

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 95

Short Title: Small Loan Revisions.

(Public)

Sponsors: Representatives Michaux; and Luebke.

Referred to: Financial Institutions, if favorable, Finance.

February 17, 1999

A BILL TO BE ENTITLED

1 AN ACT TO MODIFY THE CONSUMER FINANCE ACT TO INCREASE THE
2 AMOUNT OF LOANABLE ASSETS REQUIRED BEFORE AN ENTITY IS
3 LICENSED TO ENGAGE IN BUSINESS IN THE STATE, TO REVISE THE
4 AMOUNT OF, AND MAXIMUM RATE OF INTEREST FOR, SMALL LOANS,
5 TO ESTABLISH A LOAN PROCESSING FEE FOR CERTAIN LOANS, TO
6 REPEAL OBSOLETE PROVISIONS OF LAW, AND TO MAKE CONFORMING
7 CHANGES.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 53-168 reads as rewritten:

11 "**§ 53-168. License required; showing of convenience, advantage and financial**
12 **responsibility; investigation of applicants; hearings; existing businesses;**
13 **contents of license; transfer; posting.**

14 (a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or
15 offer to engage in the business regulated by this Article unless and until a license has
16 been issued by the Commissioner of Banks, and the Commissioner shall not issue any
17 such license unless and until ~~he~~the Commissioner finds:

18 (1) That authorizing the applicant to engage in such business will promote
19 the convenience and advantage of the community in which the applicant
20 proposes to engage in business; and

1 (2) That the financial responsibility, experience, character and general
2 fitness of the applicant are such as to command the confidence of the
3 public and to warrant the belief that the business will be operated
4 lawfully and fairly, within the purposes of this Article; and

5 (3) That the applicant has available for the operation of such business at the
6 specified location loanable assets of at least ~~twenty-five thousand dollars~~
7 ~~(\$25,000)~~ fifty thousand dollars (\$50,000).

8 (b) Investigation of Applicants. – Upon the receipt of an application, the
9 Commissioner shall investigate the facts. If the Commissioner determines from such
10 preliminary investigation that the applicant does not satisfy the conditions set forth in
11 subsection (a), ~~he~~ the Commissioner shall so notify the applicant who shall then be
12 entitled to an informal hearing thereon provided he so requests in writing within 30 days
13 after the Commissioner has caused the above-referred to notification to be mailed to the
14 applicant. In the event of a hearing, to be held in the offices of the Commissioner of
15 Banks in Raleigh, the Commissioner shall reconsider the application and, after the
16 hearing, issue a written order granting or denying such application. At the time of making
17 such application, the applicant shall pay the Banking Department the sum of two hundred
18 fifty dollars (\$250.00) as a fee for investigating the application, which shall be retained
19 irrespective of whether or not a license is granted the applicant.

20 (c) ~~Existing Business.~~ ~~Notwithstanding the provisions of this section, any~~
21 ~~person, firm or corporation which, on December 31, 1973, was a licensee under this~~
22 ~~Article either as a licensee to make loans under the provisions of G.S. 53-173 or as a~~
23 ~~motor vehicle lender under G.S. 53-176.1, may surrender such license to the~~
24 ~~Commissioner within 90 days after May 25, 1974, and elect to become a licensee to make~~
25 ~~loans under either G.S. 53-173 or 53-176.1 but not both. Such license shall be issued by~~
26 ~~the Commissioner without further application or investigation and the licensee shall be~~
27 ~~deemed a licensee under the category that it elects upon the surrender of its current~~
28 ~~license and the election.~~

29 (d) Required Assets Available. – Each licensee shall continue at all times to have
30 available for the operation of the business at the specified location loanable assets of at
31 least ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000). The
32 requirements and standards of this subsection and subsection (a)(2) of this section shall
33 be maintained throughout the period of the license and failure to maintain such
34 requirements or standards shall be grounds for the revocation of a license under the
35 provisions of G.S. 53-171 of this Article.

36 (e) License, Posting, Continuing. – Each license shall state the address at which
37 the business is to be conducted and shall state fully the name of the licensee, and if the
38 licensee is a copartnership, or association, the names of the members thereof, and if a
39 corporation, the date and place of its incorporation. Transfer or assignment of a license by
40 one person to another by sale or otherwise is prohibited without the prior approval of the
41 Commissioner. Each license shall be kept posted in the licensed place of business. Each
42 license shall remain in full force and effect until surrendered, revoked, or suspended as
43 hereinafter provided."

1 Section 2. G.S. 53-173 reads as rewritten:

2 "**§ 53-173. Maximum rate of ~~charge; interest and fee; computation of charges;~~**
3 **interest; limitation on interest after judgment; limitation on interest after**
4 **maturity of the loan.**

5 (a) ~~Maximum Rate of Charge-Interest.~~ – Every licensee hereunder may contract
6 for, compute, and receive on any loan of money, not exceeding ~~three thousand dollars~~
7 ~~(\$3,000)~~ six thousand dollars (\$6,000) in amount, ~~charges-interest~~ at rates not exceeding
8 ~~thirty six percent (36%)~~ thirty percent (30%) per annum on that part of the unpaid principal
9 balance of any loan not in excess of ~~six hundred dollars (\$600.00)~~ and ~~fifteen percent (15%)~~
10 one thousand eight hundred dollars (\$1,800) and eighteen percent (18%) per annum on
11 any remainder of such unpaid principal balance. Interest shall be contracted for and
12 collected at the single simple interest rate applied to the outstanding balance that would
13 earn the same amount of interest as the above rates for payment according to schedule.

14 (a1) Maximum Fee. – In addition to the interest authorized in subsection (a) of this
15 section, a licensee making loans under this section may collect from the borrower a fee
16 for processing the loan equal to five percent (5%) of the cash advance, not to exceed
17 twenty-five dollars (\$25.00).

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

30 (c) Limitation on Interest after Judgment. – If judgment be obtained against any
31 party on any loan made under the provisions of this section neither the judgment nor the
32 loan shall carry, from the date of the judgment, any interest in excess of eight percent
33 (8%) per annum.

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

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

40 (f) ~~Subject to the limitations contained in this Article as to maximum rates, the~~
41 ~~Commission may from time to time, upon the basis of changed conditions or facts,~~
42 ~~redetermine and refix any such maximum rates of charge, but, before determining or~~
43 ~~redetermining any such maximum rates, the Commission shall give reasonable notice of~~

1 ~~its intention to consider doing so to all licensees and a reasonable opportunity to be heard~~
2 ~~and introduce evidence with respect thereto. The notice herein required may be given by~~
3 ~~mailing such notice to the offices of the licensees as shown in the records of the~~
4 ~~Commissioner of Banks. Any such changed maximum rates of charge shall not affect~~
5 ~~preexisting loan contracts lawfully entered into between any licensee and any borrower."~~

6 Section 3. G.S. 53-165(a) reads as rewritten:

7 "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the
8 ~~charges~~ interest authorized by G.S. 53-173."

9 Section 4. This act becomes effective October 1, 1999, and applies to loans
10 made on or after that date.