

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35130-MUF-18

Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors: Senators Perry and Britt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA CONSUMER FINANCE ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Article 15 of Chapter 53 of the General Statutes reads as rewritten:

5 "Article 15.

6 "North Carolina Consumer Finance Act.

7 "§ 53-164. Title.

8 This Article shall be known and may be cited as the North Carolina Consumer Finance Act.

9 "§ 53-165. Definitions.

10 The following definitions apply in this Article:

11 (a)(1) ~~"Amount of the loan" shall mean the aggregate of the cash advance and~~
12 ~~Amount financed. – The amount of cash or its equivalent the borrower actually~~
13 ~~receives or is paid out at the borrower's discretion or on the borrower's behalf,~~
14 ~~including the charges authorized by G.S. 53-173 and G.S.~~
15 ~~53-176.G.S. 53-173, 53-176, 53-177(a) and (d), 53-177.1, and 53-189. The~~
16 ~~term includes both of the following:~~

17 a. Fees and charges prescribed by law that actually are or will be paid by
18 a licensee for determining the existence of or for perfecting, releasing,
19 or satisfying a security interest related to a loan under this Article.

20 b. Premiums payable for insurance in lieu of perfecting a security interest
21 otherwise required by a licensee in connection with a loan under this
22 Article if the premium does not exceed the fees and charges described
23 in sub-subdivision a. of this subdivision that would otherwise be
24 payable.

25 (b)(2) ~~"Borrower" shall mean any Borrower. – Any person who that borrows money~~
26 ~~from any licensee or who that pays or obligates himself oneself to pay any~~
27 ~~money or otherwise furnishes any valuable consideration to any licensee for~~
28 ~~any act of the licensee as a licensee.~~

29 (c) ~~"Cash advance" shall mean the amount of cash or its equivalent that the~~
30 ~~borrower actually receives or is paid out at his discretion or on his behalf.~~

31 (d)(3) ~~"Commission" shall mean the Commission. – The State Banking Commission.~~

32 (e)(4) ~~"Commissioner" shall mean the Commissioner. – The Commissioner of~~
33 ~~Banks.~~

34 (f) ~~"Deputy commissioner" shall mean the deputy commissioner of banks.~~

35 (5) Electronic payment. – An electronic or digital means of transferring funds as
36 an alternative to a cash payment. The term includes a payment using an



1 automated clearing house (ACH) transaction, a credit or debit card, a mobile
 2 wallet, a unified payments interface (UPI), internet banking, or mobile
 3 banking.

4 ~~(g)(6)~~ "License" shall mean the License. – The certificate issued by the
 5 Commissioner under the authority of this Article to conduct a consumer
 6 finance business.

7 ~~(h)(7)~~ "Licensee" shall mean a Licensee. – A person to ~~whom~~ which one or more
 8 licenses have been issued.

9 (8) Loan amount. – The aggregate of the amount financed and all charges
 10 authorized by this Article.

11 ~~(i)(9)~~ "Loanable assets" shall mean cash-Loanable assets. – Cash or bank deposits
 12 or installment loans made as a licensee pursuant to this Article or installment
 13 loans made as a licensee pursuant to the Article ~~which~~ that this Article
 14 supersedes or ~~such~~ other loans payable on an installment basis as approved by
 15 the Commissioner of Banks may approve, Commissioner, or any combination
 16 of two or more thereof.

17 ~~(j)(10)~~ "Person" shall include Person. – Includes any person, firm, partnership,
 18 ~~association~~ association, or corporation.

19 (11) Servicing loans. – Receiving any scheduled periodic payments from a
 20 borrower regarding a loan made pursuant to this Article and making the
 21 payments to the owner of the loan or another third party.

22 **"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.**

23 (a) Scope. – No person shall engage in the business of lending or servicing a loan in
 24 amounts of fifteen thousand dollars (\$15,000) – an amount of twenty-five thousand dollars
 25 (\$25,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection
 26 with any such the loan, any charges whether for interest, compensation, consideration, or
 27 expense, or any other purpose whatsoever, which that in the aggregate are greater than permitted
 28 by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and
 29 without first having obtained a license from the Commissioner. The word "lending" as used in
 30 this section, includes, but is not limited to, endorsing or otherwise securing loans or contracts for
 31 the repayment of loans.

32 (b) Evasions. – Subsection (a) of this section applies to any person that seeks to avoid its
 33 application by any device, subterfuge, or pretense whatsoever. Devices, subterfuges, and
 34 pretenses include any transaction in which a cash rebate or other advance of funds is offered and
 35 all of the following apply:

36 (1) The cash advance – rebate or other advance of funds is made
 37 contemporaneously with the transaction or soon thereafter.

38 (2) The amount of the cash advance rebate or other advance of funds is required
 39 to be repaid at a later date.

40 (3) The selling or providing of any item, service, or commodity with the
 41 transaction is incidental to, or a pretext for, the advance of funds.

