

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1341

Short Title: Modernize the NC Consumer Finance Act. (Public)

Sponsors: Representatives Holliman, Brubaker (Primary Sponsors); and Lucas.

Referred to: Financial Institutions, if favorable, Judiciary II, if favorable, Finance.

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA CONSUMER FINANCE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-166(a) reads as rewritten:

"(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

SECTION 2. G.S. 53-168(b) reads as rewritten:

"(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided he so requests in writing within 30 days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant."

SECTION 3. G.S. 53-171(a) reads as rewritten:

"§ 53-171. Revocation, suspension or surrender of license.

(a) If the Commissioner shall find, after due notice and hearing, or opportunity for hearing, that any such licensee, or an officer, agent, employee, or representative thereof has violated any of the provisions of this Article, or has failed to comply with the rules, regulations, instructions or orders promulgated by the Commission pursuant to the powers and duties prescribed therein, or has failed or refused to make its reports to the Commissioner, or has failed to pay the fees for its examination and supervision, or has furnished false information to the Commissioner or the Commission, the Commissioner may issue an order revoking or suspending the right of such licensee and such officer, agent, employee or representative to do business in North Carolina as a licensee, and upon receipt of such an order from the Commissioner, the licensee shall immediately surrender his license to the Commissioner.



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1 Within five days after the entry of such an order the Commissioner shall place on file his
2 findings of fact and mail or otherwise deliver a copy to the licensee. Any licensee who fails to
3 attempt to make any loans during any period of 90 consecutive days after being licensed shall
4 surrender his license to the Commissioner."

5 **SECTION 4.** G.S. 53-172(a) reads as rewritten:

6 "(a) No licensee shall conduct the business of making loans under this Article within any
7 office, suite, room, or place of business in which any other business is solicited or transacted.

8 Installment paper dealers as defined in G.S. 105-83, other loans or services authorized by
9 Chapter 53 of the General Statutes, and the collection by a licensee of loans legally made in
10 North Carolina, or another state by another government regulated lender or lending agency,
11 shall not be considered as being any other business within the meaning of this section."

12 **SECTION 5.** G.S. 53-175 reads as rewritten:

13 **"§ 53-175. Fee for returned checks.**

14 A licensee may collect the fee for returned checks to the extent permitted by
15 G.S. 25-3-506.G.S. 25-3-506 in addition to any other charges to the licensee from other
16 financial institutions for each check, negotiable order of withdrawal, share draft, or other
17 negotiable instrument returned or dishonored for any reason. This section shall apply to any
18 loan made by any licensee under this Article."

19 **SECTION 6.** G.S. 53-176 reads as rewritten:

20 **"§ 53-176. ~~Optional~~ Consumer installment loans, rates, maturities and amounts.**

21 (a) ~~In lieu of addition to~~ making loans in the amount and at the interest stated in
22 G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may ~~at any time elect to make~~
23 loans in installments not exceeding ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars
24 (\$20,000) and which shall not be repayable in less than six months or ~~more than 84~~ 96 months
25 and which shall not be secured by deeds of trust or mortgages on real estate and which are
26 repayable in substantially equal consecutive monthly payments and to charge and collect
27 interest in connection therewith which shall not exceed the following actuarial rates:

28 (1) With respect to a loan not exceeding ~~seven thousand five hundred dollars~~
29 ~~(\$7,500),~~ fifteen thousand dollars (\$15,000), thirty percent (30%) per annum
30 on that part of the unpaid principal balance not exceeding ~~one thousand~~
31 ~~dollars (\$1,000)~~ five thousand dollars (\$5,000) and twenty-four percent
32 (24%) on that part exceeding five thousand dollars (\$5,000) but not
33 exceeding ten thousand dollars (\$10,000), and eighteen percent (18%) per
34 annum on the remainder of the unpaid principal balance. Interest shall be
35 contracted for and collected at the single simple interest rate applied to the
36 outstanding balance that would earn the same amount of interest as the
37 above rates for payment according to schedule.

38 (2) With respect to a loan exceeding ~~seven thousand five hundred dollars~~
39 ~~(\$7,500),~~ fifteen thousand dollars (\$15,000), eighteen percent (18%) per
40 annum on the outstanding principal balance.

41 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
42 fee for processing the loan as agreed upon by the parties, not to exceed ~~twenty five dollars~~
43 ~~(\$25.00)~~ thirty-five dollars (\$35.00) for loans up to ~~two thousand five hundred dollars~~
44 ~~(\$2,500)~~ three thousand five hundred dollars (\$3,500) and one percent (1%) of the cash advance
45 for loans above ~~two thousand five hundred dollars (\$2,500),~~ three thousand five hundred dollars
46 (\$3,500) not to exceed a total fee of ~~forty dollars (\$40.00),~~ one hundred dollars (\$100.00),
47 provided that such charges may not be assessed more than twice in any 12-month period.

