

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1265

Short Title: Revisions to Consumer Lending.

(Public)

Sponsors: Representatives Starnes and Buchanan.

Referred to: Financial Institutions.

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO REVISE THE COLLECTION OF INTEREST ON LOANS MADE
2 PURSUANT TO THE CONSUMER FINANCE ACT UNDER CERTAIN
3 CIRCUMSTANCES, TO INCREASE THE AMOUNT OF LOANABLE ASSETS
4 REQUIRED BEFORE AN ENTITY IS LICENSED UNDER THE ACT, TO
5 REVISE THE AMOUNT OF, AND MAXIMUM SERVICE CHARGE FOR,
6 CERTAIN LOANS, TO ESTABLISH A LOAN PROCESSING FEE FOR CERTAIN
7 LOANS, TO ALLOW BORROWERS TO CANCEL LOANS UNDER CERTAIN
8 CONDITIONS, TO RECOGNIZE INADVERTENT LOANS IN THE LAW
9 RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE DISCLOSURE ON
10 SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO
11 ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF
12 OPTICAL IMAGE DISKS, TO SPECIFY A MAXIMUM CHARGE THAT
13 LENDERS MAY ASSESS AT CLOSING, AND TO REQUIRE LICENSEES TO
14 REPORT ADDITIONAL INFORMATION TO THE COMMISSIONER.

15 The General Assembly of North Carolina enacts:

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

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

19 Section 2. G.S. 53-168 reads as rewritten:
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1 **"§ 53-168. License required; showing of convenience, advantage and financial**
2 **responsibility; investigation of applicants; hearings; existing businesses;**
3 **contents of license; transfer; posting.**

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

8 (1) That authorizing the applicant to engage in such business will promote
9 the convenience and advantage of the community in which the applicant
10 proposes to engage in business; and

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

15 (3) That the applicant has available for the operation of such business at the
16 specified location loanable assets of at least ~~twenty-five thousand dollars~~
17 ~~(\$25,000)~~one hundred thousand dollars (\$100,000).

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

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

39 (d) Required Assets Available. – Each licensee shall continue at all times to have
40 available for the operation of the business at the specified location loanable assets of at
41 least ~~twenty-five thousand dollars (\$25,000)~~fifty thousand dollars (\$50,000). The
42 requirements and standards of this subsection and subsection (a)(2) of this section shall
43 be maintained throughout the period of the license and failure to maintain such

1 requirements or standards shall be grounds for the revocation of a license under the
2 provisions of G.S. 53-171 of this Article.

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

11 Section 3. G.S. 53-173 reads as rewritten:

12 "**§ 53-173. Maximum rate of service charge; computation of service charges;**
13 **limitation on interest after judgment; limitation on interest after maturity**
14 **of the loan.**

15 (a) Maximum Rate of Service Charge. – Every licensee hereunder may contract
16 for, compute, and receive on any loan of money, not exceeding ~~three thousand dollars~~
17 ~~(\$3,000)~~ six thousand dollars (\$6,000) in amount, service charges at rates not exceeding
18 ~~thirty-six percent (36%)~~ thirty-three percent (33%) per annum on that part of the unpaid
19 principal balance of any loan not in excess of ~~six hundred dollars (\$600.00)~~ and ~~fifteen~~
20 ~~percent (15%)~~ two thousand dollars (\$2,000) and fifteen percent (15%) per annum on any
21 remainder of such unpaid principal balance. Interest shall be contracted for and collected
22 at the single simple interest rate applied to the outstanding balance that would earn the
23 same amount of interest as the above rates for payment according to schedule.

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

28 (b) Computation of Service Charges. —~~Charges~~ Service charges on loans made
29 pursuant to this section shall not be paid, deducted, or received in advance. Such service
30 charges shall not be compounded but service charges on loans shall (i) be computed and
31 paid only as a percentage of the unpaid principal balance or portion thereof and (ii)
32 computed on the basis of the number of days actually elapsed; provided, however, if part
33 or all of the consideration for a loan contract is the unpaid principal balance of a prior
34 loan, then the principal amount payable under the loan contract may include any unpaid
35 service charges on the prior loan which have accrued within 90 days before the making of
36 the new loan contract. For the purpose of computing service charges, a day shall equal
37 1/365th of a year. Any payment made on a loan shall be applied first to any accrued
38 interest and then to principal, and any portion or all of the principal balance may be
39 prepaid at any time without penalty.

40 (c) Limitation on Interest after Judgment. – If judgment be obtained against any
41 party on any loan made under the provisions of this section neither the judgment nor the
42 loan shall carry, from the date of the judgment, any interest in excess of eight percent
43 (8%) per annum.

