

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH30261-MDf-80A (03/22)

Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors: Representative Steen.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA
3 CONSUMER FINANCE ACT TO INCREASE CONSUMER ACCESS AND CREDIT
4 MARKET PARITY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 53-165 is amended by adding a new subsection to read:

7 "(e1) 'Consumer Price Index' shall mean the Consumer Price Index for Urban Wage
8 Earners and Clerical Workers: U.S. City Average, All Items, compiled by the Bureau of Labor
9 Statistics, United States Department of Labor, or, if that index is canceled or superseded, the
10 index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the
11 purchasing power of the dollar for consumers, or, if no such index is chosen by the Bureau of
12 Labor Statistics, the index chosen by the Commissioner of Banks as most accurately reflecting
13 the changes in the purchasing power of the dollar for consumers."

14 **SECTION 2.** G.S. 53-172(a) reads as rewritten:

15 **"§ 53-172. Conduct of other business in same office.**

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

18 Installment paper dealers as defined in G.S. 105-83, and the collection by a licensee of
19 loans legally made in North Carolina, or another state by another government regulated lender
20 or lending agency, agency and the collection by the licensee of claims of, or payments to, an
21 insurance company licensed in North Carolina and arising in any way from an insurance policy
22 approved by the Commissioner of Insurance, shall not be considered as being any other
23 business within the meaning of this section."

24 **SECTION 3.** G.S. 53-173 reads as rewritten:

25 **"§ 53-173. ~~Maximum rate of interest and fee; computation of interest; Personal~~**
26 **installment loans maximum charges and fees; limitation on interest after**
27 **judgment; limitation on interest after maturity of the loan.**

28 (a) ~~Maximum Rate of Interest.~~ Every licensee under this section may make loans in
29 installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not
30 exceeding thirty six percent (36%) per annum on the outstanding principal balance of any loan
31 not in excess of six hundred dollars (\$600.00) and fifteen percent (15%) per annum on any
32 remainder of such unpaid principal balance. Interest shall be contracted for and collected at the
33 single simple interest rate applied to the outstanding balance that would earn the same amount
34 of interest as the above rates for payment according to schedule.



1 (a1) ~~Maximum Fee.~~ — In addition to the interest authorized in subsection (a) of this
2 section, a licensee making loans under this section may collect from the borrower a fee for
3 processing the loan equal to five percent (5%) of the loan amount not to exceed twenty five
4 dollars (\$25.00), provided that such charges may not be assessed more than twice in any
5 12-month period.

6 (a) Maximum Charges and Fees. —

7 (1) Installment account handling charge. — Every licensee under this section
8 may make personal installment loans in amounts up to two thousand dollars
9 (\$2,000), as adjusted periodically in accordance with subdivision (3) of this
10 subsection, and collect an installment account handling charge. The
11 installment account handling charge shall not exceed three dollars (\$3.00)
12 per month for each one hundred dollars (\$100.00) of the amount financed.
13 The installment account handling charge shall be calculated for the term of
14 the contract and with the total processing fee authorized in G.S. 53-173(a)(2)
15 added to the amount of the principal. Every payment shall be applied to the
16 combined total of principal and charges until the contract is fully paid. The
17 acceptance or payment of charges on loans made under the provisions of this
18 subsection shall not be deemed to constitute payment, deduction, or receipt
19 thereof in advance nor compounding.

20 (2) Processing fee. — In addition to the installment account handling charge
21 authorized by subdivision (1) of this subsection, a licensee making a loan
22 under this section may collect from the borrower a fee for processing the
23 loan equal to ten percent (10%) of the amount financed not to exceed one
24 hundred dollars (\$100.00), as adjusted periodically in accordance with
25 subdivision (3) of this subsection, provided that such charges may not be
26 assessed more than once in a 90-day period. This fee shall be fully earned by
27 the licensee at the time the loan is made and shall not be subject to any
28 refund requirement upon prepayment of the personal installment loan by the
29 borrower except as provided in subsection (i) of this section.

30 (3) Adjustment of amounts. —

31 a. Each year the Commissioner of Banks shall compute, in accordance
32 with sub-subdivision b. of this subdivision, and announce to
33 licensees by May 15, the following amounts based on a reference
34 base index equal to the consumer price index for 1982, and the
35 adjusted amounts shall take effect on July 1 of the year of the
36 computations:

- 37 1. The maximum fee under subdivision (2) of this subsection.
- 38 2. The maximum amount financed under subdivision (a)(1) of
39 this section and G.S. 53-176(a).
- 40 3. The dollar thresholds for the interest rate tiers set forth in
41 G.S. 53-176(a)(1).
- 42 4. The maximum fee for processing the loan under
43 G.S. 53-176(b).