42 (c) Penalties; Commissioner to Provide Facts and Testify. – Any person not exempt from
 43 this Article, or any officer, agent, employee, or representative thereof, that fails to comply with
 44 or that otherwise violates any of the provisions of this Article is guilty of a Class 1 misdemeanor.
 45 Each violation is a separate offense. The Commissioner shall provide the district attorney of the
 46 court having jurisdiction of any offense under this subsection with all facts and evidence in the
 47 Commissioner's actual or constructive possession and shall testify as to these facts upon the trial
 48 of any person for the offense.

49 (d) Additional Penalties. – Any contract of loan, the ~~making~~ making, servicing, or
 50 collecting of which violates any provision of this Article, or rule thereunder, adopted under it,
 51 except as a result of accidental or bona fide error of computation is void, and the licensee or any

1 other party in violation shall not collect, receive, or retain any principal or charges whatsoever
 2 with respect to the loan. If an affiliate operating in the same office or subsidiary operating in the
 3 same office of a licensee makes a loan in violation of G.S. 53-180(i), the affiliate or subsidiary
 4 may recover only its principal on the loan.

5 **"§ 53-167. Expenses of supervision.**

6 For the purpose of defraying necessary expenses of the Office of Commissioner of Banks for
 7 supervision, each licensee shall pay to the Commissioner an assessment not to exceed eighteen
 8 dollars (\$18.00) per one hundred thousand dollars (\$100,000) of assets, or fraction thereof, plus
 9 a fee of three hundred dollars (\$300.00) per office; ~~provided, however, a consumer finance~~
 10 ~~licensee shall pay a minimum annual assessment of not less than five hundred dollars (\$500.00).~~
 11 one thousand dollars (\$1,000). The assessment shall be determined on a consumer finance
 12 licensee's total assets as shown on its report of condition made to the Commissioner as of
 13 December 31 of each year, or the date most nearly approximating that date. If the Commissioner
 14 determines that the financial condition or manner of operation of a consumer finance licensee
 15 warrants further examination or an increased level of supervision, the licensee may be subject to
 16 assessment not to exceed the amount determined in accordance with the schedule set forth in this
 17 section.

18 **"§ 53-168. License required; showing of convenience, ~~advantage~~ advantage, and financial**
 19 **responsibility; investigation of applicants; hearings; existing businesses;**
 20 **contents of license; transfer; posting.**

21 (a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer
 22 to engage in the business regulated by this Article unless and until a license has been issued by
 23 the ~~Commissioner of Banks, Commissioner, and the Commissioner~~ shall not issue ~~any such the~~
 24 license unless and until the Commissioner ~~finds:~~finds all of the following:

- 25 (1) That authorizing the applicant to engage in ~~such the~~ business will promote the
 26 convenience and advantage of the community in which the applicant proposes
 27 to engage in ~~business; and~~business.
- 28 (2) That the financial responsibility, experience, ~~character~~ character, and general
 29 fitness of the applicant ~~are such as to~~ command the confidence of the public
 30 and ~~to~~ warrant the belief that the business will be operated lawfully and fairly,
 31 within the purposes of this ~~Article; and~~Article.
- 32 (3) That the applicant has available for the operation of ~~such the~~ business at the
 33 specified location loanable assets of at least fifty thousand dollars (\$50,000).

34 (b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner
 35 shall investigate the facts. If the Commissioner determines from ~~such this~~ preliminary
 36 investigation that the applicant does not satisfy the conditions set forth in subsection ~~(a), (a)~~
 37 this section, the Commissioner shall so notify the ~~applicant who shall then be applicant.~~ The
 38 applicant is entitled to an informal hearing ~~thereon provided he so~~ on the matter if the applicant
 39 requests in writing within 30 days after the Commissioner ~~has caused the above referred to~~
 40 ~~notification to be mailed~~ the notice to the applicant. In the event of a hearing, to be held in the
 41 offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the
 42 application and, after the hearing, shall issue a written order granting or denying ~~such the~~
 43 application. At the time of making ~~such the~~ application, the applicant shall pay the ~~Banking~~
 44 ~~Department~~ Office of the Commissioner of Banks the sum of ~~two hundred fifty dollars (\$250.00)~~
 45 five hundred dollars (\$500.00) as a fee for investigating the application, ~~which shall to be~~ retained
 46 irrespective of whether or not a license is granted to the applicant.

47 (c) Repealed by Session Laws 2001-519, s. 2.

48 (d) Required Assets Available. – Each licensee shall continue at all times to have
 49 available for the operation of the business at the specified location loanable assets of at least fifty
 50 thousand dollars (\$50,000). The requirements and standards of this subsection and ~~subsection~~
 51 subdivision (a)(2) of this section shall be maintained throughout the period of the license and

1 failure to maintain ~~such~~ these requirements ~~or~~ and standards ~~shall be~~ are grounds for the
2 revocation of a license under ~~the provisions of G.S. 53-171 of this Article.~~ G.S. 53-171.

