

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 679
Commerce Committee Substitute Adopted 4/15/15
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Short Title: NC Consumer Finance Act Amendments.

(Public)

Sponsors:

Referred to:

March 30, 2015

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 A LOAN GRANTED UNDER THE NORTH CAROLINA CONSUMER FINANCE ACT OR UPON REDUCTION OF A LOAN MADE 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 a loan made under 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. Nothing in this section shall be construed to authorize the collection of attorney fees otherwise prohibited under G.S. 53-180(e). Provided further, this section shall not apply if the debtor, in writing, raises an affirmative defense to an action to collect a loan made under this Article."

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.



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

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

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

1 granted to covered members shall have the interest rate on the loan adjusted
2 to eight percent (8%) per annum.

3 Reasonable Precaution to Identify Covered Members. – A licensee shall take reasonable
4 precaution to prevent making loans in violation of this section. In the event that a licensee does
5 not take reasonable precaution to identify covered members prior to making a loan, such loans
6 granted to covered members shall have the interest rate on the loan adjusted to eight percent
7 (8%) per annum. Reasonable precaution may include obtaining a copy of a Department of
8 Defense certificate, a copy of the covered military service member's most recent leave and
9 earnings statement, or any additional method approved by the Commissioner of Banks.
10 Provided however, nothing in this section shall be construed to require covered military service
11 member confirmation for a borrower with whom a licensee has an established customer
12 relationship, or for a borrower who provides verification from the borrower's most recent
13 payroll or earnings statement clearly indicating that the borrower is not a covered military
14 service member.

15 (c) Penalties and Remedies. –

- 16 (1) The remedies and rights provided under this section are in addition to and do
17 not preclude any remedy otherwise available under law to the person
18 claiming relief under this section, including any incidental, consequential, or
19 punitive damages.
20 (2) Any credit agreement, promissory note, or other contract prohibited under
21 this section is null and void.
22 (3) Nothing in this section may be construed to limit or otherwise affect the
23 applicability of section 207 of the Servicemembers Civil Relief Act, 50
24 U.S.C. App. § 527.

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

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

33 "**§ 53-190. Loans made elsewhere.**

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

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

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

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