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1981 LEGISLATION AFFECTING CIVIL DUTIES OF MAGISTRATES

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Salaries and New Magistrates

The General Assembly delayed any consideration of salary increases for state employees until its fall session. However, one bill did pass that will affect the salaries of many magistrates. Ch. 914 amends G.S. 7A-171.1 to provide that the salary pay steps take effect on the anniversary of the date the magistrate was appointed rather than on January 1 of reappointment years (odd-numbered years). That bill took effect July 1, 1981, and applies to magistrates as they reach their anniversary dates on or after July 1. For example, assume a magistrate was appointed on August 1, 1980. He was reappointed on January 1, 1981, and when reappointed he had served 5 months as a magistrate. That magistrate would now be earning the salary for one who had served less than 1 year--$9,456. Under the former law, he would not receive another salary step increase until reappointment in 1983 at which time he would have served 2 years and 5 months and would be paid at the rate of a magistrate with 1 or more but less than 3 years' service. However, he would have almost three years' service when he reached that pay scale and would have to stay there until he had served about 4 1/2 years. Under the new law that magistrate will receive a pay raise on August 1, 1981. On that date he will have served as a magistrate for 1 year and will be jumped to the pay scale of a magistrate who has served 1 or more but less than 3 years--$10,284. Then two years later he will move up another pay scale. This new law will clear up the inequity that has existed whereby magistrates with the same length of service would be receiving different salaries because of the date on which they were appointed. Now, no one will have to remain in a step longer than two years from the date on which they were appointed.

Ch. 964 authorized the appointment of several new magistrates. The following counties each received one new magistrate: Caswell, Craven, Dare, Duplin, Durham, Franklin, Granville, Guilford, Halifax, Harnett, Martin, Montgomery, Moore, Transylvania, Vance, Yancey. Cumberland and Robeson counties were each given two new magistrates.

One judicial district--the seventeenth--was split. Effective September 1, 1981, Caswell and Rockingham counties comprise Judicial District 17A and Stokes and Surry counties, 17B.

Jurisdiction and Costs

Ch. 555 increases magistrates' jurisdiction in small claims cases and in worthless check cases. Effective October 1, 1981, magistrates may hear small claims in which the amount in controversy is $1,000 or less. At that time magistrates may also accept guilty pleas and waivers of trial in worthless check cases in which the amount of the check is $500 or less. Clerks may accept guilty pleas in cases in which the amount of the check is $400 or less (Ch. 142). For magistrates authorized by their chief district court judges to try worthless check cases in which the defendant pleads not guilty, jurisdiction has been increased in those cases from $400 to $500.

Court costs in both criminal and civil cases increased July 1, 1981 (Ch. 691). In criminal cases, court costs increased from $27 to $31. In civil cases, judicial fees are $10 rather than $8 with service of process fees increasing from $3 to $4 per defendant. Thus, for a single defendant, small claims court costs are $14 rather than $11. Court costs increase by $4 for each defendant.

Trial and Appellate Procedure

G.S. 7A-228 has provided that no new trial is allowed before a magistrate; the sole remedy for an aggrieved party is to appeal to district court. Relying on that statute, in Menache v. Atlantic Coast Management Co., 43 N.C. App. 733 (1979), the court of appeals held that a motion under Rule 60(b) of the Rules of Civil Procedure to set aside a magistrates' order or judgment could only be heard by a district court judge. Ch. 599, effective October 1, 1981, provides that the chief district judge may authorize a magistrate to set aside a judgment or order for mistake or excusable neglect under Rule 60(b)(1). If authorized by the chief district judge, a magistrate may hear motions to set aside judgments or orders of dismissal that were entered in small claims court on or after October 1, 1981. A motion to set aside a judgment or order for mistake or excusable neglect must be made within reasonable time and not more than

one year after the judgment or order was entered. The motion must be made in writing, stating the grounds for the motion and the relief sought. It must be served upon each of the parties to the original lawsuit. Service may be made by the moving party's either (1) delivering a copy to other parties or their attorneys personally or leaving a copy at their attorney's office with a partner or employee or (2) mailing a copy of the motion to the last known address of the other party or his attorney. Service by mail is complete upon deposit of the motion in a post-paid, properly addressed envelope in a post office or U.S. postal box. Service may also be upon the party or his attorney of record by the sheriff under Rule 4 of the Rules of Civil Procedure. A copy of the motion must also be filed with the clerk of superior court no later than five days after service. The moving party must file a certificate showing how and when the motion was served. Once the motion is filed, the clerk sets up a hearing before the magistrate and notifies each party of the time and place of the hearing.