3 (e) License, Posting, and Continuing. – Each license shall state the address at which the
4 business is to be conducted and shall state fully the name of the licensee, and if the licensee is a
5 ~~corporation, partnership, partnership~~ or association, the names of the members thereof, and if a corporation,
6 the date and place of its incorporation. Transfer or assignment of a license by one person to
7 another by sale or otherwise is prohibited without the prior approval of the Commissioner. A
8 licensee shall provide the Commissioner notice of the proposed transfer or assignment not less
9 than 30 days before the date the transaction is set to close, and the Commissioner shall promptly
10 render a decision in the matter. Purchase of a loan made under this Article by an existing licensee
11 shall be reported to the Commissioner within 30 days after the transaction is completed. Each
12 license shall be kept posted in the licensed place of ~~business.~~ business or on the licensee's website.
13 Each license ~~shall remain~~ remains in full force and effect until surrendered, revoked, or
14 ~~suspended as hereinafter provided.~~ suspended.

15 ...

16 **"§ 53-170. Locations; change of ownership or management.**

17 (a) Business Location. – A licensee may conduct and carry on ~~his~~ the licensee's business
18 only at ~~such location or one or more~~ locations ~~as may be approved by the Commissioner of Banks,~~
19 Commissioner, and no changes shall be made from one location to another without the approval
20 of the Commissioner.

21 (b) Additional Places of Business. – Not more than one place of business shall be
22 maintained under the same license, but the Commissioner may issue more than one license to the
23 same licensee upon compliance with all the provisions of this Article governing issuance of a
24 single license.

25 (c) Change of Location, ~~Ownership~~ Ownership, or Management. – If any change occurs
26 in the name and address of the licensee or of the president, ~~secretary~~ secretary, or agent of a
27 ~~corporation, corporation holding a license,~~ or in the membership of any partnership ~~under said~~
28 sections, holding a license, a true and full statement of ~~such~~ the change, sworn to in the manner
29 required by this Article in the case of the original application, shall ~~forthwith~~ be filed with the
30 ~~Commissioner.~~ Commissioner within 90 days of the change.

31 **"§ 53-171. Revocation, ~~suspension~~ suspension, or surrender of license.**

32 (a) If the Commissioner ~~shall find,~~ finds, after due notice and hearing, or opportunity for
33 hearing, that ~~any such a~~ licensee, or an officer, agent, employee, or representative ~~thereof~~ thereof,
34 has violated any of the provisions of this Article, ~~or~~ has failed to comply with the rules,
35 regulations, instructions or orders promulgated ~~rules adopted or orders issued~~ by the Commission
36 ~~pursuant to the powers and duties prescribed therein, or~~ Commission, has failed or refused to
37 make its reports to the Commissioner, ~~or~~ has failed to pay the fees for its examination and
38 supervision, or has furnished false information to the Commissioner or the Commission, the
39 Commissioner may issue an order revoking or suspending the right of ~~such~~ the licensee ~~and such~~
40 or the officer, agent, ~~employee~~ employee, or representative to do business in North Carolina as a
41 licensee, and upon receipt of ~~such an~~ the order from the Commissioner, the licensee shall
42 immediately surrender ~~his~~ the licensee's license to the Commissioner. Within five days after the
43 entry of ~~such an~~ the order the Commissioner shall place on file ~~his~~ the Commissioner's findings
44 of fact and mail or otherwise deliver a copy to the licensee. ~~Any licensee who fails to make any~~
45 ~~loans during any period of 90 consecutive days after being licensed shall surrender his license to~~
46 ~~the Commissioner.~~

47 (b) ~~Any~~ A licensee may surrender any license by delivering it to the Commissioner with
48 written notice of its surrender, but ~~such~~ the surrender ~~shall~~ does not affect ~~his~~ the licensee's civil
49 or criminal liability for acts committed prior ~~thereto~~ to the surrender.

1 (c) No revocation, ~~suspension~~suspension, or surrender of any license ~~shall impair or~~
2 ~~affect~~impairs or affects the obligation of any preexisting lawful contract between the licensee
3 and any obligor.

4 (d) The Commissioner, in ~~his~~the Commissioner's discretion, may reinstate suspended
5 licenses or issue new licenses to a person whose license or licenses have been ~~revoked,~~revoked
6 or surrendered if and when ~~he~~the Commissioner determines no fact or condition exists ~~which~~
7 that clearly would have justified the Commissioner in refusing originally to issue ~~such~~the license
8 under this Article.

9 **"§ 53-172. Conduct of other business in same office.**

10 (a) No licensee shall conduct the business of making loans under this Article within any
11 office, suite, room, or place of business in which any other business is solicited or transacted.

12 Installment paper dealers as defined in G.S. 105-83, the collection by a licensee of loans
13 legally made in North ~~Carolina~~Carolina, including loans made under Chapter 24 or Chapter 25A
14 of the General Statutes, or legally made in another state by another government-regulated
15 government-regulated lender or lending agency, and the collection by a licensee of claims of,
16 payments to, or payments for an insurance company licensed in North Carolina and arising in
17 any way from a nonfiling or nonrecording insurance policy approved by the Commissioner of
18 Insurance ~~shall not be~~are not considered as being any other business within the meaning of this
19 section.

20 ...

21 (c) The Commissioner may require, consistent with the provisions of 12 C.F.R. Part 226
22 (Regulation Z) of the federal ~~Truth-In-Lending Act,~~Truth in Lending Act, the other business
23 authorized under subsection (b) of this section ~~to do both of the following:~~

24 (1) Disclose the cost of consumer credit of goods and services ~~sold; and~~sold.

