Article 15.

North Carolina Consumer Finance Act.

§ 53-164. Title.

This Article shall be known and may be cited as the North Carolina Consumer Finance Act. (1961, c. 1053, s. 1.)

§ 53-165. Definitions.

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

(b) "Borrower" shall mean any person who borrows money from any licensee or who pays or obligates himself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

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

(d) "Commission" shall mean the State Banking Commission.

(e) "Commissioner" shall mean the Commissioner of Banks.

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

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

(h) "Licensee" shall mean a person to whom one or more licenses have been issued.

(i) "Loanable assets" shall mean cash or bank deposits or installment loans made as a licensee pursuant to this Article or installment loans made as a licensee pursuant to the Article which this Article supersedes or such other loans payable on an installment basis as the Commissioner of Banks may approve, or any combination of two or more thereof.

(j) "Person" shall include any person, firm, partnership, association or corporation. (1957, c. 1429, s. 1; 1961, c. 1053, s. 1; 2001-519, s. 1.)

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

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

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

(1) The cash advance is made contemporaneously with the transaction or soon thereafter.

(2) The amount of the cash advance is required to be repaid at a later date.

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

(c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It is the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any offense under this subsection with all facts and evidence in the Commissioner's actual or constructive possession, and to testify as to these facts upon the trial of any person for the offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation is void, and the licensee or any other party in violation shall not collect, receive, or retain any principal or charges whatsoever with respect to the loan. If an affiliate operating in the same office or subsidiary operating in the same office of a licensee makes a loan in violation of G.S. 53-180(i), the affiliate or subsidiary may recover only its principal on the loan. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1; 1969, c. 1303, ss. 13, 14; 1973, c. 47, s. 2; c. 1042, s. 1; 1979, c. 33, s. 1; 1985, c. 154, ss. 6, 13; 1987, c. 444, s. 3; 1989, c. 17, ss. 1, 13; 1989 (Reg. Sess., 1990), c. 881, s. 1; 1993, c. 539, s. 425; 1994, Ex. Sess., c. 24, s. 14(c); 2006-243, s. 2; 2013-162, s. 1.)

§ 53-167. Expenses of supervision.

For the purpose of defraying necessary expenses of the Office of Commissioner of Banks for supervision, each licensee shall pay to the Commissioner an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner as of December 31 of each year, or the date most nearly approximating that date. If the Commissioner determines that the financial condition or manner of operation of a consumer finance licensee warrants further examination or an increased level of supervision, the licensee may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in this section. (1955, c. 1279; 1957, c. 1429, s. 1; 1961, c. 1053, s. 1; 2012-56, s. 11.)

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

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

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

(2) That the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to

warrant the belief that the business will be operated lawfully and fairly, within the purposes of this Article; and

(3) That the applicant has available for the operation of such business at the specified location loanable assets of at least fifty thousand dollars ($50,000).

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

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

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

(e) License, Posting, Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership, or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided. (1961, c. 1053, s. 1; 1969, c. 1303, s. 15; 1973, c. 1042, s. 2; 1981, c. 671, s. 15; 1987, c. 827, s. 12; 2001-519, s. 2.)

§ 53-169. Application for license.

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

(1) The fact that the applicant desires to engage in business under this Article; and

(2) Whether the applicant is an individual, partnership, association or corporation; and

(3) The name and address of the person who will manage and be in immediate control of the business; and

(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and

(5) When the applicant proposes to commence doing business; and

(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf. (1961, c. 1053, s. 1.)

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

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

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

(c) Change of Location, Ownership or Management. – If any change occurs in the name and address of the licensee or of the president, secretary or agent of a corporation, or in the membership of any partnership under said sections, a true and full statement of such change, sworn to in the manner required by this Article in the case of the original application, shall forthwith be filed with the Commissioner. (1961, c. 1053, s. 1.)

§ 53-171. Revocation, suspension or surrender of license.

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

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

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

(d) The Commissioner, in his discretion, may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked, or surrendered if and when he determines no fact or condition exists which clearly would have justified the Commissioner in refusing originally to issue such license under this Article. (1955, c. 1279; 1961, c. 1053, s. 1.)

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

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

Installment paper dealers as defined in G.S. 105-83, the collection by a licensee of loans legally made in North Carolina or another state by another government regulated lender or lending agency, and the collection by a licensee of claims of, payments to, or payments for an

insurance company licensed in North Carolina and arising in any way from a nonfiling or nonrecording insurance policy approved by the Commissioner of Insurance shall not be considered as being any other business within the meaning of this section.

