

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 810
Committee Substitute Favorable 5/31/11
Third Edition Engrossed 6/2/11

Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA
3 CONSUMER FINANCE ACT TO INCREASE CONSUMER ACCESS AND CREDIT
4 MARKET PARITY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 53-166(a) reads as rewritten:

7 "(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten~~ fifteen
8 thousand dollars (~~\$10,000~~) (\$15,000) or less and contract for, exact, or receive, directly or
9 indirectly, on or in connection with any such loan, any charges whether for interest,
10 compensation, consideration, or expense, or any other purpose whatsoever, which in the
11 aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided
12 in and authorized by this Article, and without first having obtained a license from the
13 Commissioner. The word "lending" as used in this section, shall include, but shall not be
14 limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

15 **SECTION 2.** G.S. 53-172(a) reads as rewritten:

16 "(a) No licensee shall conduct the business of making loans under this Article within any
17 office, suite, room, or place of business in which any other business is solicited or transacted.

18 Installment paper dealers as defined in G.S. 105-83, ~~and~~ the collection by a licensee of
19 loans legally made in North Carolina, or another state by another government regulated lender
20 or lending ~~agency~~, agency, and the collection by a licensee of claims of, or payments to, an
21 insurance company licensed in North Carolina and arising in any way from an insurance policy
22 approved by the Commissioner of Insurance shall not be considered as being any other business
23 within the meaning of this section."

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

25 "**§ 53-173. Maximum rate of interest and fee; computation of interest; limitation on**
26 **interest after judgment; limitation on interest after maturity of the loan.**

27 (a) Maximum Rate of Interest. – Every licensee under this section may make loans in
28 installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not
29 exceeding thirty-six percent (36%) per annum on the outstanding principal balance of any loan
30 not in excess of ~~six~~ one thousand five hundred dollars (~~\$600.00~~) (\$1,500) and fifteen percent
31 (15%) per annum on any remainder of such unpaid principal balance. Interest shall be
32 contracted for and collected at the single simple interest rate applied to the outstanding balance
33 that would earn the same amount of interest as the above rates for payment according to
34 schedule.

35 ...



1 (g) Limitations on Loans to Individual Borrowers. –

- 2 (1) No loan shall be made to a borrower before the 91st day after the origination
3 of an existing loan made under this section, nor with less than fifty percent
4 (50%) of the indebtedness of the existing loan reduced in the current
5 balance, unless the borrower receives the greater of one hundred dollars
6 (\$100.00) or twenty percent (20%) in cash in excess of the principal amount
7 of the original loan.
- 8 (2) No licensee shall make a loan under this section to repay an existing loan
9 under this section with the licensee without providing a notice, approved by
10 the Commissioner, explaining the benefits of disciplined consistent
11 repayment of installment credit and the potential of increasing costs when
12 obtaining a new loan before final payment.
- 13 (3) A licensee under this section must accept and credit semimonthly and
14 weekly payments from borrowers made before regularly scheduled payments
15 are due and also provide, at the time the loan is made, an example of the
16 potential savings that could occur as a result of more frequent payments.
- 17 (4) No licensee or an affiliate of such licensee shall make a loan to a borrower
18 under this section if there exists an outstanding loan made under this section
19 or G.S. 53-176 between the licensee and that borrower, unless the existing
20 loan is paid in full from the proceeds of the new loan."

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

22 **"§ 53-176. Optional rates, maturities and amounts.**

23 (a) ~~In lieu of addition to~~ making loans in the amount and at the interest stated in
24 G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may ~~at any time elect to~~ make
25 loans in installments not exceeding ~~ten-fifteen~~ thousand dollars ~~(\$10,000)~~ (\$15,000) and which
26 shall not be repayable in less than six months or more than ~~84-96~~ months and which shall not
27 be secured by deeds of trust or mortgages on real estate and which are repayable in
28 substantially equal consecutive monthly payments and to charge and collect interest in
29 connection therewith which shall not exceed the following actuarial rates:

- 30 (1) ~~With respect to a loan not exceeding seven thousand five hundred dollars~~
31 ~~(\$7,500), thirty~~ Thirty percent (30%) per annum on that part of the unpaid
32 principal balance not exceeding ~~one-five~~ thousand dollars ~~(\$1,000)~~ (\$5,000).
- 33 (1a) Twenty-four percent (24%) per annum on the unpaid principal balance not
34 exceeding ten thousand dollars (\$10,000).and
- 35 (1b) ~~eighteen~~ Eighteen percent (18%) per annum on the remainder of the unpaid
36 principal balance.

