

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 17
HOUSE BILL 209

AN ACT TO FURTHER REGULATE CONSUMER FINANCE COMPANIES, THEIR AFFILIATES AND SUBSIDIARIES, TO REQUIRE THEIR REGISTRATION UNDER THE MORTGAGE BANKER/BROKER REGISTRATION ACT, TO ALLOW CONSUMER FINANCE LICENSEES TO MAINTAIN THEIR RECORDS OUT OF STATE, AND TO MAKE VARIOUS TECHNICAL AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-166 reads as rewritten:

"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.

(a) Scope. – No person shall engage in the business of lending in amounts of ten thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24, except as provided in and authorized by this Article, and without first having obtained a license from the ~~Commissioner~~. Commissioner: Provided further, no person shall in the course of any business service individually or in conjunction or cooperation with any bank or other lender process or accept for delivery to any bank or other lender any loan application, or receive or accept for delivery any loan proceed checks or in any manner facilitate the extension of credit the purpose of which is to fund a loan in anticipation of any sums of money due by reason of a tax refund without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession. – Any person not exempt from this Article, or any officer, agent, employee or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars (\$500.00) nor more than twenty-five hundred dollars (\$2,500) or imprisoned not less than four months nor more than two years, or both, in the discretion of the court. Each such violation shall be considered a separate

offense. It shall be the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in his actual or constructive possession, and to testify as to such facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation shall be void and the licensee or any other party in violation shall have no right to collect, receive or retain any principal or charges whatsoever with respect to such loan. If an affiliate operating in the same office or subsidiary operating in the same office of a licensee makes a loan in violation of G.S. 53-180(i) such affiliate or subsidiary may recover only its principal on such loan.

Sec. 2. G.S. 53-172 reads as rewritten:

"§ 53-172. Conduct of other business in same office.

No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or engaged in unless, in the opinion of the Commissioner, such other business would not be contrary to the best interests of the borrowing public and is authorized by the Commissioner in writing.

If the conduct of any other business authorized by the Commissioner should, in the opinion of the Commissioner, prove contrary to the best interests of the borrowing public, the authority granted to conduct such business shall be withdrawn in writing by the Commissioner.

Installment paper dealers as defined in G.S. 105-83, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being any other business within the meaning of this section. This section shall not be construed as authorizing the collection of any loans or charges in violation of the prohibitions contained in G.S. 53-190. The books, records, and accounts relating to loans shall be kept in such manner as the Commissioner of Banks prescribes as to delineate clearly the loan business from any other business authorized by the Commissioner.

~~Each affiliate operating in the same office or subsidiary operating in the same office of a licensee making home loans as defined in G.S. 24-1.1A(e), or equity line of credit loans pursuant to G.S. 45-81 which are secured by a first mortgage or deed of trust on real property on which one or more residences are located, shall report to the Attorney General of North Carolina each quarter information concerning such loans as follows: number, rate of interest charged, principal amounts, terms, number of consumer loans or home loans refinanced by loans secured by real estate, and the number of delinquencies and foreclosures.~~

~~The North Carolina Commissioner of Banks will approve the forms for reporting. If an affiliate operating in the same office or a subsidiary operating in the same office of a licensee fails to file the report within 30 days after the due date as required by the Attorney General or violates any provision of G.S. 24-1.1A, the Attorney General shall advise the North Carolina Commissioner of Banks who may revoke under G.S. 53-172 that affiliate's or subsidiary's authority to do business in the same office as the licensee.~~

~~The Attorney General shall submit a report to the General Assembly no later than December 31, 1988, concerning the loans made pursuant to the authority granted under this Article. The report shall contain the information listed above, plus any recommendations of the Attorney General, if he has any recommendations. The costs and expenses associated with collecting and maintaining the information contained in the report of the Attorney General shall be paid by those companies required to make quarterly reports under this section."~~

Sec. 3. G.S. 53-173 reads as rewritten:

"§ 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 three thousand dollars (\$3,000) in amount, charges at rates not exceeding thirty-six percent (36%) per annum on that part of the unpaid principal balance of any loan not in excess of six hundred dollars (\$600.00) and fifteen percent (15%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(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 (i) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) 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.~~ day shall equal 1/365th of a year. 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 eight percent (8%) 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 eight percent (8%) 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, 53-174 and 53-175 (a) and (b) 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. G.S. 53-173.1, 53-174 and 53-176.1 are repealed.

Sec. 5. G.S. 53-175 reads as rewritten:

"§ 53-175. Default charge.

