

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40351-MUF-30

Short Title: Small Business Truth in Financing. (Public)

Sponsors: Representative Balkcom.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SMALL BUSINESS TRUTH IN FINANCING ACT.
3 The General Assembly of North Carolina enacts:
4 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a new Article
5 to read:

6 "Article 26.

7 "Small Business Truth in Financing Act.

8 **"§ 53-440. Short title.**

9 This Article may be cited as the "Small Business Truth in Financing Act."

10 **"§ 53-441. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Closed-end financing. – A type of commercial financing consisting of a
13 closed-end extension of credit, secured or unsecured, including equipment
14 financing. This term includes a commercial financing for a fixed principal
15 amount and a fixed duration.
- 16 (2) Commercial financing. – A sales-based financing, closed-end financing,
17 open-end financing, factoring transaction, or other form of financing, the
18 proceeds of which the recipient does not intend to use primarily for personal,
19 family, or household purposes. For purposes of determining whether a
20 financing is a commercial financing, a provider may rely on any statement of
21 intended purpose by the recipient and is not required to ascertain how the
22 proceeds are used. The recipient shall make this statement in any of the
23 following ways:
- 24 a. In a written or electronic record signed by the recipient.
- 25 b. Orally, so long as the provider documents the statement in the
26 provider's file for the recipient.
- 27 (3) Commissioner. – The North Carolina Commissioner of Banks.
- 28 (4) Control. – The power, directly or indirectly, to direct the management or
29 policy of an entity, whether through ownership of securities, by contract, or
30 otherwise. The following persons are presumed to control an entity:
- 31 a. A director, general partner, or executive officer of the entity.
- 32 b. A person that directly or indirectly has ownership of or the power to
33 vote ten percent (10%) or more of a class of outstanding voting
34 securities of the entity.
- 35 c. In the case of a limited liability company, a managing member.



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- 1 d. In the case of a partnership, a person that has the right to receive upon
2 dissolution, or has contributed, ten percent (10%) or more of the
3 capital of the partnership.
- 4 (5) Factoring transaction. – A type of commercial financing that includes an
5 agreement to purchase, transfer, or sell a legally enforceable claim for
6 payment held by a recipient for goods the recipient has supplied, or services
7 the recipient has rendered, that have been ordered but for which payment has
8 not yet been made.
- 9 (6) Finance charge. – The cost of financing as a dollar amount. This term includes
10 all of the following:
- 11 a. Any charge payable directly or indirectly by the recipient and imposed
12 directly or indirectly by the provider as an incident to or a condition of
13 the extension of financing.
- 14 b. Any charge that would have been included in the finance charge under
15 12 C.F.R. § 1026.4, as if that regulation applied.
- 16 c. Any other charge that the Commissioner determines to be part of the
17 finance charge.
- 18 (7) Financial institution. – Any of the following that is authorized to operate in
19 this State:
- 20 a. A bank, trust company, or industrial loan company having a charter,
21 license, or certificate issued by the United States, this State, or any
22 other state or jurisdiction of the United States.
- 23 b. A federally chartered savings and loan association, federal savings
24 bank, or federal credit union.
- 25 c. A savings and loan association, savings bank, or credit union
26 organized under the laws of this State or any other state.
- 27 (8) Open-end financing. – A type of commercial financing consisting of an
28 agreement for one or more extensions of open-end credit, secured or
29 unsecured. This term includes a commercial financing under a plan in which
30 all of the following are true:
- 31 a. The provider reasonably contemplates repeated transactions.
- 32 b. The provider may impose a finance charge from time to time on an
33 outstanding balance.
- 34 c. The amount of credit that may be extended to the recipient during the
35 term of the plan is generally made available to the extent that any
36 outstanding balance is repaid.
- 37 (9) Person. – An individual, corporation, partnership, limited liability company,
38 joint venture, association, joint stock company, trust, or unincorporated
39 organization, including a sole proprietorship.
- 40 (10) Provider. – Any person that extends a specific offer of commercial financing
41 to a recipient. This term includes a person that presents a specific offer of
42 commercial financing to a recipient on behalf of a third party. This term does
43 not include persons exempted under G.S. 53-442.
- 44 (11) Recipient. – A person residing in or operating in this State that is extended a
45 specific offer of commercial financing. This term includes the person's
46 authorized representative but does not include a broker.
- 47 (12) Sales-based financing. – A type of commercial financing in which the
48 recipient's repayment is based on a percentage of the recipient's volume of
49 sales or revenue in one of the following ways:
- 50 a. The recipient's payment amounts increase or decrease according to the
51 recipient's volume of sales or revenue.

b. The recipient makes regular payments in a fixed amount, but the financing includes a mechanism for reconciling these payments with the percentage of the recipient's volume of sales or revenue.