25 (2) Provide the purchaser with a reasonable cancellation period for goods and
26 services purchased.

27 (d) No licensee ~~shall;~~shall do either of the following:

28 (1) Make the purchase of goods and services sold under the authorization of
29 subsection (b) of this section a condition of making a ~~loan;~~loan.

30 (2) Consider the borrower's decision to purchase, or not purchase, goods and
31 services sold under the authorization of subsection (b) of this section a factor
32 in its approval or denial of ~~credit,~~credit or in its determination of the amount
33 of or terms of credit for the borrower.

34 ...

35 (g) This section ~~shall not be construed as authorizing~~does not authorize the collection of
36 any loans or charges in violation of the prohibitions contained in G.S. 53-190.

37 (h) The books, records, and accounts relating to loans shall be kept in ~~such manner as the~~
38 ~~Commissioner of Banks prescribes~~a manner prescribed by the Commissioner so as to delineate
39 clearly the loan business from any other business authorized by the Commissioner.

40 **"§ 53-173. Computation of interest; application of payments; limitation on interest after
41 judgment; limitation on interest after maturity of the loan.**

42 (a), (a1) Repealed by Session Laws 2013-162, s. 3, effective July 1, 2013.

43 (b) Computation of Interest. – Interest on loans made pursuant to this section shall not be
44 paid, deducted, or received in advance. ~~Such~~The interest shall not be compounded but interest
45 on loans shall (i) be computed and paid only as a percentage of the ~~unpaid principal balance or~~
46 ~~portion thereof~~amount financed and (ii) computed on the basis of the number of days actually
47 elapsed; ~~provided,~~ however, if part or all of the consideration for a loan contract is the unpaid
48 principal balance of a prior loan, then the ~~principal amount payable~~amount financed under the
49 loan contract may include any unpaid interest on the prior loan ~~which have that has~~has accrued
50 within 90 days before the making of the new loan contract. For the purpose of computing interest,
51 a day ~~shall equal~~equals 1/365th of a year.

1 (b1) Application of Payments. – Any payment made on a loan shall be applied first to late
2 charges and other permissible charges under this Article, then to any accrued interest, and then
3 to principal. Any portion or all of the principal balance may be prepaid at any time without
4 penalty.

5 (c) Limitation on Interest after Judgment. – If a money judgment is obtained against any
6 party on any loan made under ~~the provisions of this section~~ section, neither the judgment nor the
7 loan ~~shall carry, carries,~~ from the date of the judgment, any interest in excess of eight percent
8 (8%) per annum.

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

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

15 (f) Repealed by Session Laws 2001-519, s. 3, effective January 1, 2002.

16 ...

17 **"§ 53-176. Rates, ~~maturities~~ maturities, and amounts.**

18 (a) A licensee may make installment loans in aggregate with loan amounts not exceeding
19 fifteen thousand dollars (\$15,000) and which shall not be twenty-five thousand dollars (\$25,000),
20 that are not repayable in fewer than 12 months or more than 96 months and which shall not be
21 months, that are not secured by deeds of trust or mortgages on real estate and which estate, and
22 that are repayable in substantially equal consecutive monthly payments and to payments. A
23 licensee may charge and collect interest in connection therewith which shall on these loans, not
24 to exceed the following actuarial rates:

25 (1) With respect to a loan with a loan amount at origination not exceeding ten
26 thousand dollars (\$10,000), ~~thirty percent (30%)~~ twelve thousand dollars
27 (\$12,000), ~~thirty-six percent (36%)~~ per annum on that part of the unpaid
28 principal balance not exceeding four thousand dollars (\$4,000), ~~twenty-four~~
29 percent (24%) per annum on that part of the unpaid principal balance
30 exceeding four thousand dollars (\$4,000) but not exceeding eight thousand
31 dollars (\$8,000), and ~~eighteen percent (18%)~~ per annum on that part of the
32 remainder of the unpaid principal balance.

33 (2) With respect to a loan with a loan amount at origination exceeding ten
34 thousand dollars (\$10,000), ~~twelve thousand dollars (\$12,000),~~ eighteen
35 percent (18%) per annum on the outstanding principal balance.

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

39 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
40 fee for processing the loan as agreed upon by the parties, not to exceed ~~twenty-five dollars~~
41 ~~(\$25.00) for loans up to two thousand five hundred dollars (\$2,500) thirty dollars (\$30.00) for~~
42 loan amounts up to three thousand dollars (\$3,000) and one percent (1%) of the cash advance for
43 loans above two thousand five hundred dollars (\$2,500), not to exceed a total fee of forty dollars
44 (\$40.00), ~~provided that such amount financed, exclusive of the loan processing fee, for loan~~
45 amounts more than three thousand dollars (\$3,000). These charges ~~may~~ shall not be assessed
46 more than twice in any 12-month period.

47 (c) ~~The provisions of G.S. 53-173(b), (b1), (e)-(c), and (d) and G.S. 53-180(b), (c), (d),~~
48 (e), (f), (g), ~~(h)-(h),~~ and (i) shall apply to loans made pursuant to this section.

49 (d) Repealed by Session Laws 2013-162, s. 4, effective July 1, 2013.