To be entitled to have the judgment or order set aside, the moving party must show that his actions were the result of mistake or excusable neglect and that he has a meritorious defense. Mistake means some misunderstanding on the moving the party's part, not arising from his own want of proper diligence. It must be a mistake of fact and not of law. For example, if a party relied upon the advice of counsel, who was mistaken in regard to the law, it would not be grounds for setting aside a judgment. With regard to excusable neglect, a party is expected to give the attention to a lawsuit that a person of ordinary prudence gives his important business. Neglect is only excusable if the moving party has met this standard. Many of the cases on excusable neglect deal with the situation where a defendant in a lawsuit turns the matter over to a reputable, local attorney who states he will handle the matter; the attorney fails to follow up on the matter; and judgment is entered against the party. These judgments are usually set aside on the grounds of excusable neglect; the defendant acted with ordinary prudence and his attorney's neglect is not imputed to him.

The moving party must also allege facts which show that he has a meritorious defense. The magistrate does not try the case and determine the truth or falsity of the defense set up. If the moving party has alleged facts in his motion which would give him a good defense allowing him to win the case at trial, then the magistrate should find that a meritorious defense has been shown without actually determining the truth of the facts. Whether the facts are true will be determined at the trial if the motion to set aside the judgment or order is granted.

If after hearing the motion the magistrate determines that the judgment or order should be set aside, he should

issue a written order setting aside the judgment or order and ordering a new trial in small claims court. (If an order of dismissal for failure to prosecute is being set aside, the order would be for a trial to be held in small claims court because no trial would have been held yet.) In ruling on the motion, the magistrate must make written findings of fact and conclusions of law only if one of the parties requests that they be made. If a request is made, the magistrate's order must state the facts presented at the hearing that he believed to be true and that led him to find that the failure of the moving party to act was based on mistake or excusable neglect and that he would have a meritorious defense at trial and must state his conclusions of law. If no request to make findings is made, the magistrate's order need only state that the judgment or order is set aside on the grounds of mistake or excusable neglect and that a new trial is granted. If the case is ordered to be retried, or tried for the first time, the clerk will docket it and notify the parties of the date and time of trial. It must be emphasized that magistrates may hear motions to set aside small claims judgments or orders only if their chief district court judge authorizes them to hear such cases.

Ch. 599 also clarifies the law regarding appeals from small claims court for a trial de novo before the district court judge. G.S. 7A-228 is amended to provide that a party may appeal either by giving oral notice in open court when the judgment is rendered or by giving written notice to the magistrate within 10 days after the judgment is rendered. Upon announcement of the appeal in open court or the receipt of written notice from the appealing party, the magistrate must note the appeal on the judgment. However, the magistrate should not hold the judgment for ten days in his office awaiting the possibility of written appeal being filed. The case file and judgment should be returned to the clerk's office as usual. Then if a written appeal is filed, the magistrate should either ask the clerk to return the case file so the appeal can be noted on the judgment or go to the clerk's office and note the appeal on the judgment. Ch. 599 also requires that an appeal be perfected within ten days of the judgment's rendition. An appeal is perfected by paying the costs of appeal to the clerk of superior court (at the present time costs would be $10) and by serving a written notice of the appeal on all the parties and the clerk of superior court stating that the cost of appeal has been paid. A magistrate who tells the parties that they may appeal the case might also want to inform then that appeal includes paying the additional court costs to the clerk of superior court. The appealing party in his written notice of appeal may demand a jury trial in district court. Within the ten days after receiving the notice of appeals, the appellate (party who did not file the appeal) may demand a jury trial by written notice.

