

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 761*

Short Title: Consumer Finance Act Amendments. (Public)

Sponsors: Senators East; and Rucho.

Referred to: Commerce.

April 20, 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. 53-165 is amended by adding a new subsection to read:

7 "(e1) 'Consumer Price Index' shall mean the Consumer Price Index for Urban Wage
8 Earners and Clerical Workers: U.S. City Average, All Items, compiled by the Bureau of Labor
9 Statistics, United States Department of Labor, or, if that index is canceled or superseded, the
10 index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the
11 purchasing power of the dollar for consumers, or, if no such index is chosen by the Bureau of
12 Labor Statistics, the index chosen by the Commissioner of Banks as most accurately reflecting
13 the changes in the purchasing power of the dollar for consumers."

14 **SECTION 2.** G.S. 53-172(a) reads as rewritten:

15 **"§ 53-172. Conduct of other business in same office.**

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 the 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
23 business 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; Personal~~**
26 **installment loans maximum charges and fees; limitation on interest after**
27 **judgment; limitation on interest after maturity of the loan.**

28 (a) ~~Maximum Rate of Interest.~~— Every licensee under this section may make loans in
29 installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not
30 exceeding thirty six percent (36%) per annum on the outstanding principal balance of any loan
31 not in excess of six hundred dollars (\$600.00) and fifteen percent (15%) per annum on any
32 remainder of such unpaid principal balance. Interest shall be contracted for and collected at the
33 single simple interest rate applied to the outstanding balance that would earn the same amount
34 of interest as the above rates for payment according to schedule.

35 (a1) ~~Maximum Fee.~~— In addition to the interest authorized in subsection (a) of this
36 section, a licensee making loans under this section may collect from the borrower a fee for
37 processing the loan equal to five percent (5%) of the loan amount not to exceed twenty five



1 ~~dollars (\$25.00), provided that such charges may not be assessed more than twice in any~~
2 ~~12-month period.~~

3 (a) Maximum Charges and Fees. –

4 (1) Installment account handling charge. – Every licensee under this section
5 may make personal installment loans in amounts up to two thousand dollars
6 (\$2,000), as adjusted periodically in accordance with subdivision (3) of this
7 subsection, and collect an installment account handling charge. The
8 installment account handling charge shall not exceed three dollars (\$3.00)
9 per month for each one hundred dollars (\$100.00) of the amount financed.
10 The installment account handling charge shall be calculated for the term of
11 the contract and with the total processing fee authorized in G.S. 53-173(a)(2)
12 added to the amount of the principal. Every payment shall be applied to the
13 combined total of principal and charges until the contract is fully paid. The
14 acceptance or payment of charges on loans made under the provisions of this
15 subsection shall not be deemed to constitute payment, deduction, or receipt
16 thereof in advance nor compounding.

17 (2) Processing fee. – In addition to the installment account handling charge
18 authorized by subdivision (1) of this subsection, a licensee making a loan
19 under this section may collect from the borrower a fee for processing the
20 loan equal to ten percent (10%) of the amount financed not to exceed one
21 hundred dollars (\$100.00), as adjusted periodically in accordance with
22 subdivision (3) of this subsection, provided that such charges may not be
23 assessed more than once in a 90-day period. This fee shall be fully earned by
24 the licensee at the time the loan is made and shall not be subject to any
25 refund requirement upon prepayment of the personal installment loan by the
26 borrower except as provided in subsection (i) of this section.

27 (3) Adjustment of amounts. –

28 a. Each year the Commissioner of Banks shall compute, in accordance
29 with sub-subdivision b. of this subdivision, and announce to
30 licensees by May 15, the following amounts based on a reference
31 base index equal to the consumer price index for 1982, and the
32 adjusted amounts shall take effect on July 1 of the year of the
33 computations:

- 34 1. The maximum fee under subdivision (2) of this subsection.
- 35 2. The maximum amount financed under subdivision (a)(1) of
36 this section and G.S. 53-176(a).
- 37 3. The dollar thresholds for the interest rate tiers set forth in
38 G.S. 53-176(a)(1).
- 39 4. The maximum fee for processing the loan under
40 G.S. 53-176(b).

