

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 570
Finance Committee Substitute Adopted 5/26/99

Short Title: Update Consumer Finance Act.

(Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

1 AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT TO
2 REVISE THE COLLECTION OF INTEREST UNDER CERTAIN
3 CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS UNDER
4 CERTAIN CONDITIONS, TO INCREASE CERTAIN FEES, TO INCREASE THE
5 LIABILITY AMOUNTS OF INADVERTENT LOANS IN THE LAW
6 RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE DISCLOSURE ON
7 SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO
8 ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF
9 OPTICAL IMAGE DISKS, AND TO SPECIFY A MAXIMUM CHARGE THAT
10 LENDERS MAY ASSESS AT CLOSING.
11

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 53-165(a) reads as rewritten:

14 "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the
15 charges authorized either by G.S. 53-173 or G.S. 53-176."

16 Section 2. G.S. 53-168(b) reads as rewritten:

17 "(b) Investigation of Applicants. – Upon the receipt of an application, the
18 Commissioner shall investigate the facts. If the Commissioner determines from such
19 preliminary investigation that the applicant does not satisfy the conditions set forth in

1 subsection (a), he shall so notify the applicant who shall then be entitled to an informal
2 hearing thereon provided he so requests in writing within 30 days after the Commissioner
3 has caused the above-referred to notification to be mailed to the applicant. In the event of
4 a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the
5 Commissioner shall reconsider the application and, after the hearing, issue a written order
6 granting or denying such application. At the time of making such application, the
7 applicant shall pay the Banking Department the sum of ~~two hundred fifty dollars (\$250.00)~~
8 two hundred seventy-five dollars (\$275.00) as a fee for investigating the application,
9 which shall be retained irrespective of whether or not a license is granted the applicant."

10 Section 3. G.S. 53-176 reads as rewritten:

11 "**§ 53-176. Optional rates, maturities and amounts.**

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

19 (1) ~~With rates of thirty percent (30%) per annum on that part of the unpaid~~
20 principal balance not exceeding two thousand dollars (\$2,000) with
21 respect to a loan not exceeding ten thousand dollars (\$10,000) seven
22 thousand five hundred dollars (\$7,500), thirty percent (30%) per annum on
23 that part of the unpaid principal balance not exceeding one thousand dollars
24 (\$1,000) and eighteen percent (18%) per annum on the remainder of the
25 unpaid principal balance. Interest shall be contracted for and collected at
26 the single simple interest rate applied to the outstanding balance that
27 would earn the same amount of interest as the above rates for payment
28 according to schedule.

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

32 In addition to the interest permitted in this section, a licensee may assess at closing a
33 ~~reasonable credit investigation loan charge as agreed upon by the parties, not to exceed the~~
34 ~~actual cost of the credit investigation; twenty-five dollars (\$25.00); provided that such~~
35 ~~charges may not be assessed to the same borrower more than twice in any 12-month~~
36 ~~period. The Commissioner of Banks may review charges assessed pursuant to this section and~~
37 ~~may adopt appropriate rules in accordance with G.S. 53-185. period, and which may be~~
38 included in the original principal balance of the loan and shall be earned when the loan is
39 made.

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

42 Any licensee under this Article shall have the right to elect to make loans in
43 accordance with this section by the filing of a written statement to that effect with the

1 Commissioner and on date of such notification begin making loans regulated by this
2 section for the following 12 months. Annually after such election a licensee may elect to
3 make loans in accordance with this section unless the licensee notifies in writing the
4 Commissioner of its intention to terminate such election.

5 The due date of the first monthly payment shall not be more than 45 days following
6 the disbursement of funds under any such installment loan. A borrower under this section
7 may prepay all or any part of a loan made under this section without penalty. A
8 borrower, no more than twice in a 12-month period with the same licensee, may cancel a
9 loan within 15 calendar days after disbursement of the loan proceeds to the borrower
10 without incurring or paying interest so long as the amount of the loan, minus any fees or
11 charges, is returned to or received by the licensee.

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

20 Section 4. G.S. 53-179 reads as rewritten:

21 "**§ 53-179. Multiple-office loan limitations.**

22 A licensee shall not grant a loan under this Article in one office to any borrower who
23 already has a loan in another ~~office-office~~, licensed under this Article, operated by the
24 same entity or by an affiliate, parent, subsidiary or under the same ownership,
25 management or control, whether partial or ~~complete-complete~~ for the purpose, or with the
26 effect, of obtaining charges in excess of those authorized by this Article. This section
27 shall apply to intrastate and interstate operations. A licensee shall take every reasonable
28 precaution to prevent granting loans in violation of this section. Such loans granted
29 inadvertently resulting in a total liability of ~~three thousand dollars (\$3,000)-six thousand~~
30 dollars (\$6,000) or less, shall be adjusted to the rates applicable under the Article to a
31 single loan of equivalent amount, and when the total liability on such loans is in excess of
32 ~~three thousand dollars (\$3,000)-six thousand dollars (\$6,000)~~, interest shall be adjusted to
33 simple interest at eight percent (8%) per annum on the entire obligation."

34 Section 5. G.S. 53-181(a) is amended by adding a new subdivision to read:

35 "(10) In addition to any disclosures otherwise provided by law, a licensee
36 soliciting loans using facsimile or negotiable checks shall disclose the
37 following:

38 'THIS IS A SOLICITATION FOR A LOAN. READ THE
39 ENCLOSED DISCLOSURES BEFORE SIGNING THIS
40 AGREEMENT.'

41 This notice shall be printed in not less than 10-point bold type
42 and shall appear conspicuously on the offer."

43 Section 6. G.S. 53-182(b) reads as rewritten:

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

5 Section 7. G.S. 53-184(a) reads as rewritten:

6 "(a) Each licensee shall maintain all books and records relating to loans made under
7 this Article required by the Commissioner of Banks to be kept, and the Commissioner,
8 his deputy, or duly authorized examiner or agent or employee is authorized and
9 empowered to examine such records at any reasonable time. Such books and records may
10 be maintained in the form of magnetic tape, magnetic ~~disk-disk~~, optical disk, or other
11 form of computer, electronic or microfilm media available for examination on the basis
12 of computer printed reproduction, video display or other medium acceptable to the
13 Commissioner of Banks; provided, however, that such books and records so kept must be
14 convertible into clearly legible tangible documents within a reasonable time. Any
15 licensee having more than one licensed office may maintain such books and records at a
16 location other than the licensed office location if such location is approved by the
17 Commissioner; provided that, upon such requirements as may be imposed by the
18 Commissioner of Banks, there shall be available to the borrower at each licensed location
19 or such other location convenient to the borrower, as designated by the licensee, complete
20 loan information; and provided further that such books and records of each licensed
21 office shall be clearly segregated. When a licensee maintains its books and records
22 outside of North Carolina, the licensee shall make them available for examination at the
23 place where they are maintained and shall pay for all reasonable and necessary expenses
24 incurred by the Commissioner in conducting such examination. Where the data
25 processing for any licensee is performed by a person other than the licensee, the licensee
26 shall provide to the Commissioner of Banks a copy of a binding agreement between the
27 licensee and the data processor which allows the Commissioner of Banks, his deputy, or
28 duly authorized examiner or agent or employee to examine that particular data processor's
29 activities pertaining to the licensee to the same extent as if such services were being
30 performed by the licensee on its own premises; and, notwithstanding the provisions of
31 G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall
32 reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the
33 Commissioner in such examination."

34 Section 8. This act becomes effective October 1, 1999, and applies to loans
35 made on or after that date.