37 Interest shall be contracted for and collected at the single simple interest rate applied to the
38 outstanding balance that would earn the same amount of interest as the above rates for payment
39 according to schedule.

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

43 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
44 fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars
45 (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%) of
46 the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a
47 total fee of forty dollars (\$40.00), provided that such charges may not be assessed more than
48 twice in any 12-month period.

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

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

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

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

22 **SECTION 5.** G.S. 53-177 reads as rewritten:

23 "**§ 53-177. Recording fees.**~~Fees.~~

24 (a) Recording Fees. – The licensee may collect from the borrower the amount of any
25 fees necessary to file or record its security interest with any public official or agency of a
26 county or the State as may be required pursuant to Article 9 of Chapter 25 of the General
27 Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be
28 applied, such fees may either (i) be paid by the licensee to such public official or agency of the
29 county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase
30 nonfiling or nonrecording insurance on the instrument securing the loan, ~~or (iii) be retained by~~
31 ~~a licensee that elects to self insure against the loss of a security interest by reason of not filing~~
32 ~~or recording its security instrument: Provided, provided, however, the amount collected by the~~
33 ~~licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or~~
34 ~~for self insurance, policy shall be the premium amount for such insurance as fixed by the~~
35 ~~Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost~~
36 ~~of recording or filing a security interest. Provided further, a licensee shall not collect or permit~~
37 ~~to be collected any notary fee in connection with any loan made under this Article, nor may a~~
38 ~~licensee collect any fee from the borrower for the cost of releasing a security interest except~~
39 ~~such fee as actually paid to any public official or agency of the county or State for such~~
40 ~~purpose.~~

41 (b) Late Fees. –

42 (1) A licensee may charge a late payment charge for any payment which
43 remains past due for 10 days or more after the due date.

44 (2) No licensee may charge a late payment charge:

45 a. For loans made pursuant to G.S. 53-173, greater than ten dollars
46 (\$10.00).

47 b. For loans made pursuant to G.S. 53-176, greater than fifteen dollars
48 (\$15.00).

49 c. More than once with respect to a single late payment.

1 (c) Deferral Charges. – A licensee may, by agreement with the borrower, collect a
2 deferral charge and defer the due date of all or any part of one or more installments under an
3 existing loan contract as permitted in the provisions of G.S. 25A-30."

4 **SECTION 6.** G.S. 53-179 reads as rewritten:

5 **"§ 53-179. Multiple-office loan limitations.**

6 A licensee shall not grant a loan in one office to any borrower who already has a loan in
7 another office operated by the same entity or by an affiliate, parent, subsidiary or under the
8 same ownership, management or control, whether partial or complete. This section shall apply
9 to intrastate and interstate operations. A licensee shall take every reasonable precaution to
10 prevent granting loans in violation of this section. ~~Such~~ Subject to the limitation contained in
11 G.S. 53-173(g)(4), loans granted inadvertently resulting in a total liability of three thousand
12 dollars (\$3,000) or less, shall be adjusted to the rates applicable under the Article to a single
13 loan of equivalent amount, and when the total liability on such loans is in excess of three
14 thousand dollars (\$3,000), interest shall be adjusted to simple interest at eight percent (8%) per
15 annum on the entire obligation."

16 **SECTION 7.(a)** There is created the North Carolina Legislative Study Commission
17 on Improvement in Small-Dollar Lending. The purpose of the Commission is to determine
18 what measures the General Assembly may undertake to appropriately update G.S. 53-173 of
19 the North Carolina Consumer Finance Act.