50 (e) The due date of the first monthly payment shall not be more than 45 days following
51 the disbursement of funds under ~~any such~~ the installment loan. A borrower under this section

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

6 (f) Repealed by Session Laws 2013-162, s. 4, effective July 1, 2013.

7 ...

8 **"§ 53-176.2. Inflation adjustment for loan amounts and certain loan fees.**

9 (a) In this section, "CPI-U" means the Consumer Price Index for All Urban Consumers
10 published by the Bureau of Labor Statistics of the United States Department of Labor. The CPI-U
11 for calendar year 2023 is the Reference Base Index.

12 (b) Beginning on January 1, 2024, the Commissioner shall annually adjust the dollar
13 amount for the loan amounts established in G.S. 53-176, the non-percentage-based loan
14 processing fee allowed in G.S. 53-176(b), and the late payment fee allowed in G.S. 53-177(b)
15 based on the annual percentage change in CPI-U that was reported on the preceding June 1. The
16 resulting inflation-adjusted amounts become effective on the date of the adjustment and remain
17 in effect for one calendar year until the next adjustment is made. The adjusted loan amounts
18 established in G.S. 53-176 shall be rounded to the nearest five hundred dollars (\$500.00), and the
19 adjusted loan fees shall be rounded to the nearest five dollars (\$5.00).

20 (c) The Commissioner shall publish the adjusted loan amount categories and loan fees
21 and the formula by which the adjustments were calculated on the Commissioner's website.
22 Additionally, the Commissioner shall provide each licensee a notice of the adjustments, shall
23 publish the adjustments in the North Carolina Register, and shall notify the Revisor of Statutes
24 who shall adjust the amounts in the General Statutes.

25 **"§ 53-177. Fees.**

26 (a) Recording Fees. – The licensee may collect from the borrower the amount of any fees
27 necessary to file or record its security interest with any public official or agency of a county or
28 the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or
29 G.S. 20-58 ~~et seq. through~~ G.S. 20-58.8. Upon full disclosure to the borrower on how the fees
30 will be applied, ~~such the~~ such the fees may either (i) be paid by the licensee to ~~such the~~ such the public official or
31 agency of the county or State or (ii) in lieu of recording or filing, applied by the licensee to
32 purchase nonfiling or nonrecording insurance on the instrument securing the loan; ~~provided,~~
33 however, the amount collected by the licensee from the borrower for the purchase of a nonfiling
34 or nonrecording insurance policy shall be the premium amount for ~~such the~~ such the insurance as fixed
35 by the Commissioner of Insurance. ~~Such The~~ Such The premium shall be at least one dollar (\$1.00) less
36 than the cost of recording or filing a security interest. ~~Provided further, a~~ A licensee shall not
37 collect or permit to be collected any notary fee in connection with any loan made under this
38 Article, nor ~~may shall~~ shall a licensee collect any fee from the borrower for the cost of releasing a
39 security interest except ~~such the~~ such the fee as actually paid to any public official or agency of the county
40 or State for ~~such this~~ such this purpose.

41 (b) Late Payment Fees. –

42 (1) A licensee may charge a late payment fee for any payment ~~which that~~ which that remains
43 past due for 10 days or more after the due date.

44 (2) No licensee ~~may shall~~ shall charge a late payment fee in an amount greater than
45 ~~fifteen dollars (\$15.00)~~ twenty dollars (\$20.00) nor charge a late payment fee
46 more than once with respect to a single late payment.

47 (3) If a late payment fee has been once imposed with respect to a particular late
48 payment, no ~~such late payment~~ such late payment fee shall be imposed with respect to any future
49 payment ~~which that~~ which that would have been timely and sufficient but for the previous
50 default.