(13) Specific offer. – The specific terms of commercial financing, including price and amount, that are based on information about the recipient and that, if accepted by the recipient, are binding on the provider, subject to any specific conditions stated in the terms.

"§ 53-442. Exemptions.

(a) The following persons are exempt from this Article:

(1) A financial institution, including its holding company, subsidiaries, and affiliates that are under common ownership, direction, or control.

(2) A lender regulated under Chapter 23 (Farm Credit System) of Title 12 of the United States Code.

(3) Any person that makes no more than five commercial financing transactions in this State in a 12-month period.

(4) A motor vehicle dealer, as defined in G.S. 20-286, or any affiliate, employee, or agent of a motor vehicle dealer, or any person or entity that provides financing for the purchase of a motor vehicle, as defined in G.S. 20-286, or a recreational vehicle, as defined in G.S. 20-4.01.

(5) Any person, such as an equipment dealer or supplier, that is presenting a financing offer on behalf of an exempt person.

(6) Any officer or employee of an entity described in subdivisions (1) through (4) of this subsection when acting within the scope of his or her employment.

(b) A person providing technology services for commercial financing to a person exempted by subsection (a) of this section is also exempt from this Article so long as the person providing technology services is acting only in that capacity and has no interest in the commercial financing extended by the exempt entity in connection with the services. Technology services include licensing software and providing support services for technology.

(c) The following transactions are exempt from this Article:

(1) A commercial financing transaction secured by real property.

(2) A commercial financing transaction for an amount over five hundred thousand dollars (\$500,000).

(3) A lease, as defined in G.S. 25-2A-103.

(4) The sale, lease, rental, or subscription of a motor vehicle by a motor vehicle dealer licensed under G.S. 20-287.

(d) Consumer finance companies licensed and doing business under Article 15 of Chapter 53 of the General Statutes or doing business pursuant to Chapter 25A of the General Statutes are exempt from this Article.

"§ 53-443. Sales-based financing disclosure requirements.

(a) A provider shall provide all of the following disclosures to a recipient in a format prescribed by the Commissioner at the time of extending a specific offer of sales-based financing:

(1) The total amount of the commercial financing.

(2) The disbursement amount, if different from the total amount of the commercial financing. This amount does not include any fees deducted at the time of disbursement.

(3) The finance charge.

(4) The estimated annual percentage rate, using the words "annual percentage rate" or the abbreviation "APR," inclusive of the finance charge and any fees and calculated in accordance with 12 C.F.R. § 1026.22 based on the estimated term of repayment and the projected payment amounts. The estimated term of repayment and the projected payment amounts shall be calculated based on