Landlord and Tenant Law

In 1980 the N.C. Court of Appeals in Spinks v. Taylor, 47 N.C. App. 68 (1980, held that a landlord could lawfully exercise peaceful, nonviolent self-help to regain leased premises where the tenant fails to pay rent. In Spinks, the landlord padlocked the premises while the defendant was absent from the premises and then let the tenants reenter after they had paid the rent due. The North Carolina Supreme Court granted certiorari and upheld the right of a landlord to enter peacefully and repossess leased premises that are subject to forfeiture for nonpayment of rent. (Spinks v. Taylor, _____ N.C. _____; 278 S.E.2d 501 (1981).) However, the Supreme Court went on to provide that the landlord may not reenter against the will of a tenant. An objection by the tenant elevates the reentry to a forceful one, and the landlord's sole lawful recourse at that time is through a summary ejectment proceeding. The Supreme Court remanded the case to the trial court to determine if the landlord had refused the tenant's requested entrance to the apartment after it was padlocked. Such refusal would make the eviction forceful. Therefore, the current law in North Carolina is that a landlord may use peaceful self-help in evicting a tenant who is past due in his rent. However, effective October 1, 1981, Ch. 566 changes the law with regard to self-help. A new G.S. 42-25.1 prohibits any self-help in evicting a residential tenant; a landlord must use the statutory summary ejectment procedure to remove a tenant from the premises. The statute applies to constructive as well as actual removal, thus prohibiting not only padlocking but actions such as cutting off utilities to force the tenant to leave.

Ch. 566 also prohibits distress and distraint, which is a common law procedure allowing the landlord to seize his tenant's personal property as collateral when the tenant owes back rent. The new law also prohibits the landlord from taking any lien in the tenant's personal property except in accordance with G.S. Ch. 44A and provides that any lease provision authorizing a security interest in the tenant's personal property is void as against public policy. It therefore answers in the negative the formerly unresolved question of whether a landlord could, by contract, acquire a security interest or lien on tenant's property for nonpayment of rent.

If a landlord removes or attempts to remove a tenant in violation of this law, the tenant is entitled to recover possession or to terminate his lease and to recover actual damages for removal from the landlord or agent. If the landlord interferes with the tenant's access to his personal property or takes the tenant's personal property in violation

of the law, the tenant may recover the property and any actual damages. The tenant is not entitled to punitive damages, treble damages, or damages for emotional distress if he sues under this act. However, the act provides that the remedies created by this statute are supplementary to all existing common law and statutory rights and remedies. If the action is based on a right other than the one given by this statute, damages other than actual damages may be available.

Ch. 566 rewrites G.S. 44A-2(c), the statutory provision for a landlord's lien. Presently G.S. 44A-2 grants a landlord a lien on all furniture, household furnishings, equipment, and other personal property remaining on the leased premises 60 or more days after the tenant has vacated the premises. Effective October 1, 1981, that section is amended to provide that the landlord has a lien or property remaining on the premises if (1) the tenant has vacated the premises for 21 or more days after the paid rental period has expired and (2) the lessor has a lawful claim for damages against the tenant. The lien is for the amount of rents due the landlord, for repairing damage to the premises above normal wear and tear, and for the costs and expenses of sale. Thus, if the tenant owes landlord back rent (and there is no security deposit out of which the landlord can satisy the claim), the landlord acquires a lien in the tenant's personal property if it remains on the premises at least 21 days after the tenant has vacated and the paid rental period has expired. The landlord may then sell the property under the sale procedure set out in G.S. 44A-4 and -5. That procedure requires notice to the tenant followed by a private or public sale. The lien does not have priority over security interests in the property that have been perfected at the time the landlord acquired his lien. Therefore, the property would be sold subject to any prior security agreements (which means the property remains subject to the lien even after the sale) and the holder of the security agreement can claim an interest in the property superior to the landlord's if the tenant defaults on the debt secured by the property.

The new statute provides the landlord with other options if he does not want to establish a lien in the property and sell it to recover money owed by the tenant. If the tenant has vacated the premises for 21 days or if the landlord has received a judgment for the premises which is executable and the tenant has vacated, then the landlord may remove the property and place it in storage. The landlord may either store it himself or give it to a warehouseman for storage. In either case it is held in storage for the tenant and is his property not the landlord's. Under G.S. 44A-2(a) a warehouseman who stores the property would acquire a lien in

it for unpaid storage fees. If the property remaining on the premises has a value of less than $100, the landlord may remove it five days after the tenant has vacated the premises and donate it to any charitable institution.

Finally, the landlord still has the remedy of executing on a summary ejectment judgment and having the sheriff set out the property.

To recap these new landlord-tenant provisions:

(1) The only way a landlord can evict a tenant from a residence who does not leave on his own accord is by bringing a summary ejectment action.

(2) A landlord may not contract for a lien on the tenant's personal property.

