

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1635*

Short Title: Revisions to Consumer Lending.

(Public)

Sponsors: Representatives Wright; Bowie, Brubaker, Church, Creech, Dockham, Earle, Gibson, Hurley, McMahan, Tallent, and Wainwright.

Referred to: Financial Institutions, if favorable, Rules, Calendar, and Operations of the House.

May 18, 2000

A BILL TO BE ENTITLED

1
2 AN ACT TO REVISE THE APPLICABLE INTEREST RATES ON LOANS MADE
3 PURSUANT TO THE CONSUMER FINANCE ACT UNDER CERTAIN
4 CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE FOR
5 CERTAIN LOANS, TO ALLOW BORROWERS TO CANCEL LOANS UNDER
6 CERTAIN CIRCUMSTANCES, TO ALLOW LENDERS TO CHARGE A LATE
7 PAYMENT PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE
8 DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR
9 NEGOTIABLE CHECKS, AND TO ALLOW LENDERS TO MAINTAIN
10 CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS.

11 The General Assembly of North Carolina enacts:

12 Section 1. G.S. 53-176 reads as rewritten:

13 "**§ 53-176. Optional rates, maturities and amounts.**

14 (a) In lieu of making loans in the amount and at the charges stated in G.S. 53-173
15 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in
16 installments not exceeding ten thousand dollars (\$10,000) and which shall not be
17 repayable in less than six months or more than 84 months and which shall not be secured
18 by deeds of trust or mortgages on real estate and which are repayable in substantially

1 equal consecutive monthly payments and to charge and collect interest in connection
2 therewith which shall not exceed the following actuarial rates:

- 3 (1) ~~With respect to a loan not exceeding seven thousand five hundred~~
4 ~~dollars (\$7,500), thirty percent (30%) per annum on that part of the~~
5 ~~unpaid principal balance not exceeding one thousand dollars (\$1,000)~~
6 ~~and eighteen percent (18%) per annum on the remainder of the unpaid~~
7 ~~principal balance. Interest shall be contracted for and collected at the~~
8 ~~single simple interest rate applied to the outstanding balance that would~~
9 ~~earn the same amount of interest as the above rates for payment~~
10 ~~according to schedule. two thousand dollars (\$2,000), twenty-eight~~
11 ~~percent (28%) per annum on the outstanding principal balance.~~
- 12 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~
13 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding principal~~
14 ~~balance. two thousand dollars (\$2,000) but not more than three thousand~~
15 ~~five hundred dollars (\$3,500), twenty-five percent (25%) per annum on~~
16 ~~the outstanding principal balance.~~
- 17 (3) ~~With respect to a loan exceeding three thousand five hundred dollars~~
18 ~~(\$3,500) but not more than five thousand dollars (\$5,000), twenty-three~~
19 ~~percent (23%) per annum on the outstanding principal balance.~~
- 20 (4) ~~With respect to a loan exceeding five thousand dollars (\$5,000) but not~~
21 ~~more than seven thousand five hundred dollars (\$7,500), twenty-one~~
22 ~~percent (21%) per annum on the outstanding principal balance.~~
- 23 (5) ~~With respect to a loan exceeding seven thousand five hundred dollars~~
24 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding~~
25 ~~principal balance.~~

26 (b) ~~In addition to the interest permitted in this section, a licensee may assess at~~
27 ~~closing a reasonable credit investigation charge as agreed upon by the parties, fee for~~
28 ~~processing the loan equal to five percent (5%) of the cash advance, not to exceed the~~
29 ~~actual cost of the credit investigation, twenty-five dollars (\$25.00) for loans not in excess of~~
30 ~~two thousand dollars (\$2,000), and not to exceed fifty dollars (\$50.00) for loans in excess~~
31 ~~of two thousand dollars (\$2,000). ~~provided that such charges~~ Except as otherwise provided~~
32 ~~by this subsection, the processing fee may not be assessed only once for each loan. more~~
33 ~~than twice in any 12-month period. If a loan in excess of two thousand dollars (\$2,000) is~~
34 ~~renewed, extended, or refinanced, in which the borrower receives a new cash advance in~~
35 ~~an amount equal to at least twenty percent (20%) of the outstanding principal balance of~~
36 ~~the existing loan, a fee for processing the loan may be assessed not to exceed fifty dollars~~
37 ~~(\$50.00). For all other renewed extended or refinanced loans, a licensee may assess at~~
38 ~~closing a fee for processing the loan equal to five percent (5%) of the cash advance, not~~
39 ~~to exceed twenty-five dollars (\$25.00) and the fee may not be assessed more than twice in~~
40 ~~a 12-month period, the initial processing fee being the first. It shall be unlawful for any~~
41 ~~lender to structure a loan for the specific purpose of obtaining a higher fee. The penalty~~
42 ~~for such action is forfeiture of the fee. The Commissioner of Banks may review charges~~