44 b. The adjustment of amounts required by sub-subdivision a. of this
45 subdivision shall be computed by following these four steps:

- 46 1. Dividing the reference base index into the consumer price
47 index at the end of the preceding year.
- 48 2. Converting the amount obtained under G.S. 53-173(a)(3)b.1.
49 to the nearest whole percent.
- 50 3. Rounding the result computed under G.S. 53-173(a)(3)b.2. to
51 the next lower multiple of 10 percent (10%) unless the result

(3) In the event a loan is made in violation of this subsection, the licensee shall refund to the borrower all charges paid by the borrower with respect to the loan, however, the borrower shall remain obligated to repay to the licensee the amount financed under the loan.

(i) Partial Refund of Fees. – If a loan made under this section is prepaid in full prior to the term expiration date, including payment in cash or by a new loan, or if, upon default by the borrower, the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge permitted in G.S. 53-173(a)(1) as contracted on the loan but not earned as of the date of loan payoff. The amount of any refund or credit shall be calculated according to the payment schedule originally contracted for, and calculated in accordance with the actuarial method set forth in Regulation Z (12 C.F.R. Part 226) as of the next installment due date following the date of prepayment. In addition, if the loan is prepaid in full, refinanced, or consolidated within the first 90 days, the first fifteen dollars (\$15.00) of the loan processing fee shall be retained by the lender and the remainder of the loan processing fee shall be refunded at a rate of one-ninetieth of the remainder of the loan processing fee per day, beginning on the day after the date of the prepayment, refinancing, or consolidation and ending on the 90th day after the loan was made.

(j) Rescission of Contract. – A borrower who has entered into a contract for a loan made pursuant to this section may, within three days of having entered into the contract, rescind the loan contract by returning to the licensee in cash or by a certified bank check the amount financed under the loan, and, upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. No borrower may exercise this right more than twice in a 12-month period."

SECTION 4. G.S. 53-175 reads as rewritten:

"§ 53-175. Fee for returned checks.

A licensee may collect the fee for returned checks to the extent permitted by ~~G.S. 25-3-506~~. G.S. 25-3-506, or thirty dollars (\$30.00), whichever is greater. This section shall apply to any loan made by any licensee under this Article."

SECTION 5. G.S. 53-176 reads as rewritten:

"§ 53-176. Optional rates, maturities and amounts.

In lieu of addition to making loans in the amount and at the interest stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make installment loans in installments not exceeding ~~ten thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) and which shall not be repayable in less than six months or more than ~~8496~~ 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) With respect to a loan not exceeding seven thousand five hundred dollars (\$7,500), ~~thirty percent (30%) per annum~~ Two and one-half percent (2.5%) per month on that part of the unpaid principal balance not exceeding ~~one thousand dollars (\$1,000)~~ and ~~eighteen percent (18%) per annum~~ five thousand dollars (\$5,000), and two percent (2%) per month on that part exceeding five thousand dollars (\$5,000) but not exceeding ten thousand dollars (\$10,000), and one and one-half percent (1.5%) per month on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

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

1 (a1) Interest on loans made pursuant to this section shall not be paid, deducted, or
2 received in advance. Such interest shall not be compounded but shall be (i) computed and paid
3 only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the
4 basis of the number of days actually elapsed. However, if part or all of the consideration for a
5 loan contract is the unpaid principal balance of a prior loan, then the principal amount payable
6 under the loan contract may include any unpaid interest on the prior loan which has accrued
7 within 90 days before the making of the new loan contract. For the purpose of computing
8 interest, a day shall equal 1/360th of a year. Any payment made on a loan shall be applied first
9 to any accrued interest and then to principal, and any portion or all of the principal balance may
10 be prepaid at any time without penalty.

11 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
12 fee for processing the loan as agreed upon by the parties, not to exceed ~~twenty five dollars~~
13 ~~(\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%)~~
14 ~~thirty-five dollars (\$35.00) for loans up to one thousand seven hundred fifty dollars (\$1,750), as~~
15 ~~adjusted periodically in accordance with G.S. 53-173(a)(3), and two percent (2%) of the cash~~
16 ~~advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a total fee of~~
17 ~~forty dollars (\$40.00), one thousand seven hundred fifty dollars (\$1,750), as adjusted~~
18 ~~periodically in accordance with G.S. 53-173(a)(3), provided that such charges may not be~~
19 ~~assessed more than twice in any 12-month period.~~

20 (c) The provisions of ~~G.S. 53-173(b), (e) and (d) G.S. 53-173(a)(3), (c), and (d) and~~
21 ~~G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this~~
22 ~~section.~~

