

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 969

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

Sponsors: Representatives Gailliard and Setzer (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

May 12, 2021

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) Borrower. – A person residing in or operating in this State that is extended a
13 specific offer of commercial financing. This term includes the person's
14 authorized representative but does not include a broker.

15 (2) Closed-end financing. – A type of commercial financing consisting of a
16 closed-end extension of credit, secured or unsecured, including equipment
17 financing. This term includes a commercial financing for a fixed principal
18 amount and a fixed duration.

19 (3) Commercial financing. – A sales-based financing, closed-end financing,
20 open-end financing, factoring transaction, or other form of financing, the
21 proceeds of which the borrower does not intend to use primarily for personal,
22 family, or household purposes. For purposes of determining whether a
23 financing is a commercial financing, a covered lender may rely on any
24 statement of intended purpose by the borrower and is not required to ascertain
25 how the proceeds are used. The borrower shall make this statement in any of
26 the following ways:

27 a. In a written or electronic record signed by the borrower.

28 b. Orally so long as the covered lender documents the statement in the
29 covered lender's file for the borrower.

30 (4) Commissioner. – The North Carolina Commissioner of Banks.

31 (5) Control. – The power, directly or indirectly, to direct the management or
32 policy of an entity, whether through ownership of securities, by contract, or
33 otherwise. The following persons are presumed to control an entity:

34 a. A director, general partner, or executive officer of the entity.



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- 1 b. A person that directly or indirectly has ownership of or the power to
2 vote ten percent (10%) or more of a class of outstanding voting
3 securities of the entity.
- 4 c. In the case of a limited liability company, a managing member.
- 5 d. In the case of a partnership, a person that has the right to receive upon
6 dissolution, or has contributed, ten percent (10%) or more of the
7 capital of the partnership.
- 8 (6) Covered lender. – A person, whether or not registered under this Article, that
9 extends a specific offer of commercial financing to a borrower. This term
10 includes a person that presents a specific offer of commercial financing to a
11 borrower on behalf of a third party. This term does not include persons
12 exempted under G.S. 53-442.
- 13 (7) Factoring transaction. – A type of commercial financing that includes an
14 agreement to purchase, transfer, or sell a legally enforceable claim for
15 payment held by a borrower for goods the borrower has supplied, or services
16 the borrower has rendered, that have been ordered but for which payment has
17 not yet been made.
- 18 (8) Finance charge. – The cost of financing as a dollar amount. This term includes
19 all of the following:
- 20 a. Any charge payable directly or indirectly by the borrower and imposed
21 directly or indirectly by the covered lender as an incident to or a
22 condition of the extension of financing.
- 23 b. Any charge that would have been included in the finance charge under
24 12 C.F.R. § 1026.4, as if that regulation applied.
- 25 c. Any other charge that the Commissioner determines to be part of the
26 finance charge.
- 27 (9) Financial institution. – Any of the following that is authorized to operate in
28 this State:
- 29 a. A bank, trust company, or industrial loan company having a charter,
30 license, or certificate issued by the United States, this State, or any
31 other state or jurisdiction of the United States.
- 32 b. A federally chartered savings and loan association, federal savings
33 bank, or federal credit union.
- 34 c. A savings and loan association, savings bank, or credit union
35 organized under the laws of this State or any other state.
- 36 (10) Nationwide Multistate Licensing System and Registry (NMLS). – The
37 licensing system developed and maintained by the Conference of State Bank
38 Supervisors and the American Association of Residential Mortgage
39 Regulators for the registration of persons under this Article.
- 40 (11) Open-end financing. – A type of commercial financing consisting of an
41 agreement for one or more extensions of open-end credit, secured or
42 unsecured. This term includes a commercial financing under a plan in which
43 all of the following are true:
- 44 a. The covered lender reasonably contemplates repeated transactions.
- 45 b. The covered lender may impose a finance charge from time to time on
46 an outstanding balance.
- 47 c. The amount of credit that may be extended to the borrower during the
48 term of the plan is generally made available to the extent that any
49 outstanding balance is repaid.

