

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 599
Committee Substitute Favorable 4/5/01
Committee Substitute #2 Reported Without Prejudice 4/23/01
Senate Judiciary I Committee Substitute Adopted 10/2/01
Senate Committee Substitute Adopted 12/6/01

Short Title: Revise Consumer Finance Act.

(Public)

Sponsors:

Referred to:

March 14, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO MODIFY THE CONSUMER FINANCE ACT TO INCREASE THE
3 AMOUNT OF LOANABLE ASSETS REQUIRED BEFORE AN ENTITY IS
4 LICENSED TO ENGAGE IN BUSINESS IN THE STATE, TO REVISE THE
5 COLLECTION OF INTEREST UNDER CERTAIN CIRCUMSTANCES, TO
6 ESTABLISH A LOAN PROCESSING FEE, TO ALLOW LENDERS TO
7 CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN
8 CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF
9 LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS
10 TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE
11 DISKS, TO REPEAL OBSOLETE PROVISIONS OF THE GENERAL
12 STATUTES, AND TO MAKE CONFORMING CHANGES TO THE GENERAL
13 STATUTES.

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** G.S. 53-165(a) reads as rewritten:

16 "(a) "Amount of the loan" shall mean the aggregate of the cash advance and the
17 charges authorized by ~~G.S. 53-173~~.G.S. 53-173 and G.S. 53-176."

18 **SECTION 2.** G.S. 53-168 reads as rewritten:

19 "**§ 53-168. License required; showing of convenience, advantage and financial**
20 **responsibility; investigation of applicants; hearings; existing businesses;**
21 **contents of license; transfer; posting.**

22 (a) Necessity for License; Prerequisites to Issuance. – No person shall engage in
23 or offer to engage in the business regulated by this Article unless and until a license has
24 been issued by the Commissioner of Banks, and the Commissioner shall not issue any
25 such license unless and until ~~he~~ the Commissioner finds:

- 1 (1) That authorizing the applicant to engage in such business will promote
2 the convenience and advantage of the community in which the
3 applicant proposes to engage in business; and
4 (2) That the financial responsibility, experience, character and general
5 fitness of the applicant are such as to command the confidence of the
6 public and to warrant the belief that the business will be operated
7 lawfully and fairly, within the purposes of this Article; and
8 (3) That the applicant has available for the operation of such business at
9 the specified location loanable assets of at least ~~twenty five thousand~~
10 ~~dollars (\$25,000).~~ fifty thousand dollars (\$50,000).

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

23 ~~(c) Existing Business. – Notwithstanding the provisions of this section, any~~
24 ~~person, firm or corporation which, on December 31, 1973, was a licensee under this~~
25 ~~Article either as a licensee to make loans under the provisions of G.S. 53-173 or as a~~
26 ~~motor vehicle lender under G.S. 53-176.1, may surrender such license to the~~
27 ~~Commissioner within 90 days after May 25, 1974, and elect to become a licensee to~~
28 ~~make loans under either G.S. 53-173 or 53-176.1 but not both. Such license shall be~~
29 ~~issued by the Commissioner without further application or investigation and the licensee~~
30 ~~shall be deemed a licensee under the category that it elects upon the surrender of its~~
31 ~~current license and the election.~~

32 (d) Required Assets Available. – Each licensee shall continue at all times to have
33 available for the operation of the business at the specified location loanable assets of at
34 least ~~twenty five thousand dollars (\$25,000).~~ fifty thousand dollars (\$50,000). The
35 requirements and standards of this subsection and subsection (a)(2) of this section shall
36 be maintained throughout the period of the license and failure to maintain such
37 requirements or standards shall be grounds for the revocation of a license under the
38 provisions of G.S. 53-171 of this Article.

39 (e) License, Posting, Continuing. – Each license shall state the address at which
40 the business is to be conducted and shall state fully the name of the licensee, and if the
41 licensee is a copartnership, or association, the names of the members thereof, and if a
42 corporation, the date and place of its incorporation. Transfer or assignment of a license

1 by one person to another by sale or otherwise is prohibited without the prior approval of
2 the Commissioner. Each license shall be kept posted in the licensed place of business.
3 Each license shall remain in full force and effect until surrendered, revoked, or
4 suspended as hereinafter provided."

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

6 "**§ 53-173. Maximum rate of ~~charge; interest and fee; computation of charges;~~
7 interest; limitation on interest after judgment; limitation on interest after
8 maturity of the loan.**

9 (a) ~~Maximum Rate of Charge. Interest.~~ Interest. – Every licensee ~~hereunder~~ under this
10 section may contract for, compute, and receive on any loan of money, make loans in
11 installments not exceeding three thousand dollars (\$3,000) in amount, charges at interest
12 rates not exceeding thirty-six percent (36%) per annum on that part of the unpaid the
13 outstanding principal balance of any loan not in excess of six hundred dollars (\$600.00)
14 and fifteen percent (15%) per annum on any remainder of such unpaid principal
15 balance. Interest shall be contracted for and collected at the single simple interest rate
16 applied to the outstanding balance that would earn the same amount of interest as the
17 above rates for payment according to schedule.

