

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 777

Short Title: Adjust Interest Rates and Loan Ceilings.

(Public)

Sponsors: Senator Lee.

Referred to: Commerce.

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LICENSEES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILINGS, TO COLLECT ATTORNEY FEES AND COURT COSTS IN THE CASE OF DEFAULT, AND TO MAINTAIN RECORDS IN THE FORM OF OPTICAL IMAGING.

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-five thousand dollars (\$25,000) 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, 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. 53-176 reads as rewritten:

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

In lieu of making loans in the amount and at the charges 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 loans in

1 installments not exceeding ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars  
2 (\$25,000) and which shall not be repayable in less than six months or more than 84  
3 months and which shall not be secured by deeds of trust or mortgages on real estate and  
4 which are repayable in substantially equal consecutive monthly payments and to charge  
5 and collect interest in connection ~~therewith which shall not exceed the following actuarial~~  
6 ~~rates:~~

7       (1) ~~With respect to a loan not exceeding seven thousand five hundred~~  
8 ~~dollars (\$7,500), thirty percent (30%) per annum on that part of the~~  
9 ~~unpaid principal balance not exceeding one thousand dollars (\$1,000)~~  
10 ~~and eighteen percent (18%) per annum on the remainder of the unpaid~~  
11 ~~principal balance.~~

12 therewith. On the part of the unpaid balance not exceeding five thousand dollars (\$5,000),  
13 interest shall not exceed the actuarial rate of twenty-nine percent (29%) per annum. On  
14 the remainder of the unpaid balance, interest shall not exceed the actuarial rate of  
15 eighteen percent (18%) per annum. Interest shall be contracted for and collected at the  
16 single simple interest rate applied to the outstanding balance that would earn the same  
17 amount of interest as the above rates for payment according to schedule.

18       (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~  
19 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding~~  
20 ~~principal balance.~~

21 In addition to the interest permitted in this section, a licensee may assess at closing a  
22 reasonable credit investigation charge as agreed upon by the parties, not to exceed the  
23 actual cost of the credit investigation; provided that such charges may not be assessed  
24 more than twice in any 12-month period. The Commissioner of Banks may review  
25 charges assessed pursuant to this section and may adopt appropriate rules in accordance  
26 with G.S. 53-185.

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

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

35 The due date of the first monthly payment shall not be more than 45 days following  
36 the disbursement of funds under any such installment loan. A borrower under this section  
37 may prepay all or any part of a loan made under this section without penalty.

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

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

3 Section 3. G.S. 53-180(e) reads as rewritten:

4 "(e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the  
5 provisions of G.S. 53-173, the agreement may not provide for payment by the borrower  
6 of attorney ~~fees.~~ fees, except court and collection costs in the case of default by the  
7 borrower."

8 Section 4. G.S. 53-182(b) reads as rewritten:

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

13 Section 5. G.S. 53-184(a) reads as rewritten:

14 "(a) Each licensee shall maintain all books and records relating to loans made under  
15 this Article required by the Commissioner of Banks to be kept, and the Commissioner, ~~his~~  
16 the Commissioner's deputy, or duly authorized examiner or agent or employee is  
17 authorized and empowered to examine ~~such~~ the records at any reasonable time. ~~Such~~  
18 ~~books~~ Books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~  
19 disk, optical image disk, or other form of computer, electronic or microfilm media  
20 available for examination on the basis of computer printed reproduction, video display or  
21 other medium acceptable to the Commissioner of Banks; provided, however, that ~~such~~ the  
22 books and records so kept must be convertible into clearly legible tangible documents  
23 within a reasonable time. Any licensee having more than one licensed office may  
24 maintain ~~such~~ the required books and records at a location other than the licensed office  
25 location if ~~such~~ the location is approved by the Commissioner; provided that, ~~upon such~~  
26 ~~requirements as may be imposed by the Commissioner of Banks,~~ the Commissioner of Banks  
27 may require that there shall be available to the borrower at each licensed location or such  
28 other location convenient to the borrower, as designated by the licensee, complete loan  
29 information; and provided further that ~~such~~ the books and records of each licensed office  
30 shall be clearly segregated. When a licensee maintains its books and records outside of  
31 North Carolina, the licensee shall make them available for examination at the place where  
32 they are maintained and shall pay for all reasonable and necessary expenses incurred by  
33 the Commissioner in conducting such examination. Where the data processing for any  
34 licensee is performed by a person other than the licensee, the licensee shall provide to the  
35 Commissioner of Banks a copy of a binding agreement between the licensee and the data  
36 processor which allows the Commissioner of Banks, ~~his~~ the Commissioner's deputy, or  
37 duly authorized examiner or agent or employee to examine that particular data processor's  
38 activities pertaining to the licensee to the same extent as if such services were being  
39 performed by the licensee on its own premises; and, notwithstanding the provisions of  
40 G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall  
41 reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the  
42 Commissioner in ~~such~~ the examination."

1                   Section 6. This act becomes effective October 1, 1997, and applies to contracts  
2 entered into on or after that date.