(b) Notwithstanding subsection (a) of this section, the Commissioner may authorize in writing the solicitation and transaction of other business in any office, suite, room, or place of business in which a licensee is conducting the business of making loans if the Commissioner determines that the other business would not be contrary to the best interests of the borrowing public.

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

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

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

(d) No licensee shall:

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

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

(e) The licensee shall notify the borrower in writing that the purchase of the goods and services offered under the authorization under subsection (b) of this section is voluntary and that the borrower's decision whether or not to purchase the goods and services will not affect the licensee's decision to grant credit or the amount of or terms of the credit granted.

(f) If, at any time, the Commissioner has reason to believe that the conduct of any other business authorized under this section is contrary to the best interests of the borrowing public, the Commissioner shall hold a hearing pursuant to Chapter 150B of the General Statutes to determine whether or not to revoke the authority to conduct that business. The Commissioner shall revoke the authority to conduct any other business if he or she finds that the conduct of any other business authorized under this section is contrary to the best interests of the borrowing public.

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

(h) The books, records, and accounts relating to loans shall be kept in such manner as the Commissioner of Banks prescribes as to delineate clearly the loan business from any other business authorized by the Commissioner. (1961, c. 1053, s. 1; 1967, c. 769, s. 1; 1971, c. 1212; 1981, c. 464, s. 2; 1985, c. 154, ss. 7, 8, 9; 1987, c. 444, ss. 2, 3; 1989, c. 17, ss. 2, 13; 1991 (Reg. Sess., 1992), c. 765, s. 1; 2013-162, s. 2.)

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

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

(b) Computation of Interest. – Interest on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such interest shall not be compounded but interest on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or

portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided, however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid interest on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing interest, a day shall equal 1/365th of a year.

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

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

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

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

(f) Repealed by Session Laws 2001-519, s. 3, effective January 1, 2002. (1961, c. 1053, s. 1; 1969, c. 1303, ss. 13, 17-22; 1973, c. 1042, s. 3; 1975, c. 110, s. 1; 1979, c. 33, s. 2; 1981, c. 561, ss. 1-3; 1983, c. 68, s. 1; c. 126, s. 13; 1989, c. 17, s. 3; 2001-519, s. 3; 2013-162, s. 3.)

§ 53-173.1: Repealed by Session Laws 1989, c. 17, s. 4.

§ 53-173.2. Repealed by Session Laws 1975, c. 110, s. 2.

§ 53-174: Repealed by Session Laws 1989, c. 17, s. 4.

§ 53-175. Fee for returned checks.

A licensee may collect the fee for returned checks to the extent permitted by G.S. 25-3-506. This section shall apply to any loan made by any licensee under this Article. (1961, c. 1053, s. 1; 1969, c. 1303, s. 23; 1981, c. 561, s. 4; 1983, c. 68, s. 1; c. 126, s. 12; 1989, c. 17, s. 5; 1995 (Reg. Sess., 1996), c. 742, s. 21.)

§ 53-176. Rates, maturities and amounts.

(a) A licensee may make installment loans in aggregate amounts not exceeding fifteen thousand dollars ($15,000) and which shall not be repayable in fewer than 12 months or more than 96 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) With respect to a loan not exceeding ten thousand dollars ($10,000), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding four thousand dollars ($4,000), twenty-four percent (24%) per annum on that part of the unpaid principal balance exceeding four thousand dollars ($4,000) but not exceeding eight thousand dollars ($8,000), and

eighteen percent (18%) per annum on that part of the remainder of the unpaid principal balance.

(2) With respect to a loan exceeding ten thousand dollars ($10,000), eighteen percent (18%) per annum on the outstanding principal balance.

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

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

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

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

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

(f) Repealed by Session Laws 2013-162, s. 4, effective July 1, 2013. (1961, c. 1053, s. 1; 1969, c. 1303, s. 12.1; 1981, c. 561, s. 7; 1983, c. 68, s. 1; c. 126, ss. 14, 15; 1989, c. 17, s. 6; 1995, c. 155, s. 1; 2001-519, s. 4; 2013-162, s. 4.)

§ 53-176.1: Repealed by Session Laws 1989, c. 17, s. 4.

§ 53-177. Fees.