1 assessed pursuant to this ~~section~~subsection and may adopt appropriate rules in
2 accordance with G.S. 53-185.

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

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

11 (e) The due date of the first monthly payment shall not be more than 45 days
12 following the disbursement of funds under any such installment loan. A borrower under
13 this section may prepay all or any part of a loan made under this section without penalty.
14 No more than twice in a 12-month period, a borrower may cancel a loan with the same
15 licensee within 15 calendar days after disbursement of the loan proceeds without
16 incurring or paying interest so long as the amount of the loan, minus any fees or charges,
17 is returned to or received by the licensee.

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

26 (g) A lender may charge a party to a loan or extension of credit governed by this
27 section a late payment charge not to exceed five percent (5%) of the payment due or ten
28 dollars (\$10.00), whichever is greater, for any payment past due for 15 days or more;
29 provided, in no case shall the late charge exceed the outstanding principal balance. If a
30 late payment charge has been once imposed with respect to a late payment, no late charge
31 shall be imposed with respect to any future payment which would have been timely and
32 sufficient but for the previous default."

33 Section 2. G.S. 53-181(a) is amended by adding a new subdivision to read:

34 "(10) In addition to any disclosures otherwise provided by law, a licensee
35 soliciting loans using a facsimile or negotiable check shall disclose the
36 following:

37 'THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED
38 DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

39 This notice shall be printed in not less than 12-point bold type and shall
40 appear conspicuously on the offer."

41 Section 3. G.S. 53-182(b) reads as rewritten:

42 "(b) Upon payment of any loan in full, a licensee shall cancel and return to the
43 borrower, within a reasonable length of time, originals or copies of any note, assignment,

1 mortgage, deed of trust, or other instrument securing such loan, which no longer secures
2 any indebtedness of the borrower to the licensee."

3 Section 4. G.S. 53-184(a) reads as rewritten:

4 "(a) Each licensee shall maintain all books and records relating to loans made under
5 this Article required by the Commissioner of Banks to be kept, and the Commissioner,
6 his deputy, or duly authorized examiner or agent or employee is authorized and
7 empowered to examine such records at any reasonable time. Such books and records may
8 be maintained in the form of magnetic tape, magnetic ~~disk-disk~~, optical disk, or other
9 form of computer, electronic or microfilm media available for examination on the basis
10 of computer printed reproduction, video display or other medium acceptable to the
11 Commissioner of Banks; provided, however, that such books and records so kept must be
12 convertible into clearly legible tangible documents within a reasonable time. Any
13 licensee having more than one licensed office may maintain such books and records at a
14 location other than the licensed office location if such location is approved by the
15 Commissioner; provided that, upon such requirements as may be imposed by the
16 Commissioner of Banks, there shall be available to the borrower at each licensed location
17 or such other location convenient to the borrower, as designated by the licensee, complete
18 loan information; and provided further that such books and records of each licensed
19 office shall be clearly segregated. When a licensee maintains its books and records
20 outside of North Carolina, the licensee shall make them available for examination at the
21 place where they are maintained and shall pay for all reasonable and necessary expenses
22 incurred by the Commissioner in conducting such examination. Where the data
23 processing for any licensee is performed by a person other than the licensee, the licensee
24 shall provide to the Commissioner of Banks a copy of a binding agreement between the
25 licensee and the data processor which allows the Commissioner of Banks, his deputy, or
26 duly authorized examiner or agent or employee to examine that particular data processor's
27 activities pertaining to the licensee to the same extent as if such services were being
28 performed by the licensee on its own premises; and, notwithstanding the provisions of
29 G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall
30 reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~the
31 Commissioner in such examination."

32 Section 5. This act becomes effective October 1, 2000, and applies to loans
33 made on or after that date.