41 b. The adjustment of amounts required by sub-subdivision a. of this
42 subdivision shall be computed by following these four steps:

- 43 1. Dividing the reference base index into the consumer price
44 index at the end of the preceding year.
- 45 2. Converting the amount obtained under G.S. 53-173(a)(3)b.1.
46 to the nearest whole percent.
- 47 3. Rounding the result computed under G.S. 53-173(a)(3)b.2. to
48 the next lower multiple of 10 percent (10%) unless the result
49 computed under G.S. 53-173(a)(3)b.2. is a multiple of 10
50 percent (10%) in which event that result shall be used.

1 4. For each amount referred to in G.S. 53-173(a)(3)a.1. through
2 a.4., multiplying that amount by the result obtained under
3 G.S. 53-173(a)(3)b.3.

4 c. If the consumer price index is revised, the revised index shall be used
5 to compute amounts under this subsection after that revision takes
6 effect. If the revision changes the reference base index, a revised
7 reference base index shall be used. The revised reference base index
8 shall bear the same ratio to the reference base index as the revised
9 consumer price index for the first month in which it is available bears
10 to the consumer price index for the first month in which the revised
11 consumer price index is available.

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

22 (c) ~~Limitation on Interest after Judgment. — If a money judgment is obtained against~~
23 ~~any party borrower on any loan made under the provisions of this section-section, neither the~~
24 ~~judgment nor the loan shall carry, from the date of the judgment, any carry interest in excess of~~
25 ~~eight percent (8%) per annum at the annual percentage rate of the loan contract as computed~~
26 ~~under the federal Truth in Lending Act, 12 U.S.C. § 1601, et seq.~~

27 (d) ~~Limitation of Interest after Maturity of Loan. — After the maturity date of any loan~~
28 ~~contract made under the provisions of this section and until the loan contract is paid in full by~~
29 ~~cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%)~~
30 ~~per annum shall be computed or collected from any party to the loan upon the unpaid principal~~
31 ~~balance of the loan. the loan shall carry interest at a rate not to exceed the annual percentage~~
32 ~~rate of the loan contract as computed under the federal Truth in Lending Act, 12 U.S.C. § 1601,~~
33 ~~et seq.~~

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

35 (f) Repealed by Session Laws 2001-519, s. 3.

36 (g) No Other Charges Permitted. — On any loan made under the provisions of this
37 section, no other charge of any nature whatsoever is permitted except for those authorized by
38 this section and G.S. 53-175, 53-177, 53-180(e), and 53-189.

39 (h) Limitation on Loans to Individual Consumers. —

40 (1) No person licensed under this Article, or an affiliate of such licensee, shall
41 make a loan to a borrower under this section if there exists an outstanding
42 loan made under this section or G.S. 53-176 between the licensee and that
43 borrower unless the existing loan is paid in full from the proceeds of the new
44 loan.

45 (2) The acquisition by a licensee, or an affiliate of a licensee, of a loan made by
46 another licensee under this section to a borrower who at the time of the
47 acquisition has an outstanding loan made pursuant to this section from the
48 acquiring licensee or an affiliate of the acquiring licensee, is not a violation
49 of this subsection.

50 (3) In the event a loan is made in violation of this subsection, the licensee shall
51 refund to the borrower all charges paid by the borrower with respect to the

1 loan, however, the borrower shall remain obligated to repay to the licensee
2 the amount financed under the loan.

3 (i) Partial Refund of Fees. – If a loan made under this section is prepaid in full prior to
4 the term expiration date, including payment in cash or by a new loan, or if, upon default by the
5 borrower, the licensee demands payment in full of the unpaid balance, the licensee shall refund
6 or credit to the borrower that portion of the installment account handling charge permitted in
7 G.S. 53-173(a)(1) as contracted on the loan but not earned as of the date of loan payoff. The
8 amount of any refund or credit shall be calculated according to the payment schedule originally
9 contracted for, and calculated in accordance with the actuarial method set forth in Regulation Z
10 (12 C.F.R. Part 226) as of the next installment due date following the date of prepayment. In
11 addition, if the loan is prepaid in full, refinanced, or consolidated within the first 90 days, the
12 first fifteen dollars (\$15.00) of the loan processing fee shall be retained by the lender and the
13 remainder of the loan processing fee shall be refunded at a rate of one-ninetieth of the
14 remainder of the loan processing fee per day, beginning on the day after the date of the
15 prepayment, refinancing, or consolidation and ending on the 90th day after the loan was made.

