

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 810
Committee Substitute Favorable 5/31/11

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 ...

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



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

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

21 "**§ 53-176. Optional rates, maturities and amounts.**

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

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

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

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

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

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

50 ~~(d) Any licensee under this Article shall have the right to elect to make loans in~~
 51 ~~accordance with this section by the filing of a written statement to that effect with the~~

1 ~~Commissioner and no sooner than 30 days from the date of such notification begin making~~
2 ~~loans regulated by this section. After such election a licensee may continue to make loans in~~
3 ~~accordance with this section unless the licensee notifies the Commissioner in writing of its~~
4 ~~intention to terminate such election on a date not sooner than 30 days from the notification.~~

5 (e) 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 may
7 prepay all or any part of a loan made under this section without penalty. Except as otherwise
8 provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower
9 may cancel a loan with the same licensee within three business days after disbursement of the
10 loan proceeds without incurring or paying interest so long as the amount financed, minus any
11 fees or charges, is returned to and received by the licensee within that time.

12 (f) ~~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 Article~~
14 ~~except as authorized in this section, shall be permitted to make loans under the provisions of~~
15 ~~this section. Any corporate licensee or individual or partnership licensee that elects to make~~
16 ~~loans in accordance with the provisions of this section shall be bound by that election with~~
17 ~~respect to all of its offices and locations in this State and all offices and locations in this State~~
18 ~~of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their~~
19 ~~offices and locations in this State."~~

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

21 "**§ 53-177. Recording fees.Fees.**

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

39 (b) Late Fees. –

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

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

43 a. For loans made pursuant to G.S. 53-173, greater than ten dollars
44 (\$10.00).

45 b. For loans made pursuant to G.S. 53-176, greater than fifteen dollars
46 (\$15.00).

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

48 (c) Third-Party Payment Fees. – The licensee may collect any actual charges paid by
49 the licensee related to payments submitted by the borrower or at the borrower's request through
50 electronic or other means not affiliated with the licensee.

1 (d) 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.** This act becomes effective October 1, 2011.