- 1 the recipient's projected sales volume. The projected sales volume shall be
2 calculated in accordance with subsection (b) of this section.
- 3 (5) The total repayment amount, or the disbursement amount plus the finance
4 charge.
- 5 (6) The estimated term of repayment, based on the recipient's projected sales
6 volume.
- 7 (7) The payment amounts, based on the recipient's projected sales volume, as
8 follows:
- 9 a. For payment amounts that are fixed, all of the following:
- 10 1. The payment amounts and frequency.
- 11 2. If the payment frequency is other than monthly, the amount of
12 the average projected payment per month.
- 13 b. For payment amounts that are variable, all of the following:
- 14 1. A payment schedule or a description of the method used to
15 calculate the amounts and frequency of the payments.
- 16 2. The amount of the average projected payment per month.
- 17 (8) A description of all other potential fees not included in the finance charge,
18 including draw fees, late payment fees, and returned payment fees.
- 19 (9) The following information relating to a recipient's election to pay off or
20 refinance the commercial refinancing prior to full repayment:
- 21 a. Whether the recipient upon this election would be required to pay a
22 percentage of the unpaid portion of the finance charge, other than
23 interest accrued since the recipient's last payment. If so, the provider
24 shall disclose this percentage, as well as the maximum dollar amount
25 the recipient could be required to pay.
- 26 b. Whether the recipient upon this election would be required to pay any
27 fees not already included in the finance charge.
- 28 (10) A description of any collateral requirements or security interests.
- 29 (b) For purposes of this section, the provider shall calculate the recipient's projected sales
30 volume according to one of the two methods listed below. The provider shall use the same
31 method in all its sales-based financing and shall notify the Commissioner on which method it has
32 elected to use. The methods are as follows:
- 33 (1) Historical method. – If the provider elects to use the historical method, the
34 provider shall calculate the recipient's projected sales volume according to the
35 recipient's average volume of sales over a historical time period. The provider
36 shall use the same historical time period in all its sales-based financing, and
37 the historical time period shall be at least one month and shall not exceed 12
38 months.
- 39 (2) Opt-in method. – If the provider elects to use the opt-in method, the provider
40 shall determine the recipient's projected sales volume using any reasonable
41 method. The provider shall annually report to the Commissioner in a format
42 acceptable to the Commissioner a summary of its disclosed estimated annual
43 percentage rates in comparison to its actual annual percentage rates. The
44 Commissioner shall determine whether the deviations between the disclosed
45 estimated annual percentage rates and the actual annual percentage rates are
46 too great. In making this determination, the Commissioner may require
47 additional information from the provider. If the Commissioner determines that
48 the deviations are too great, the Commissioner shall order the provider to use
49 the historical method in all its sales-based financing.

1 (c) In determining under subdivision (b)(2) of this section whether the deviations
2 between disclosed estimated annual percentage rates and the actual annual percentage rates are
3 too great, the Commissioner may consider all of the following factors:

- 4 (1) Whether, based on the provider's knowledge at the time of the specific offer,
5 the provider's estimation of the annual percentage rate was reasonable and
6 made in good faith.
7 (2) Whether any unusual or extraordinary circumstances impacted the deviation.
8 (3) Whether the provider has explored other reasonable methods of calculating
9 the recipient's projected sales volume in an effort to achieve a closer
10 estimation of the annual percentage rate.

11 **"§ 53-444. Closed-end financing disclosure requirements.**

12 A provider shall provide all of the following disclosures to a recipient in a format prescribed
13 by the Commissioner at the time of extending a specific offer of closed-end financing:

- 14 (1) The total amount of the commercial financing.
15 (2) The disbursement amount, if different from the total amount of the
16 commercial financing. This amount does not include any fees deducted at the
17 time of disbursement.
18 (3) The finance charge.
19 (4) The annual percentage rate, using the words "annual percentage rate" or the
20 abbreviation "APR," inclusive of the finance charge and any fees and
21 calculated in accordance with 12 C.F.R. § 1026.22.
22 (5) The total repayment amount, or the disbursement amount plus the finance
23 charge.
24 (6) The term of repayment.
25 (7) The payment amounts as follows:
26 a. For payment amounts that are fixed, all of the following:
27 1. The payment amounts and frequency.
28 2. If the payment frequency is other than monthly, the amount of
29 the average projected payment per month.
30 b. For payment amounts that are variable, all of the following:
31 1. A payment schedule or a description of the method used to
32 calculate the amounts and frequency of the payments.
33 2. The amount of the average projected payment per month.
34 (8) A description of all other potential fees not included in the finance charge,
35 including draw fees, late payment fees, and returned payment fees.
36 (9) The following information relating to a recipient's election to pay off or
37 refinance the commercial refinancing prior to full repayment:
38 a. Whether the recipient upon this election would be required to pay a
39 percentage of the unpaid portion of the finance charge, other than
40 interest accrued since the recipient's last payment. If so, the provider
41 shall disclose this percentage, as well as the maximum dollar amount
42 the recipient could be required to pay.
43 b. Whether the recipient upon this election would be required to pay any
44 fees not already included in the finance charge.
45 (10) A description of any collateral requirements or security interests.

46 **"§ 53-445. Open-end financing disclosure requirements.**

47 (a) A provider shall provide all of the following disclosures to a recipient in a format
48 prescribed by the Commissioner at the time of extending a specific offer of open-end financing:

- 49 (1) The maximum amount of credit available to the recipient.
50 (2) The amount scheduled to be drawn by the recipient, if any. This amount does
51 not include any fees deducted at the time of disbursement.

