

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1042
HOUSE BILL 1453

AN ACT TO AMEND THE NORTH CAROLINA CONSUMER FINANCE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-166(a) as the same appears in Volume 2B of the 1973 Cumulative Supplement to the General Statutes of North Carolina is amended by striking the words and numerals "nine hundred dollars (\$900.00)" in the second line thereof and substituting in lieu thereof the words and numerals "fifteen hundred dollars (\$1500)," and by striking "G.S. 24-1.1" in the sixth line thereof and substituting in lieu thereof "Chapter 24."

Sec. 2. G.S. 53-168(c) as the same appears in Volume 2B of the 1973 Cumulative Supplement to the General Statutes of North Carolina is amended to read as follows:

"(c) Existing business. Notwithstanding the provisions of this section, any person, firm or corporation which, on December 31, 1973, was a licensee under this Article either as a licensee to make loans under the provisions of G.S. 53-173 or as a motor vehicle lender under G.S. 53-176.1, may surrender such license to the commissioner within 90 days after the effective date of this subsection and elect to become a licensee to make loans under either G.S. 53-173 or G.S. 53-176.1 but not both. Such license shall be issued by the commissioner without further application or investigation and the licensee shall be deemed a licensee under the category that it elects upon the surrender of its current license and the election."

Sec. 3. G.S. 53-173 as the same appears in Volume 2B of the 1973 Cumulative Supplement to the General Statutes of North Carolina is amended to read as follows:

"§53-173. Maximum rate of charge; computation of charges; limitation on interest after judgment; limitation on interest after maturity of the loan; inapplicability of other sections. — (a) Maximum rate of charge. Every licensee hereunder may contract for, compute, and receive on any loan of money, not exceeding fifteen hundred dollars (\$1500) in amount, charges at rates not exceeding two and one-half percent (2 1/2%) per month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars (\$300.00) and one and one-half percent (1-1/2%) per month on any remainder of such unpaid principal balance.

(b) Computation of charges. Charges on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such charges shall not be compounded but charges on loans shall (1) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (2) 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 charges on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing charges, a month shall be that period of time from one date in a month to the corresponding date in the following month but if there is no corresponding date, then to the last day of such following month, and a day shall be one-thirtieth of a month where computation is made for a fraction of a month. Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.

(c) Limitation on interest after judgment. If judgment be 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 six percent (6%) 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 six percent (6%) per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

(e) Inapplicability of other sections. The provisions of G.S. 53-173.1, G.S. 53-174 and 53-175 shall not apply to any loan made pursuant to the provisions of this section.

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

Sec. 4. Chapter 53 of the General Statutes is amended by inserting a new section to be designated G.S. 53-173.1 to read as follows:

"§ 53-173.1. Computations; other procedures. — Every loan made pursuant to the provisions of this Article other than G.S. 53-173 shall be repayable in substantially equal consecutive monthly installments, and subject to the following:

(a) The charge for payment according to schedule shall be computed at the time the loan is made and when computed shall be added to the cash advance. A licensee shall compute monthly charges for a period of time less than one year at one-twelfth of the annual rate for each loan month and shall compute charges for a period of less than one loan month at one-thirtieth of one-twelfth of the annual rate for each day. A loan month is that period of time from one date in the month through the corresponding date in the next month. If there is no corresponding date, then the last day of the next month will be used. All payments made on account, except those applied to default or deferment charges, shall be applied to the unpaid installments in the order in which they are due.

(b) The licensee shall not fix a due date of the first installment of any loan contract providing for monthly installments for a term exceeding 45 actual days from the date of the loan. When the first payment of any such contract may be due on a date beyond a loan month defined above, a licensee will be permitted to make an additional charge for the number of days in excess of 30 or the number of days in excess of one loan month from the date of the loan, whichever is less. The charge for the extra days may be added to the amount of the first installment and shall be excluded in computing any rebate.

(c) If, as of an installment due date the payment dates of all unpaid installments are deferred for one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge, which shall not exceed that portion of the charge for payment according to schedule originally added to the cash advance attributable under the rule of seventy-eights (78's) or the sum of the digits principle to the first of the deferred monthly installment periods multiplied by the number of months in which no schedule payment has been made or in which no payment is required by reason of the deferment. The Banking Commission may promulgate any further rules and regulations which may be necessary with regard to the provisions of this subsection."

Sec. 5. G.S. 53-176.1 as the same appears in the 1973 Cumulative Supplement to the General Statutes of North Carolina is amended by deleting the first sentence of subsection (a) and by changing the second sentence to read as follows:

"Any person applying for a license as a motor vehicle lender shall meet all the requirements of G.S. 53-168."

Sec. 6. The last sentence of G.S. 53-179 as the same appears in the 1973 Cumulative Supplement to the General Statutes of North Carolina is rewritten to read as follows: "Such loans granted inadvertently resulting in a total liability of fifteen hundred dollars (\$1500) or less, shall be adjusted to the rates applicable under the Article to a single loan of equivalent amount, and when the total liability on such loans is in excess of fifteen hundred dollars (\$1500), interest shall be adjusted to simple interest at six percent (6%) per annum on the entire obligation."

Sec. 7. G.S. 53-180 as the same appears in the 1973 Cumulative Supplement to the General Statutes of North Carolina is rewritten to read as follows:

"§ 53-180. Limitations and prohibitions on practices and agreements. — (a) Time and payment limitation. Except as otherwise provided in this Article, no licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this Article providing for any scheduled repayment of principal more than 25 months from the date of making the contract if the cash advance is six hundred dollars (\$600.00) or less; nor more than 37 months from the date of making the contract if the cash advance is in excess of six hundred dollars (\$600.00). 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 act with respect to default by the borrower is enforceable only to the extent that (1) the borrower fails to make a payment as required by the agreement, or (2) 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 an 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. 53-173, the agreement may not provide for payment by the borrower of attorney fees.

(f) No real property as security. No loan made pursuant to the provisions of G.S. 53-173 shall be secured in any way by an interest in 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."

Sec. 8. G.S. 53-190 as the same appears in the 1973 Cumulative Supplement to the General Statutes of North Carolina is amended by striking the words and numerals "nine

hundred dollars (\$900.00)" in the second line and substituting in lieu thereof the words and numerals "fifteen hundred dollars (\$1500)".

Sec. 9. Chapter 53 of the General Statutes is amended by inserting a new section to be designated as G.S. 53-173.2 to read as follows:

"§ 53-173.2. **Special rate.** — In lieu of making loans pursuant to G.S. 53-173, a licensee may make loans at a rate not in excess of one dollar (\$1.00) for each five dollars (\$5.00) of cash advance to the borrower up to the amount of one hundred dollars (\$100.00) and a period of at least 15 days must be allowed for repayment of each five dollars (\$5.00) cash advance. Such charges shall not be assessed by any subterfuge or device on any loan over one hundred dollars (\$100.00) or on any balance of one hundred dollars (\$100.00) or less when the original loan was greater than one hundred dollars (\$100.00). Provided, however, that if there is an unpaid balance on a loan made under this section, no further loan can be made by the licensee to the borrower until the unpaid balance has been paid in full."

Sec. 10. This act shall become effective 60 days after ratification.

In the General Assembly read three times and ratified, this the 26th day of March, 1974.