- 1 (12) Person. – An individual, corporation, partnership, limited liability company,
2 joint venture, association, joint stock company, trust, or unincorporated
3 organization, including a sole proprietorship.
- 4 (13) Sales-based financing. – A type of commercial financing in which the
5 borrower's repayment is based on a percentage of the borrower's volume of
6 sales or revenue in one of the following ways:
- 7 a. The borrower's payment amounts increase or decrease according to the
8 borrower's volume of sales or revenue.
- 9 b. The borrower makes regular payments in a fixed amount, but the
10 financing includes a mechanism for reconciling these payments with
11 the percentage of the borrower's volume of sales or revenue.
- 12 (14) Specific offer. – The specific terms of commercial financing, including price
13 and amount, that are based on information about the borrower and that, if
14 accepted by the borrower, are binding on the covered lender, subject to any
15 specific conditions stated in the terms.

16 **"§ 53-442. Exemptions.**

- 17 (a) The following persons are exempt from this Article:
- 18 (1) A financial institution.
- 19 (2) A lender regulated under Chapter 23 (Farm Credit System) of Title 12 of the
20 United States Code.
- 21 (3) Any person that makes no more than five commercial financing transactions
22 in this State in a 12-month period.
- 23 (b) A person providing technology services for commercial financing to a person
24 exempted by subsection (a) of this section is also exempt from this Article, so long as the person
25 providing technology services is acting only in that capacity and has no interest in the commercial
26 financing. Technology services includes licensing software and providing support services for
27 technology.
- 28 (c) The following transactions are exempt from this Article:
- 29 (1) A commercial financing transaction secured by real property.
- 30 (2) A commercial financing transaction for an amount over five hundred thousand
31 dollars (\$500,000).
- 32 (3) A lease as defined in G.S. 25-2A-103.

33 **"§ 53-443. Sales-based financing disclosure requirements.**

- 34 (a) A covered lender shall provide all of the following disclosures to a borrower in a
35 format prescribed by the Commissioner at the time of extending a specific offer of sales-based
36 financing:
- 37 (1) The total amount of the commercial financing.
- 38 (2) The disbursement amount, if different from the total amount of the
39 commercial financing. This amount does not include any fees deducted at the
40 time of disbursement.
- 41 (3) The finance charge.
- 42 (4) The estimated annual percentage rate, using the words "annual percentage
43 rate" or the abbreviation "APR," inclusive of the finance charge and any fees
44 and calculated in accordance with 12 C.F.R. § 1026.22 based on the estimated
45 term of repayment and the projected payment amounts. The estimated term of
46 repayment and the projected payment amounts shall be calculated based on
47 the borrower's projected sales volume. The projected sales volume shall be
48 calculated in accordance with subsection (b) of this section.
- 49 (5) The total repayment amount, or the disbursement amount plus the finance
50 charge.

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

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

8 **"§ 53-444. Closed-end financing disclosure requirements.**

9 A covered lender shall provide all of the following disclosures to a borrower in a format
10 prescribed by the Commissioner at the time of extending a specific offer of closed-end financing:

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

43 **"§ 53-445. Open-end financing disclosure requirements.**

44 (a) A covered lender shall provide all of the following disclosures to a borrower in a
45 format prescribed by the Commissioner at the time of extending a specific offer of open-end
46 financing:

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

- 1 (4) The annual percentage rate, using the words "annual percentage rate" or the
2 abbreviation "APR," inclusive of the finance charge and any fees and
3 calculated in accordance with 12 C.F.R. § 1026.22.
4 (5) The total repayment amount, or the draw amount plus the finance charge.
5 (6) The term of the plan.
6 (7) The payment amounts as follows:
7 a. For payment amounts that are fixed, all of the following:
8 1. The payment amounts and frequency.
9 2. If the payment frequency is other than monthly, the amount of
10 the average projected payment per month.
11 b. For payment amounts that are variable, all of the following:
12 1. A payment schedule or a description of the method used to
13 calculate the amounts and frequency of the payments.
14 2. The amount of the average projected payment per month.
15 (8) A description of all other potential fees not included in the finance charge,
16 including draw fees, late payment fees, and returned payment fees.
17 (9) The following information relating to a borrower's election to pay off or
18 refinance the commercial refinancing prior to full repayment:
19 a. Whether the borrower upon this election would be required to pay a
20 percentage of the unpaid portion of the finance charge, other than
21 interest accrued since the borrower's last payment. If so, the covered
22 lender shall disclose this percentage, as well as the maximum dollar
23 amount the borrower could be required to pay.
24 b. Whether the borrower upon this election would be required to pay any
25 fees not already included in the finance charge.
26 (10) A description of any collateral requirements or security interests.
27 (b) In calculating the finance charge in subdivision (a)(3) of this section, the annual
28 percentage rate in subdivision (a)(4) of this section, the total repayment amount in subdivision
29 (a)(5) of this section, and the payment amounts in subdivision (a)(7) of this section, the covered
30 lender shall deem that the draw amount is equal to the maximum amount of credit available to
31 the borrower, if drawn and held for the entire term of the plan.