- 1 (3) The finance charge.
- 2 (4) The annual percentage rate, using the words "annual percentage rate" or the
3 abbreviation "APR," inclusive of the finance charge and any fees and
4 calculated in accordance with 12 C.F.R. § 1026.22.
- 5 (5) The total repayment amount, or the draw amount plus the finance charge.
- 6 (6) The term of the plan.
- 7 (7) The payment amounts as follows:
- 8 a. For payment amounts that are fixed, all of the following:
- 9 1. The payment amounts and frequency.
- 10 2. If the payment frequency is other than monthly, the amount of
11 the average projected payment per month.
- 12 b. For payment amounts that are variable, all of the following:
- 13 1. A payment schedule or a description of the method used to
14 calculate the amounts and frequency of the payments.
- 15 2. The amount of the average projected payment per month.
- 16 (8) A description of all other potential fees not included in the finance charge,
17 including draw fees, late payment fees, and returned payment fees.
- 18 (9) The following information relating to a recipient's election to pay off or
19 refinance the commercial refinancing prior to full repayment:
- 20 a. Whether the recipient upon this election would be required to pay a
21 percentage of the unpaid portion of the finance charge, other than
22 interest accrued since the recipient's last payment. If so, the provider
23 shall disclose this percentage, as well as the maximum dollar amount
24 the recipient could be required to pay.
- 25 b. Whether the recipient upon this election would be required to pay any
26 fees not already included in the finance charge.
- 27 (10) A description of any collateral requirements or security interests.
- 28 (b) In calculating the finance charge in subdivision (a)(3) of this section, the annual
29 percentage rate in subdivision (a)(4) of this section, the total repayment amount in subdivision
30 (a)(5) of this section, and the payment amounts in subdivision (a)(7) of this section, the provider
31 shall deem the draw amount according to one of the two methods listed below. The provider shall
32 use the same method in all its open-end financing and shall notify the Commissioner on which
33 method it has elected to use. The methods are as follows:
- 34 (1) Total credit method. – If the provider elects to use the total credit method for
35 open-end commercial credit plans, the provider shall make its calculations by
36 assuming the maximum amount of credit available to the recipient, in each
37 case, is drawn and repaid at the minimum rate.
- 38 (2) Comparable method. – If the provider elects to use the comparable method for
39 open-end commercial credit plans, the provider shall determine its own
40 reasonable method for its calculations based on the draw and repayment
41 behavior of comparable transactions. The provider shall annually report to the
42 Commissioner in a format acceptable to the Commissioner a summary of its
43 disclosures and in comparison to its actual results as determined upon the
44 repayment of the transaction. The Commissioner shall determine whether the
45 deviations between the estimated results and the actual results are too great.
46 In making this determination, the Commissioner may require additional
47 information from the provider. If the Commissioner determines that the
48 deviations are too great, the Commissioner shall order the provider to use the
49 total credit method in all its open-end commercial credit plans.

1 (c) In determining under subdivision (b)(2) of this section whether the deviations
2 between disclosed estimates for subdivisions (a)(3), (a)(4), (a)(5), and (a)(7) of this section are
3 too great, the Commissioner may consider all of the following factors:

- 4 (1) Whether, based on the provider's knowledge at the time of the specific offer,
5 the provider's estimation was reasonable and made in good faith.
- 6 (2) Whether any unusual or extraordinary circumstances impacted the deviation.
- 7 (3) Whether the provider has explored other reasonable methods of calculation in
8 an effort to achieve a closer estimation of the actual results.

9 **"§ 53-446. Factoring transaction disclosure requirements.**

10 A provider shall provide all of the following disclosures to a recipient in a format prescribed
11 by the Commissioner at the time of extending a specific offer for a factoring transaction:

- 12 (1) The purchase amount, or the amount of accounts receivable purchased from
13 the recipient.
- 14 (2) The disbursement amount, if different from the purchase amount. This amount
15 does not include any fees deducted at the time of disbursement.
- 16 (3) The finance charge. This amount includes any discount deducted from the face
17 value of the accounts receivable.
- 18 (4) The estimated annual percentage rate, using that term, calculated according to
19 12 C.F.R. Part 1026 Appendix J, as a single advance, single payment
20 transaction. In making this calculation, the purchase amount is deemed to be
21 the financing amount, the purchase amount minus the finance charge
22 expressed as a negative number is deemed to be the total repayment amount,
23 and the term is determined by one of the following methods:
 - 24 a. By the payment due date of the accounts receivable.
 - 25 b. By the provider estimating the term as the average payment period by
26 the party owing the accounts receivable over a historical time period.
27 The historical time period shall not exceed the preceding 12 months.
- 28 (5) The total repayment amount, or the purchase amount plus the finance charge.
- 29 (6) A description of all other potential fees not included in the finance charge.
- 30 (7) A description of the receivables purchased and any additional collateral
31 requirements or security interests.