(a) ~~If the contract so provides, an additional charge for any installment past due 10 days or more according to the original terms of the contract by reason of default may be made in an amount not to exceed five percent (5%) of the amount of the installment past due and said amount may be charged once and no more on the same default; provided, that if such charge is deducted from a payment made on the loan and such deduction results in a default of a subsequent installment, no charge shall be made for such subsequent default; provided, further, that once a borrower has incurred a default charge pursuant to this section, no default charge shall be incurred with respect to any future payments which would not have been in default except for the previous default.~~

(b) ~~If there is an unpaid balance on a loan at the maturity date as originally scheduled or as deferred, an additional charge at a rate not to exceed eight percent (8%) per annum may be charged on the outstanding balance until the loan is paid in full by cash, a new loan, renewal or otherwise.~~

(c) Fee for returned checks.

A licensee may collect the fee for returned checks to the extent permitted by G.S. 25-3-512. This ~~subsection~~ section shall apply to any loan made by any licensee under this Article."

Sec. 6. G.S. 53-176 reads as rewritten:

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

In lieu of making loans in the ~~amount, for the term~~ amount and at the charges stated ~~respectively in G.S. 53-166, 53-173 and 53-180, in G.S. 53-173 and for the terms stated in G.S. 53-180,~~ a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars (\$10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

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

~~The provisions of G.S. 53-173.1, G.S. 53-174 and G.S. 53-175(a) and (b) shall not apply to loans made pursuant to this section.~~ The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), ~~and (h) and (i)~~ shall apply to loans made pursuant to this section.

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

~~The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Such election shall be made by the filing of a written statement to that effect by the licensee with the Commissioner and can be terminated by cancellation notice filed by the licensee in writing with the Commissioner.~~

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee which is making loans under this Article otherwise than as authorized specially in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee making an election to make loans in accordance with the provisions of this section shall respectively be bound by such election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State."

Sec. 7. G.S. 53-177 reads as rewritten:

"§ 53-177. Recording fees.

The licensee may collect from the borrower the actual fees paid a amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State, for filing, recording, or releasing any instrument securing the loan. State as may be required pursuant to G.S. 25-9-302 **et seq.** or G.S. 20-58 **et seq.** Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in

lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self insurance, shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost of recording or filing a security interest. Provided further, a A—licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article.—Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose. In lieu of recording any instrument and in lieu of collecting any recording fee herein authorized, a lender may take out nonrecording or nonfiling insurance on the instrument securing the loan and charge to the borrower the amount of the premium as fixed by the Commissioner of Insurance, but the amount so charged to the borrower shall not in any event exceed sixty cents (60¢) with respect to any one loan."

Sec. 8. G. S. 53-180 reads as rewritten:

"§ 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; more than 37 months from the date of making the contract if the cash advance is in excess of six hundred dollars (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); more than 49 months from the date of making the contract if the cash advance is in excess of fifteen hundred dollars (\$1,500) but not in excess of two thousand five hundred dollars (\$2,500); or more than 61 months if the cash advance is in excess of two thousand five hundred dollars (\$2,500). 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 Article with respect to default by the borrower is enforceable only to the extent that (i) the borrower fails to make a payment as required by the agreement, or (ii) 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 any 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 licensee shall make any loan within this State which shall in any way be secured by 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.

(h) Limitations on Home Loans. – No affiliate operating in the same office or subsidiary operating in the same office of a licensee shall make any home loan as defined in G.S. 24-1.1A(e) in a principal amount of less than three thousand dollars (\$3,000).

(i) Limitation on Conditions to Making Loans. – A licensee or an affiliate operating in the same office or subsidiary operating in the same office of a licensee shall not make as a condition of any loan the refinancing of a borrower's home loan as defined in G.S. 24-1.1A(e) which is not currently in default.

(j) No Solicitation of Deposits. – No licensee may directly or indirectly solicit from any borrower funds to be held on deposit in any bank; provided, however, a borrower may at his option, by way of a military allotment or other such program, designate a depository to receive and disburse funds for a designated purpose."

Sec. 9. G.S. 53-181 reads as rewritten:

"§ 53-181. Statements and information to be furnished to borrowers; power of attorney or confession of judgment prohibited.