16 (j) Rescission of Contract. – A borrower who has entered into a contract for a loan
17 made pursuant to this section may, within three days of having entered into the contract,
18 rescind the loan contract by returning to the licensee in cash or by a certified bank check the
19 amount financed under the loan, and, upon delivery of those funds to the licensee, the borrower
20 shall have no further liability or obligations under the loan contract. No borrower may exercise
21 this right more than twice in a 12-month period."

22 **SECTION 4.** G.S. 53-175 reads as rewritten:

23 **"§ 53-175. Fee for returned checks.**

24 A licensee may collect the fee for returned checks to the extent permitted by ~~G.S. 25-3-506.~~
25 G.S. 25-3-506, or thirty dollars (\$30.00), whichever is greater. This section shall apply to any
26 loan made by any licensee under this Article."

27 **SECTION 5.** G.S. 53-176 reads as rewritten:

28 **"§ 53-176. Optional rates, maturities and amounts.**

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

36 (1) ~~With respect to a loan not exceeding seven thousand five hundred dollars~~
37 ~~(\$7,500), thirty percent (30%) per annum~~ Two and one-half percent (2.5%)
38 per month on that part of the unpaid principal balance not exceeding ~~one~~
39 thousand dollars (\$1,000) and ~~eighteen percent (18%) per annum~~ five
40 thousand dollars (\$5,000), and two percent (2%) per month on that part
41 exceeding five thousand dollars (\$5,000) but not exceeding ten thousand
42 dollars (\$10,000), and one and one-half percent (1.5%) per month on the
43 remainder of the unpaid principal balance. Interest shall be contracted for
44 and collected at the single simple interest rate applied to the outstanding
45 balance that would earn the same amount of interest as the above rates for
46 payment according to schedule.

47 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~
48 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding principal~~
49 ~~balance.~~

50 (a1) Interest on loans made pursuant to this section shall not be paid, deducted, or
51 received in advance. Such interest shall not be compounded but shall be (i) computed and paid

1 only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the
2 basis of the number of days actually elapsed. However, if part or all of the consideration for a
3 loan contract is the unpaid principal balance of a prior loan, then the principal amount payable
4 under the loan contract may include any unpaid interest on the prior loan which has accrued
5 within 90 days before the making of the new loan contract. For the purpose of computing
6 interest, a day shall equal 1/360th of a year. Any payment made on a loan shall be applied first
7 to any accrued interest and then to principal, and any portion or all of the principal balance may
8 be prepaid at any time without penalty.

9 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
10 fee for processing the loan as agreed upon by the parties, not to exceed ~~twenty-five dollars~~
11 ~~(\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%)~~
12 thirty-five dollars (\$35.00) for loans up to one thousand seven hundred fifty dollars (\$1,750), as
13 adjusted periodically in accordance with G.S. 53-173(a)(3), and two percent (2%) of the cash
14 advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a total fee of
15 forty dollars (\$40.00), one thousand seven hundred fifty dollars (\$1,750), as adjusted
16 periodically in accordance with G.S. 53-173(a)(3), provided that such charges may not be
17 assessed more than twice in any 12-month period.

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

21 ~~(d) Any licensee under this Article shall have the right to elect to make loans in~~
22 ~~accordance with this section by the filing of a written statement to that effect with the~~
23 ~~Commissioner and no sooner than 30 days from the date of such notification begin making~~
24 ~~loans regulated by this section. After such election a licensee may continue to make loans in~~
25 ~~accordance with this section unless the licensee notifies the Commissioner in writing of its~~
26 ~~intention to terminate such election on a date not sooner than 30 days from the notification.~~

27 (e) The due date of the first monthly payment shall not be more than 45 days following
28 the disbursement of funds under any such installment loan. A borrower under this section may
29 prepay all or any part of a loan made under this section without penalty. Except as otherwise
30 provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower
31 may cancel a loan with the same licensee within three business days after disbursement of the
32 loan proceeds without incurring or paying interest so long as the amount financed, minus any
33 fees or charges, is returned to and received by the licensee within that time.