32 **"§ 53-447. Disclosure requirements for other forms of commercial financing.**

33 A provider shall provide all of the following disclosures to a recipient in a format prescribed
34 by the Commissioner at the time of extending a specific offer of commercial financing that is not
35 sales-based financing, open-end financing, closed-end financing, or a factoring transaction:

- 36 (1) The total amount of the commercial financing.
- 37 (2) The disbursement amount, if different from the total amount of the
38 commercial financing. This amount does not include any fees deducted at the
39 time of disbursement.
- 40 (3) The finance charge.
- 41 (4) The annual percentage rate, using the words "annual percentage rate" or the
42 abbreviation "APR," inclusive of the finance charge and any fees and
43 calculated in accordance with 12 C.F.R. § 1026.22.
- 44 (5) The total repayment amount, or the disbursement amount plus the finance
45 charge.
- 46 (6) The term of the financing.
- 47 (7) The payment amounts as follows:
 - 48 a. For payment amounts that are fixed, all of the following:
 - 49 1. The payment amounts and frequency.
 - 50 2. If the payment frequency is other than monthly, the amount of
51 the average projected payment per month.

- 1 b. For payment amounts that are variable, all of the following:
2 1. A payment schedule or a description of the method used to
3 calculate the amounts and frequency of the payments.
4 2. The amount of the average projected payment per month.
5 (8) A description of all other potential fees not included in the finance charge,
6 including draw fees, late payment fees, and returned payment fees.
7 (9) The following information relating to a recipient's election to pay off or
8 refinance the commercial refinancing prior to full repayment:
9 a. Whether the recipient upon this election would be required to pay a
10 percentage of the unpaid portion of the finance charge, other than
11 interest accrued since the recipient's last payment. If so, the provider
12 shall disclose this percentage, as well as the maximum dollar amount
13 the recipient could be required to pay.
14 b. Whether the recipient upon this election would be required to pay any
15 fees not already included in the finance charge.
16 (10) A description of any collateral requirements or security interests.

17 **"§ 53-448. Disclosure requirements for renewal financing.**

18 If, as a condition of obtaining new commercial financing, a provider requires the recipient to
19 pay off some or all of the balance of an existing commercial financing from the same provider,
20 the provider shall disclose all of the following in a format prescribed by the Commissioner at the
21 time of extending a specific offer of the new commercial financing:

- 22 (1) The amount of the new commercial financing that will be used to pay off any
23 prepayment charge or unpaid interest. If the total repayment amount for the
24 existing financing is fixed, the prepayment charge is equal to the product of
25 the finance charge for the existing financing multiplied by the percentage of
26 the total repayment amount that will be paid off, minus any portion of the total
27 repayment amount that will be forgiven.
28 (2) If the disbursement amount will be reduced to pay off a portion of the balance,
29 the amount by which the disbursement amount will be reduced.

30 **"§ 53-449. Additional requirements for disclosures.**

31 (a) If a provider is required to make disclosures under this Article, the provider shall
32 present these disclosures to the recipient as a document separate from all other information to be
33 signed by the recipient. The provider shall obtain the recipient's signature before proceeding with
34 the transaction.

35 (b) If a provider presents any information in addition to the disclosures required under
36 this Article, the provider shall not use the term "rate" in describing a metric other than the annual
37 percentage rate or estimated annual percentage rate or annual interest rate. The term "interest,"
38 when used to describe a percentage rate, shall only be used to describe annualized percentage
39 rates, such as the annual interest rate. When a provider states a rate of finance charge or a
40 financing amount to a recipient during an application process for commercial financing, the
41 provider shall also state the rate as an "annual percentage rate," using that term or the abbreviation
42 "APR."