(3) If the tenant has vacated the property and left some personal property on it, the landlord may:

(a) wait 21 days and if he is owed back rent or money for property damages, claim a lien in the property and sell it under G.S. 44A-4;
(b) wait 21 days and then remove the property and store it for the tenant;
(c) bring a summary ejectment action and ten days after judgment, remove the property and store it;
(d) if the property is worth less than $100, wait five days and then donate it to charity; or
(e) bring a summary ejectment action, ten days after judgment have the clerk of court issue an order of ejectment, and let the sheriff set the property out;

(4) If the tenant has not vacated the property the landlord must file a summary ejectment action, get a judgment for possession, and have the sheriff remove the tenant and his property under an order of ejectment or writ of possession.

Interest Rates

The General Assembly raised interest rates that may be charged by lenders and sellers extending credit on goods and services bought. G.S. 24-1.1 and -1.2 are amended (Ch. 465 and Ch. 464) to permit a lender other than a finance company who lends $25,000 or less to charge interest at the rate announced monthly by the Commissioner of Banks. On the fifteenth day of each month the Commissioner announces the maximum rate of interest for the following calendar month.

The rate is the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity plus six per cent, or sixteen per cent, whichever is greater. Before these acts, lenders were limited to 12% interest, except on an installment loan of $5,000 or less, not secured by real property, lenders were allowed to charge 15%. For loans over $25,000, no limitation is placed on the allowable interest rate, which is the same as the former law. Both acts took effect June 8, 1981, and apply to loans made on or after that date.

Ch. 561 amends the laws regarding interest rates charged by finance companies. G.S. 53-173(a) is amended to provide that regular small loan lenders (finance companies who lend up to $3,000 to an individual and who may secure the loans with personal property only) may now charge interest at the rate of 36% per year on that part of the unpaid principal balance not in excess of $600 and 15% per year on the remainder. Formerly, finance companies could charge 3% per month (36% per year) on the first $300 unpaid principal and 1 1/2% per month (18% per year) on the remaining balance. Optional rate lenders (finance companies who lend up to $5,000 to an individual and who may secure the loans with personal property and junior real estate mortgages) may now charge interest at the rate set monthly by the Commissioner of Banks. The rate will be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity plus six per cent, or sixteen per cent, whichever is greater. Formerly, these finance companies were limited to 15% per year. Ch. 561 also amends G.S. 53-173(c) to provide that a judgment obtained by a finance company for default on a loan may draw 8% rather than 6% interest from the date the judgment is rendered until it is paid. Ch. 561 is effective July 13, 1981, and applies only to loans made after that date.

Having the maximum allowable interest rate float on the basis of the rate of six-month treasury bill means that rates can vary from contract to contract depending on when the loan is made. (Once a loan is made, the rate does not float in that loan.) For example, assume that on July 15, 1981, the Commissioner of Banks set the allowable interest rate for August at 18 1/2 per cent. John Smith goes to NCNB on August 15, 1981, and borrows $2,000 on an installment note, payable monthly for twenty-four months. The maximum allowable rate for that loan is 18 1/2 per cent. Smith signs a note to pay $2,000 plus 18 1/2 per cent interest. Three months later Smith needs to borrow some more money. This time he returns to NCNB to borrow $1,000 on a 6-month demand note. However, by this time treasury bill rates have risen, and the

Commissioner of Banks has set the maximum allowable rate for November at 20 per cent. This second loan will have an interest rate of 20 per cent.

The General Assembly also raised the interest rates that may be charged under Chapter 25A of the General Statutes--The Retail Installment Sales Act. That law applies to sellers who sell goods or services on credit, and the goods or services are purchased primarily for personal, family, household, or agricultural purposes. Ch. 446 amends G.S. 25A-15 to provide the following allowable maximum interest rates on consumer credit installment sales contract: 24% per year (was, 22%) where the amount financed is less than $1,500; 22% per year (was, 20%) where the amount financed is at least $1,500 but less than $2,000; 20% per year (was, 18%) where the amount financed is at least $2,000 but less than $3,000; and 18% per year (was, 16%) where the amount financed is $3,000 or more. For used motor vehicles the seller can charge the greater of the interest rate listed above or the following: 18% per year for vehicles one or two model years old; 20% per year for vehicles three model years old; 22% for vehicles four model years old; and 29% for vehicles five model years old and older. A motor vehicle is one model year old on January 1 of the year following the designated year model of the vehicle. Formerly, the law authorized the imposition of interest at 29% per year for motor vehicles three model years or older. Under this new law, if Jones purchased a 1978 Chevrolet on January 15, 1981, from Smith Used Cars, and Smith financed $2,000 of it, Smith could charge 20% interest. If Smith financed only $1,800, he could charge 22% since the general allowable interest rate is greater than the alternate rate for used motor vehicles. Ch. 446 applies to contracts entered into on or after June 25, 1981.