34 (f) ~~No individual, partnership, or corporate licensee and no corporation which is the~~
35 ~~parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article~~
36 ~~except as authorized in this section, shall be permitted to make loans under the provisions of~~
37 ~~this section. Any corporate licensee or individual or partnership licensee that elects to make~~
38 ~~loans in accordance with the provisions of this section shall be bound by that election with~~
39 ~~respect to all of its offices and locations in this State and all offices and locations in this State~~
40 ~~of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their~~
41 ~~offices and locations in this State."~~

42 **SECTION 6.** G.S. 53-177 reads as rewritten:

43 **"§ 53-177. Recording fees.**Fees.

44 (a) Recording Fees. – The licensee may collect from the borrower the amount of any
45 fees necessary to file or record its security interest with any public official or agency of a
46 county or the State as may be required pursuant to Article 9 of Chapter 25 of the General
47 Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be
48 applied, such fees may either (i) be paid by the licensee to such public official or agency of the
49 county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase
50 nonfiling or nonrecording insurance on the instrument securing the loan, ~~or (iii) be retained by~~
51 ~~a licensee that elects to self insure against the loss of a security interest by reason of not filing~~

1 ~~or recording its security instrument: loan.~~ Provided, however, the amount collected by the
 2 licensee from the borrower for the purchase of a nonfiling or nonrecording insurance ~~policy, or~~
 3 ~~for self insurance, policy~~ shall be the premium amount for such insurance as fixed by the
 4 Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost
 5 of recording or filing a security interest. Provided further, a licensee shall not collect or permit
 6 to be collected any notary fee in connection with any loan made under this Article, nor may a
 7 licensee collect any fee from the borrower for the cost of releasing a security interest except
 8 such fee as actually paid to any public official or agency of the county or State for such
 9 purpose.

10 (b) Late Fees. –

11 (1) A licensee may charge a late payment charge as agreed upon by the parties
 12 in the loan contract for payments received 10 days or more after the due
 13 date.

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

15 a. For loans made pursuant to G.S. 53-173, greater than fifteen dollars
 16 (\$15.00).

17 b. For loans made pursuant to G.S. 53-176, in excess of five percent
 18 (5%) of the amount of the payment or twenty dollars (\$20.00),
 19 whichever is greater.

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

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

24 (d) Deferral Charges. – A licensee may, by agreement with the borrower, collect the
 25 charge and defer the due date of all or any part of one or more installments under an existing
 26 loan contract as permitted in the provisions of G.S. 25A-30."

27 **SECTION 7.** G.S. 53-180 reads as rewritten:

28 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

29 (a) Time and Payment Limitation. – Except as otherwise provided in this Article, no
 30 licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this
 31 Article providing for any scheduled repayment of principal or charges less than four months or
 32 more than 25seven months from the date of making the contract if the cash advance is ~~six~~
 33 ~~hundred dollars (\$600.00)~~ five hundred dollars (\$500.00) or less; or more than 3713 months
 34 from the date of making the contract if the cash advance is in excess of six hundred dollars
 35 (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); five hundred dollars (\$500.00)
 36 but not in excess of one thousand dollars (\$1,000); more than 4919 months from the date of
 37 making the contract if the cash advance is in excess of ~~fifteen hundred dollars (\$1,500) but not~~
 38 ~~in excess of two thousand five hundred dollars (\$2,500); one thousand dollars (\$1,000) but not~~
 39 in excess of one thousand five hundred dollars (\$1,500); or more than 6425 months if the cash
 40 advance is in excess of ~~two thousand five hundred dollars (\$2,500); one thousand five hundred~~
 41 dollars (\$1,500). Every loan contract shall provide for repayment ~~of the amount loaned in~~
 42 substantially equal equal, fully amortizing installments, either of principal or of principal and
 43 charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained
 44 herein shall prevent a loan being considered a new loan because the proceeds of the loan are
 45 used to pay an existing ~~contract loan.~~

46 (b) No Assignment of Earnings. – A licensee may not take an assignment of earnings of
 47 the borrower for payment or as security for payment of a loan. An assignment of earnings in
 48 violation of this section is unenforceable by the assignee of the earnings and is revocable by the
 49 borrower. A sale of unpaid earnings made in consideration of the payment of money to or for
 50 the account of the seller of the earnings is deemed to be a loan to the seller by an assignment of
 51 earnings.