48 (c) The provisions of ~~G.S. 53-173(b), (e) and (d)~~ G.S. 53-173(b) and (c) and
49 G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this
50 section.

1 ~~(d) Any licensee under this Article shall have the right to elect to make loans in~~
2 ~~accordance with this section by the filing of a written statement to that effect with the~~
3 ~~Commissioner and no sooner than 30 days from the date of such notification begin making~~
4 ~~loans regulated by this section. After such election a licensee may continue to make loans in~~
5 ~~accordance with this section unless the licensee notifies the Commissioner in writing of its~~
6 ~~intention to terminate such election on a date not sooner than 30 days from the notification.~~

7 (e) The due date of the first monthly payment shall not be more than 45 days following
8 the disbursement of funds under any such installment loan. A borrower under this section may
9 prepay all or any part of a loan made under this section without penalty. Except as otherwise
10 provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower
11 may cancel a loan with the same licensee within three business days after disbursement of the
12 loan proceeds without incurring or paying interest so long as the amount financed, minus any
13 fees or charges, is returned to and received by the licensee within that time.

14 (f) No individual, partnership, or corporate licensee and no corporation which is the
15 parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article
16 except as authorized in this section, shall be permitted to make loans under the provisions of
17 this section. Any corporate licensee or individual or partnership licensee that elects to make
18 loans in accordance with the provisions of this section shall be bound by that election with
19 respect to all of its offices and locations in this State and all offices and locations in this State
20 of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their
21 offices and locations in this State."

22 **SECTION 7.** G.S. 53-177 reads as rewritten:

23 "**§ 53-177. Recording fees.Fees.**

24 (a) Recording Fees. – The licensee may collect from the borrower the amount of any
25 fees necessary to file or record its security interest with any public official or agency of a
26 county or the State as may be required pursuant to Article 9 of Chapter 25 of the General
27 Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be
28 applied, such fees may either (i) be paid by the licensee to such public official or agency of the
29 county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase
30 nonfiling or nonrecording insurance on the instrument securing the loan, ~~or (iii) be retained by~~
31 ~~a licensee that elects to self insure against the loss of a security interest by reason of not filing~~
32 ~~or recording its security instrument: Provided, however, the amount collected by the licensee~~
33 ~~from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self~~
34 ~~insurance, shall be the premium amount for such insurance as fixed by the Commissioner of~~
35 ~~Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost of recording or~~
36 ~~filing a security interest loan.~~ Provided further, a licensee shall not collect or permit to be
37 collected any notary fee in connection with any loan made under this Article, nor may a
38 licensee collect any fee from the borrower for the cost of releasing a security interest except
39 such fee as actually paid to any public official or agency of the county or State for such
40 purpose.

41 (b) Late Fees. – A licensee may charge a late payment charge as agreed upon by the
42 parties in the loan contract for payments received 10 days or more after the due date. However,
43 no licensee may charge a late payment charge:

44 (1) That exceeds five percent (5%) of the amount of the payment or twenty
45 dollars (\$20.00), whichever is greater, for a loan made under G.S. 53-176.

46 (2) More than once with respect to a single late payment.

47 (c) Third-Party Payment Fees. – The licensee may collect any actual charges paid by
48 the licensee related to payments submitted by the borrower or at the borrower's request through
49 electronic or other means not affiliated with the licensee.

50 (d) Deferral Charges. – A licensee may, by agreement with the borrower, defer the due
51 date of all or any part of one or more installment payments under an existing loan contract.

1 Except as provided in this subsection, a deferral agreement must be in writing, dated, and
2 signed by the parties. A deferral agreement may provide for a deferral charge not to exceed the
3 rate of one and one-half percent (1.5%) of each payment for each month from the date which
4 such payment or part thereof would otherwise have been payable to the date when such
5 payment or part thereof is made payable under the deferral agreement. If a deferral charge is
6 made pursuant to a deferral agreement, a late fee provided in subsection (b) of this section may
7 be imposed only if the payment as deferred is not paid when due and no new deferral
8 agreement is entered into with respect to that payment. A deferral agreement that extends the
9 due date of only one payment does not have to be in writing. A deferral agreement for which no
10 charge is made does not have to be in writing, and a licensee that does not charge for a deferral
11 may not charge a late fee."

