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SENATE DRS85135-ML-139 (03/15)

Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors: Senators Gunn, Newton, and Clodfelter (Primary Sponsors).

Referred to:

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.

35 (a1) ~~Maximum Fee.~~ — In addition to the interest authorized in subsection (a) of this
36 section, a licensee making loans under this section may collect from the borrower a fee for



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1 ~~processing the loan equal to five percent (5%) of the loan amount not to exceed twenty five~~
2 ~~dollars (\$25.00), provided that such charges may not be assessed more than twice in any~~
3 ~~12-month period.~~

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

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

18"

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

20 "**§ 53-176. ~~Optional rates,~~Rates, maturities and amounts.**

21 (a) ~~In lieu of making loans in the amount and at the interest stated in G.S. 53-173 and~~
22 ~~for the terms stated in G.S. 53-180, a~~ licensee may at any time elect to make loans in
23 installments not exceeding ~~ten thousand dollars (\$10,000)~~fifteen thousand dollars (\$15,000)
24 and which shall not be repayable in less than ~~six~~12 months or more than ~~84~~96 months and
25 which shall not be secured by deeds of trust or mortgages on real estate and which are
26 repayable in substantially equal consecutive monthly payments and to charge and collect
27 interest in connection therewith which shall not exceed the following actuarial rates:

28 (1) ~~With respect to a loan not exceeding seven thousand five hundred dollars~~
29 ~~(\$7,500), ~~thirty~~Thirty percent (30%) per annum on that part of the unpaid~~
30 ~~principal balance not exceeding one thousand dollars (\$1,000) and eighteen~~
31 ~~percent (18%) per annum on the remainder of the unpaid principal balance.~~
32 ~~Interest shall be contracted for and collected at the single simple interest rate~~
33 ~~applied to the outstanding balance that would earn the same amount of~~
34 ~~interest as the above rates for payment according to schedule.~~five thousand
35 dollars (\$5,000).

36 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~
37 ~~(\$7,500), ~~eighteen~~ percent (18%) per annum on the outstanding principal~~
38 ~~balance.~~Twenty-four percent (24%) per annum on that part of the unpaid
39 principal balance exceeding five thousand dollars (\$5,000) but not exceeding
40 ten thousand dollars (\$10,000).

41 (3) Eighteen percent (18%) per annum on that part of the remainder of the
42 unpaid principal balance.

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

46 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
47 fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars
48 (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%) of
49 the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a
50 total fee of forty dollars (\$40.00), provided that such charges may not be assessed more than
51 twice in any 12-month period.

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

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

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

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

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

25 "**§ 53-177. Recording fees.Fees.**

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

43 (b) Late Fees. –

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

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

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

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

- 7 (1) Properly credit the full claim amount posted to the balance of the loan
 8 effective the date the proceeds were received.
- 9 (2) Close the loan account and cease collection efforts on any loan that was paid
 10 in full by a claim.
- 11 (3) Provide the borrower written notice, unless otherwise prohibited by federal
 12 law, that (i) the claim has been partially paid or paid in full and (ii) to the
 13 extent the loan is subject to the insurance company's subrogation rights,
 14 instructions about direction of future payments.
- 15 (4) Cancel of record or properly credit, as appropriate, any judgments against
 16 the borrower arising from the loan and, if the judgment has been paid in part,
 17 file a certificate of partial satisfaction.
- 18 (5) Accurately report any account adjustments to any credit bureau used by the
 19 licensee."

20 **SECTION 6.** G.S. 53-180 reads as rewritten:

21 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

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

35 ...

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

43 ...

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

47 "

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

50 **"§ 53-180.1. Military service members limitation.**

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

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

9 (1) The licensee notifies the borrower's company-level commander or the
10 company-level commander's equivalent designee before the loan is
11 consummated. Notification may occur verbally, by electronic means, United
12 States mail, or other equivalent methods of notification. The notification
13 method and date shall be recorded in writing and included in the loan file
14 along with the name of the company-level commander or equivalent
15 designee communicated with and the date of the communication with the
16 company-level commander or equivalent designee.

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

22 (3) A military service member who has entered into a loan contract made
23 pursuant to this Article may, within 30 days of entering into the loan
24 contract, rescind the loan contract by returning to the licensee in cash or by
25 certified bank check the amount advanced to or for the benefit of the military
26 service member under the loan contract, and upon delivery of those funds to
27 the licensee, the borrower shall have no further liability or obligations under
28 the loan contract. Nothing in this provision shall be construed to restrict or
29 eliminate any other penalties provided by State or federal law.

30 (4) The licensee shall give the military service member a separate disclosure
31 that includes the statements and information required under G.S. 53-181(a).
32 The licensee shall include the name and address of the North Carolina
33 Commissioner of Banks, the Consumer Protection Division of the North
34 Carolina Department of Justice, and the Consumer Financial Protection
35 Bureau. The licensee may include internal compliance information on the
36 same disclosure.

37 (5) Notwithstanding Section 2 of Title 9 of the United States Code, 9 U.S.C. § 2,
38 or any other federal or State law, rule, or regulation, no agreement to
39 arbitrate any dispute involving the extension of consumer credit shall be
40 enforceable against any military service member or dependent of such a
41 member or any person who was a military service member or dependent of
42 that member when the agreement was made.

43 (6) A licensee shall take reasonable precaution to prevent making loans in
44 violation of this section. In the event that a licensee does not take reasonable
45 precautions to identify military service members prior to making a loan, such
46 loans granted to military service members shall have the interest rate on the
47 loan adjusted to eight percent (8%) per annum.

48 (c) Penalties and remedies. –

49 (1) The remedies and rights provided under this section are in addition to and do
50 not preclude any remedy otherwise available under law to the person

1 claiming relief under this section, including any incidental, consequential, or
2 punitive damages.
3 (2) Except as provided in subdivision (6) of subsection (b) of this section, any
4 credit agreement, promissory note, or other contract prohibited under this
5 section is null and void.
6 (3) Nothing in this section may be construed to limit or otherwise affect the
7 applicability of Section 207 of the Servicemembers Civil Relief Act, 50
8 U.S.C. App. § 527.
9 (d) Additional Restriction. – When a military service member has been deployed to a
10 theater of combat, a licensee shall not contact the military service member by telephone or
11 electronic mail for purposes of collecting on the loan upon receiving sufficient proof of the
12 military service member's deployment. An official copy of the military service member's orders
13 for deployment shall constitute sufficient proof."

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