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

(b) Late Fees. –

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

(2) No licensee may charge a late payment fee in an amount greater than fifteen dollars ($15.00) nor charge a late payment fee more than once with respect to a single late payment.

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

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

(d) Insurance Policy. – If a licensee, in lieu of recording, collects a fee to purchase a nonfiling or nonrecording insurance policy as authorized under subsection (a) of this section, to be valid, any claim arising from such policy shall only be used to compensate the licensee for damages arising from failure to record or file its security interest in accordance with Article 9 of Chapter 25 of the General Statutes. Following payment of such claim, the licensee shall do the following:

(1) Properly credit the full claim amount posted to the balance of the loan effective the date the proceeds were received.

(2) Close the loan account and cease collection efforts on any loan that was paid in full by a claim.

(3) Provide the borrower written notice, unless otherwise prohibited by federal law, that (i) the claim has been partially paid or paid in full and (ii) to the extent the loan is subject to the insurance company's subrogation rights, instructions about direction of future payments.

(4) Cancel of record or properly credit, as appropriate, any judgments against the borrower arising from the loan and, if the judgment has been paid in part, file a certificate of partial satisfaction.

(5) Accurately report any account adjustments to any credit bureau used by the licensee.

(e) Recovery of Costs. – If a borrower requests in writing of the lender to take a voluntary dismissal of an action to recover a loan made under this Article, and both parties agree to such a dismissal, the lender shall obtain in writing from the borrower an acknowledgment that (i) the borrower will be liable for the statutory court costs and (ii) any other reasonable and bona fide costs incurred in the course of bringing the action, and the lender may recover the statutory court costs incurred as well as any other reasonable and bona fide costs incurred in the course of bringing the action. Nothing in this section shall be construed to authorize the collection of attorney fees otherwise prohibited by G.S. 53-180(e). Provided further, that this section shall not apply if the borrower, in written documentation raises an affirmative defense to an action to collect a loan under this Article. Nothing in this section shall in any way affect or prohibit a magistrate, judge, or arbitrator from awarding filing fees and fees for service of process incurred by the lender in bringing the civil action if a judgment is awarded or the other bona fide costs set forth above and the recovery of said costs and fees is expressly authorized in the event judgment is entered against the borrower. (1961, c. 1053, s. 1; 1989, c. 17, s. 7; 2000-169, s. 36; 2013-162, s. 5; 2015-179, s. 1.)

§ 53-178. No further charges; no splitting contracts; certain contracts void.

No further or other charges or insurance commissions shall be directly or indirectly contracted for or received by any licensee, affiliate, parent, subsidiary, or licensee under the same ownership, management, or control, whether partial or complete, except those specifically authorized by this Article, by the Commissioner under G.S. 53-172 or any other statute. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining interest or charges in excess of those authorized by this Article. All balances due to a licensee from any person as a borrower or as an endorser, guarantor or surety for any borrower or otherwise jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges, or exceeding the maximum amount of fifteen thousand dollars ($15,000). (1961, c. 1053, s. 1; 1991 (Reg. Sess., 1992), c. 765, s. 2; 2015-179, s. 2.)

§ 53-179: Repealed by Session Laws 2015-179, s. 3, effective September 1, 2015.

§ 53-180. Limitations and prohibitions on practices and agreements.

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

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

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

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

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

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

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

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

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

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

(k) Loans made pursuant to this Article solicited using a facsimile or negotiable check shall be subject to the provisions of G.S. 75-20(a). (1961, c. 1053, s. 1; 1969, c. 1303, s. 24; 1973, c. 1042, s. 7; 1979, c. 33, s. 3; 1981, c. 464, s. 3; 1985, c. 154, ss. 10-12; 1987, c. 444, s. 3; 1989, c. 17, ss. 8, 13; 2001-519, s. 5; 2013-162, s. 6.)

§ 53-180.1. Military service members limitation.

(a) Definition. – For purposes of this section, the term "covered military service member" means a member of the Armed Forces who is either (i) on active duty under a call or order that does not specify a period of 30 days or fewer or (ii) on active Guard and Reserve Duty, as that term is defined in 10 U.S.C. § 101(d)(6), with a rank of E4 or below.

(b) Requirements for Granting Loan. – A licensee may not make a loan to a borrower who is a covered military service member unless the following requirements are met:

(1) The licensee notifies the borrower's commanding officer or executive officer before the loan is consummated. Notification may occur verbally, by electronic means, United States mail, or other equivalent methods of notification. The notification method and date shall be recorded in writing and included in the loan file along with the name of the commanding officer or executive officer communicated with and the date of the communication with the commanding officer or executive officer.