1 (c) Limitation on Default Provisions. – An agreement between a licensee and a
2 borrower pursuant to a loan under this Article with respect to default by the borrower is
3 enforceable only to the extent that (i) the borrower fails to make a payment as required by the
4 agreement, or (ii) the prospect of payment, performance, or realization of collateral is
5 significantly endangered or impaired, the burden of establishing the prospect of a significant
6 endangerment or impairment being on the licensee.

7 (d) Prohibitions on Discrimination. – No licensee shall deny any extension of credit or
8 discriminate in the fixing of the amount, duration, application procedures or other terms or
9 conditions of such extension of credit because of the race, color, religion, national origin, sex or
10 marital status of the applicant or any other person connected with the transaction.

11 (e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the
12 provisions of ~~G.S. 53-173~~, G.S. 53-173 or G.S. 53-176, the agreement may ~~not~~ provide for
13 ~~payment by the borrower of the collection of reasonable~~ attorney fees.

14 (f) No Real Property as Security. – No licensee shall make any loan within this State
15 which shall in any way be secured by real property.

16 (g) Deceptive Acts or Practices. – No licensee shall engage in any unfair method of
17 competition or unfair or deceptive trade practices in the conduct of making loans to borrowers
18 pursuant to this Article or in collecting or attempting to collect any money alleged to be due
19 and owing by a borrower.

20 (h) Limitations on Home Loans. – No affiliate operating in the same office or
21 subsidiary operating in the same office of a licensee shall make any home loan as defined in
22 G.S. 24-1.1A(e) in a principal amount of less than three thousand dollars (\$3,000).

23 (i) Limitation on Conditions to Making Loans. – A licensee or an affiliate operating in
24 the same office or subsidiary operating in the same office of a licensee shall not make as a
25 condition of any loan the refinancing of a borrower's home loan as defined in G.S. 24-1.1A(e)
26 which is not currently in default.

27 (j) No Solicitation of Deposits. – No licensee may directly or indirectly solicit from any
28 borrower funds to be held on deposit in any bank; provided, however, a borrower may at his
29 option, by way of a military allotment or other such program, designate a depository to receive
30 and disburse funds for a designated purpose.

31 (k) Loans made pursuant to this Article solicited using a facsimile or negotiable check
32 shall be subject to the provisions of G.S. 75-20(a)."

33 **SECTION 8.** G.S. 53-181 reads as rewritten:

34 "**§ 53-181. Statements and information to be furnished to borrowers; power of attorney**
35 **or confession of judgment prohibited.**

36 (a) Contents of Statement Furnished to Borrower. – At the time a loan is made, and one
37 time per calendar year free at the written request of the borrower and twenty-five dollars
38 (\$25.00) for each additional request, the licensee shall deliver to the borrower, or if there be
39 two or more borrowers, to one of them a copy of the loan contract, or a written statement,
40 showing in clear and distinct terms:

41 (1) The name and address of the licensee and one of the primary obligors on the
42 loan;

43 (2) The date of the loan contract;

44 (3) Schedule of installments or descriptions thereof;

45 (4) The cash advance;

46 (5) The face amount of the note evidencing the loan;

47 (6) The amount collected or paid for insurance, if any;

48 (7) The amount collected or paid for filing or other fees allowed by this Article;

49 (8) The collateral or security for the loan;

50 (9) If the loan refinances a previous loan, the following relating to the
51 refinanced loan: (i) the principal balance due; (ii) interest charged that is

1 included in the new loan; and (iii) rebates on any credit insurance, listed
2 separately.
3 (10) In addition to any disclosures otherwise provided by law, a licensee
4 soliciting loans using a facsimile or negotiable check shall provide the
5 disclosures required by G.S. 75-20(a).