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

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

36 ~~(f) No individual, partnership, or corporate licensee and no corporation which is the~~
37 ~~parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article~~
38 ~~except as authorized in this section, shall be permitted to make loans under the provisions of~~
39 ~~this section. Any corporate licensee or individual or partnership licensee that elects to make~~
40 ~~loans in accordance with the provisions of this section shall be bound by that election with~~
41 ~~respect to all of its offices and locations in this State and all offices and locations in this State~~
42 ~~of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their~~
43 ~~offices and locations in this State."~~

44 **SECTION 6.** G.S. 53-177 reads as rewritten:

45 **"§ 53-177. Recording fees.Fees.**

46 (a) Recording Fees. – The licensee may collect from the borrower the amount of any
47 fees necessary to file or record its security interest with any public official or agency of a
48 county or the State as may be required pursuant to Article 9 of Chapter 25 of the General
49 Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be
50 applied, such fees may either (i) be paid by the licensee to such public official or agency of the
51 county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase

1 nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by
2 a licensee that elects to self insure against the loss of a security interest by reason of not filing
3 or recording its security instrument. ~~loan.~~ Provided, however, the amount collected by the
4 licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or
5 for self insurance, policy shall be the premium amount for such insurance as fixed by the
6 Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost
7 of recording or filing a security interest. Provided further, a licensee shall not collect or permit
8 to be collected any notary fee in connection with any loan made under this Article, nor may a
9 licensee collect any fee from the borrower for the cost of releasing a security interest except
10 such fee as actually paid to any public official or agency of the county or State for such
11 purpose.

12 (b) Late Fees. –

13 (1) A licensee may charge a late payment charge as agreed upon by the parties
14 in the loan contract for payments received 10 days or more after the due
15 date.

16 (2) No licensee may charge a late payment charge:

17 a. For loans made pursuant to G.S. 53-173, greater than fifteen dollars
18 (\$15.00).

19 b. For loans made pursuant to G.S. 53-176, in excess of five percent
20 (5%) of the amount of the payment or twenty dollars (\$20.00),
21 whichever is greater.

22 c. More than once with respect to a single late payment.

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

26 (d) Deferral Charges. – A licensee may, by agreement with the borrower, collect the
27 charge and defer the due date of all or any part of one or more installments under an existing
28 loan contract as permitted in the provisions of G.S. 25A-30."

29 **SECTION 7.** G.S. 53-180 reads as rewritten:

30 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

31 (a) Time and Payment Limitation. – Except as otherwise provided in this Article, no
32 licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this
33 Article providing for any scheduled repayment of principal or charges less than four months or
34 more than 25seven months from the date of making the contract if the cash advance is ~~six~~
35 ~~hundred dollars (\$600.00)~~ five hundred dollars (\$500.00) or less; or more than 3713 months
36 from the date of making the contract if the cash advance is in excess of six hundred dollars
37 (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); five hundred dollars (\$500.00)
38 but not in excess of one thousand dollars (\$1,000); more than 4919 months from the date of
39 making the contract if the cash advance is in excess of fifteen hundred dollars (\$1,500) but not
40 in excess of two thousand five hundred dollars (\$2,500); one thousand dollars (\$1,000) but not
41 in excess of one thousand five hundred dollars (\$1,500); or more than 6425 months if the cash
42 advance is in excess of two thousand five hundred dollars (\$2,500). one thousand five hundred
43 dollars (\$1,500). Every loan contract shall provide for repayment of the amount loaned in
44 substantially equal equal, fully amortizing installments, either of principal or of principal and
45 charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained
46 herein shall prevent a loan being considered a new loan because the proceeds of the loan are
47 used to pay an existing contract loan.

48 (b) No Assignment of Earnings. – A licensee may not take an assignment of earnings of
49 the borrower for payment or as security for payment of a loan. An assignment of earnings in
50 violation of this section is unenforceable by the assignee of the earnings and is revocable by the
51 borrower. A sale of unpaid earnings made in consideration of the payment of money to or for

1 the account of the seller of the earnings is deemed to be a loan to the seller by an assignment of
2 earnings.

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

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

13 (e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the
14 provisions of ~~G.S. 53-173~~, G.S. 53-173 or G.S. 53-176, the agreement may ~~not~~ provide for
15 ~~payment by the borrower of~~ the collection of reasonable attorney fees.

