

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 599

Short Title: Revise Consumer Finance Act.

(Public)

Sponsors: Representatives Michaux; Church, Dockham, Fitch, Gibson, Hurley, McAllister, McLawhorn, McMahan, Smith, Wainwright, Womble, and Wright.

Referred to: Financial Institutions.

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 AMOUNT OF, AND MAXIMUM RATE OF INTEREST FOR, SMALL LOANS,
6 TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN
7 CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE, TO ALLOW
8 LENDERS TO CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN
9 CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF
10 LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS
11 TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE
12 DISKS, TO REPEAL OBSOLETE PROVISIONS OF THE GENERAL
13 STATUTES, AND TO MAKE CONFORMING CHANGES TO THE GENERAL
14 STATUTES.

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.** G.S. 53-168 reads as rewritten:

17 "**§ 53-168. License required; showing of convenience, advantage and financial**
18 **responsibility; investigation of applicants; hearings; existing businesses;**
19 **contents of license; transfer; posting.**

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

24 (1) That authorizing the applicant to engage in such business will promote
25 the convenience and advantage of the community in which the
26 applicant proposes to engage in business; and

1 (2) That the financial responsibility, experience, character and general
2 fitness of the applicant are such as to command the confidence of the
3 public and to warrant the belief that the business will be operated
4 lawfully and fairly, within the purposes of this Article; and

5 (3) That the applicant has available for the operation of such business at
6 the specified location loanable assets of at least ~~twenty five thousand~~
7 ~~dollars (\$25,000).~~ fifty thousand dollars (\$50,000).

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

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

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

36 (e) License, Posting, Continuing. – Each license shall state the address at which
37 the business is to be conducted and shall state fully the name of the licensee, and if the
38 licensee is a copartnership, or association, the names of the members thereof, and if a
39 corporation, the date and place of its incorporation. Transfer or assignment of a license
40 by one person to another by sale or otherwise is prohibited without the prior approval of
41 the Commissioner. Each license shall be kept posted in the licensed place of business.
42 Each license shall remain in full force and effect until surrendered, revoked, or
43 suspended as hereinafter provided. "

44 **SECTION 2.** G.S. 53-173 reads as rewritten:

1 **"§ 53-173. Maximum rate of charge; interest and fee; computation of charges;**
2 **interest; limitation on interest after judgment; limitation on interest after**
3 **maturity of the loan.**

4 (a) ~~Maximum Rate of Charge-Interest.~~ – Every licensee hereunder may contract
5 for, compute, and receive on any loan of money, not exceeding ~~three thousand dollars~~
6 ~~(\$3,000)~~ six thousand dollars (\$6,000) in amount, ~~charges interest~~ at rates not exceeding
7 ~~thirty six percent (36%)~~ thirty percent (30%) per annum on that part of the unpaid
8 principal balance of any loan not in excess of ~~six hundred dollars (\$600.00)~~ and ~~fifteen~~
9 ~~percent (15%)~~ one thousand eight hundred dollars (\$1,800) and eighteen percent (18%)
10 per annum on any remainder of such unpaid principal balance. Interest shall be
11 contracted for and collected at the single simple interest rate applied to the outstanding
12 balance that would earn the same amount of interest as the above rates for payment
13 according to schedule.

14 (a1) Maximum Fee. – In addition to the interest authorized in subsection (a) of this
15 section, a licensee making loans under this section may collect from the borrower a fee
16 for processing the loan equal to five percent (5%) of the cash advance, not to exceed
17 fifty dollars (\$50.00).

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

30 (c) Limitation on Interest after Judgment. – If judgment be obtained against any
31 party on any loan made under the provisions of this section neither the judgment nor the
32 loan shall carry, from the date of the judgment, any interest in excess of eight percent
33 (8%) per annum.

34 (d) Limitation of Interest after Maturity of Loan. – After the maturity date of any
35 loan contract made under the provisions of this section and until the loan contract is
36 paid in full by cash, new loan, refinancing or otherwise, no charges other than interest at
37 eight percent (8%) per annum shall be computed or collected from any party to the loan
38 upon the unpaid principal balance of the loan.

