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Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors:

Referred to:

March 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE MAXIMUM INTEREST RATE ALLOWED AND TO MAKE
3 VARIOUS AMENDMENTS TO THE NORTH CAROLINA CONSUMER FINANCE
4 ACT TO ENSURE CONTINUED ACCESS TO CREDIT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 53-166(a) reads as rewritten:

7 "(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten~~
8 ~~thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) or less and contract for, exact, or
9 receive, directly or indirectly, on or in connection with any such loan, any charges whether for
10 interest, compensation, consideration, or expense, or any other purpose whatsoever, which in
11 the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as
12 provided in and authorized by this Article, and without first having obtained a license from the
13 Commissioner. The word "lending" as used in this section, shall include, but shall not be
14 limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

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

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

18 Installment paper dealers as defined in G.S. 105-83, ~~and~~ the collection by a licensee of
19 loans legally made in North ~~Carolina, Carolina~~ or another state by another government
20 regulated lender or lending agency, and the collection by a licensee of claims of, payments to,
21 or payments for an insurance company licensed in North Carolina and arising in any way from
22 a nonfiling or nonrecording insurance policy approved by the Commissioner of Insurance shall
23 not be considered as being any other business within the meaning of this section."

24 **SECTION 3.** G.S. 53-173 reads as rewritten:

25 "~~§ 53-173. Maximum rate of interest and fee; computation~~ Computation of interest;
26 application of payments; limitation on interest after judgment; limitation on
27 interest after maturity of the loan.

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



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1 (a1) ~~Maximum Fee.~~— In addition to the interest authorized in subsection (a) of this
2 section, a licensee making loans under this section may collect from the borrower a fee for
3 processing the loan equal to five percent (5%) of the loan amount not to exceed twenty-five
4 dollars (\$25.00), provided that such charges may not be assessed more than twice in any
5 12-month period.

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

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

20"

21 **SECTION 4.** G.S. 53-176 reads as rewritten:

22 "**§ 53-176. ~~Optional rates, Rates, maturities and amounts.~~**

23 (a) ~~In lieu of making loans in the amount and at the interest stated in G.S. 53-173 and~~
24 ~~for the terms stated in G.S. 53-180, a~~ licensee may at any time elect to make installment loans
25 in installments—aggregate amounts not exceeding ten thousand dollars (\$10,000) fifteen
26 thousand dollars (\$15,000) and which shall not be repayable in less fewer than six 12 months or
27 more than 8496 months and which shall not be secured by deeds of trust or mortgages on real
28 estate and which are repayable in substantially equal consecutive monthly payments and to
29 charge and collect interest in connection therewith which shall not exceed the following
30 actuarial rates:

31 (1) With respect to a loan not exceeding ~~seven thousand five hundred dollars~~
32 ~~(\$7,500),~~ ten thousand dollars (\$10,000), thirty percent (30%) per annum on
33 that part of the unpaid principal balance not exceeding ~~one thousand dollars~~
34 ~~(\$1,000) and eighteen percent (18%) per annum on the remainder of the~~
35 ~~unpaid principal balance. Interest shall be contracted for and collected at the~~
36 ~~single simple interest rate applied to the outstanding balance that would earn~~
37 ~~the same amount of interest as the above rates for payment according to~~
38 ~~schedule.~~ four thousand dollars (\$4,000), twenty-four percent (24%) per
39 annum on that part of the unpaid principal balance exceeding four thousand
40 dollars (\$4,000) but not exceeding eight thousand dollars (\$8,000), and
41 eighteen percent (18%) per annum on that part of the remainder of the
42 unpaid principal balance.

43 (2) With respect to a loan exceeding ~~seven thousand five hundred dollars~~
44 ~~(\$7,500),~~ ten thousand dollars (\$10,000), eighteen percent (18%) per annum
45 on the outstanding principal balance.

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

49 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
50 fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars
51 (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%) of

1 the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a
2 total fee of forty dollars (\$40.00), provided that such charges may not be assessed more than
3 twice in any 12-month period.

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

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

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

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

27 **SECTION 5.** G.S. 53-177 reads as rewritten:

28 "**§ 53-177. Recording fees.Fees.**

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

46 (b) Late Fees. –

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

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

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

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

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

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

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

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

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

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

26 **SECTION 6.** 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, no~~
 29 ~~licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this~~
 30 ~~Article providing for any scheduled repayment of principal more than 25 months from the date~~
 31 ~~of making the contract if the cash advance is six hundred dollars (\$600.00) or less; more than~~
 32 ~~37 months from the date of making the contract if the cash advance is in excess of six hundred~~
 33 ~~dollars (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); more than 49 months~~
 34 ~~from the date of making the contract if the cash advance is in excess of fifteen hundred dollars~~
 35 ~~(\$1,500) but not in excess of two thousand five hundred dollars (\$2,500); or more than 61~~
 36 ~~months if the cash advance is in excess of two thousand five hundred dollars (\$2,500). Every~~
 37 loan contract shall provide for repayment of the amount loaned in substantially equal
 38 installments, either of principal or of principal and charges in the aggregate, at approximately
 39 equal periodic intervals of time. Nothing contained herein shall prevent a loan being considered
 40 a new loan because the proceeds of the loan are used to pay an existing contract.

41 ...

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

49 ...

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

4"

5 **SECTION 7.** Article 15 of Chapter 53 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 53-180.1. Military service members limitation.**

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

12 (b) Verification; Requirements for Granting Loan. – Prior to making a loan under this
13 Article, a licensee will confirm whether the borrower is a military service member and
14 document this in the person's loan file. A licensee may not make a loan to a borrower who is a
15 military service member with a rank of E4 or below ("covered member") unless the following
16 requirements are met:

17 (1) The licensee notifies the borrower's company-level commander or equivalent
18 designee of the covered member before the loan is consummated.
19 Notification may occur verbally, by electronic means, United States mail, or
20 other equivalent methods of notification. The notification method and date
21 shall be recorded in writing and included in the loan file along with the name
22 of the company-level commander or equivalent designee communicated with
23 and the date of the communication with the company-level commander or
24 equivalent designee.

25 (2) The licensee shall deposit in the United States mail a copy of the federal
26 Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the
27 complete contract for the loan addressed to the borrower's company-level
28 commander or equivalent designee of the covered member within five
29 business days of the consummation of the loan.

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

38 (4) The licensee shall give the covered member a separate disclosure that
39 includes the statements and information required under G.S. 53-181(a). The
40 licensee shall include the name and address of the North Carolina
41 Commissioner of Banks, the Consumer Protection Division of the North
42 Carolina Department of Justice, and the Consumer Financial Protection
43 Bureau. The licensee may include internal compliance information on the
44 same disclosure.

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

1 (6) A licensee shall take reasonable precaution to prevent making loans in
2 violation of this section. In the event that a licensee does not take reasonable
3 precautions to identify covered members prior to making a loan, such loans
4 granted to covered members shall have the interest rate on the loan adjusted
5 to eight percent (8%) per annum.

6 (c) Penalties and Remedies. –

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

11 (2) Except as provided in subdivision (6) of subsection (b) of this section, any
12 credit agreement, promissory note, or other contract prohibited under this
13 section is null and void.

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

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

24 **SECTION 8.** This act becomes effective July 1, 2013.