20 **SECTION 7.(b)** The Commission shall consist of the following 16 members:

- 21 (1) Five members of the House of Representatives appointed by the Speaker of
22 the House of Representatives.
- 23 (2) Five members of the Senate appointed by the President Pro Tempore of the
24 Senate.
- 25 (3) One member of the consumer finance industry, one member of a consumer
26 advocacy organization, and one member representing a State-chartered bank,
27 each appointed by the Speaker of the House of Representatives.
- 28 (4) One member of the consumer finance industry, one member of a consumer
29 advocacy organization, and one member representing a State-chartered
30 credit union, each appointed by the President Pro Tempore of the Senate.

31 **SECTION 7.(c)** The Speaker of the House of Representatives shall designate one
32 representative as co-chair and the President Pro Tempore of the Senate shall designate one
33 senator as co-chair. The Commission shall meet upon the call of the co-chairs. Vacancies on
34 the Commission shall be filled by the same appointing authority as made the initial
35 appointment. A quorum of the Commission shall be a majority of its members.

36 **SECTION 7.(d)** The Commission shall study the following issues related to
37 designating appropriate features for a small-dollar loan product and the economic requirements
38 for market sustainability and availability for loans made under G.S. 53-173 of the North
39 Carolina Consumer Finance Act:

- 40 (1) Appropriate features of small dollar installment loans for consumer safety
41 and accountability; that is transparency, fairness, transaction structure, and
42 sustainability for individuals borrowing funds under this section.
- 43 (2) The costs of operations and economic sustainability for the consumer
44 finance industry and its impact on the availability and delivery of small
45 dollar loan products under this section, with specific emphasis on loans
46 under \$3,000.
- 47 (3) Appropriate ceiling of the maximum dollar amount to be lent to an
48 individual consumer under this section.
- 49 (4) What, if any, are appropriate restrictions on pricing or transaction fees under
50 this section to encourage safety, responsibility, competition, and availability.

1 (5) Any other matters the Commission considers necessary in furtherance of the
2 purpose for which it is established.

3 **SECTION 7.(e)** Members of the Commission shall receive per diem, subsistence,
4 and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The
5 Commission, while in the discharge of its official duties, may exercise all powers provided for
6 under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the
7 Legislative Building or the Legislative Office Building.

8 With approval of the Legislative Services Commission, the Legislative Services
9 Officer shall assign professional staff to assist the Commission in its work. The House of
10 Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to
11 the Commission, and the expenses relating to the clerical employees shall be borne by the
12 Commission. The Commission may contract for professional, clerical, or consultant services as
13 provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a
14 State employee or a person currently under contract with the State to provide services.

15 All State departments and agencies and local governments and their subdivisions
16 shall furnish the Commission with any information in their possession or available to them.

17 **SECTION 7.(f)** The Commission shall report the results of its study and its
18 recommendations, including any proposed legislative changes, to the 2012 Regular Session of
19 the 2011 General Assembly. The Commission shall terminate on May 1, 2012, or upon the
20 filing of its final report, whichever occurs first.

21 **SECTION 7.(g)** This section becomes effective when it becomes law.

22 **SECTION 8.** G.S. 53-180 is amended by adding a new subsection to read:

23 "(l) Exception for Military Borrowers. – A licensee may not make a loan to a borrower
24 who is a military service member unless the military service member obtains a written
25 authorization signed by the service member's company commander. A licensee must include a
26 clear and concise statement in the loan documentation advising the borrower that military
27 service members must identify themselves as service members and must obtain written
28 authorization from their company commander before entering a loan agreement. The licensee
29 shall retain a copy of the borrower's military ID card and the company commander's written
30 authorization in the borrower's loan file. The borrower must attest (i) that he or she is or is not a
31 military service member, (ii) that if the borrower is a military service member, he or she has
32 obtained a written authorization from the company commander to enter the loan agreement, and
33 (iii) that all information presented to the licensee pertaining to the requirements of this
34 subsection is true and accurate to the best of the borrower's knowledge. For the purpose of this
35 subsection "military service member" includes only a person on active duty."

36 **SECTION 9.** This act becomes effective October 1, 2011.