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

23 (b) ~~Computation of Charges. Interest.~~ Charges Interest on loans made pursuant
24 to this section shall not be paid, deducted, or received in advance. Such ~~charges~~ interest
25 shall not be compounded but ~~charges~~ interest on loans shall (i) be computed and paid
26 only as a percentage of the unpaid principal balance or portion thereof and (ii) computed
27 on the basis of the number of days actually elapsed; provided, however, if part or all of
28 the consideration for a loan contract is the unpaid principal balance of a prior loan, then
29 the principal amount payable under the loan contract may include any unpaid ~~charges~~
30 interest on the prior loan which have accrued within 90 days before the making of the
31 new loan contract. For the purpose of computing ~~charges, interest,~~ a day shall equal
32 1/365th of a year. Any payment made on a loan shall be applied first to any accrued
33 interest and then to principal, and any portion or all of the principal balance may be
34 prepaid at any time without penalty.

35 (c) Limitation on Interest after Judgment. – If a money judgment be is obtained
36 against any party on any loan made under the provisions of this section neither the
37 judgment nor the loan shall carry, from the date of the judgment, any interest in excess
38 of eight percent (8%) per annum.

39 (d) Limitation of Interest after Maturity of Loan. – After the maturity date of any
40 loan contract made under the provisions of this section and until the loan contract is
41 paid in full by cash, new loan, refinancing or otherwise, no charges other than interest at

1 eight percent (8%) per annum shall be computed or collected from any party to the loan
2 upon the unpaid principal balance of the loan.

3 (e) Repealed by Session Laws 1989, c. 17, s. 3.

4 (f) ~~Subject to the limitations contained in this Article as to maximum rates, the
5 Commission may from time to time, upon the basis of changed conditions or facts,
6 redetermine and refix any such maximum rates of charge, but, before determining or
7 redetermining any such maximum rates, the Commission shall give reasonable notice of
8 its intention to consider doing so to all licensees and a reasonable opportunity to be
9 heard and introduce evidence with respect thereto. The notice herein required may be
10 given by mailing such notice to the offices of the licensees as shown in the records of
11 the Commissioner of Banks. Any such changed maximum rates of charge shall not
12 affect preexisting loan contracts lawfully entered into between any licensee and any
13 borrower."~~

14 **SECTION 4.** G.S. 53-176 reads as rewritten:

15 **"§ 53-176. Optional rates, maturities and amounts.**

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

23 (1) With respect to a loan not exceeding seven thousand five hundred
24 dollars (\$7,500), thirty percent (30%) per annum on that part of the
25 unpaid principal balance not exceeding one thousand dollars (\$1,000)
26 and eighteen percent (18%) per annum on the remainder of the unpaid
27 principal balance. Interest shall be contracted for and collected at the
28 single simple interest rate applied to the outstanding balance that
29 would earn the same amount of interest as the above rates for payment
30 according to schedule.

31 (2) With respect to a loan exceeding seven thousand five hundred dollars
32 (\$7,500), eighteen percent (18%) per annum on the outstanding
33 principal balance.

34 (b) In addition to the interest permitted in this section, a licensee may assess at
35 closing a ~~reasonable credit investigation charge fee~~ for processing the loan as agreed
36 upon by the parties, not to exceed the actual cost of the credit investigation; twenty-five
37 dollars (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one
38 percent (1%) of the cash advance for loans above two thousand five hundred dollars
39 (\$2,500), not to exceed a total fee of forty dollars (\$40.00), provided that such charges
40 may not be assessed more than twice in any 12-month period. The Commissioner of
41 Banks may review charges assessed pursuant to this section and may adopt appropriate
42 rules in accordance with G.S. 53-185.

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

3 (d) Any licensee under this Article shall have the right to elect to make loans in
4 accordance with this section by the filing of a written statement to that effect with the
5 Commissioner and ~~on no sooner than 30 days from the~~ date of such notification begin
6 making loans regulated by this ~~section for the following 12 months.~~ section. Annually
7 ~~after~~ After such election a licensee may ~~elect~~ continue to make loans in accordance with
8 this section unless the licensee notifies ~~in writing~~ the Commissioner in writing of its
9 intention to terminate such ~~election.~~ election on a date not sooner than 30 days from the
10 notification.

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

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

27 **SECTION 5.** G.S. 53-180 is amended by adding a new subsection to read:

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

30 **SECTION 6.** G.S. 53-181(a) is amended by adding a new subdivision to
31 read:

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

35 **SECTION 7.** G.S. 53-182(b) reads as rewritten:

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

40 **SECTION 8.** G.S. 53-184(a) reads as rewritten:

41 "(a) Each licensee shall maintain all books and records relating to loans made
42 under this Article required by the Commissioner of Banks to be kept, and the

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

27 **SECTION 9.** This act becomes effective January 1, 2002, and applies to
28 loans made on or after that date.