

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 377

Short Title: Credit Card Changes.

(Public)

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Sponsors: Senators Staton, Royall, and Plyler.

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Referred to: Banks and Thrift.

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March 9, 1989

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE CREDIT CARD BANKS, TO AMEND THE RATE OF  
2 INTEREST AND FEES APPLICABLE TO CREDIT CARD ACCOUNTS, OPEN-  
3 END CREDIT, AND REVOLVING CHARGE ACCOUNTS, AND TO REPEAL  
4 THE PROHIBITION AGAINST THE USE OF CREDIT CARD FACILITIES TO  
5 SOLICIT CONTRACTS OF INSURANCE.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 24-11 reads as rewritten:

8 ~~"§ 24extension of credit under an open end credit or similar plan (including~~  
9 ~~revolving credit card plans, and revolving charge accounts, but excluding~~  
10 ~~any loan made directly by a lender under a check loan, check credit or~~  
11 ~~other such plan) under which no service charge shall be imposed upon~~  
12 ~~the consumer or debtor if the account is paid in full within 25 days from~~  
13 ~~the billing date, but upon which there may be imposed an annual charge~~  
14 ~~not to exceed twenty dollars (\$20.00), there may be charged and collected~~  
15 ~~interest, finance charges or other fees at a rate in the aggregate not to~~  
16 ~~exceed one and one-half percent (1 1/2%) per month computed on the~~  
17 ~~unpaid portion of the balance of the previous month less payments or~~  
18 ~~credit within the billing cycle or the average daily balance outstanding~~  
19 ~~during the current billing period. No person, firm or corporation may~~  
20 ~~charge a discount or fee in excess of six percent (6%) of the principal~~  
21 ~~amount of the accounts acquired from or through any vendors or others~~  
22 ~~providing services who participate in such plan.~~  
23

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

7       ~~(c) Any extension of credit under an open-end or similar plan under which there~~  
8 ~~is charged a monthly periodic rate greater than one and one-quarter percent (1 1/4%)~~  
9 ~~may not be secured by real or personal property or any other thing of value, provided,~~  
10 ~~that this subsection shall not apply to consumer credit sales regulated by Chapter 25A,~~  
11 ~~the Retail Installment Sales Act; provided further, that in any action initiated for the~~  
12 ~~possession of property in which a security interest has been taken, a judgement for the~~  
13 ~~possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-~~  
14 ~~105(6)) for which the cash price was one hundred dollars (\$100.00) or more.~~

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

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

35 **"§ 24-11. Open-end credit other than credit card accounts.**

36       (a) The following definitions apply in this section:

37           (1) Open-end credit. Credit extended by a creditor under a plan in which  
38 the creditor reasonably contemplates repeated transactions, the creditor  
39 may impose a finance charge from time to time on an outstanding  
40 unpaid balance, and the amount of credit that may be extended to the  
41 debtor during the term of the plan, up to any limit agreed upon by the  
42 parties, is generally made available to the extent that any outstanding  
43 balance is repaid.

1 (2) Consumer open-end credit. Open-end credit that is extended for  
2 personal, family, or household purposes in an amount of twenty-five  
3 thousand dollars (\$25,000) or less.

4 (b) On the extension of open-end credit, whether secured or unsecured, there may  
5 be charged and collected finance charges and interest, transaction fees, overlimit  
6 charges, late payment fees or delinquency charges, charges for each return of a  
7 dishonored check or draft in payment of any portion of an outstanding balance,  
8 membership fees, whether assessed on an annual or other periodic basis, and any other  
9 fees and charges. In addition, an extension of open-end credit, whether secured or  
10 unsecured, may provide for such terms and conditions as may be agreed upon by the  
11 parties. All fees and charges authorized by this section are material to the determination  
12 of interest under the most favored lender doctrine and under section 85 of the National  
13 Bank Act, 12 U.S.C. § 85, or section 521 of the Depository Institutions Deregulation  
14 and Monetary Control Act of 1980, 12 U.S.C. § 1831d.

15 (c) If a creditor proposes an amendment to a consumer open-end credit plan  
16 which has the effect of increasing any charge, rate of interest, or fee to be paid by the  
17 debtor and the plan is subject to the requirements of the federal Truth-in-Lending Act  
18 (Title 1 of the Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.), as amended,  
19 and as implemented by Regulation Z, 12 C.F.R. § 226, of the Federal Reserve System,  
20 the creditor shall notify the debtor in writing at least 30 days before the effective date of  
21 the amendment of the amended terms and of the debtor's right to cancel the plan. The  
22 debtor may cancel the plan and pay the account in full in accordance with the terms and  
23 conditions of the plan that are then in effect. Cancellation by the debtor is effective  
24 upon receipt by the creditor of written notification of cancellation at an address  
25 designated by the creditor. Failure to cancel the plan before the effective date of the  
26 amendment constitutes consent by the debtor to the amendment.

