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BANKING AND FINANCE

Credit Cards: Provide for Deregulation

CODE SECTIONS:	O.C.G.A. §§ 7-4-2 (amended), 7-5-1—7-5-6 (amended)
BILL NUMBER:	SB 254
ACT NUMBER:	182
SUMMARY:	The Act deregulates banking laws governing bank credit cards issued in Georgia. Deregulation is accomplished by eliminating the eighteen percent ceiling on interest rates, the twelve dollar annual fee limit, and other rate and fee limitations on credit cards issued in Georgia. The Act also permits out-of-state financial institutions to establish limited purpose credit card banks in Georgia.
EFFECTIVE DATE:	March 19, 1987

History

In 1969 the Georgia Legislature passed the Lender Credit Card Act.¹ This Act regulated interest rates, annual fees, and other charges such as cash advance fees, delinquency fees, and collection fees charged for credit cards issued by financial institutions.² These statutory provisions also limited the methods that financial institutions could use to compute interest rates. Georgia banks felt the pressure of these regulations, particularly in 1981, when the cost of funds soared and the prime rate rose above the annual percentage rate that banks could charge on credit cards.³

In 1981 Delaware deregulated its credit card pricing to create a more favorable climate for financial institutions issuing credit cards.⁴ The Delaware statute also permits out-of-state financial institutions to open a special credit card bank in Delaware for the limited purpose of issuing credit cards.⁵ In 1986 First Atlanta Corporation, the largest credit card

1. 1969 Ga. Laws 87 (previously codified at O.C.G.A. §§ 7-5-1 to -7 (1982)).

2. *Id.*

3. Telephone interview with Jerry Craft, Senior Vice President, First Atlanta Corp. (May 1, 1987) [hereinafter Craft Interview].

4. *S.C.'s Credit Card Rates Rise After Deregulation*, Atlanta Const., Feb. 26, 1987, at 1D, col. 2. See DEL. CODE ANN. tit. 5, §§ 941-974 (1985 & Supp. 1986).

5. DEL. CODE ANN. tit. 5, §§ 1001-1038 (1985).

issuer in the Southeast, responded to these favorable conditions for credit card issuers and moved its credit card business to Delaware.⁶ The laws deregulating credit cards and permitting special purpose credit card banks to open in Delaware have positively affected Delaware's economy by helping to attract thirty-four new banks to the state and creating approximately 8,000 new jobs.⁷

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The Act combines the Delaware statutory provisions and similar deregulation statutes from Nebraska and South Dakota.⁸ Under Georgia's statute, the state no longer establishes ceilings on permissible interest rates or fees for credit cards,⁹ and out-of-state financial institutions are allowed to open special purpose credit card banks in Georgia.¹⁰

Little opposition was expressed to the Act.¹¹ It passed the Senate by a 50-4 vote. The House Banks and Banking Committee submitted a substitute bill to strengthen certain aspects of the Act.¹² This House committee substitute was adopted in the final version of SB 254.

The House committee substitute did not make significant substantive changes in the Act, but did clarify the legislature's intent to use credit card deregulation to have a positive effect on the job market in Georgia and to provide the Georgia Department of Banking and Finance with greater control over the operation of the special credit card banks.¹³ The Act requires any out-of-state bank opening a special purpose credit card bank in Georgia to employ, within one year of beginning its operations, a minimum of fifty people in Georgia devoted to the bank's credit card activities.¹⁴ Alternatively, the credit card bank may contract with a qualifying organization in Georgia to perform the bank's credit card operations, but the credit card bank must still maintain a sufficient number of employees in Georgia to ensure that the credit card bank maintains a substantial presence in the state. The Act authorizes the state banking department to determine the number of necessary employees.¹⁵

Additionally, the House committee substitute strengthened certain

6. Craft Interview, *supra* note 3.

7. Mantius, *Bill Would Revise Credit Card Laws*, Atlanta Const., Feb. 4, 1987, at 1B, col. 2.

8. Telephone interview with Robert Moler, Deputy Banking Commissioner, State of Georgia, Department of Banking and Finance (May 1, 1987) [hereinafter Moler Interview].