12 **SECTION 8.** G.S. 53-179 reads as rewritten:

13 **"§ 53-179. Multiple-office loan limitations.**

14 A licensee shall not grant a loan in one office to any borrower who already has a loan in
15 another office operated by the same entity or by an affiliate, parent, subsidiary or under the
16 same ownership, management or control, whether partial or complete. This section shall apply
17 ~~to intrastate and interstate operations to operations in this State.~~ A licensee shall take every
18 reasonable precaution to prevent granting loans in violation of this section. Such loans granted
19 inadvertently ~~resulting in a total liability of three thousand dollars (\$3,000) or less,~~ shall be
20 adjusted to the rates applicable under the Article to a single loan of equivalent amount, ~~and~~
21 ~~when the total liability on such loans is in excess of three thousand dollars (\$3,000), interest~~
22 ~~shall be adjusted to simple interest at eight percent (8%) per annum on the entire~~
23 ~~obligation amount."~~

24 **SECTION 9.** G.S. 53-180 reads as rewritten:

25 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

26 (a) Time and Payment Limitation. – Except as otherwise provided in this Article, no
27 licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this
28 Article providing for any scheduled repayment of principal more than 25 months from the date
29 of making the contract if the cash advance is six hundred dollars (\$600.00) or less; more than
30 37 months from the date of making the contract if the cash advance is in excess of six hundred
31 dollars (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); more than 49 months
32 from the date of making the contract if the cash advance is in excess of fifteen hundred dollars
33 (\$1,500) but not in excess of two thousand five hundred dollars (\$2,500); or more than 61
34 months if the cash advance is in excess of two thousand five hundred dollars (\$2,500). Every
35 loan contract shall provide for repayment of the amount loaned in substantially equal
36 installments, either of principal or of principal and charges in the aggregate, at approximately
37 equal periodic intervals of time. Nothing contained herein shall prevent a loan being considered
38 a new loan because the proceeds of the loan are used to pay an existing contract.

39 (b) No Assignment of Earnings. – A licensee may not take an assignment of earnings of
40 the borrower for payment or as security for payment of a loan. An assignment of earnings in
41 violation of this section is unenforceable by the assignee of the earnings and is revocable by the
42 borrower. A sale of unpaid earnings made in consideration of the payment of money to or for
43 the account of the seller of the earnings is deemed to be a loan to the seller by an assignment of
44 earnings.

45 (c) Limitation on Default Provisions. – An agreement between a licensee and a
46 borrower pursuant to a loan under this Article with respect to default by the borrower is
47 enforceable only to the extent that (i) the borrower fails to make a payment as required by the
48 agreement, or (ii) the prospect of payment, performance, or realization of collateral is
49 significantly endangered or impaired, the burden of establishing the prospect of a significant
50 endangerment or impairment being on the licensee.

1 (d) Prohibitions on Discrimination. – No licensee shall deny any extension of credit or
2 discriminate in the fixing of the amount, duration, application procedures or other terms or
3 conditions of such extension of credit because of the race, color, religion, national origin, sex or
4 marital status of the applicant or any other person connected with the transaction.

5 (e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the
6 provisions of G.S. 53-173, the agreement may not provide for payment by the borrower of
7 attorney fees. A loan made pursuant to the provisions of G.S. 53-176 may provide for the
8 collection of reasonable attorneys' fees.

9 (e1) Judgment Enforced by Garnishment of Wages. – A final judgment awarding
10 monetary damages against an individual may be enforced by a garnishment order directing the
11 employer of the judgment debtor to pay to the judgment creditor that portion of the disposable
12 earnings owed to the judgment debtor that are not exempt under G.S. 1-362.

13 (f) No Real Property as Security. – No licensee shall make any loan within this State
14 which shall in any way be secured by real property.

15 (g) Deceptive Acts or Practices. – No licensee shall engage in any unfair method of
16 competition or unfair or deceptive trade practices in the conduct of making loans to borrowers
17 pursuant to this Article or in collecting or attempting to collect any money alleged to be due
18 and owing by a borrower.

19 (h) Limitations on Home Loans. – No affiliate operating in the same office or
20 subsidiary operating in the same office of a licensee shall make any home loan as defined in
21 G.S. 24-1.1A(e) in a principal amount of less than three thousand dollars (\$3,000).

22 (i) Limitation on Conditions to Making Loans. – A licensee or an affiliate operating in
23 the same office or subsidiary operating in the same office of a licensee shall not make as a
24 condition of any loan the refinancing of a borrower's home loan as defined in G.S. 24-1.1A(e)
25 which is not currently in default.

26 (j) No Solicitation of Deposits. – No licensee may directly or indirectly solicit from any
27 borrower funds to be held on deposit in any bank; provided, however, a borrower may at his
28 option, by way of a military allotment or other such program, designate a depository to receive
29 and disburse funds for a designated purpose.