27 (d) This section does not apply to credit cards and credit card accounts as defined  
28 in G.S. 53-244."

29 Sec. 2. Chapter 53 of the General Statutes is amended by adding a new  
30 Article to read:

31 **"ARTICLE 20.**

32 **"CREDIT CARD AND CREDIT CARD BANK ACT.**

33 **"§ 53-243. Title.**

34 This Article shall be known and may be cited as the North Carolina Credit Card and  
35 Credit Card Bank Act.

36 **"§ 53-244. Definitions.**

37 The following definitions apply in this Article:

- 38 (1) Banking Commission. The Banking Commission of this State.  
39 (2) Commissioner. The Commissioner of Banks of this State.  
40 (3) Control. Defined in section 2(a)(2) of the Bank Holding Company Act  
41 of 1956, 12 U.S.C. § 1841(a)(2), as amended.  
42 (4) Credit card. Defined in Title 1 of the Consumer Credit Protection Act,  
43 15 U.S.C. § 1601 et seq., as amended, and as implemented by section

- 1                    226.2(a) of Regulation Z issued by the Board of Governors of the  
2                    Federal Reserve System.
- 3                    (5)                Credit card account. An arrangement or agreement between a  
4                    domestic lender, credit card bank, or other credit card issuer and a  
5                    debtor pursuant to which open-end credit is accessed by a credit card.
- 6                    (6)                Credit card bank. A national bank whose principal place of business is  
7                    located in this State or a bank organized under the laws of this State,  
8                    the activities of which are limited to those authorized in G.S. 53-246.
- 9                    (7)                Domestic lender. A bank, savings and loan association, savings bank,  
10                    or credit union organized under the laws of this State or the United  
11                    States which is authorized by law to accept deposits and make loans  
12                    and has its principal place of business in this State.
- 13                    (8)                Foreign lender. A bank, savings and loan association, savings bank, or  
14                    credit union organized under the laws of the United States, any state  
15                    other than this State, or the District of Columbia, which is authorized  
16                    by law to accept deposits and make loans and has its principal place of  
17                    business outside this State.
- 18                    (9)                Holding company. A company that controls a domestic or foreign  
19                    lender.
- 20                    (10)              Open-end credit. Credit extended by a creditor under a plan in which  
21                    the creditor reasonably contemplates repeated transactions, the creditor  
22                    may impose a finance charge from time to time on an outstanding  
23                    unpaid balance, and the amount of credit that may be extended to the  
24                    debtor during the term of the plan, up to any limit agreed upon by the  
25                    parties, is generally made available to the extent that any outstanding  
26                    balance is repaid.
- 27                    (11)              Other credit card issuer. A corporation, partnership, or other entity,  
28                    other than a domestic lender, foreign lender, or credit card bank, that  
29                    issues a credit card.
- 30                    (12)              Qualifying organization. A corporation, partnership, or other entity  
31                    that maintains an office in this State at which are employed at least 200  
32                    residents of this State who are directly engaged in providing the  
33                    following services, either for the qualifying organization or on behalf  
34                    of other domestic or foreign lenders, credit card banks, or other credit  
35                    card issuers.
- 36                    a.                The distribution of credit cards or other devices designed and  
37                    effective to access credit card accounts.
- 38                    b.                The preparation of periodic statements of amounts due under  
39                    credit card accounts.
- 40                    c.                The receipt from credit card holders of amounts paid with  
41                    respect to credit card accounts.
- 42                    d.                The maintenance of financial records reflecting the status of  
43                    credit card accounts from time to time.

1           The term 'qualifying organization' also includes any domestic bank,  
2           credit card bank, or other credit card issuer that satisfies the  
3           employment and activities requirements set forth in this subdivision.

4    **"§ 53-245. Credit card banks authorized.**

5           Subject to the provisions of this Article, a domestic lender, foreign lender, or holding  
6           company may organize, own, and control a credit card bank. Nothing contained in this  
7           Article shall be construed to amend or alter the provisions of the North Carolina  
8           Regional Reciprocal Bank Act, G.S. 53-209 et seq., or to authorize bank holding  
9           companies to acquire, own, or control any bank as defined in section 2(c) of the Bank  
10          Holding Company Act of 1956, 12 U.S.C. § 1841(c), as amended.