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

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

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

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

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

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

35 **SECTION 8.** G.S. 53-181 reads as rewritten:

36 **"§ 53-181. Statements and information to be furnished to borrowers; power of attorney**
37 **or confession of judgment prohibited.**

38 (a) Contents of Statement Furnished to Borrower. – At the time a loan is made, and one
39 time per calendar year free at the written request of the borrower and twenty-five dollars
40 (\$25.00) for each additional request, the licensee shall deliver to the borrower, or if there be
41 two or more borrowers, to one of them a copy of the loan contract, or a written statement,
42 showing in clear and distinct terms:

- 43 (1) The name and address of the licensee and one of the primary obligors on the
44 loan;
- 45 (2) The date of the loan contract;
- 46 (3) Schedule of installments or descriptions thereof;
- 47 (4) The cash advance;
- 48 (5) The face amount of the note evidencing the loan;
- 49 (6) The amount collected or paid for insurance, if any;
- 50 (7) The amount collected or paid for filing or other fees allowed by this Article;
- 51 (8) The collateral or security for the loan;

1 (9) If the loan refinances a previous loan, the following relating to the
2 refinanced loan: (i) the principal balance due; (ii) interest charged that is
3 included in the new loan; and (iii) rebates on any credit insurance, listed
4 separately.

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

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

14 (c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take
15 any confession of judgment or permit any borrower to execute a power of attorney in favor of
16 any licensee or in favor of any third person to confess judgment or to appear for the borrower in
17 any judicial proceeding and any such confession of judgment or power of attorney to confess
18 judgment shall be absolutely void."

19 **SECTION 9.** G.S. 53-186 reads as rewritten:

20 "**§ 53-186. Commissioner to issue subpoenas, conduct hearings, give publicity to**
21 **investigations, etc.**

22 (a) Powers of the Commissioner. – The Commissioner of Banks shall have the power
23 and duty to issue subpoenas including subpoenas duces tecum, and compel attendance of
24 witnesses, administer oaths, conduct hearings and transcribe testimony in making the
25 investigations and conducting the hearings provided for herein or in the other discharge of his
26 duties, and to give such publicity to his investigations and findings as he may deem best for the
27 public interest.

28 (b) Timely Response to Borrowers' Complaints and Inquiries. –

29 (1) Timely Commissioner response to borrowers. – The Commissioner shall
30 establish reasonable procedures to provide a timely response to borrowers, in
31 writing where appropriate, to complaints against, or inquiries concerning, a
32 licensee, including all of the following:

33 a. Steps that have been taken by the Commissioner in response to the
34 complaint or inquiry of the borrower.

35 b. Any responses received by the Commissioner from the licensee.

36 c. Any follow-up actions or planned follow-up actions by the
37 Commissioner in response to the complaint or inquiry of the
38 borrower.

39 (2) Timely response to Commissioner by licensee. – A licensee shall provide a
40 timely response, in writing where appropriate, to the Commissioner
41 concerning a borrower complaint or inquiry, including all of the following:

42 a. Steps that have been taken by the licensee to respond to the
43 complaint or inquiry of the borrower.

44 b. Responses received by the licensee from the borrower.

45 c. Follow-up actions or planned follow-up actions by the licensee to
46 respond to the complaint or inquiry of the borrower.

47 (3) Provision of information to borrowers. – A licensee shall, in a timely
48 manner, comply with a borrower's written request for information in the
49 control or possession of such licensee concerning the loan transaction,
50 product, or service that the borrower obtained from such licensee as required
51 by G.S. 53-181(a), including up to six months of payment history,

1 concerning the account of the borrower. However, nothing in this section
2 shall be construed to require a licensee to make available to the consumer
3 any of the following:

- 4 a. Any confidential commercial information, including an algorithm
5 used to derive credit scores or other risk scores or predictors;
6 b. Any information collected by the licensee for the purpose of
7 preventing fraud or money laundering, or detecting or making any
8 report regarding other unlawful or potentially unlawful conduct;
9 c. Any information required to be kept confidential by any other
10 provision of law; or
11 d. Any nonpublic or confidential information, including confidential
12 supervisory information.

13 (c) Commissioner to Develop Pamphlet. – The Office of the Commissioner of Banks
14 shall develop a written pamphlet that explains the rights and responsibilities of consumers who
15 obtain loans from a licensee for distribution in all licensed offices. Such pamphlet shall include
16 the names, mailing or electronic mail addresses, and telephone numbers for the offices in the
17 Office of Commissioner of Banks or the Department of Justice responsible for enforcing the
18 provisions of this Chapter. Such pamphlet shall be given to a borrower at the time a loan is
19 made by a licensee and shall be readily available to all consumers at all times in each licensed
20 office. The Commissioner shall consult with, and seek input from, representatives of
21 consumers, the licensees, and the Attorney General in the development of the pamphlet. Each
22 licensee shall be responsible for reproducing and distributing the pamphlet finally approved and
23 authorized by the Commissioner. The pamphlet developed under this subsection shall be
24 provided to consumers as of January 1, 2012."

25 **SECTION 10.** This act becomes effective October 1, 2011.