(a) Contents of Statement Furnished to Borrower. – At the time a loan is made, the licensee shall deliver to the borrower, or if there be two or more borrowers, to one of them a copy of the loan contract, or a written statement, showing in clear and distinct terms:

- (1) The name and address of the licensee and one of the primary obligors on the loan;
- (2) The date of the loan contract;
- (3) Schedule of installments or descriptions thereof;
- (4) The cash advance;
- (5) The face amount of the note evidencing the loan;
- (6) The amount collected or paid for insurance, if any;
- (7) The amount collected or paid for filing or other fees allowed by this Article;

- (8) The collateral or security for the loan;
- (9) If the loan refinances a previous loan, the following relating to the refinanced loan: (i) the principal balance due; (ii) interest charged that is included in the new loan; and (iii) rebates on any credit insurance, listed separately.

(b) Schedule of Charges, etc., to Be Made Available; Copy Filed with Commissioner. – Each licensee doing business in North Carolina shall make readily available to the borrower at each place of business such full and accurate schedule of charges and insurance premiums, including refunds and rebates, on all classes of loans currently being made by such licensee, as the Commissioner shall prescribe, and a copy thereof shall be filed in the office of the Commissioner of Banks.

(c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take any confession of judgment or permit any borrower to execute a power of attorney in favor of any licensee or in favor of any third person to confess judgment or to appear for the borrower in any judicial proceeding and any such confession of judgment or power of attorney to confess judgment shall be absolutely void."

Sec. 10. G.S. 53-184 reads as rewritten:

"§ 53-184. Securing of information; records and reports; allocations of expense.

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

by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by him in such examination.

(b) Each licensee shall file annually with the Commissioner of Banks on or before the thirty-first day of March for the 12 months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. Such reports shall disclose in detail and under appropriate headings the resources, assets and liabilities of such licensee at the beginning and at the end of the period, the income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, the ratios of the profits to the assets reported, the monthly average number and amount of loans outstanding and a classification of loans made, by size and by security, and such other information as the Commissioner may require. Such reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of such licensee.

(c) If a licensee conducts another business or is affiliated with other licensees under this Article, or if any other situation exists under which allocations of expense are necessary, the licensee or licensees shall make such allocation according to appropriate and reasonable accounting principles.

(d) If a licensee is affiliated with other licensees, all of the affiliated lenders shall file composite annual reports in addition to the separate reports required in subsection (b) of this section, in such form as the Commissioner may require."

Sec. 11. G.S. 53-190 reads as rewritten:

"§ 53-190. Loans made elsewhere.

(a) No loan contract made outside this State in the amount or of the value of ~~three thousand dollars (\$3,000)~~ ten thousand dollars (\$10,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

(b) If any lender or agent of a lender who makes loan contracts outside this State in the amount or of the value of ~~three thousand dollars (\$3,000)~~ ten thousand dollars (\$10,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article.

(c) No lender licensed to do business under this Article may collect, or cause to be collected, any loan made by a lender in another state to a borrower, who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition."

Sec. 12. G.S. 53-235 reads as rewritten:

"§ 53-235. Registration requirements of mortgage bankers and mortgage brokers.

(a) No mortgage banker, as defined in G.S. 53-234(3), shall engage in the business of making mortgage loans without first being registered with the Commissioner in accordance with the registration procedure provided in this Article and such regulations as may be promulgated by the Commissioner.

(b) No mortgage broker, as defined in G.S. 53-234(4), shall engage in the business of processing, placing or negotiating a mortgage loan or offering to process, place or negotiate a mortgage loan in this State without first being registered with the Commissioner in accordance with the registration procedure provided in this Article and such regulations as may be promulgated by the Commissioner.

(c) Notwithstanding subsections (a) and (b) of this section, the registration provisions of this Article shall not apply to any exempt persons or entities as defined by G.S. 53-234(6).

(d) Notwithstanding subsections (a) and (b) of this section any other provision of law, an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act shall not be required to register under this section register with the Commissioner in accordance with the registration procedures provided in this Article: Provided, however, such affiliate or subsidiary shall be exempt from the payment of any required fees under this Article."

Sec. 13. Section 14 of Chapter 154 of the 1985 Session Laws (First Session, 1985), as amended by Section 3 of Chapter 444 of the 1987 Session Laws (First Session, 1987), is rewritten to read:

"Sec. 14. Section 1 of this act is effective upon ratification and shall expire on July 31, 1987. Section 8 of this act is repealed effective upon the ratification of this act. The remaining sections of this act are effective upon ratification."

Sec. 14. The first sentence of Section 4 of Chapter 444 of the 1987 Session Laws is rewritten to read:

"Section 1 of this act shall be effective on July 31, 1987."

Sec. 15. Sections 1, 3, 7, 8, 9 and 12 of this act are effective on August 1, 1989; the remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of March, 1989.