11   **"§ 53-246. Credit card banks; creation, powers, and duties.**

12          (a)    A credit card bank:

- 13           (1)    Shall be organized under the laws of the United States or of this State.  
14           (2)    May engage only in credit card operations, which may include the  
15           business of soliciting, processing, and extending credit pursuant to  
16           credit card accounts and conducting other activities as may be  
17           incidental to this business.  
18           (3)    May not accept demand deposits or deposits that the depositor may  
19           withdraw by check or similar means or to pay to third parties.  
20           (4)    May not accept a savings or time deposit of less than one hundred  
21           thousand dollars (\$100,000).  
22           (5)    May maintain only one office that accepts deposits.  
23           (6)    May not engage in the business of making commercial loans.  
24           (7)    Shall operate in a manner that is not likely to attract customers from  
25           the general public in this State to the substantial detriment of other  
26           domestic lenders.  
27           (8)    Shall maintain capital stock and paid-in surplus in an amount of not  
28           less than two million dollars (\$2,000,000).  
29           (9)    Shall have, within one year after the date it begins doing business, not  
30           less than 50 employees located in this State devoted to its credit card  
31           activities; provided, however, that where the credit card bank contracts  
32           with a qualifying organization for services incidental to offering credit  
33           card accounts, the minimum number of employees located in this State  
34           shall be determined by the Commissioner. The minimum number  
35           determined by the Commissioner shall be sufficient to assure the  
36           continued and substantive presence of the credit card bank in this State  
37           for the purpose of conducting its corporate affairs and performing the  
38           credit underwriting function and such other activities not subject to  
39           contract with the qualifying organization as may be incidental to its  
40           servicing of credit card accounts.

41          (b)    The Banking Commission may make such rules relating to the organization,  
42           operation, and supervision of credit card banks organized pursuant to the laws of this  
43           State as may be consistent with this Article. Credit card banks organized under the laws

1 of the United States are not subject to the supervisory authority or the rules of the  
2 Banking Commission.

3 (c) A domestic lender or other credit card issuer is not required to establish a  
4 credit card bank to issue credit cards and create credit card accounts.

5 (d) All shares of capital stock, except directors' qualifying shares, if any, of a  
6 credit card bank shall be owned solely by a domestic lender, foreign lender, or holding  
7 company.

8 **"§ 53-247. Finance charges, interest, charges, and fees.**

9 Notwithstanding any other provision of law, a domestic lender, credit card bank, or  
10 other credit card issuer may contract for and collect in connection with a credit card  
11 account finance charges and interest, transaction fees, overlimit charges, late payment  
12 fees or delinquency charges, charges for each return of a dishonored check or draft in  
13 payment of any portion of an outstanding balance, membership fees, whether assessed  
14 on an annual or other periodic basis, and any other fees and charges and may provide  
15 for such terms and conditions as may be agreed upon by the parties. All fees and  
16 charges authorized by this section are material to the determination of interest under the  
17 most favored lender doctrine and under section 85 of the National Bank Act, 12 U.S.C.  
18 § 85, or section 521 of the Depository Institutions and Monetary Control Act of 1980,  
19 12 U.S.C. § 1831d. If an amendment to a credit card account has the effect of  
20 increasing any charge, rate of interest, or fee to be paid by the debtor, the creditor shall  
21 notify the debtor in writing at least 30 days before the effective date of the amendment  
22 of the amended terms and of the debtor's right to surrender the credit card or cards. If  
23 the debtor surrenders the credit card or cards before the effective date of the amendment  
24 and as otherwise directed by the creditor, the debtor may pay the account in full in  
25 accordance with the terms and conditions of the account as are then in effect. Failure by  
26 the debtor to surrender the credit card or cards as directed by the creditor constitutes  
27 consent by the debtor to the amendment.

28 **"§ 53-248. Discount fees.**

29 A creditor may charge discounts and fees as agreed upon by the creditor and  
30 merchants and others who provide goods or services and who participate in the  
31 creditor's credit card plan."

32 Sec. 3. Article 4A of Chapter 58 of the General Statutes is repealed.

33 Sec. 4. G.S. 25A-11 reads as rewritten:

34 **"§ 25A-11. 'Revolving charge account contract' defined.**

35 'Revolving charge account contract' means an agreement or understanding between  
36 a seller and a buyer under which consumer credit sales may be made from time to time,  
37 under the terms of which a finance charge or service charge is to be computed in  
38 relation to the buyer's unpaid balance from time to time, and under which the buyer has  
39 the privilege of paying the balance in full or in installments. ~~This definition shall not~~  
40 ~~affect the meaning of the term 'revolving charge account' appearing in G.S. 24-11(a)."~~

41 Sec. 5. G.S. 25A-14 reads as rewritten:

42 **"§ 25A-14. Finance charge rates for revolving charge account contracts.**

1       ~~(a) The finance charge rate for a consumer credit sale made pursuant to a~~  
2 ~~revolving charge account contract may not exceed the rates provided for revolving~~  
3 ~~credit by G.S. 24-11(a). The annual fee provided in G.S. 24-11(a) may not be imposed.~~

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

7       ~~(c) No default or deferral charge shall be imposed by the seller in connection~~  
8 ~~with a revolving charge account contract, except as specifically provided for in G.S. 24-~~  
9 ~~11(a).~~

10       On the extension of secured or unsecured credit made pursuant to a revolving charge  
11 account contract, there may be charged and collected interest and fees as agreed upon  
12 by the parties to the contract."

13               Sec. 6. This act is effective upon ratification.