

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 955

Short Title: Consumer Finance Act Changes.

(Public)

Sponsors: Representative Dawkins.

Referred to: Commerce.

April 19, 1991

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE NORTH CAROLINA CONSUMER FINANCE ACT TO
2 MODIFY THE RATES AND FEES ALLOWED TO BE CHARGED, TO GRANT
3 AUTHORITY TO WRITE INSURANCE IN THE SAME PLACE OF BUSINESS,
4 AND TO ALLOW THE TAKING OF SECOND MORTGAGES ON REAL
5 PROPERTY.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 53-172 reads as rewritten:

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

10 (a) No licensee shall conduct the business of making loans under this Article
11 within any office, suite, room, or place of business in which any other business is
12 solicited or engaged in unless, in the opinion of the Commissioner, such other business
13 would not be contrary to the best interests of the borrowing public and is authorized by
14 the Commissioner in writing.

15 If the conduct of any other business authorized by the Commissioner should, in the
16 opinion of the Commissioner, prove contrary to the best interests of the borrowing
17 public, the authority granted to conduct such business shall be withdrawn in writing by
18 the Commissioner.

19 (b) ~~Installment paper dealers as defined in G.S. 105-83, and the collection by a~~
20 ~~licensee of loans legally made in North Carolina, or another state by another~~
21 ~~government regulated lender or lending agency, shall not be considered as being any~~
22 ~~other business within the meaning of this section. The following shall not be considered~~
23 as being any other business within the meaning of this section:

24 (1) Installment paper dealers as defined in G.S. 105-83;

1 (2) The collection by a licensee of loans legally made in North Carolina,
2 or another state, by another government regulated lender or lending
3 agency; or

4 (3) Soliciting, making, or issuing contracts or policies, and all other
5 activities authorized under Chapter 58 of the General Statutes.

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

8 (d) The books, records, and accounts relating to loans shall be kept in such
9 manner as the Commissioner of Banks prescribes as to delineate clearly the loan
10 business from any other business authorized by the Commissioner."

11 Sec. 2. G.S. 53-173 reads as rewritten:

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

14 (a) Maximum Rate of Charge. – Every licensee hereunder may contract for,
15 compute, and receive on any loan of money, ~~not exceeding three thousand dollars~~
16 ~~(\$3,000) in amount, charges at rates not exceeding thirty six percent (36%) per annum~~
17 ~~on that part of the unpaid principal balance of any loan not in excess of six hundred~~
18 ~~dollars (\$600.00) and fifteen percent (15%) per annum on any remainder of such time,~~
19 nonrefundable processing fee of forty dollars (\$40.00). Every licensee hereunder may
20 also contract for, compute, and receive on any loan of money, the following charges:

21 (1) Loan not exceeding one thousand five hundred dollars (\$1,500) in
22 amount: charges at rates not exceeding thirty percent (30%) per
23 annum.

24 (2) Loan not exceeding two thousand dollars (\$2,000) in amount: charges
25 at rates not exceeding twenty-four percent (24%) per annum on that
26 part of the unpaid principal balance in excess of one thousand five
27 hundred dollars (\$1,500).

28 (3) Loan not exceeding five thousand dollars (\$5,000) in amount: charges
29 at rates not exceeding twenty-one percent (21%) per annum on that
30 part of the unpaid principal balance in excess of two thousand dollars
31 (\$2,000).

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

35 (a1) CPI Adjustments in Rates Chargeable. – An additional five percent (5%) per
36 annum is added to each of the interest rates which may be contracted for and charged
37 under this section, if the Commissioner of Banks on or before January 31 of each year
38 finds that the Consumer Price Index as of December 31 of the preceding year to that
39 index one year earlier equals or exceeds five percent (5%). For purposes of this
40 subsection, Consumer Price Index means the Consumer Price Index (all-items – United
41 States city average), as published by the United States Department of Labor, Bureau of
42 Labor Statistics.