The General Assembly made no change in the interest rate allowable on revolving account credit cards; it remains at 1 1/2% per month (18% per year). However, Ch. 844 changes the method by which the interest may be assessed. G.S. 24-11(a) now provides that the 1 1/2 per cent per month interest is computed on the unpaid balance of the previous month or the average daily balance outstanding during the billing period. Effective January 1, 1982, that section will provide that the interest is computed on the unapid portion of the balance of the previous month less payments or credit within the billing cycle or the average daily balance outstanding during the current billing period, thus making it clear that interest is imposed only on the past-due balance of the account.

Two charts setting out applicable interest rates under the new laws are attached at the end of this memorandum.

The General Assembly also provided that certain money judgments draw interest from the time the lawsuit is begun rather than when the judgment is rendered. Ch. 327 provides that the portion of money judgment designated for compensatory damages in actions other than contract bears interest from time the action was begun if the claim is covered by liability insurance. If the claim is not covered by liability insurance, the judgment bears interest from its rendition. Compensatory damages are those awarded to compensate the plaintiff for his actual damages, as opposed to punitive damages which are allowable in certain kinds of actions to punish the defendant. In most actions in small claims courts only compensatory damages would be awarded. About the only kinds of cases in small claims court to which this statute would apply are automobile negligence cases or injury to a person when the defendant's homeowner's policy provides coverage. For example, Jones is involved in an automobile accident and suffers a broken finger and damage to his car. On July 15, 1981, he files a suit against Smith, the driver and owner of the other car, claiming Smith negligently ran a stop light which caused the accident. He asks for $800 for medical bills, pain and suffering, and damage to his car. The trial is held on August 15, 1981. Smith is covered by his automobile liability insurance policy. The magistrate rules in favor of Jones and awards a judgment of $800. Eight per cent interest on the judgment would begin running on July 15 rather than August 15. Ch. 327 will have very little effect in small claims cases: First, it is rare that magistrates hear noncontract cases where the defendant carries liability insurance that covers the claim. Second, the purpose for this provision is to make sure that a plaintiff will not lose a substantial sum of money by the defendant's (in fact, the insurance company) delaying trial of the case for several years. In small claims court it is uncommon for a plaintiff to have to wait longer than a month from filing his lawsuit to trial so there is no lengthy delay from the filing of the suit until trial.

Involuntary Commitments

Ch. 936 deals with the situation in which a person who has been involuntarily committed either commits a crime while residing in the institution or while on escape or unauthorized absence from the institution. If such a person is brought before a magistrate without a warrant, the magistrate must first determine probable cause and issue a

magistrate's order for the crime committed. After issuing the magistrate's order or when the defendant is brought before the magistrate after being arrested under a warrant, the magistrate must determine if the involuntary commitment is still valid. The commitment would be valid if the time period for which the defendant had been committed by the district court judge had not yet run. For example, if a defendant had been committed for 180 days, escaped after 80 days and was brought before the magistrate 60 days after his escape for the crime of assault with a deadly weapon with intent to kill, the commitment would still be valid. However, if he were brought before the magistrate 110 days after his escape, the commitment would no longer be valid. If the magistrate finds that the commitment is still valid, the defendant is not entitled to pretrial release. Rather, the magistrate must order the sheriff to return the defendant to the treatment facility in which he was residing when he committed the crime or from which he had escaped. The order should state that the magistrate finds:

(1) that the defendant has been charged with a crime;

(2) that the crime was committed while the defendant was residing in a mental health facility on an involuntary commitment or while on escape or unauthorized absence from a mental health facility to which he had been committed under an involuntary commitment, and

(3) that the commitment is still valid.

It should then order the sheriff take the defendant into his custody and to transport him to the institution to which he had been committed. The magistrate should prepare an original and three copies of the order: one copy should be sent to the clerk of court; three should be given to the sheriff--the original for him to be returned to the clerk, with the officer's return on it; one to be given to the defendant; and one for the mental health facility.