32 **§ 53-446. Factoring transaction disclosure requirements.**

33 A covered lender shall provide all of the following disclosures to a borrower in a format
34 prescribed by the Commissioner at the time of extending a specific offer for a factoring
35 transaction:

- 36 (1) The purchase amount, or the amount of accounts receivable purchased from
37 the borrower.
38 (2) The disbursement amount, if different from the purchase amount. This amount
39 does not include any fees deducted at the time of disbursement.
40 (3) The finance charge. This amount includes any discount deducted from the face
41 value of the accounts receivable.
42 (4) The estimated annual percentage rate, using that term, calculated according to
43 12 C.F.R. Part 1026 Appendix J, as a single advance, single payment
44 transaction. In making this calculation, the purchase amount is deemed to be
45 the financing amount, the purchase amount minus the finance charge is
46 deemed to be the total repayment amount, and the term is determined by one
47 of two methods:
48 a. The term is determined by the payment due date of the accounts
49 receivable.
50 b. The covered lender may estimate the term as the average payment
51 period by the party owing the accounts receivable over a historical

1 time period. The historical time period shall not exceed the preceding
2 12 months.

3 (5) The total repayment amount, or the purchase amount plus the finance charge.

4 (6) A description of all other potential fees not included in the finance charge.

5 (7) A description of the receivables purchased and any additional collateral
6 requirements or security interests.

7 **"§ 53-447. Disclosure requirements for other forms of commercial financing.**

8 A covered lender shall provide all of the following disclosures to a borrower in a format
9 prescribed by the Commissioner at the time of extending a specific offer of commercial financing
10 that is not sales-based financing, open-end financing, closed-end financing, or a factoring
11 transaction:

12 (1) The total amount of the commercial financing.

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

16 (3) The finance charge.

17 (4) The annual percentage rate, using the words "annual percentage rate" or the
18 abbreviation "APR," inclusive of the finance charge and any fees and
19 calculated in accordance with 12 C.F.R. Part 1026.

20 (5) The total repayment amount, or the disbursement amount plus the finance
21 charge.

22 (6) The term of the financing.

23 (7) The payment amounts as follows:

24 a. For payment amounts that are fixed, all of the following:

25 1. The payment amounts and frequency.

26 2. If the payment frequency is other than monthly, the amount of
27 the average projected payment per month.

28 b. For payment amounts that are variable, all of the following:

29 1. A payment schedule or a description of the method used to
30 calculate the amounts and frequency of the payments.

31 2. The amount of the average projected payment per month.

32 (8) A description of all other potential fees not included in the finance charge,
33 including draw fees, late payment fees, and returned payment fees.

34 (9) The following information relating to a borrower's election to pay off or
35 refinance the commercial refinancing prior to full repayment:

36 a. Whether the borrower upon this election would be required to pay a
37 percentage of the unpaid portion of the finance charge, other than
38 interest accrued since the borrower's last payment. If so, the covered
39 lender shall disclose this percentage, as well as the maximum dollar
40 amount the borrower could be required to pay.

41 b. Whether the borrower upon this election would be required to pay any
42 fees not already included in the finance charge.

43 (10) A description of any collateral requirements or security interests.

44 **"§ 53-448. Disclosure requirements for renewal financing.**

45 If, as a condition of obtaining new commercial financing, a covered lender requires the
46 borrower to pay off some or all of the balance of an existing commercial financing from the same
47 covered lender, the covered lender shall disclose all of the following in a format prescribed by
48 the Commissioner at the time of extending a specific offer of the new commercial financing:

49 (1) The amount of the new commercial financing that will be used to pay off any
50 prepayment charge or unpaid interest. If the total repayment amount for the
51 existing financing is fixed, the prepayment charge is equal to the product of

1 the finance charge for the existing financing multiplied by the percentage of
2 the total repayment amount that will be paid off, minus any portion of the total
3 repayment amount that will be forgiven.

