

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

5

SENATE BILL 679
Commerce Committee Substitute Adopted 4/15/15
Third Edition Engrossed 4/20/15
House Committee Substitute Favorable 7/15/15
Fifth Edition Engrossed 7/20/15

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 borrower requests in writing of the lender to take a voluntary dismissal of an action to recover a loan made under this Article, and both parties agree to such a dismissal, the lender shall obtain in writing from the borrower an acknowledgment that (i) the borrower will be liable for the statutory court costs and (ii) any other reasonable and bona fide costs incurred in the course of bringing the action, and 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 by G.S. 53-180(e). Provided further, that this section shall not apply if the borrower, in written documentation raises an affirmative defense to an action to collect a loan under this Article. Nothing in this section shall in any way affect or prohibit a magistrate, judge, or arbitrator from awarding filing fees and fees for service of process incurred by the lender in bringing the civil action if a judgment is awarded or the other bona fide costs set forth above and the recovery of said costs and fees is expressly authorized in the event judgment is entered against the borrower."

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~~-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



1 for the purpose of or with the effect of obtaining interest or charges in excess of those
2 authorized by this Article. All balances due to a licensee from any person as a borrower or as
3 an endorser, guarantor or surety for any borrower or ~~otherwise, or due from any husband or~~
4 ~~wife, otherwise~~ jointly or severally, shall be considered a part of any loan being made by a
5 licensee to such person for the purpose of computing interest or ~~charges, charges, or exceeding~~
6 the maximum amount of fifteen thousand dollars (\$15,000)."

7 **SECTION 3.** G.S. 53-179 is repealed.

8 **SECTION 4.** G.S. 53-180.1 reads as rewritten:

9 **"§ 53-180.1. Military service members limitation.**

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

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

- 20 (1) The licensee notifies the borrower's ~~company level commander or equivalent~~
21 ~~designee of the covered member commanding officer or executive officer~~
22 before the loan is consummated. Notification may occur verbally, by
23 electronic means, United States mail, or other equivalent methods of
24 notification. The notification method and date shall be recorded in writing
25 and included in the loan file along with the name of the ~~company level~~
26 ~~commander or equivalent designee commanding officer or executive officer~~
27 communicated with and the date of the communication with the
28 ~~company level commander or equivalent designee commanding officer or~~
29 ~~executive officer.~~
- 30 (2) The licensee shall deposit in the United States mail a copy of the federal
31 Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the
32 complete contract for the loan addressed to the borrower's ~~company level~~
33 ~~commander or equivalent designee of the covered member commanding~~
34 ~~officer or executive officer~~ within five business days of the consummation of
35 the loan.
- 36 (3) A covered military service member who has entered into a loan contract
37 made pursuant to this Article may, within 30 days of entering into the loan
38 contract, rescind the loan contract by returning to the licensee in cash or by
39 certified bank check the amount advanced to or for the benefit of the covered
40 military service member under the loan contract, and upon delivery of those
41 funds to the licensee, the borrower shall have no further liability or
42 obligations under the loan contract. Nothing in this provision shall be
43 construed to restrict or eliminate any other penalties provided by State or
44 federal law.
- 45 (4) The licensee shall give the covered military service member a separate
46 disclosure that includes the statements and information required under
47 G.S. 53-181(a). The licensee shall include the name and address of the North
48 Carolina Commissioner of Banks, the Consumer Protection Division of the
49 North Carolina Department of Justice, and the Consumer Financial
50 Protection Bureau. The licensee may include internal compliance
51 information on the same disclosure.

1 (5) Notwithstanding section 2 of Title 9 of the United States Code, 9 U.S.C. § 2,
2 or any other federal or State law, rule, or regulation, no agreement to
3 arbitrate any dispute involving the extension of consumer credit shall be
4 enforceable against any covered military service member or dependent of
5 such a covered military service member or any person who was a covered
6 military service member or dependent of that covered military service
7 member when the agreement was made.

8 (6) ~~A licensee shall take reasonable precaution to prevent making loans in~~
9 ~~violation of this section. In the event that a licensee does not take reasonable~~
10 ~~precautions to identify covered members prior to making a loan, such loans~~
11 ~~granted to covered members shall have the interest rate on the loan adjusted~~
12 ~~to eight percent (8%) per annum.~~

13 (b1) Reasonable Precaution to Identify Covered Military Service Members. – A licensee
14 shall take reasonable precaution to prevent making loans in violation of this section. In the
15 event that a licensee does not take reasonable precaution to identify covered military service
16 members prior to making such a loan, such loans granted to covered military service members
17 shall have the interest rate on the loan adjusted to eight percent (8%) per annum. Reasonable
18 precaution may include obtaining a certificate from the Department of Defense Manpower Data
19 Center (DMDC) that specifies whether the prospective borrower is or is not a member of the
20 armed forces, a copy of the covered military service member's most recent leave and earnings
21 statement, verification of borrower(s) income or any additional method approved by the
22 Commissioner of Banks. In the event the DMDC system is down, the licensee shall obtain a
23 computer screen copy of the failed request. Provided however, nothing in this section shall be
24 construed to require covered military service member confirmation for a borrower with whom a
25 licensee has an established customer relationship, or for a borrower who provides verification
26 from the borrower's most recent payroll or and earnings statement, or verification of income
27 clearly indicating that the borrower is not a covered military service member.

28 (c) Penalties and Remedies. –

29 (1) The remedies and rights provided under this section are in addition to and do
30 not preclude any remedy otherwise available under law to the person
31 claiming relief under this section, including any incidental, consequential, or
32 punitive damages.

33 (2) Any credit agreement, promissory note, or other contract prohibited under
34 this section is null and void.

35 (3) Nothing in this section may be construed to limit or otherwise affect the
36 applicability of section 207 of the Servicemembers Civil Relief Act, 50
37 U.S.C. App. § 527.

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

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

46 "**§ 53-190. Loans made elsewhere.**

47 (a) No loan contract made outside this State in the amount or of the value of ~~ten~~
48 ~~thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) or less, for which greater
49 consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article
50 have been charged, contracted for, or received, shall be enforced in this State. Provided, the
51 foregoing shall not apply to loan contracts in which all contractual activities, including

1 solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and
2 receipt of funds, occur entirely outside North Carolina.

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

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

11 **SECTION 6.** This act becomes effective September 1, 2015.