- 1 (4) A licensee may apply a borrower's most recent payment to the oldest
2 installment due.
- 3 (5) A licensee shall not collect more than one late payment fee from any full or
4 partial payment made toward a particular scheduled installment payment.
5 However, a licensee may collect more than one late payment fee from any
6 payment made toward more than one installment payment so long as the
7 number of late payment fees collected does not exceed the number of different
8 installment payments that were past due for 10 days or more and to which the
9 payment was applied.
- 10 (6) If a licensee declares a borrower in default and accelerates a loan, the licensee
11 may collect a late payment fee for each installment payment that was, as of
12 the date of acceleration, past due for 10 days or more. A licensee shall not
13 collect a late payment fee for any installment that becomes due solely because
14 the licensee has declared a borrower in default and accelerated a loan.
- 15 (7) If a licensee refinances a loan, a licensee may include in the amount financed
16 late payment fees for each installment payment that was, as of the date of the
17 refinancing, past due for 10 days or more.
- 18 (8) If a loan reaches maturity, a licensee may include in the final balance owed a
19 late payment fee for each installment payment that remains past due for 10
20 days or more.
- 21 (c) Deferral Charges. – A licensee may, by agreement with the borrower, collect a
22 deferral charge and defer the due date of all or part of one or more installments under an existing
23 loan contract as permitted ~~in the provisions of~~ by G.S. 25A-30. A licensee may assess a deferral
24 charge for each month of the remaining loan term on each installment owed after the date of
25 deferral. A licensee may also charge a late payment fee on deferred payments that remain past
26 due for 10 days or more after the agreed upon due date. A deferral shall not alter the maturity
27 date of the loan contract, even if a payment is deferred beyond maturity.
- 28 (d) Insurance Policy. – If a licensee, in lieu of recording, collects a fee to purchase a
29 nonfiling or nonrecording insurance policy as authorized under subsection (a) of this section, to
30 be valid, any claim arising from ~~such the~~ policy shall only be used to compensate the licensee for
31 damages arising from failure to record or file its security interest in accordance with Article 9 of
32 Chapter 25 of the General Statutes. Following payment of ~~such the~~ claim, the licensee shall do
33 the following:
- 34 (1) Properly credit the full claim amount posted to the balance of the ~~loan~~ loan,
35 effective the date the proceeds were received.
- 36 ...
- 37 (e) Recovery of Costs. – If a borrower requests in writing of the lender to take a voluntary
38 dismissal of an action to recover a loan made under this Article, and both parties agree to ~~such a~~
39 the dismissal, the lender shall obtain in writing from the borrower an acknowledgment that (i)
40 the borrower will be liable for the statutory court costs and (ii) any other reasonable and bona
41 fide costs incurred in the course of bringing the action, and the lender may recover the statutory
42 court costs incurred as well as any other reasonable and bona fide costs incurred in the course of
43 bringing the action. Nothing in this section ~~shall be construed to authorize~~ authorizes the
44 collection of attorney fees otherwise prohibited by G.S. 53-180(e). ~~Provided further, that this~~
45 ~~section shall~~ This section does not apply if the borrower, in written documentation raises an
46 affirmative defense to an action to collect a loan under this Article. Nothing in this section ~~shall~~
47 ~~in any way affect or prohibit~~ affects or prohibits a magistrate, judge, or arbitrator from awarding
48 filing fees and fees for service of process incurred by the lender in bringing the civil action ~~if a~~
49 judgment is awarded or the other bona fide costs set forth ~~above and the recovery of said costs~~
50 ~~and fees is expressly authorized in the event judgment is entered against the borrower in this~~
51 subsection.

1 ...

2 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

3 (a) Time and Payment Limitation. – Every loan contract shall provide for repayment of
4 the amount loaned in substantially equal installments, either of principal or of principal and
5 charges in the aggregate, at approximately equal periodic intervals of time. Nothing ~~contained~~
6 ~~herein shall prevent in this section prevents~~ a loan being considered a new loan because the
7 proceeds of the loan are used to pay an existing contract.

8 (b) No Assignment of Earnings. – A licensee ~~may shall~~ not take an assignment of
9 earnings of the borrower for payment or as security for payment of a loan. An assignment of
10 earnings in violation of this section is ~~unenforceable by the assignee of the earnings and is~~
11 ~~revocable by the borrower. unenforceable.~~ A sale of unpaid earnings made in consideration of
12 the payment of money to or for the account of the seller of the earnings is deemed to be a loan to
13 the seller by an assignment of earnings.

14 ...

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

20 (e) Limitation on ~~Attorney's Attorney~~ Fees. – With respect to a loan made pursuant to ~~the~~
21 ~~provisions of~~ G.S. 53-176, the agreement ~~may shall~~ not provide for payment by the borrower of
22 attorney fees.

23 (f) No Real Property as Security. – No licensee shall make any loan within this State
24 ~~which shall in any way be that is~~ secured by real property.

25 ...

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

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

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

36 ...

37 **"§ 53-181. Statements and information to be furnished to borrowers; power of attorney or**
38 **confession of judgment prohibited.**

39 (a) Contents of Statement Furnished to Borrower. – At the time a loan is made, the
40 licensee shall ~~deliver deliver, or make available electronically,~~ to the borrower, or if there ~~be are~~
41 two or more borrowers, to one of them a copy of the loan ~~contract, contract~~ or a written statement,
42 showing all of the following in clear and distinct terms:

- 43 (1) The name and address of the licensee and one of the primary obligors on the
44 ~~loan; loan.~~
- 45 (2) The date of the loan ~~contract; contract.~~
- 46 (3) ~~Schedule of installments or descriptions thereof;~~ A schedule or description of
47 the installments.
- 48 (4) ~~The cash advance;~~ loan amount.
- 49 (5) ~~The face amount of the note evidencing the loan;~~
- 50 (6) The amount collected or paid for insurance, if ~~any; any.~~

- 1 (7) The amount collected or paid for filing or other fees allowed by this
 2 ~~Article;~~Article.
 3 (8) The collateral or security for the ~~loan;~~loan.
 4 (9) If the loan refinances a previous loan, the following relating to the refinanced
 5 loan: (i) the principal balance due; (ii) interest charged that is included in the
 6 new loan; and (iii) rebates on any credit insurance, listed separately.
 7 (10) In addition to any disclosures otherwise provided by law, a licensee soliciting
 8 loans using a facsimile or negotiable check shall provide the disclosures
 9 required by G.S. 75-20(a).
 10 (11) The following statement: "This loan is regulated by the provisions of the North
 11 Carolina Consumer Finance Act, Article 15 of Chapter 53 of the North
 12 Carolina General Statutes."