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

40 (f) ~~Subject to the limitations contained in this Article as to maximum rates, the~~
41 ~~Commission may from time to time, upon the basis of changed conditions or facts,~~
42 ~~redetermine and refix any such maximum rates of charge, but, before determining or~~
43 ~~redetermining any such maximum rates, the Commission shall give reasonable notice of~~
44 ~~its intention to consider doing so to all licensees and a reasonable opportunity to be~~

1 ~~heard and introduce evidence with respect thereto. The notice herein required may be~~
2 ~~given by mailing such notice to the offices of the licensees as shown in the records of~~
3 ~~the Commissioner of Banks. Any such changed maximum rates of charge shall not~~
4 ~~affect preexisting loan contracts lawfully entered into between any licensee and any~~
5 ~~borrower."~~

6 **SECTION 3.** G.S. 53-165(a) reads as rewritten:

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

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

10 **"§ 53-176. Optional rates, maturities and amounts.**

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

18 (1) ~~With respect to a loan not exceeding seven thousand five hundred~~
19 ~~dollars (\$7,500), thirty percent (30%) per annum on that part of the~~
20 ~~unpaid principal balance not exceeding one thousand dollars (\$1,000)~~
21 ~~the actuarial rates of twenty-eight percent (28%) per annum on that~~
22 ~~part of the unpaid principal balance not exceeding two thousand~~
23 ~~dollars (\$2,000) and eighteen percent (18%) per annum on the~~
24 ~~remainder of the unpaid principal balance. Interest shall be contracted~~
25 ~~for and collected at the single simple interest rate applied to the~~
26 ~~outstanding balance that would earn the same amount of interest as the~~
27 ~~above rates for payment according to schedule.~~

28 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~
29 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding~~
30 ~~principal balance.~~

31 (b) In addition to the interest permitted in this section, a licensee may assess at
32 closing a ~~reasonable credit investigation charge as agreed upon by the parties, fee for~~
33 ~~processing the loan equal to five percent (5%) of the cash advance, not to exceed the~~
34 ~~actual cost of the credit investigation; provided that such charges may not be assessed~~
35 ~~more than twice in any 12 month period, fifty dollars (\$50.00). The Commissioner of~~
36 ~~Banks may review charges assessed pursuant to this section~~ subsection and may adopt
37 appropriate rules in accordance with G.S. 53-185.

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

40 (d) Any licensee under this Article shall have the right to elect to make loans in
41 accordance with this section by the filing of a written statement to that effect with the
42 Commissioner and on date of such notification begin making loans regulated by this
43 section for the following 12 months. Annually after such election a licensee may elect to

1 make loans in accordance with this section unless the licensee notifies in writing the
2 Commissioner of its intention to terminate such election.

3 (e) The due date of the first monthly payment shall not be more than 45 days
4 following the disbursement of funds under any such installment loan. A borrower under
5 this section may prepay all or any part of a loan made under this section without
6 penalty.

7 (f) No individual, partnership, or corporate licensee and no corporation which is
8 the parent, subsidiary or affiliate of a corporate licensee that is making loans under this
9 Article except as authorized in this section, shall be permitted to make loans under the
10 provisions of this section. Any corporate licensee or individual or partnership licensee
11 that elects to make loans in accordance with the provisions of this section shall be
12 bound by that election with respect to all of its offices and locations in this State and all
13 offices and locations in this State of its parent, subsidiary or affiliated corporate
14 licensee, or with respect to all of his or their offices and locations in this State.

15 (g) A lender may charge a party to a loan or extension of credit governed by this
16 section a late payment charge not to exceed five percent (5%) of the payment due or
17 seven dollars (\$7.00), whichever is greater, for any payment past due for 10 days or
18 more; provided, in no case shall the late charge exceed the outstanding principal
19 balance. If a late payment charge has been once imposed with respect to a late payment,
20 no late charge shall be imposed with respect to any future payment which would have
21 been timely and sufficient but for the previous default."

22 **SECTION 5.** G.S. 53-181(a) is amended by adding a new subdivision to
23 read:

24 "(10) In addition to any disclosures otherwise provided by law, a licensee
25 soliciting loans using a facsimile or negotiable check shall disclose the
26 following:

27 'THIS IS A SOLICITATION FOR A LOAN. READ THE
28 ENCLOSED DISCLOSURES BEFORE SIGNING THIS
29 AGREEMENT.'

30 This notice shall be printed in not less than 12-point bold type and
31 shall appear conspicuously on the offer."

32 **SECTION 6.** G.S. 53-182(b) reads as rewritten:

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

37 **SECTION 7.** G.S. 53-184(a) reads as rewritten:

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

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

22 **SECTION 8.** This act becomes effective July 1, 2001, and applies to loans
23 made on or after that date.