

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 26, 2015
S.B. 679
PRINCIPAL CLERK

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SENATE DRS45259-MD-46 (03/03)

Short Title: NC Consumer Finance Act Amendments.

(Public)

Sponsors: Senators Gunn, Newton, and D. Davis (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE RECOVERY OF COURT COSTS AND RELATED COSTS UPON VOLUNTARY DISMISSAL AT THE REQUEST OF A BORROWER OF AN ACTION TO RECOVER PAYMENTS DUE UNDER A LOAN GRANTED UNDER THE NORTH CAROLINA CONSUMER FINANCE ACT OR UPON REDUCTION OF A LOAN ISSUED UNDER THE ACT TO JUDGMENT; TO CLARIFY THE MULTIPLE LOAN LIMITATIONS UNDER THE ACT; TO CLARIFY THE STATUTE RELATED TO WHETHER OR NOT BORROWERS ARE MEMBERS OF THE MILITARY PRIOR TO MAKING LOANS UNDER THE ACT; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-177 is amended by adding a new subsection to read:

"(e) Recovery of Costs. – If a lender agrees, upon the written request of the borrower, to take a voluntary dismissal of an action to recover payments due under a loan issued pursuant to this Article or if such a loan is reduced to a judgment, the lender may recover the statutory court costs incurred as well as any other reasonable and bona fide costs incurred in the course of bringing the action."

SECTION 2. G.S. 53-178 reads as rewritten:

"§ 53-178. No further charges; no splitting contracts; certain contracts void.

No further or other charges or insurance commissions shall be directly or indirectly contracted for or received by any ~~licensee~~ licensee, affiliate, parent, subsidiary or licensee under the same ownership, management, or control, whether partial or complete except those specifically authorized by this ~~Article or Article~~, by the Commissioner under G.S. 53-172, G.S. 53-172 or any other statute. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining interest or charges in excess of those authorized by this Article. All balances due to a licensee from any person as a borrower or as an endorser, guarantor or surety for any borrower or ~~otherwise, or due from any husband or wife, otherwise~~ jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges."

SECTION 3. G.S. 53-179 is repealed.

SECTION 4. G.S. 53-180.1 reads as rewritten:

"§ 53-180.1. Military service members limitation.

(a) Definition. – For purposes of this section, the term "military service member" means a member of the Armed Forces who is either (i) on active duty under a call or order that does not specify a period of 30 days or fewer or (ii) on active Guard and Reserve Duty, as that term is defined in ~~40 U.S.C. § 101(d)(6)~~, 10 U.S.C. § 101(d)(6), with a rank of E4 or below.



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1 (b) ~~Verification; Requirements for Granting Loan. – Prior to making a loan under this~~
2 ~~Article, a licensee will confirm whether the borrower is a military service member and~~
3 ~~document this in the person's loan file. A licensee may not make a loan to a borrower who is a~~
4 ~~covered military service member with a rank of E4 or below ("covered member") unless the~~
5 following requirements are met:

- 6 (1) The licensee notifies the borrower's company-level commander or equivalent
7 designee of the covered member before the loan is consummated.
8 Notification may occur verbally, by electronic means, United States mail, or
9 other equivalent methods of notification. The notification method and date
10 shall be recorded in writing and included in the loan file along with the name
11 of the company-level commander or equivalent designee communicated with
12 and the date of the communication with the company-level commander or
13 equivalent designee.
- 14 (2) The licensee shall deposit in the United States mail a copy of the federal
15 Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the
16 complete contract for the loan addressed to the borrower's company-level
17 commander or equivalent designee of the covered member within five
18 business days of the consummation of the loan.
- 19 (3) A covered member who has entered into a loan contract made pursuant to
20 this Article may, within 30 days of entering into the loan contract, rescind
21 the loan contract by returning to the licensee in cash or by certified bank
22 check the amount advanced to or for the benefit of the covered member
23 under the loan contract, and upon delivery of those funds to the licensee, the
24 borrower shall have no further liability or obligations under the loan
25 contract. Nothing in this provision shall be construed to restrict or eliminate
26 any other penalties provided by State or federal law.
- 27 (4) The licensee shall give the covered member a separate disclosure that
28 includes the statements and information required under G.S. 53-181(a). The
29 licensee shall include the name and address of the North Carolina
30 Commissioner of Banks, the Consumer Protection Division of the North
31 Carolina Department of Justice, and the Consumer Financial Protection
32 Bureau. The licensee may include internal compliance information on the
33 same disclosure.
- 34 (5) Notwithstanding section 2 of Title 9 of the United States Code, 9 U.S.C. § 2,
35 or any other federal or State law, rule, or regulation, no agreement to
36 arbitrate any dispute involving the extension of consumer credit shall be
37 enforceable against any covered member or dependent of such a member or
38 any person who was a covered member or dependent of that member when
39 the agreement was made.
- 40 (6) ~~A licensee shall take reasonable precaution to prevent making loans in~~
41 ~~violation of this section. In the event that a licensee does not take reasonable~~
42 ~~precautions to identify covered members prior to making a loan, such loans~~
43 ~~granted to covered members shall have the interest rate on the loan adjusted~~
44 ~~to eight percent (8%) per annum.~~

45 **(b1) Reasonable Precautions to Identify Covered Members. – A licensee shall take**
46 **reasonable precaution to prevent making loans in violation of this section. In the event that a**
47 **licensee does not take reasonable precautions to identify covered members prior to making a**
48 **loan, such loans granted to covered members shall have the interest rate on the loan adjusted to**
49 **eight percent (8%) per annum. Reasonable precaution may include obtaining a copy of a**
50 **Department of Defense certificate verifying the borrower is not in the military, obtaining a**

1 copy of a military service member's most recent leave and earnings statement, or verification of
2 income.

3 (c) Penalties and Remedies. –

4 (1) The remedies and rights provided under this section are in addition to and do
5 not preclude any remedy otherwise available under law to the person
6 claiming relief under this section, including any incidental, consequential, or
7 punitive damages.

8 (2) Any credit agreement, promissory note, or other contract prohibited under
9 this section is null and void.

10 (3) Nothing in this section may be construed to limit or otherwise affect the
11 applicability of section 207 of the Servicemembers Civil Relief Act, 50
12 U.S.C. App. § 527.

13 (d) Additional Restriction. – When a military servicemember has been deployed to a
14 theater of combat, combat supporting role, an area where hostile fire and/or when Imminent
15 Danger Pay is authorized to the servicemember, a licensee shall not contact the military
16 servicemember or member's spouse by telephone or electronic mail for purposes of collecting
17 on the loan upon receiving sufficient proof of the military servicemember's deployment. An
18 official copy of the military service member's orders for deployment or written verification
19 from the servicemember's commanding officer shall constitute sufficient proof."

20 **SECTION 5.** G.S. 53-190 reads as rewritten:

21 "**§ 53-190. Loans made elsewhere.**

22 (a) No loan contract made outside this State in the amount or of the value of ~~ten~~
23 ~~thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) or less, for which greater
24 consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article
25 have been charged, contracted for, or received, shall be enforced in this State. Provided, the
26 foregoing shall not apply to loan contracts in which all contractual activities, including
27 solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and
28 receipt of funds, occur entirely outside North Carolina.

29 (b) If any lender or agent of a lender who makes loan contracts outside this State in the
30 amount or of the value of ~~ten thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) or
31 less, comes into this State to solicit or otherwise conduct activities in regard to such loan
32 contracts, then such lender shall be subject to the requirements of this Article.

33 (c) No lender licensed to do business under this Article may collect, or cause to be
34 collected, any loan made by a lender in another state to a borrower, who was a legal resident of
35 North Carolina at the time the loan was made. The purchase of a loan account shall not alter
36 this prohibition."

37 **SECTION 6.** This act becomes effective July 1, 2015.