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

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

7 (f) ~~Subject to the limitations contained in this Article as to maximum rates, the~~
8 ~~Commission may from time to time, upon the basis of changed conditions or facts,~~
9 ~~redetermine and refix any such maximum rates of charge, but, before determining or~~
10 ~~redetermining any such maximum rates, the Commission shall give reasonable notice of~~
11 ~~its intention to consider doing so to all licensees and a reasonable opportunity to be heard~~
12 ~~and introduce evidence with respect thereto. The notice herein required may be given by~~
13 ~~mailing such notice to the offices of the licensees as shown in the records of the~~
14 ~~Commissioner of Banks. Any such changed maximum rates of charge shall not affect~~
15 ~~preexisting loan contracts lawfully entered into between any licensee and any borrower."~~

16 Section 4. G.S. 53-176 reads as rewritten:

17 **"§ 53-176. Optional rates, maturities and amounts.**

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

25 (1) With respect to a loan not exceeding ~~seven thousand five hundred dollars~~
26 ~~(\$7,500), ten thousand dollars (\$10,000), thirty percent (30%)~~ thirty-three
27 percent (33%) per annum on that part of the unpaid principal balance
28 ~~not exceeding one thousand dollars (\$1,000) two thousand dollars~~
29 ~~(\$2,000) and eighteen percent (18%)~~ fifteen percent (15%) per annum on
30 the remainder of the unpaid principal balance. Interest shall be
31 contracted for and collected at the single simple interest rate applied to
32 the outstanding balance that would earn the same amount of interest as
33 the above rates for payment according to schedule.

34 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~
35 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding~~
36 ~~principal balance.~~

37 In addition to the interest permitted in this section, a licensee ~~may assess at closing a~~
38 ~~reasonable credit investigation charge as agreed upon by the parties, not to exceed the~~
39 ~~actual cost of the credit investigation; provided that such charges may not be assessed~~
40 ~~more than twice in any 12 month period. The Commissioner of Banks may review~~
41 ~~charges assessed pursuant to this section and may adopt appropriate rules in accordance~~
42 ~~with G.S. 53-185. making loans under this section may collect from the borrower a fee~~

1 for processing the loan equal to five percent (5%) of the cash advance, not to exceed
2 twenty-five dollars (\$25.00).

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

5 Any licensee under this Article shall have the right to elect to make loans in
6 accordance with this section by the filing of a written statement to that effect with the
7 Commissioner and on date of such notification begin making loans regulated by this
8 section for the following 12 months. Annually after such election a licensee may elect to
9 make loans in accordance with this section unless the licensee notifies in writing the
10 Commissioner of its intention to terminate such election.

11 The due date of the first monthly payment shall not be more than 45 days following
12 the disbursement of funds under any such installment loan. A borrower under this section
13 may prepay all or any part of a loan made under this section without penalty. A borrower
14 may cancel a loan within 30 calendar days after disbursement of the loan proceeds to the
15 borrower without incurring or paying interest so long as the amount of the loan is
16 returned to or received by the licensee.

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

25 Section 5. G.S. 53-179 reads as rewritten:

26 "**§ 53-179. Multiple-office loan limitations.**

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

41 Section 6. G.S. 53-181(a) is amended by adding a new subdivision to read:

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

4 'THIS IS A SOLICITATION FOR A LOAN. READ THE
5 ENCLOSED DISCLOSURES BEFORE SIGNING THIS
6 AGREEMENT.'

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

9 Section 7. G.S. 53-182(b) reads as rewritten:

10 "(b) Upon payment of any loan in full, a licensee shall cancel and return to the
11 borrower, at the licensee's office, within a reasonable length of time, originals or copies
12 of any note, assignment, mortgage, deed of trust, or other instrument securing such loan,
13 which no longer secures any indebtedness of the borrower to the licensee."

14 Section 8. G.S. 53-184 reads as rewritten:

15 **"§ 53-184. Securing of information; records and reports; allocations of expense.**

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

1 (b) Each licensee shall file annually with the Commissioner of Banks on or before
2 the thirty-first day of March for the 12 months' period ending the preceding December
3 31, reports on forms prescribed by the Commissioner. Reports shall disclose in detail and
4 under appropriate headings the assets and liabilities of the licensee, the ~~income, expense,~~
5 income from interest and other charges collected for loans, income from all businesses
6 related to transactions under the act, income from other noncredit businesses authorized
7 by the Commissioner, all expense from those businesses, gain, loss, delinquency, bad
8 debt, bad debt recovery, and any other information as the Commissioner may ~~require.~~
9 require in order to make meaningful reports to the public and the General Assembly on
10 the services and financial condition of the industry. Reports shall be verified by the oath
11 or affirmation of the owner, manager, president, vice-president, cashier, secretary or
12 treasurer of the licensee.

13 (c) If a licensee conducts another business or is affiliated with other licensees
14 under this Article, or if any other situation exists under which allocations of expense are
15 necessary, the licensee or licensees shall make such allocation according to appropriate
16 and reasonable accounting principles.

17 (d) Repealed by Session Laws 1997-285, s. 3."

18 Section 9. The Commissioner of Banks shall require, by rule, that all licensees
19 develop a written pamphlet that explains the rights and responsibilities of consumers who
20 obtain consumer loans from a lender licensed under this Article 15 of Chapter 53 of the
21 General Statutes for distribution in all licensed consumer loan offices. Such pamphlet
22 shall include the names, addresses, and telephone numbers of the state agency responsible
23 for enforcing the provisions of this Article 15 of Chapter 53 of the General Statutes.
24 Such pamphlet shall be given to a consumer at the time the initial loan, subject to this
25 Article 15 of Chapter 53 of the General Statutes, is made, and shall be readily available to
26 all consumers at all times in each licensed consumer loan office. The Commissioner of
27 Banks shall approve each pamphlet and each licensee shall be responsible for
28 reproducing and distributing the pamphlet.

29 Section 10. Section 9 of this act becomes effective January 1, 2000. The
30 remainder of this act becomes effective October 1, 1999, and applies to loans made on or
31 after that date.