30 (k) Loans made pursuant to this Article solicited using a facsimile or negotiable check
31 shall be subject to the provisions of G.S. 75-20(a)."

32 **SECTION 10.** G.S. 53-181 reads as rewritten:

33 **"§ 53-181. Statements and information to be furnished to ~~borrowers;~~borrowers; notices**
34 **of default; power of attorney or confession of judgment prohibited.**

35 (a) Contents of Statement Furnished to Borrower. – At the time a loan is made, and one
36 time per calendar year free at the written request of the borrower, and twenty-five dollars
37 \$25.00 for each additional request, the licensee shall deliver to the borrower, or if there be two
38 or more borrowers, to one of them a copy of the loan contract, or a written statement, showing
39 in clear and distinct terms:

- 40 (1) The name and address of the licensee and one of the primary obligors on the
41 loan;
- 42 (2) The date of the loan contract;
- 43 (3) Schedule of installments or descriptions thereof;
- 44 (4) The cash advance;
- 45 (5) The face amount of the note evidencing the loan;
- 46 (6) The amount collected or paid for insurance, if any;
- 47 (7) The amount collected or paid for filing or other fees allowed by this Article;
- 48 (8) The collateral or security for the loan;
- 49 (9) If the loan refinances a previous loan, the following relating to the
50 refinanced loan: (i) the principal balance due; (ii) interest charged that is

1 included in the new loan; and (iii) rebates on any credit insurance, listed
2 separately.

3 (10) In addition to any disclosures otherwise provided by law, a licensee
4 soliciting loans using a facsimile or negotiable check shall provide the
5 disclosures required by G.S. 75-20(a).

6 (b) Schedule of Charges, etc., to Be Made Available; Copy Filed with Commissioner. –
7 Each licensee doing business in North Carolina shall make readily available to the borrower at
8 each place of business such full and accurate schedule of charges and insurance premiums,
9 including refunds and rebates, on all classes of loans currently being made by such licensee, as
10 the Commissioner shall prescribe, and a copy thereof shall be filed in the office of the
11 Commissioner of Banks.

12 (b1) Notice of Delinquency or Default. – In the event of a delinquency or other act of
13 default on the part of the borrower, the licensee should act in good faith to inform the borrower
14 of the facts concerning the loan and the nature and extent of the delinquency or default, and, if
15 the borrower replies, attempt to negotiate with the borrower, subject to the licensee's duties and
16 obligations under the loan contract, to attempt a resolution or workout to the delinquency,
17 including taking a confession of judgment as provided in subsection (c) of this section.

18 (c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take
19 any confession of ~~judgment~~ judgment, except as authorized by this subsection, or permit any
20 borrower to execute a power of attorney in favor of any licensee or in favor of any third person
21 to confess judgment or to appear for the borrower in any judicial proceeding and any such
22 confession of judgment or power of attorney to confess judgment shall be absolutely void. This
23 subsection does not prohibit confessions of judgment that are taken by licensees to memorialize
24 a resolution or workout of a delinquency agreed to by the borrower. However, a confession of
25 judgment authorized by this subsection must do all of the following:

- 26 (1) Contain a payment schedule, either in the body of the confession of
27 judgment or as an attachment to it, setting forth the arrangement for curing
28 an existing delinquency.
29 (2) Provide that the borrower will be credited for any payments made to the
30 licensee prior to the default.
31 (3) Provide that if the confession of judgment is recorded after default, the
32 remaining outstanding balance of the judgment shall bear interest at the legal
33 rate until paid in full.
34 (4) Be held by and not filed by the licensee unless the borrower defaults in the
35 payment terms."

36 **SECTION 11.** G.S. 53-190 reads as rewritten:

37 **"§ 53-190. Loans made elsewhere.**

38 (a) No loan contract made outside this State in the amount or of the value of ~~ten~~
39 ~~thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) or less, for which greater
40 consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article
41 have been charged, contracted for, or received, shall be enforced in this State. Provided, the
42 foregoing shall not apply to loan contracts in which all contractual activities, including
43 solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and
44 receipt of funds, occur entirely outside North Carolina.

45 (b) If any lender or agent of a lender who makes loan contracts outside this State in the
46 amount or of the value of ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) or
47 less, comes into this State to solicit or otherwise conduct activities in regard to such loan
48 contracts, then such lender shall be subject to the requirements of this Article.

49 (c) No lender licensed to do business under this Article may collect, or cause to be
50 collected, any loan made by a lender in another state to a borrower, who was a legal resident of

1 North Carolina at the time the loan was made. The purchase of a loan account shall not alter
2 this prohibition."

3 **SECTION 12.** This act is effective when it becomes law and applies to loans made
4 on or after that date.