43 (b) Computation of Charges. – Charges on loans made pursuant to this section
44 shall not be paid, deducted, or received in advance. Such charges shall not be

1 compounded but charges on loans shall (i) be computed and paid only as a percentage
2 of the unpaid principal balance or portion thereof and (ii) computed on the basis of the
3 number of days actually elapsed; provided, however, if part or all of the consideration
4 for a loan contract is the unpaid principal balance of a prior loan, then the principal
5 amount payable under the loan contract may include any unpaid charges on the prior
6 loan which have accrued within 90 days before the making of the new loan contract. For
7 the purpose of computing charges, a day shall equal 1/365th of a year. Any payment
8 made on a loan shall be applied first to any accrued interest and then to principal, and
9 any portion or all of the principal balance may be prepaid at any time without penalty.

10 (c) Limitation on Interest after Judgment. – If judgment be obtained against any
11 party on any loan made under the provisions of this section neither the judgment nor the
12 loan shall carry, from the date of the judgment, any interest in excess of eight percent
13 (8%) per annum.

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

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

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

30 Sec. 3. G.S. 53-176 reads as rewritten:

31 **"§ 53-176. Optional rates, maturities and amounts.**

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

- 39 (1) With respect to a loan not exceeding seven thousand five hundred
40 dollars (\$7,500), thirty percent (30%) per annum on that part of the
41 unpaid principal balance not exceeding one thousand dollars (\$1,000)
42 and eighteen percent (18%) per annum on the remainder of the unpaid
43 principal balance. Interest shall be contracted for and collected at the
44 single simple interest rate applied to the outstanding balance that

1 would earn the same amount of interest as the above rates for payment
2 according to schedule.

3 (2) With respect to a loan exceeding seven thousand five hundred dollars
4 (\$7,500), eighteen percent (18%) per annum on the outstanding
5 principal balance.

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

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

14 The due date of the first monthly payment shall not be more than 45 days following
15 the disbursement of funds under any such installment loan. A borrower under this
16 section may prepay all or any part of a loan made under this section without penalty.

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

26 Sec. 4. G.S. 53-180 reads as rewritten:

27 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

28 (a) Time and Payment Limitation. – Except as otherwise provided in this Article,
29 no licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan
30 under this Article providing for any scheduled repayment of principal more than 25
31 months from the date of making the contract if the cash advance is six hundred dollars
32 (\$600.00) or less; more than 37 months from the date of making the contract if the cash
33 advance is in excess of six hundred dollars (\$600.00) but not in excess of fifteen
34 hundred dollars (\$1,500); more than 49 months from the date of making the contract if
35 the cash advance is in excess of fifteen hundred dollars (\$1,500) but not in excess of
36 two thousand five hundred dollars (\$2,500); or more than 61 months if the cash advance
37 is in excess of two thousand five hundred dollars (\$2,500). Every loan contract shall
38 provide for repayment of the amount loaned in substantially equal installments, either of
39 principal or of principal and charges in the aggregate, at approximately equal periodic
40 intervals of time. Nothing contained herein shall prevent a loan being considered a new
41 loan because the proceeds of the loan are used to pay an existing contract.

42 (b) No Assignment of Earnings. – A licensee may not take an assignment of
43 earnings of the borrower for payment or as security for payment of a loan. An
44 assignment of earnings in violation of this section is unenforceable by the assignee of

1 the earnings and is revocable by the borrower. A sale of unpaid earnings made in
2 consideration of the payment of money to or for the account of the seller of the earnings
3 is deemed to be a loan to the seller by an assignment of earnings.

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

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

15 (e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the
16 provisions of G.S. 53-173, the agreement may not provide for payment by the borrower
17 of attorney fees.

18 (f) No Real Property as Security. – No licensee shall make any loan in a
19 principal amount less than three thousand dollars (\$3,000) or greater than five thousand
20 dollars (\$5,000) within this State which shall in any way be secured by real property.

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

25 (h) Limitations on Home Loans. – No affiliate operating in the same office or
26 subsidiary operating in the same office of a licensee shall make any home loan as
27 defined in G.S. 24-1.1A(e) in a principal amount of less than ~~three thousand dollars~~
28 ~~(\$3,000)~~ five thousand dollars (\$5,000).

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

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

37 Sec. 5. This act is effective upon ratification.