Ch. 936 takes effect October 1, 1981.

Miscellaneous

Chapter 413 raises the amount of personal property to be assigned to a spouse and children under a year's allowance. The surviving spouse's allotment is increased from $2,000 to $5,000 and each child's allowance is increased from $600 to $1,000. Ch. 413 applies to estates of persons dying on or after May 18, 1981.

Ch. 781 adds a new G.S. 25-3-512 authorizing a merchant to charge a processing fee of not more than $10 for checks returned because of insufficient funds or no account if at the time the check is presented a sign at least 8 by 11 inches stating the amount of the amount of the fee to be charged for returned checks was conspiciously posted in the immediate vicinity of the cash register and was in plain view of anyone paying for goods or services by check. If the check is sent by mail, a processing fee may be collected only if it is expressly authorized by the contract creating the debt. Likewise, if a collection agency collects the check, the maker of the check is not required to pay the processing fee unless the fee is expressly authorized by the contract creating the debt. These provisions apply when the merchant or collection agency attempts to recover the amount of the check without filing a court action. If the merchant attempts to collect the check by filing a civil action, G.S. 6-21.3 applies. Ch. 781 amends that statute to increase from $5 to $10 the amount that must be assessed by the magistrate to defray the costs of processing the returned check. G.S. 6-21.3 does not require any showing of a sign being posted or a contract specifying a processing fee; rather, it requires the magistrate to add the $10 to the damages awarded if he finds for the plaintiff. Ch. 781 applies to checks written on or after July 1, 1981. Ch. 781 applies only to collecting a check civilly. It does not change the law with regard to restitution under the worthless check law. If a defendant wishes to plead guilty before a magistrate under G.S. 14-107, he need only pay the amount of the check as restitution plus court costs. The magistrate may not collect a processing fee for the payee on the check.

Ch. 414 rewrites G.S. 1-538.1, dealing with a parent's liability for damage caused by his child. As written G.S. 1-538.1 provides that a person may recover actual damages in an amount not to exceed $1,000 from the parents of a minor who maliciously or willfully injures the person or destroys his real or personal property. Ch. 414 applies to actions for damages suffered on or after May 18, 1981.

Ch. 745 adds a new subsection (c) to G.S. 1-239 requiring a judgment creditor, within 60 days after receipt of any payment on a judgment, to give notice of the payment to the clerk of court. If the judgment creditor fails to file the required noticed, the debtor may make a written demand to the creditor to file the notice, and if the creditor fails to do so within 30 days, the debtor may recover any loss suffered plus attorney's fees. Additionally, the creditor is subject to a civil penalty of $100. The statute does not specify who assesses the penalty

or to whom the penalty is awarded. G.S. 1-58 provides that where a penalty is imposed by law and it is not provided to what person the penalty is given, it may be recovered, for his own use, by anyone who sues for it. Therefore, the debtor may sue for the penalty and keep the $100 himself or the clerk of court could sue for the penalty and remit the funds to the state.

The North Carolina Constitution provides that each resident of the state is entitled to have at least $1000 of his real property and $500 of his personal property to be exempt from his debts. Effective October 1, 1981, Ch. 490 grants each debtor a new and broader set of exemptions:

(1) $7,500 in real or personal property used as his residence;

(2) $2,500 in other property less the amount used in (1) above;

(3) $1,000 in value in one motor vehicle;

(4) $2,500 in value for the debtor plus $500 for each of the debtor's dependents, not to exceed $2,000 for dependents, in household goods, wearing apparel, appliances, books, animals, crops, or musical instruments that are held primarily for personal, family, or household use;

(5) $500 in tools of his trade; and

(6) professionally prescribed health aids.

Magistrates will not have any direct role in setting aside exemptions. Under the new law, the clerk of superior court notifies a debtor of his rights to exempt property, and after a hearing the property is set aside by the clerk or a district court judge rather than the sheriff. In small claims cases the exemptions will probably not be set aside until an execution is issued.