43 (c) If the Commissioner determines that the laws of another state require commercial
44 financing disclosures that meet or exceed the commercial financing disclosure requirements
45 established in this Article, any commercial financing disclosure form that the other state approves
46 for the purposes of complying with the other state's commercial financing disclosure laws may
47 be used for the purposes of complying with the commercial financing disclosure requirements
48 established under this Article.

49 **"§ 53-450. Registration requirement.**

50 (a) A provider operating in this State shall register with the Commissioner in a format
51 prescribed by the Commissioner and shall submit a registration fee, as required by this section.

1 A provider shall comply with all provisions of this Article. The registration required by this
2 section shall be renewed every five years.

3 (b) A provider shall pay a nonrefundable fee of one thousand dollars (\$1,000) at the time
4 of registration and renewal.

5 **"§ 53-451. Registration application.**

6 Applications for registration under this Article shall be filed through the Commissioner. To
7 be considered complete, the application shall be verified by attestation of the applicant or a
8 designee of the applicant and shall include all of the following:

9 (1) The applicant's legal name, along with any assumed business name, principal
10 address, including street address and mailing address, contact information,
11 and social security number or taxpayer identification number.

12 (2) The applicant's form and place of organization, if applicable.

13 **"§ 53-452. Notice of material change.**

14 If the information contained in any document filed with the Commissioner under this Article
15 is or becomes inaccurate or incomplete in any material respect, the provider shall, within 30 days,
16 file a correcting amendment to the information contained in the document.

17 **"§ 53-453. Consumer complaints.**

18 The Commissioner may receive a complaint from a recipient regarding a provider in regards
19 to the requirements set forth in this Article and, upon receipt of the complaint, may investigate
20 the provider for failure to comply with this Article.

21 **"§ 53-454. Confidentiality.**

22 (a) All information obtained by the Commissioner under this Article is subject to
23 confidential treatment as provided in G.S. 53C-2-7.

24 (b) The Commissioner may enter into written agreements with other governmental
25 agencies, the Conference of State Bank Supervisors, or other associations representing
26 governmental agencies and may share otherwise confidential information pursuant to these
27 agreements.

28 (c) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any
29 information provided under subsection (b) of this section, and any privilege arising under any
30 other federal or State law with respect to the information, continue to apply to the information
31 after it has been disclosed to an entity described in subsection (b) of this section. Information
32 held by the entity is not subject to disclosure under any State law governing the disclosure to the
33 public of information held by an officer or agency of the State. The entities described in
34 subsection (b) of this section may share information with State and federal regulatory officials
35 without the loss of privilege or the loss of confidentiality protections provided by State and
36 federal law.

37 **"§ 53-455. Rules; appeal by aggrieved person.**

38 (a) The Commissioner may adopt rules to enforce this Article, including rules to calculate
39 metrics required to be disclosed under this Article.

40 (b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule adopted or order
41 issued by the Commissioner may appeal to the State Banking Commission for review upon
42 providing a written notice of appeal within 20 days after the rule was adopted or order was issued.
43 The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal
44 from a contested case proceeding before the Commissioner, shall set forth in numbered order the
45 assignments of error for review by the State Banking Commission. Failure to specify the
46 assignments of error or failure to comply with the briefing schedule provided by the State
47 Banking Commission constitutes grounds to dismiss the appeal. Any party aggrieved by a
48 decision of the State Banking Commission may petition for judicial review pursuant to
49 G.S. 53C-2-6(b).

50 **"§ 53-456. Penalties; enforcement.**

1 (a) After notice and opportunity for hearing in accordance with Article 3A of Chapter
2 150B of the General Statutes, if the Commissioner finds that a provider has violated any provision
3 of this Article or any rule adopted under it, the Commissioner may do any of the following:

4 (1) Order the provider to cease and desist from any violations of this Article.

5 (2) Assess a civil penalty of not more than two thousand dollars (\$2,000) for each
6 violation or ten thousand dollars (\$10,000) for each violation that the
7 Commissioner finds to be willful. The clear proceeds of civil penalties
8 imposed pursuant to this section shall be remitted to the Civil Penalty and
9 Forfeiture Fund in accordance with G.S. 115C-457.2.

10 (b) The powers vested in the Commissioner by this Article are in addition to any other
11 enforcement powers of the Commissioner."

12 **SECTION 2.** This act is effective 60 days after it becomes law and applies to
13 transactions occurring on or after that date.