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

19 (c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take
 20 any confession of judgment or permit any borrower to execute a power of attorney in favor of
 21 any licensee or in favor of any third person to confess judgment or to appear for the borrower in
 22 any judicial ~~proceeding~~proceeding, and ~~any such a~~ confession of judgment or power of attorney
 23 to confess judgment ~~shall be absolutely~~is void. Nothing in this subsection prohibits a licensee
 24 from taking a confession of judgment from a borrower following the borrower's failure to make
 25 a payment as required under the loan contract.

26 **"§ 53-182. Payment of loans; receipts.**

27 (a) After each cash payment made on account of any loan, the licensee shall give to the
 28 person making ~~such the~~ payment a signed, dated receipt showing the amount paid and the balance
 29 due on the loan. No receipt shall be required in the case of electronic payments or payments made
 30 by the borrower's check or money order, ~~where if~~ the entire proceeds of the check or money order
 31 are applied to the loan. The use of a coupon book system ~~shall be~~is deemed in compliance with
 32 this section.

33 (b) Upon payment of any loan in full, a licensee shall cancel and ~~return either return or~~
 34 make available electronically to the borrower, within a reasonable length of time, originals or
 35 copies of any note, assignment, mortgage, deed of trust, or other instrument securing ~~such loan,~~
 36 which the loan that no longer secures any indebtedness of the borrower to the licensee.

37 ...

38 **"§ 53-184. Securing of information; records and reports; allocations of expense.**

39 (a) Each licensee shall ~~maintain all~~keep the books and records required by subsection
 40 (e) of this section relating to loans made under this ~~Article~~required by the Commissioner of
 41 Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or
 42 employee is authorized and empowered to ~~Article, and the Commissioner, or an agent of the~~
 43 Commissioner, may examine such these books and records at any reasonable time. ~~Such These~~
 44 books and records may be maintained in the form of magnetic tape, magnetic disk, optical disk,
 45 or other form of computer, ~~electronic~~electronic, or microfilm media available for examination
 46 on the basis of computer printed reproduction, video ~~display~~display, or other medium acceptable
 47 to the ~~Commissioner of Banks; provided, Commissioner;~~ Commissioner; however, ~~that such these~~
 48 books and records ~~so kept must shall~~ be convertible into clearly legible tangible documents within a
 49 reasonable time. Any licensee having more than one licensed office may maintain ~~such these~~
 50 books and records at a location other than the licensed office location if ~~such the~~ location is
 51 approved by the ~~Commissioner; provided that, upon such requirements as may be imposed by~~

1 ~~the Commissioner of Banks, Commissioner.~~ In accordance with any requirements imposed by
2 ~~the Commissioner,~~ there shall be available to the borrower at each licensed location or ~~such other~~
3 location convenient to the borrower, as designated by the licensee, complete loan ~~information;~~
4 ~~and provided further that such information.~~ These books and records of each licensed office shall
5 be clearly segregated. When a licensee maintains its books and records outside of North Carolina,
6 the licensee shall make them available for examination at the place where they are maintained
7 and shall pay for all reasonable and necessary expenses incurred by the Commissioner in
8 conducting ~~such an~~ examination. Where the data processing for any licensee is performed by a
9 person other than the licensee, the licensee shall provide to the Commissioner ~~of Banks~~ a copy
10 of a binding agreement between the licensee and the data processor ~~which that expressly~~ allows
11 the ~~Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee~~
12 Commissioner, or an agent of the Commissioner, access to examine that particular the data
13 processor's activities pertaining to ~~the a particular~~ licensee to the same extent as if ~~such these~~
14 services were being performed by the licensee on its own premises; and, notwithstanding ~~the~~
15 ~~provisions of G.S. 53-167,~~ when billed by the ~~Commissioner of Banks, Commissioner,~~ the
16 licensee shall reimburse the Commissioner ~~of Banks~~ for all costs and expenses incurred by the
17 Commissioner in ~~such the~~ examination.

18 (b) Each licensee shall file annually with the Commissioner ~~of Banks~~ on or before the
19 ~~thirty first~~ 31st day of March for the 12 months' period ending the preceding December 31,
20 reports on forms prescribed by the Commissioner. Reports shall disclose in detail and under
21 appropriate headings the assets and liabilities of the licensee, the income, expense, gain, loss, and
22 any other information ~~as the Commissioner may require.~~ required by the Commissioner. Reports
23 shall be verified by the oath or affirmation of the owner, manager, president, vice-president,
24 cashier, ~~secretary~~ secretary, or treasurer of the licensee.

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

29 (d) Repealed by Session Laws 1997-285, s. 3, effective January 1, 1998.

