceed the greater of one-quarter of one percent
 3 (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or
 4 amendment of terms, or fifty dollars (\$50.00).

5 (e) Any bank or savings institution organized under the law of North Carolina or of the
 6 United States may charge a party to a loan or extension of credit not secured by real property
 7 governed by this section an origination fee ~~not to exceed the greater of one-quarter of one percent~~
 8 ~~(1/4 of 1%) of the outstanding balance or fifty dollars (\$50.00).~~in accordance with this
 9 subsection. For a loan or extension of credit with a principal amount of one hundred thousand
 10 dollars (\$100,000) or greater, the maximum origination fee is one quarter of one percent (1/4 of
 11 1%) of the principal amount. For a loan or extension of credit with a principal amount less than
 12 one hundred thousand dollars (\$100,000), the origination fee shall not exceed the amounts in the
 13 following table:

<u>Principal Amount</u>	<u>Maximum Origination Fee</u>
<u>\$0 to \$19,999</u>	<u>\$150.00</u>
<u>\$20,000 to \$29,999</u>	<u>\$175.00</u>
<u>\$30,000 to \$49,999</u>	<u>\$200.00</u>
<u>\$50,000 to \$99,999</u>	<u>\$250.00</u>

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

21 **SECTION 2.** G.S. 24-10.1 reads as rewritten:

22 "**§ 24-10.1. Late fees.**

23 (a) Subject to the limitations contained in subsection (b) of this section, any lender may
 24 charge a party to a loan or extension of credit governed by ~~the provisions of~~ G.S. 24-1.1 or
 25 G.S. 24-1.1A a late payment charge as agreed upon by the parties in the loan contract.

26 (b) ~~No lender may charge a late payment charge.~~All of the following limitations apply to
 27 a late payment charge:

28 (1) ~~In excess of four percent (4%) of the amount of the payment past due; or~~A
 29 late payment charge shall not exceed any of the following:

30 a. The amount disclosed with particularity to the borrower pursuant to
 31 the Federal Consumer Credit Protection Act if that act applies to the
 32 transaction.

33 b. For a loan or extension of credit that meets all of the following
 34 conditions, the greater of thirty-five dollars (\$35.00) or four percent
 35 (4%) of the amount of the payment past due:

36 1. The loan or extension of credit is made by a bank or savings
 37 institution organized under the law of North Carolina or of the
 38 United States.

39 2. The loan or extension of credit is not secured by real property.

40 3. The loan or extension of credit is governed by G.S. 24-1.1.

41 c. For any other type of loan or extension of credit governed by
 42 G.S. 24-1.1 or G.S. 24-1.1A, four percent (4%) of the amount of the
 43 payment past due.

44 (2) ~~In excess of the amount disclosed with particularity to the borrower pursuant~~
 45 ~~to the provisions of the Federal Consumer Credit Protection Act if the~~
 46 ~~transaction is one to which the provisions of that act apply, which in no event~~
 47 ~~shall exceed four percent (4%); or~~

48 (3) ~~For any payment unless past due for 15 days or more; provided, however, if~~
 49 ~~the loan is one on which interest on each installment is paid in advance, no~~
 50 ~~late payment charge may be charged until the payment is 30 days past due or~~

~~more; or~~ A late payment charge shall not be charged unless one of the following is true:

- 3 a. The payment is 30 days past due or more for a loan on which interest
 4 on each installment is paid in advance.
- 5 b. The payment is 15 days past due or more for any other loan.
- 6 (4) ~~More~~ A late payment charge shall not be charged more than once with respect
 7 to a single late payment. If a late payment charge is deducted from a payment
 8 made on the contract and ~~such the~~ deduction results in a subsequent default
 9 on a subsequent payment, no late payment charge ~~may shall~~ be imposed for
 10 ~~such the~~ default. If a late payment charge has been once imposed with respect
 11 to a particular late payment, no ~~such late payment~~ charge shall be imposed
 12 with respect to any future payment ~~which that~~ would have been timely and
 13 sufficient but for the previous ~~default; provided that~~ default. However, when
 14 a borrower fails to make an installment payment, and the terms of the loan
 15 agreement provide that subsequent payments shall first be applied to the past
 16 due balance, and the borrower resumes making installment payments but has
 17 not paid all past due installments, then the lender may enforce the contract
 18 according to its terms, imposing a separate late payment charge for each
 19 installment that becomes due until the default is ~~cured; or~~ cured.
- 20 (5) ~~On~~ A late payment charge shall not be charged on any loan which that by its
 21 terms calls for repayment of the entire balance in a single payment and not for
 22 installments of interest or principal and ~~interest; or~~ interest.
- 23 (6) ~~Unless~~ A late payment charge shall not be charged unless the lender notifies
 24 the borrower within 45 days following the date the payment was due that a
 25 late payment charge has been imposed for a particular late payment which late
 26 payment must be paid unless the borrower can show that the installment was
 27 paid in full and on time. No late payment charge ~~may shall~~ be collected from
 28 any borrower if the borrower informs the lender that non-payment of an
 29 installment is in dispute and presents proof of payment within 45 days of
 30 receipt of the lender's notice of the late charge.

31 (c) The provisions of this subsection apply only to home loans made by lenders described
 32 in G.S. 24-1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late
 33 payment charge in excess of that permitted in this section, the loan ~~shall not be deemed to be is~~
 34 not unlawful if: if all of the following are true:

- 35 (1) No late fee in excess of those permitted in this section has been assessed or
 36 collected by the ~~lender; and~~ lender.
- 37 (2) One of the following is true:
- 38 a. If the loan is executed on or after July 14, 1993, the lender provides
 39 written notice to the borrower within 90 days of the date of execution
 40 of the loan documents that the late payment charge with respect to the
 41 loan shall be four percent (4%) or ~~less; or~~ less.
- 42 b. If the loan was executed prior to July 14, 1993, the lender provides
 43 written notice to the borrower within six months of that date that the
 44 late payment charge with respect to the loan shall be four percent (4%)
 45 or less."

46 **SECTION 3.** This act becomes effective October 1, 2018, and applies to contracts
 47 entered into, renewed, or modified on or after that date.