(2) The licensee shall deposit in the United States mail a copy of the federal Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the complete contract for the loan addressed to the borrower's commanding officer or executive officer within five business days of the consummation of the loan.

(3) A covered military service member who has entered into a loan contract made pursuant to this Article may, within 30 days of entering into the loan contract, rescind the loan contract by returning to the licensee in cash or by certified bank check the amount advanced to or for the benefit of the covered military service member under the loan contract, and upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. Nothing in this provision shall be construed to restrict or eliminate any other penalties provided by State or federal law.

(4) The licensee shall give the covered military service member a separate disclosure that includes the statements and information required under G.S. 53-181(a). The licensee shall include the name and address of the North Carolina Commissioner of Banks, the Consumer Protection Division of the

North Carolina Department of Justice, and the Consumer Financial Protection Bureau. The licensee may include internal compliance information on the same disclosure.

(5) Notwithstanding section 2 of Title 9 of the United States Code, 9 U.S.C. § 2, or any other federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered military service member or dependent of such a covered military service member or any person who was a covered military service member or dependent of that covered military service member when the agreement was made.

(6) Repealed by Session Laws 2015-179, s. 4, effective September 1, 2015.

(b1) Reasonable Precaution to Identify Covered Military Service Members. – A licensee shall take reasonable precaution to prevent making loans in violation of this section. In the event that a licensee does not take reasonable precaution to identify covered military service members prior to making such a loan, such loans granted to covered military service members shall have the interest rate on the loan adjusted to eight percent (8%) per annum. Reasonable precaution may include obtaining a certificate from the Department of Defense Manpower Data Center (DMDC) that specifies whether the prospective borrower is or is not a member of the armed forces, a copy of the covered military service member's most recent leave and earnings statement, verification of borrower(s) income or any additional method approved by the Commissioner of Banks. In the event the DMDC system is down, the licensee shall obtain a computer screen copy of the failed request. Provided however, nothing in this section shall be construed to require covered military service member confirmation for a borrower with whom a licensee has an established customer relationship, or for a borrower who provides verification from the borrower's most recent payroll or and earnings statement, or verification of income clearly indicating that the borrower is not a covered military service member.

(c) Penalties and Remedies. –

(1) The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any incidental, consequential, or punitive damages.

(2) Any credit agreement, promissory note, or other contract prohibited under this section is null and void.

(3) Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 527.

(d) Additional Restriction. – When a military servicemember has been deployed to a theater of combat, combat supporting role, an area where hostile fire and/or when Imminent Danger Pay is authorized to the servicemember, a licensee shall not contact the military servicemember or member's spouse by telephone or electronic mail for purposes of collecting on the loan upon receiving sufficient proof of the military servicemember's deployment. An official copy of the military service member's orders for deployment or written verification from the servicemember's commanding officer shall constitute sufficient proof. (2013-162, s. 7; 2015-179, s. 4.)

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

(a) Contents of Statement Furnished to Borrower. – At the time a loan is made, the licensee shall deliver to the borrower, or if there be two or more borrowers, to one of them a copy of the loan contract, or a written statement, showing in clear and distinct terms:

(1) The name and address of the licensee and one of the primary obligors on the loan;
(2) The date of the loan contract;
(3) Schedule of installments or descriptions thereof;
(4) The cash advance;
(5) The face amount of the note evidencing the loan;
(6) The amount collected or paid for insurance, if any;
(7) The amount collected or paid for filing or other fees allowed by this Article;
(8) The collateral or security for the loan;
(9) If the loan refinances a previous loan, the following relating to the refinanced loan: (i) the principal balance due; (ii) interest charged that is included in the new loan; and (iii) rebates on any credit insurance, listed separately.
(10) In addition to any disclosures otherwise provided by law, a licensee soliciting loans using a facsimile or negotiable check shall provide the disclosures required by G.S. 75-20(a).

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

(c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take any confession of judgment or permit any borrower to execute a power of attorney in favor of any licensee or in favor of any third person to confess judgment or to appear for the borrower in any judicial proceeding and any such confession of judgment or power of attorney to confess judgment shall be absolutely void. (1955, c. 1279; 1961, c. 1053, s. 1; 1989, c. 17, s. 9; 2001-519, s. 6.)

§ 53-182. Payment of loans; receipts.