9. O.C.G.A. § 7-5-4 (Supp. 1987).

10. O.C.G.A. § 7-5-3 (Supp. 1987).

11. Moler Interview, *supra* note 8.

12. SB 254 (HCS), 1987 Ga. Gen. Assem.

13. Telephone interview with J. Joseph Brannen, Executive Vice President, Georgia Bankers Association (May 1, 1987).

14. O.C.G.A. § 7-5-3(9) (Supp. 1987).

15. O.C.G.A. § 7-5-3(9) (Supp. 1987).

penalties that the Act authorizes the state banking department to impose against credit card banks operating outside the limitations established by O.C.G.A. § 7-5-3.¹⁶ The House committee substitute explicitly provides that the \$10,000 per day fine, authorized as a penalty when a credit card bank fails to adhere to a banking department order to stop unauthorized activities, may be assessed against either the credit card bank or its parent company or domestic or foreign lender.¹⁷ The House committee substitute further authorizes the banking department to require divestiture of a credit card bank operating outside of the limitations of O.C.G.A. § 7-5-3.¹⁸

According to the bill's sponsor, the Act is designed to accomplish two goals: "1) create jobs for Georgia and my district in Columbus, and 2) to get the General Assembly out of the rate setting business on credit cards."¹⁹ The most important aspect of the Act, as viewed by its sponsor, is attracting new jobs to Georgia. It is estimated that six out-of-state banks will open limited purpose credit card banks in Georgia within one year of passage of the Act, with the possibility of creating 1,500 new jobs within five years.²⁰ The deregulative aspect of the bill is viewed as being critical to attracting these new jobs to Georgia. Deregulation is also viewed as essential to keep Georgia financial institutions from following First Atlanta Corporation by moving their credit card operations outside the state in order to take advantage of more favorable market rates.²¹

Some consumer groups share the concern expressed by several Georgia legislators that banks should currently charge lower rates on credit cards to reflect the lower costs presently incurred by banks in borrowing money to fund their credit card portfolios.²² Proponents of the Act suggest that the free market will address this concern once the market is allowed to operate without government influence.²³ Furthermore, the proponents

16. O.C.G.A. § 7-5-5 (Supp. 1987).

17. O.C.G.A. § 7-5-5(b)(1) (Supp. 1987).

18. O.C.G.A. § 7-5-5(b)(2) (Supp. 1987).

19. Statement issued by Senator Floyd Hudgins, Senate District No. 15, Chairman, Banking & Finance Committee (1987 Ga. Gen. Assem.) (copy on file at *Georgia State University Law Review* office).

20. *Id.*

21. Mantius, *supra* note 7.

22. *Id.*; Hopkins, *Senate OK's Lifting Credit Card Interest Limit*, Atlanta J., Feb. 12, 1987, at 1D, col. 2.

23. Within weeks after passage of SB 254, First Atlanta Corp. announced plans to offer a credit card with a 14.88% annual percentage rate (APR). First Atlanta also plans to double the annual fee on this credit card, from \$12 to \$24. Alternatively, First Atlanta will continue to offer its current credit card carrying a 17.88% APR and \$12.00 annual fee. Mantius, *First Atlanta Plans 14.88% - Interest Credit Card*, Atlanta J. & Const., Apr. 11, 1987, at 1C, col. 1. However, this reduced rate is probably more a reflection of the current general credit market rather than credit deregulation. Because First Atlanta issues its credit cards out of a limited purpose credit card bank incorporated in Delaware, it was not previously limited by Georgia's prior cap of 18%

point out that, because out-of-state banks are limited only by the laws of the states in which their credit card operations are based, Georgia consumers holding credit cards from those banks were not protected by Georgia's usury law limiting credit card interest rates.²⁴

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APR.

Trust Co. Bank also announced plans to issue credit cards with a lower APR. Additionally, Trust Co. plans to take advantage of the deregulation of credit card fees by charging customers a \$15 fee on balances above the bank established credit limit and a separate \$15 delinquency fee on delinquent accounts. Mallard, *Trust Company Cuts Interest Rate on Credit Cards*, Atlanta J. & Const., April 11, 1987 at 1C, col. 6. Prior to deregulation, Georgia banks were limited to charging either a one dollar delinquency fee or five percent of the amount of the unpaid minimum payment such amount not to exceed five dollars. Previously, the Georgia Code did not provide for fees or penalties if a credit limit was exceeded. See O.C.G.A. § 7-5-5(2) (1982).

²⁴. *Lifting Usury Law Could Bring New Prosperity to Georgia*, Atlanta J., Feb. 10, 1987, at 12A, col. 1.