- 4 (2) If the disbursement amount will be reduced to pay off a portion of the balance,
5 the amount by which the disbursement amount will be reduced.

6 **"§ 53-449. Additional requirements for disclosures.**

7 (a) If a covered lender is required to make disclosures under this Article, the covered
8 lender shall present these disclosures to the borrower as a document separate from all other
9 information to be signed by the borrower. The covered lender shall obtain the borrower's
10 signature before proceeding with the transaction.

11 (b) If a covered lender presents any information in addition to the disclosures required
12 under this Article, the covered lender shall not use the term "rate" in describing a metric other
13 than the annual percentage rate or estimated annual percentage rate.

14 **"§ 53-450. Registration requirement.**

15 (a) A covered lender operating in this State shall register with the Commissioner in a
16 format prescribed by the Commissioner and shall submit a registration fee, as required by this
17 section. A covered lender shall comply with all provisions of this Article.

18 (b) A covered lender shall pay a nonrefundable fee of one thousand dollars (\$1,000) at
19 the time of registration and at the time of each renewal of registration. Registrations shall be
20 renewed every three years. In addition, a covered lender registering for the first time shall pay
21 the actual cost of obtaining a credit report and federal and State criminal background checks and
22 the processing fees required by the Nationwide Multistate Licensing System and Registry.

23 (c) A registration issued under this Article is not assignable.

24 **"§ 53-451. Registration application.**

25 (a) Application. – Applications for registration under this Article shall be filed through
26 the Nationwide Multistate Licensing System and Registry (NMLS) in a form acceptable to the
27 Commissioner. To be considered complete, the application shall be verified by attestation of the
28 applicant or a designee of the applicant and shall include all of the following:

- 29 (1) The applicant's legal name, along with any assumed business name, principal
30 address, including street address and mailing address, contact information,
31 and social security number or taxpayer identification number.
32 (2) The applicant's form and place of organization, if applicable.
33 (3) A certificate of good standing from the state in which the applicant was
34 organized, if applicable.
35 (4) A certificate of authority from the North Carolina Secretary of State to
36 conduct business in this State, if required by Article 15 of Chapter 55 of the
37 General Statutes, or other evidence of the applicant's registration or
38 qualification to do business in this State.
39 (5) The qualifications and business history of the applicant and, if applicable, the
40 business history of any person controlling the applicant, including a
41 description of any injunction or administrative order by any state or federal
42 authority to which the person is or has been subject.
43 (6) A record of any criminal convictions for the applicant, or in the case of an
44 applicant that is an entity, each individual who has control of the applicant,
45 for a 10-year period prior to the date of the application, including the
46 applicant's consent to a federal and State criminal background check and a set
47 of the applicant's fingerprints in a form acceptable to the Commissioner. In
48 the case of an applicant that is an entity, each individual who has control over
49 the applicant shall consent to a federal and State criminal background check
50 and shall submit a set of the individual's fingerprints.

1 (7) The applicant's financial condition, including its credit history, business
2 history, and most recent audited annual financial statement, or if the applicant
3 is a wholly owned subsidiary, of the applicant's parent entity. This statement
4 shall include the balance sheet, statement of income or loss, statement of
5 changes in shareholder equity, if applicable, and statement of changes in
6 financial position.

7 (8) Any additional information that the Commissioner deems relevant.

8 (b) Abandoned Application. – The Commissioner may deem an application abandoned if
9 the applicant fails to respond to a written request for information by the Commissioner within 30
10 days of the date of the request.

11 (c) Approval of Registration. – The Commissioner shall approve an applicant's
12 registration if the Commissioner finds all of the following:

13 (1) The applicant has satisfied the requirements imposed by this Article.

14 (2) The applicant's business will be conducted honestly, fairly, and in a manner
15 commanding the confidence and trust of the community.

16 (3) Persons controlling the applicant, as a group, have degrees of character,
17 competence, and experience that command the confidence and trust of the
18 community and justify the belief that the applicant will operate safely,
19 soundly, and in compliance with the law.

