

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 570

Short Title: Update Consumer Finance Act.

(Public)

Sponsors: Senators Hoyle; Ballantine, Carpenter, Carter, Dalton, Forrester, Jordan, Lee, Moore, Odom, Plyler, Purcell, Reeves, Rucho, Soles, and Weinstein.

Referred to: Commerce.

March 29, 1999

A BILL TO BE ENTITLED

1
2 AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT TO
3 REVISE THE COLLECTION OF INTEREST UNDER CERTAIN
4 CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS UNDER
5 CERTAIN CONDITIONS, TO RECOGNIZE INADVERTENT LOANS IN THE
6 LAW RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE DISCLOSURE
7 ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS,
8 TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF
9 OPTICAL IMAGE DISKS, TO SPECIFY A MAXIMUM CHARGE THAT
10 LENDERS MAY ASSESS AT CLOSING, AND TO REQUIRE LICENSEES TO
11 REPORT ADDITIONAL INFORMATION TO THE COMMISSIONER.

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 53-165(a) reads as rewritten:

14 "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the
15 charges authorized either by G.S. 53-173, G.S. 53-173 or G.S. 53-176."

16 Section 2. G.S. 53-176 reads as rewritten:

17 "**§ 53-176. Optional rates, maturities and amounts.**

18 In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for
19 the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in

1 installments not exceeding ten thousand dollars (\$10,000) and which shall not be
2 repayable in less than six months or more than 84 months and which shall not be secured
3 by deeds of trust or mortgages on real estate and which are repayable in substantially
4 equal consecutive monthly payments and to charge and collect interest in connection
5 therewith which shall not exceed the following actuarial rates:

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

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

17 In addition to the interest permitted in this section, a licensee may assess at closing a
18 ~~reasonable credit investigation loan charge as agreed upon by the parties, not to exceed the~~
19 ~~actual cost of the credit investigation; twenty-five dollars (\$25.00); provided that such~~
20 ~~charges may not be assessed to the same borrower more than twice in any 12-month~~
21 ~~period. The Commissioner of Banks may review charges assessed pursuant to this section and~~
22 ~~may adopt appropriate rules in accordance with G.S. 53-185. period, and which may be~~
23 ~~included in the original principal balance of the loan and shall be earned when the loan is~~
24 ~~made.~~

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

27 Any licensee under this Article shall have the right to elect to make loans in
28 accordance with this section by the filing of a written statement to that effect with the
29 Commissioner and on date of such notification begin making loans regulated by this
30 section for the following 12 months. Annually after such election a licensee may elect to
31 make loans in accordance with this section unless the licensee notifies in writing the
32 Commissioner of its intention to terminate such election.

33 The due date of the first monthly payment shall not be more than 45 days following
34 the disbursement of funds under any such installment loan. A borrower under this section
35 may prepay all or any part of a loan made under this section without penalty. A borrower
36 may cancel a loan within 15 calendar days after disbursement of the loan proceeds to the
37 borrower without incurring or paying interest so long as the amount of the loan is
38 returned to or received by the licensee.

39 No individual, partnership, or corporate licensee and no corporation which is the
40 parent, subsidiary or affiliate of a corporate licensee that is making loans under this
41 Article except as authorized in this section, shall be permitted to make loans under the
42 provisions of this section. Any corporate licensee or individual or partnership licensee
43 that elects to make loans in accordance with the provisions of this section shall be bound

1 by that election with respect to all of its offices and locations in this State and all offices
2 and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with
3 respect to all of his or their offices and locations in this State."

4 Section 3. G.S. 53-179 reads as rewritten:

5 **"§ 53-179. Multiple-office loan limitations.**

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

20 Section 4. G.S. 53-181(a) is amended by adding a new subdivision to read:

21 "(10) In addition to any disclosures otherwise provided by law, a licensee
22 soliciting loans using facsimile or negotiable checks shall disclose the
23 following:

24 'THIS IS A SOLICITATION FOR A LOAN. READ THE
25 ENCLOSED DISCLOSURES BEFORE SIGNING THIS
26 AGREEMENT.'

27 This notice shall be printed in not less than 10-point bold type
28 and shall appear conspicuously on the offer."

29 Section 5. G.S. 53-182(b) reads as rewritten:

30 "(b) Upon payment of any loan in full, a licensee shall cancel and return to the
31 borrower, within a reasonable length of time, originals or copies of any note, assignment,
32 mortgage, deed of trust, or other instrument securing such loan, which no longer secures
33 any indebtedness of the borrower to the licensee."

34 Section 6. G.S. 53-184 reads as rewritten:

35 **"§ 53-184. Securing of information; records and reports; allocations of expense.**

36 (a) Each licensee shall maintain all books and records relating to loans made under
37 this Article required by the Commissioner of Banks to be kept, and the Commissioner,
38 his deputy, or duly authorized examiner or agent or employee is authorized and
39 empowered to examine such records at any reasonable time. Such books and records may
40 be maintained in the form of magnetic tape, magnetic ~~disk-disk,~~ optical disk, or other
41 form of computer, electronic or microfilm media available for examination on the basis
42 of computer printed reproduction, video display or other medium acceptable to the
43 Commissioner of Banks; provided, however, that such books and records so kept must be

1 convertible into clearly legible tangible documents within a reasonable time. Any
2 licensee having more than one licensed office may maintain such books and records at a
3 location other than the licensed office location if such location is approved by the
4 Commissioner; provided that, upon such requirements as may be imposed by the
5 Commissioner of Banks, there shall be available to the borrower at each licensed location
6 or such other location convenient to the borrower, as designated by the licensee, complete
7 loan information; and provided further that such books and records of each licensed
8 office shall be clearly segregated. When a licensee maintains its books and records
9 outside of North Carolina, the licensee shall make them available for examination at the
10 place where they are maintained and shall pay for all reasonable and necessary expenses
11 incurred by the Commissioner in conducting such examination. Where the data
12 processing for any licensee is performed by a person other than the licensee, the licensee
13 shall provide to the Commissioner of Banks a copy of a binding agreement between the
14 licensee and the data processor which allows the Commissioner of Banks, his deputy, or
15 duly authorized examiner or agent or employee to examine that particular data processor's
16 activities pertaining to the licensee to the same extent as if such services were being
17 performed by the licensee on its own premises; and, notwithstanding the provisions of
18 G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall
19 reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~the
20 Commissioner in such examination.

21 (b) Each licensee shall file annually with the Commissioner of Banks on or before
22 the thirty-first day of March for the 12 months' period ending the preceding December
23 31, reports on forms prescribed by the Commissioner. Reports shall disclose in detail and
24 under appropriate headings the assets and liabilities of the licensee, the ~~income, expense,~~
25 income from interest and other charges collected for loans, income from all businesses
26 related to transactions under the act, income from other noncredit businesses authorized
27 by the Commissioner, all expense from those businesses, gain, loss, delinquency, bad
28 debt, bad debt recovery, and any other information as the Commissioner may require.
29 require in order to make meaningful reports to the public and the General Assembly on
30 the services and financial condition of the industry. Reports shall be verified by the oath
31 or affirmation of the owner, manager, president, vice-president, cashier, secretary or
32 treasurer of the licensee.

33 (c) If a licensee conducts another business or is affiliated with other licensees
34 under this Article, or if any other situation exists under which allocations of expense are
35 necessary, the licensee or licensees shall make such allocation according to appropriate
36 and reasonable accounting principles.

37 (d) Repealed by Session Laws 1997-285, s. 3."

38 Section 7. This act becomes effective October 1, 1999, and applies to loans
39 made on or after that date.