

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

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~~ 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. – 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 twenty-five dollars (\$25.00), provided that such charges
21 may not be assessed more than twice in any 12-month period.

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

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

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

1 (e) Repealed by Session Laws 1989, c. 17, s. 3.

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

12 (g) A lender may charge a party to a loan or extension of credit governed by this
13 section a late payment charge not to exceed five percent (5%) of the payment due or
14 seven dollars (\$7.00), whichever is greater, but in no event greater than ten dollars
15 (\$10.00), for any payment past due for 10 days or more; provided, in no case shall the
16 late charge exceed the outstanding payment due. If a late payment charge has been once
17 imposed with respect to a late payment, no late charge shall be imposed with respect to
18 any future payment that would have been timely and sufficient but for the previous
19 default. If a late charge is deducted from a payment made on the loan and this deduction
20 results in a subsequent late payment or default on a subsequent payment, no late charge
21 may be imposed for this default."

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

23 **"§ 53-176. Optional rates, maturities and amounts.**

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

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

39 (2) With respect to a loan exceeding seven thousand five hundred dollars
40 (\$7,500), eighteen percent (18%) per annum on the outstanding
41 principal balance.

1 **(b)** In addition to the interest permitted in this section, a licensee may assess at
2 closing a ~~reasonable credit investigation charge fee~~ for processing the loan as agreed
3 upon by the parties, not to exceed the actual cost of the credit investigation; twenty-five
4 dollars (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one
5 percent (1%) of the cash advance above two thousand five hundred dollars (\$2,500), not
6 to exceed a total fee of sixty dollars (\$60.00), provided that such charges may not be
7 assessed more than twice in any 12-month period. The Commissioner of Banks may
8 review charges assessed pursuant to this section and may adopt appropriate rules in
9 accordance with G.S. 53-185.

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

12 **(d)** Any licensee under this Article shall have the right to elect to make loans in
13 accordance with this section by the filing of a written statement to that effect with the
14 Commissioner and ~~on no~~ no sooner than 30 days from the date of such notification begin
15 making loans regulated by this section for the following 12 months. section. Annually
16 after ~~After~~ such election a licensee may ~~elect~~ continue to make loans in accordance with
17 this section unless the licensee notifies ~~in writing~~ the Commissioner in writing of its
18 intention to terminate such ~~election.~~ election on a date not sooner than 30 days from the
19 notification.

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

28 **(f)** No individual, partnership, or corporate licensee and no corporation which is
29 the parent, subsidiary or affiliate of a corporate licensee that is making loans under this
30 Article except as authorized in this section, shall be permitted to make loans under the
31 provisions of this section. Any corporate licensee or individual or partnership licensee
32 that elects to make loans in accordance with the provisions of this section shall be
33 bound by that election with respect to all of its offices and locations in this State and all
34 offices and locations in this State of its parent, subsidiary or affiliated corporate
35 licensee, or with respect to all of his or their offices and locations in this State.

36 **(g)** A lender may charge a party to a loan or extension of credit governed by this
37 section a late payment charge not to exceed five percent (5%) of the payment due or
38 seven dollars (\$7.00), whichever is greater, but in no event greater than ten dollars
39 (\$10.00), for any payment past due for 10 days or more; provided, in no case shall the
40 late charge exceed the outstanding payment due. If a late payment charge has been once
41 imposed with respect to a late payment, no late charge shall be imposed with respect to
42 any future payment that would have been timely and sufficient but for the previous

1 default. If a late charge is deducted from a payment made on the loan and this deduction
2 results in a subsequent late payment or default on a subsequent payment, no late charge
3 may be imposed for this default."

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

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

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

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

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

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

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

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

1 notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the
2 Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all
3 costs and expenses incurred by ~~him~~ the Commissioner in such examination."

4 **SECTION 9.** This act becomes effective December 1, 2001, and applies to
5 loans made on or after that date.