6 (b) Schedule of Charges, etc., to Be Made Available; Copy Filed with Commissioner. –
7 Each licensee doing business in North Carolina shall make readily available to the borrower at
8 each place of business such full and accurate schedule of charges and insurance premiums,
9 including refunds and rebates, on all classes of loans currently being made by such licensee, as
10 the Commissioner shall prescribe, and a copy thereof shall be filed in the office of the
11 Commissioner of Banks.

12 (c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take
13 any confession of judgment or permit any borrower to execute a power of attorney in favor of
14 any licensee or in favor of any third person to confess judgment or to appear for the borrower in
15 any judicial proceeding and any such confession of judgment or power of attorney to confess
16 judgment shall be absolutely void."

17 **SECTION 9.** G.S. 53-186 reads as rewritten:

18 "**§ 53-186. Commissioner to issue subpoenas, conduct hearings, give publicity to**
19 **investigations, etc.**

20 (a) Powers of the Commissioner. – The Commissioner of Banks shall have the power
21 and duty to issue subpoenas including subpoenas duces tecum, and compel attendance of
22 witnesses, administer oaths, conduct hearings and transcribe testimony in making the
23 investigations and conducting the hearings provided for herein or in the other discharge of his
24 duties, and to give such publicity to his investigations and findings as he may deem best for the
25 public interest.

26 (b) Timely Response to Borrowers' Complaints and Inquiries. –

27 (1) Timely Commissioner response to borrowers. – The Commissioner shall
28 establish reasonable procedures to provide a timely response to borrowers, in
29 writing where appropriate, to complaints against, or inquiries concerning, a
30 licensee, including all of the following:

31 a. Steps that have been taken by the Commissioner in response to the
32 complaint or inquiry of the borrower.

33 b. Any responses received by the Commissioner from the licensee.

34 c. Any follow-up actions or planned follow-up actions by the
35 Commissioner in response to the complaint or inquiry of the
36 borrower.

37 (2) Timely response to Commissioner by licensee. – A licensee shall provide a
38 timely response, in writing where appropriate, to the Commissioner
39 concerning a borrower complaint or inquiry, including all of the following:

40 a. Steps that have been taken by the licensee to respond to the
41 complaint or inquiry of the borrower.

42 b. Responses received by the licensee from the borrower.

43 c. Follow-up actions or planned follow-up actions by the licensee to
44 respond to the complaint or inquiry of the borrower.

45 (3) Provision of information to borrowers. – A licensee shall, in a timely
46 manner, comply with a borrower's written request for information in the
47 control or possession of such licensee concerning the loan transaction,
48 product, or service that the borrower obtained from such licensee as required
49 by G.S. 53-181(a), including up to six months of payment history,
50 concerning the account of the borrower. However, nothing in this section

1 shall be construed to require a licensee to make available to the consumer
2 any of the following:

- 3 a. Any confidential commercial information, including an algorithm
4 used to derive credit scores or other risk scores or predictors;
5 b. Any information collected by the licensee for the purpose of
6 preventing fraud or money laundering, or detecting or making any
7 report regarding other unlawful or potentially unlawful conduct;
8 c. Any information required to be kept confidential by any other
9 provision of law; or
10 d. Any nonpublic or confidential information, including confidential
11 supervisory information.

12 (c) Commissioner to Develop Pamphlet. – The Office of the Commissioner of Banks
13 shall develop a written pamphlet that explains the rights and responsibilities of consumers who
14 obtain loans from a licensee for distribution in all licensed offices. Such pamphlet shall include
15 the names, mailing or electronic mail addresses, and telephone numbers for the offices in the
16 Office of Commissioner of Banks or the Department of Justice responsible for enforcing the
17 provisions of this Chapter. Such pamphlet shall be given to a borrower at the time a loan is
18 made by a licensee and shall be readily available to all consumers at all times in each licensed
19 office. The Commissioner shall consult with, and seek input from, representatives of
20 consumers, the licensees, and the Attorney General in the development of the pamphlet. Each
21 licensee shall be responsible for reproducing and distributing the pamphlet finally approved and
22 authorized by the Commissioner. The pamphlet developed under this subsection shall be
23 provided to consumers as of January 1, 2012."

24 **SECTION 10.** This act becomes effective October 1, 2011.