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

(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee. (1955, c. 1279; 1961, c. 1053, s. 1; 2001-519, s. 7.)

§ 53-183. Advertising, broadcasting, etc., false or misleading statements.

No licensee subject to this Article shall advertise, display, distribute, telecast, or broadcast or cause or permit to be advertised, displayed, distributed, telecasted, or broadcasted, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans. The Commissioner may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers. The Commissioner may permit or require licensees to refer in their advertising to the fact that their business is under State supervision, subject to conditions imposed by him to prevent an erroneous impression as to the scope or degree of protection provided by this Article. (1957, c. 1429, s. 3; 1961, c. 1053, s. 1.)

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

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

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

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

(d) Repealed by Session Laws 1997-285, s. 3, effective January 1, 1998. (1955, c. 1279; 1957, c. 1429, s. 4; 1961, c. 1053, s. 1; 1981, c. 561, s. 8; 1983, c. 68, s. 1; 1989, c. 17, s. 10; 1997-285, ss. 2, 3; 2001-519, s. 8; 2012-56, s. 12.)

§ 53-185. Rules and regulations by Banking Commission and Commissioner.

The State Banking Commission is hereby authorized, empowered and directed to make all rules and regulations deemed by the Commission to be necessary in implementing this Article and in providing for the protection of the borrowing public and the efficient management of such licensees and to give all necessary instructions to such licensees for the purpose of interpreting this Article; provided, the Commissioner is hereby authorized to make such rules and regulations and issue such orders as he deems necessary and desirable in implementing and carrying out the provisions of G.S. 53-184. And it shall be the duty of all such licensees, their officers, agents and employees, to comply fully with all such rules, regulations and instructions. When promulgated, any rule or regulation shall be forwarded by mail to each licensee at its licensed place of business at least 20 days prior to its effective date. (1955, c. 1279; 1961, c. 1053, s. 1.)

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

The Commissioner of Banks shall have the power and duty to issue subpoenas including subpoenas duces tecum, and compel attendance of witnesses, administer oaths, conduct hearings and transcribe testimony in making the investigations and conducting the hearings provided for herein or in the other discharge of his duties, and to give such publicity to his investigations and findings as he may deem best for the public interest. (1957, c. 1429, s. 5; 1961, c. 1053, s. 1.)

§ 53-187. Injunctive powers; receivers.

Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to violate any provision of this Article, he may in addition to all actions provided for in this Article, and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought in the name of the Commissioner on the relation of the State of North Carolina to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this Article through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court. (1957, c. 1429, s. 6; 1961, c. 1053, s. 1.)

§ 53-188. Review of regulations, order or act of Commission or Commissioner.

The Commission may review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order or act may appeal, pursuant to G.S. 53C-2-6(b), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to petition for judicial review pursuant to G.S. 53C-2-6(b). (1957, c. 1429, s. 6; 1961, c. 1053, s. 1; 1973, c. 1331, s. 3; 1987, c. 827, s. 13; 1995, c. 129, s. 29; 2009-57, s. 2; 2012-56, s. 13.)

§ 53-189. Insurance.

(a) Credit life, credit accident and health, credit unemployment, and credit property insurance may be written in accordance with the provisions of Article 57 of Chapter 58 of the General Statutes.

(b) The premium or cost of credit life, credit accident and health, credit unemployment, or credit property insurance, when written by or through any lender or other creditor, its affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal, of this State, or of any rule, regulation or order issued by any regulatory authority of this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 25; 1975, c. 660, s. 2; 1981, c. 759, s. 10; c. 876; 1987, c. 826, s. 10; 1993, c. 226, s. 14.)

§ 53-190. Loans made elsewhere.

(a) No loan contract made outside this State in the amount or of the value of fifteen thousand dollars ($15,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

(b) If any lender or agent of a lender who makes loan contracts outside this State in the amount or of the value of fifteen thousand dollars ($15,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article.

(c) No lender licensed to do business under this Article may collect, or cause to be collected, any loan made by a lender in another state to a borrower, who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition. (1961, c. 1053, s. 1; 1967, c. 769, s. 2; 1969, c. 1303, s. 13; 1973, c. 1042, s. 8; 1979, c. 706, s. 2; 1989, c. 17, s. 11; 2015-179, s. 5.)

§ 53-191. Businesses exempted.

Nothing in this Article shall be construed to apply to any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit

corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1; 1969, c. 1303, s. 26.)