30 (e) A licensee shall maintain separate loan ledgers and accounts related to the making
31 and collecting of loans under this Article. Allocation of expenses shall be made monthly
32 according to generally accepted accounting principles. All books and records required by this
33 section shall be retained for a period of two years after the last transaction consistent with the
34 Federal Trade Commission Safeguards Rule, Part 314 of Title 16 of the Code of Federal
35 Regulations. The books and records to be kept are as follows:

36 (1) General ledger. – The general ledger shall be double entry, showing in detail
37 the total of assets, liabilities, capital, income, and expenses. Each account shall
38 be individually designated. No net or "wash" entries shall be made to any
39 account. The general ledger shall be posted once each month, and the posting
40 shall include all transactions through the last business day of the month. The
41 actual posting shall be completed by the 30th day of each ensuing month for
42 the previous month's business. A licensee shall maintain a description of each
43 general ledger entry, including adjusting and closing entries. If any account
44 on the general ledger does not agree with the corresponding account on the
45 annual report to the Commissioner, a supplement to the annual report shall be
46 furnished that reconciles or explains any differences.

47 (2) Loan documents. – Documentation of all loans to each individual, including
48 the date made, account number, loan amount, and date of cancellation.

49 (3) Judgments. – When a loan has been reduced to a final judgment, a licensee
50 shall comply with all of the following provisions:

- 1 a. The individual account record maintained pursuant to subdivision (2)
- 2 of this subsection shall be designated as a judgment account.
- 3 b. Payments received shall be identified and applied on the judgment
- 4 account record.
- 5 c. The licensee shall maintain a copy of the final judgment and any other
- 6 court documents that are necessary to disclose all of the following
- 7 information:
 - 8 1. The final judgment date.
 - 9 2. The name of the licensee.
 - 10 3. The final judgment debtor's name.
 - 11 4. The date the suit was filed.
 - 12 5. The nature of the suit.
 - 13 6. The name and location of the court.
 - 14 7. The amount of the final judgment, specifying principal, interest
 - 15 charges, any fees authorized by statute, and court costs.
 - 16 8. The disposition of the case.
- 17 d. A licensee that charges a borrower for court costs incurred in obtaining
- 18 a final judgment or pursuant to any ancillary proceeding related to an
- 19 account shall itemize these costs on the individual account record and
- 20 retain a receipt or other document showing the costs.
- 21 e. A licensee shall retain a copy of the sheriff's return of execution issued
- 22 when property is sold pursuant to a final judgment.
- 23 (4) Repossessions. – When property is taken in accordance with the terms of a
- 24 security agreement, by judicial process, or abandonment, the individual
- 25 account record shall be designated as a repossession account and shall state
- 26 when and how possession of the security was obtained and shall identify the
- 27 proceeds of the sale of the property. The licensee shall also retain all of the
- 28 following:
 - 29 a. A copy of any agreement entered into with the borrower with respect
 - 30 to the terms of surrender.
 - 31 b. A copy of the notice of sale, together with proof of mailing or personal
 - 32 delivery.
 - 33 c. An inventory of the property taken, unless it appears on the notice of
 - 34 sale.
 - 35 d. A signed bill of sale or a statement from the purchaser, or from the
 - 36 auctioneer if the sale was public, describing the collateral purchased
 - 37 and showing the amount paid.
 - 38 e. Evidence that the sale took place on the date set forth in any notice of
 - 39 public sale, or a date after the date set forth in any notice of private
 - 40 sale, including a notice of any bids received.
 - 41 f. A copy of a final accounting sent to the borrower, setting forth the
 - 42 disposition of the proceeds of sale and the principal balance due, if
 - 43 any, on the account prepared in accordance with G.S. 25-9-616.
 - 44 g. Paid receipts showing the costs incurred in the repossession and sale
 - 45 of the security that have been charged to the borrower.

46 ...

47 "**§ 53-190. Loans made elsewhere.**

48 (a) No loan contract made outside this State in the amount or of the value of ~~fifteen~~

49 ~~thousand dollars (\$15,000)~~ twenty-five thousand dollars (\$25,000) or less, for which greater

50 consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 ~~of this Article~~ have

51 been charged, contracted for, or received, shall be enforced in this State. ~~Provided, the foregoing~~

1 ~~shall~~ This subsection, however, does not apply to loan contracts in which all contractual
2 activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents,
3 and delivery and receipt of funds, occur entirely outside ~~North Carolina~~ this State.

4 (b) If any lender or agent of a lender ~~who~~ that makes loan contracts outside this State in
5 the amount or of the value of ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand dollars
6 ~~(\$25,000) or less~~, less comes into this State to solicit or otherwise conduct activities in regard to
7 ~~such the~~ loan contracts, then ~~such the~~ lender ~~shall be~~ is subject to the requirements of this Article.

8 (c) No lender licensed to do business under this Article ~~may~~ shall collect, or cause to be
9 collected, any loan made by a lender in another state to a ~~borrower, who~~ borrower that was a
10 ~~legal~~ resident of ~~North Carolina~~ this State at the time the loan was made. The purchase of a loan
11 account ~~shall~~ does not alter this prohibition."

12 **SECTION 2.** G.S. 53C-1-4 reads as rewritten:

13 **"§ 53C-1-4. Definitions and application of terms.**

14 Unless the context requires otherwise, the following definitions apply in this Chapter:

15 ...

16 (20a) Consumer finance licensee. – An individual associated with a "licensee," as
17 that term is defined in ~~G.S. 53-165(h)~~ G.S. 53-165.

18"

19 **SECTION 3.** This act becomes effective October 1, 2023, and applies to contracts
20 entered into, modified, or renewed on or after that date.