NC Banking Brief: All The Notable Legal Updates In Q4

By **Gursharon Shergill** (January 18, 2024)

In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in North Carolina banking regulation and policymaking.

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In the fourth quarter of 2023, North Carolina saw two new financial services laws go into effect.

Both new laws, which amended the North Carolina Retail Installment Sales Act and the North Carolina Consumer Finance Act, increase the maximum interest rates and the default late charge that may be assessed for loans. Several additional changes were made to the North Carolina Consumer Finance Act.

The following is a summary of the new financial services laws in North Carolina that took effect in the fourth quarter.

Rate Changes for Credit Installment Sale Contracts

On June 27, 2023, the General Assembly voted to override Democratic Gov. Roy Cooper's veto of S.B. 329. The law modifies the Retail Installment Sales Act to increase the maximum finance charge rates that may be applied to consumer credit installment sale contracts and the default charge for past-due installment payments.

Under the previous law, the maximum finance charge rate imposed for credit installment sale contracts for goods and services other than cars was based on the amount financed and ranged from 18% to 24% per annum.

The maximum finance charge rates for consumer credit installment sale contracts of vehicles repayable in at least six installments were based on model year and ranged from 18% to 29% per annum.

S.B. 329 went into effect Oct. 1, 2023, and makes three notable changes. First, it reduces the categories for the credit installment sale contracts for goods and services other than cars from four to two and increases the maximum annual finance charge to 24% where the amount financed is less than $3,000, and 21% where the amount financed is greater than $3,000.

Second, it increases the maximum annual finance charge rates for consumer credit installment sale contracts of vehicles repayable in at least six installments, allowing for 20% per annum for vehicles one to three model years old, 26% per annum for vehicles four to five model years old, and 30% for vehicles six or more model years old.

Third, it increases the default charge sellers may assess "[i]f any installment is past due for 10 days or more" from $15 to $18.

Changes to the Consumer Finance Act

On June 27, 2023, the General Assembly also voted to override Gov. Cooper's veto of S.B.

331. The law amends the North Carolina Consumer Finance Act in several ways.

S.B. 331 adds several defined terms to the Consumer Finance Act — including "amount financed," "electronic payment" and "servicing loans" — replaces the term "amount of loan" with "loan amount," and deletes the term "cash advance."

Previously, the Consumer Finance Act required a license to lend or service a loan in the amount of $15,000 or less at interest rates greater than those allowed under North Carolina's usury laws. S.B. 331 increases this minimum amount to $25,000.

S.B. 331 also increases the application fee for a consumer finance license from $250 to $500, and the minimum annual assessment that a consumer finance licensee must pay from $500 to $1,000.

The new law further adds several reporting requirements, including requiring a licensee to:

- Provide the commissioner no less than 30 days' notice of a proposed transfer or assignment of a license;
- Report the purchase of a loan made under the Consumer Finance Act to the commissioner within 30 days after completing the transaction; and
- File a statement of change in location, ownership or management within 90 days of the change.

S.B. 331 removes the requirement that a licensee who fails to make any loans during any consecutive 90-day period must surrender their license.

S.B. 331 increases the interest rate cap on installment loans made by licensees from 30% to 33% per annum for "a loan amount at origination not exceeding twelve thousand dollars ($12,000) ... on that part of the unpaid principal balance not exceeding four thousand dollars ($4,000)," though the interest rate maximums on the remaining parts of the unpaid principal balance remain unchanged.

The new law also increases the cap on the allowed closing fee from $25 to "thirty dollars ($30) for loan amounts up to three thousand dollars ($3,000) and one percent (1%) of the amount financed, exclusive of the loan processing fee, for loan amounts more than three thousand dollars ($3,000)" up to $150, up from a previous maximum of $40.

The new law increases the cap on the late fee that a licensee may charge from $15 to $18. S.B. 331 amends the Consumer Finance Act to allow a licensee to "apply a borrower's most recent payment to the oldest installment due" and makes additional changes to when a licensee may collect late payment fees under various scenarios.

Finally, S.B. 331 changes the maximum value of unenforceable loan contracts made outside the state to an amount or value of $25,000, up from $15,000.

The new law, which went into effect on Oct. 1, 2023, makes additional conforming, clarifying and technical changes throughout the Consumer Finance Act.

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