20 (4) The applicant meets other similar requirements determined by the
21 Commissioner.

22 (d) Renewal. – The requirements and procedures of this section also apply to the renewal
23 of a registration.

24 **"§ 53-452. Notice of material change.**

25 If the information contained in any document filed with the Commissioner or the NMLS
26 under this Article is or becomes inaccurate or incomplete in any material respect, the covered
27 lender, whether registered or applying for registration, shall within 30 days file a correcting
28 amendment to the information contained in the document.

29 **"§ 53-453. Examinations; charges.**

30 (a) For the purpose of protecting consumer interests and determining a covered lender's
31 compliance with the requirements of this Article, the Commissioner may conduct an examination
32 of a covered lender.

33 (b) A covered lender shall reimburse the Office of the Commissioner of Banks all
34 reasonable costs and expenses of an examination. In unusual circumstances and in the interest of
35 justice, the Commissioner may waive reimbursement for the costs and expenses of an
36 examination under this section.

37 **"§ 53-454. Consumer complaints.**

38 The Commissioner may receive a complaint from a borrower regarding a covered lender and,
39 upon receipt of the complaint, may examine the covered lender pursuant to G.S. 53-453.

40 **"§ 53-455. Confidentiality.**

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

43 (b) Notwithstanding any State law to the contrary, the Commissioner shall report
44 enforcement actions under this Article and any other relevant information to the NMLS.

45 (c) The Commissioner may enter into written agreements with other governmental
46 agencies, the Conference of State Bank Supervisors, or other associations representing
47 governmental agencies and may share otherwise confidential information pursuant to these
48 agreements.

49 (d) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any
50 information provided under subsections (b) and (c) of this section, and any privilege arising under
51 any other federal or State law with respect to the information, continues to apply to the

1 information after it has been disclosed to an entity described in subsection (b) or (c) of this
2 section. Information held by the entity is not subject to disclosure under any State law governing
3 the disclosure to the public of information held by an officer or agency of the State. The entities
4 described in subsection (b) or (c) of this section may share information with State and federal
5 regulatory officials without the loss of privilege or the loss of confidentiality protections provided
6 by State and federal law.

7 (e) Nothing in this section prohibits the Commissioner from releasing to the public a list
8 of persons registered under this Article or aggregated financial data on these registrants.

9 **"§ 53-456. Rules; appeal by aggrieved person.**

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

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

22 **"§ 53-457. Penalties; enforcement.**

23 (a) After notice and opportunity for hearing in accordance with Article 3A of Chapter
24 150B of the General Statutes, if the Commissioner finds that a covered lender has violated any
25 provision of this Article or any rule adopted under it, the Commissioner may do any of the
26 following:

- 27 (1) Revoke, suspend, or refuse to renew a covered lender's registration.
- 28 (2) Order a covered lender to cease and desist from providing commercial
29 financing.
- 30 (3) Assess a civil penalty of not more than two thousand dollars (\$2,000) for each
31 violation or ten thousand dollars (\$10,000) for each violation that the
32 Commissioner finds to be willful. The clear proceeds of civil penalties
33 imposed pursuant to this section shall be remitted to the Civil Penalty and
34 Forfeiture Fund in accordance with G.S. 115C-457.2.

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

37 **"§ 53-458. Service of process.**

38 (a) A registrant under this Article is deemed to have done all of the following:

- 39 (1) Consented to the jurisdiction of the courts of this State for an action arising
40 under this Article.
- 41 (2) Appointed the Secretary of State as the registrant's agent for the purpose of
42 accepting service of process in an action arising under this Article.

43 (b) The Commissioner is deemed to have complied with the requirement of law
44 concerning service of process upon mailing by certified mail notice to a registrant, postage
45 prepaid and addressed to the last known address on file with the Commissioner.

46 **"§ 53-459. Commissioner's participation in nationwide registry.**

47 A covered lender shall be registered through the NMLS. In order to carry out this
48 requirement, the Commissioner may participate in the NMLS. G.S. 53-244.119 applies to this
49 section."

50 **SECTION 2.** This act becomes effective May 1, 2022, and applies to transactions
51 occurring on or after that date.