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MAXIMUM ALLOWABLE INTEREST RATES ON LOANS IN NORTH CAROLINA

Type of Lender	Amount Lent	Security	Interest Rate	Other Allowable Charges
Bank, credit union, savings and loans, and individual (G.S. 24-1.1, -1.1C, -1.2)	$25,000 or less	Any property	Greater of 16% or noncompetitive rate for U.S. Treasury bills with six-month maturity plus 6%. Rate will be set monthly by Comm'r of Banks.	Prepayment fee of 2% if prepaid within 3 years of 1st payment for contract loan.
Finance company--regular small loan lender (G.S. 153-173)	$3,000 or less	Any personal property	36% per year on unpaid principal up to $600 and 15% per year on remainder.	Fees paid to public official for filing, releasing security instrument or in lieu thereof maximum of 60 cents for non-filing insurance. Credit life, accident and health, or property insurance charges if comply with truth-in-lending.
Finance company--optional rate lender (G.S. 153-176)	$5,000 or less	Any personal property and junior real estate mortgage	Greater of 16% or noncompetitive rate for U.S. Treasury bills with six-month maturity plus 6%. Rate will be set monthly by Comm'r of Banks.	In addition to charges listed above, default charge for installment past due at least 10 days of 5%.
Finance company--motor vehicle lender (G.S. 153-176.1)	$5,000 or less	Motor vehicle	$15 per $100 per year loaned on first $500; $11 per $100 on that amount over $500 but not more than $1,000; and $9 per $100 on amount over $1,000 but not more than $1,500. 16% per year on cash advance over $1,500.	Same as for optional rate lender.

PENALTIES:

Banks, credit union, individuals: Knowingly charging greater rate of interest than allowable forfeits entire interest on loan and borrower may recover twice the amount of interest actually paid. (G.S. 24-2)

Finance companies: Misdemeanor with punishment of $500 to $2,500 fine and/or imprisonment for 4 months to 2 years. Also contract is void unless violation result of accidental or bona fide error of computation. Lender has no right to collect or retain any principal or interest with respect to the loan. Borrower would have an action against the lender to recover any principal or interest paid. (G.S. 153-166)

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ALLOWABLE FINANCE CHARGES ON SALE OF CONSUMER GOODS OR SERVICES IN NORTH CAROLINA

Property Sold	Security Taken	Amount Financed	Allowable Finance Charge[1]	Other Allowable Charges
Any personal property or services to be used for personal, household family or agricultural purposes.	Property sold or property previously sold by seller to buyer in which seller has existing security interest.	Less than $1,500	24% $5 minimum	Damage to property, credit, life, accident insurance charges if comply with truth-in-lending; Official fees paid to public officials for perfecting, releasing, etc. security interest or in lieu thereof premiums for insurance to protect seller if doesn't exceed official fees charges; Default charge for installment past due at least 10 days of 5% of past due installment or $6, whichever less; Written, dated deferral agreement may provide for charge of 1 1/2% of each installment for each month from date installment would have been due.
		$1,500 but less than $2,000	22% $5 minimum	
		$2,000 but less than $3,000	20% $5 minimum	
		$3,000 to $25,000	18% $5 minimum	
Motor vehicle one or two model years old[2]	Property sold or property previously sold by seller to buyer in which seller has existing security interest.	$25,000 or less	Higher of 18% or amount allowable under personal property above.	
Motor vehicle three model years old			Higher of 20% or amount allowable under personal property above.	
Motor vehicle four model years old			Higher of 22% or amount allowable under personal property above.	
Motor vehicle five model years old or older			29%	
Personal property to be affixed to real property	Real property to which property sold is affixed.	$1,000 or more	16%	
Personal property on revolving charge account	Property sold or property previously sold by seller to buyer in which seller has existing security agreement for which cash price was $100 or more.		1 1/2% per month (18% per year)	None

[1]Finance charge is the sum of all charges payable directly or indirectly by the buyer and imposed by the seller as an incident to the extension of credit, including interest, time-price differential, service charge, carrying charge, loan fee, finder's fee, appraisal report, investigation report, credit report, and any non-excluded insurance fees.

[2]A motor vehicle is one model year old on January 1 of the year following the designated year model of the vheicle.

PENALTIES:

If contract requires payment of not more than 2 times permitted finance charge, seller not permitted to recover any finance charge, and seller liable to buyer for 2 times amount of finance charge that has been paid, plus reasonable attorneys fees.

If contract requires payment of more than 2 times permitted finance charge, contract void. Buyer can keep goods and seller not entitled to recover anything.

If charges for authorized fees (default, etc.) in excess of allowable rate, buyer demands in writing a refund, and seller fails to refund within 10 days, then seller liable for three times amount of overpaid fee.

Knowing and willful violation consitutes unfair trade practice.