

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

H

1

HOUSE BILL 1626

Short Title: Cap APR for Consumer Loans. (Public)

Sponsors: Representatives Glazier, Barnhart, McGee, Hall (Primary Sponsors); Harrison and Luebke.

Referred to: Financial Institutions, if favorable, Finance.

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO RAISE THE FEE FOR AN APPLICATION UNDER THE NORTH CAROLINA CONSUMER FINANCE ACT, TO LIMIT THE ANNUAL PERCENTAGE RATE OF INTEREST THAT CAN BE CHARGED FOR LOANS MADE PURSUANT TO THE NORTH CAROLINA CONSUMER FINANCE ACT, TO DISALLOW THE CHARGING OF A RECORDING FEE UNLESS THE FEE SHALL BE USED TO FILE OR RECORD THE LICENSEE'S SECURITY INTEREST; AND TO PROHIBIT THE WRITING OF CREDIT LIFE, CREDIT ACCIDENT AND HEALTH, AND RELATED FORMS OF INSURANCE AND AGREEMENTS FOR ANY LOAN THAT IS SUBJECT TO THE NORTH CAROLINA CONSUMER FINANCE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-168(b) reads as rewritten:

"(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided he so requests in writing within 30 days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant."

SECTION 2. G.S. 53-165 is amended by adding a new subsection to read:

"(a1) 'Annual percentage rate' shall mean the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time)."

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

"§ 53-173. Maximum rate of interest and fee; computation of interest; limitation on interest after judgment; limitation on interest after maturity of the loan.

(a) Maximum Rate of Interest. – Every licensee under this section may make loans in installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not exceeding thirty-six percent (36%) per annum on the outstanding principal balance of any loan not in excess of six hundred dollars (\$600.00) and fifteen percent (15%) per annum on any



1 remainder of such unpaid principal balance. Interest shall be contracted for and collected at the
2 single simple interest rate applied to the outstanding balance that would earn the same amount
3 of interest as the above rates for payment according to schedule. In no event shall a loan made
4 pursuant to this section have an annual percentage rate that exceeds thirty-six percent (36%).

5 (a1) Maximum Fee. – In addition to the interest authorized in subsection (a) of this
6 section, a licensee making loans under this section may collect from the borrower a fee for
7 processing the loan equal to five percent (5%) of the loan amount not to exceed twenty-five
8 dollars (\$25.00), provided that such charges may not be assessed more than twice in any
9 12-month ~~period~~ period and may not be assessed if doing so would cause the annual percentage
10 rate to exceed the limit established in subsection (a) of this section.

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

21 (c) Limitation on Interest after Judgment. – If a money judgment is obtained against
22 any party on any loan made under the provisions of this section neither the judgment nor the
23 loan shall carry, from the date of the judgment, any interest in excess of eight percent (8%) per
24 annum.

25 (d) Limitation of Interest after Maturity of Loan. – After the maturity date of any loan
26 contract made under the provisions of this section and until the loan contract is paid in full by
27 cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%)
28 per annum shall be computed or collected from any party to the loan upon the unpaid principal
29 balance of the loan.

30 (e) Repealed by Session Laws 1989, c. 17, s. 3.

31 (f) Repealed by Session Laws 2001-519, s. 3."

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

33 **"§ 53-176. Optional rates, maturities and amounts.**

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

41 (1) With respect to a loan not exceeding seven thousand five hundred dollars
42 (\$7,500), thirty percent (30%) per annum on that part of the unpaid principal
43 balance not exceeding one thousand dollars (\$1,000) and eighteen percent
44 (18%) per annum on the remainder of the unpaid principal balance. Interest
45 shall be contracted and collected at the single simple interest rate applied to
46 the outstanding balance that would earn the same amount of interest as the
47 above rates for payment according to schedule.

48 (2) With respect to a loan exceeding seven thousand five hundred dollars
49 (\$7,500), eighteen percent (18%) per annum on the outstanding principal
50 balance.

1 (a1) In no event shall a loan made pursuant to this section have an annual percentage rate
2 that exceeds thirty-six percent (36%).

3 (b) In addition to the interest permitted in this section, a licensee may assess at closing a
4 fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars
5 (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%) of
6 the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a
7 total fee of forty dollars (\$40.00), provided that such charges may not be assessed more than
8 twice in any 12-month ~~period~~ period and may not be assessed if doing so would cause the
9 annual percentage rate to exceed the limit established in subsection (a1) of this section.

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

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

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

25 (f) No individual, partnership, or corporate licensee and no corporation which is the
26 parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article
27 except as authorized in this section, shall be permitted to make loans under the provisions of
28 this section. Any corporate licensee or individual or partnership licensee that elects to make
29 loans in accordance with the provisions of this section shall be bound by that election with
30 respect to all of its offices and locations in this State and all offices and locations in this State
31 of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their
32 offices and locations in this State."

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

34 "**§ 53-177. Recording fees.**

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

1 **SECTION 6.** G.S. 53-189 reads as rewritten:

2 "**§ 53-189. Insurance.**

3 (a) Credit life, credit accident and health, credit unemployment, ~~and credit property~~
4 ~~insurance may be written in accordance with the provisions of Article 57 of Chapter 58 of the~~
5 ~~General Statutes; credit property insurance, debt cancellation agreements, or debt suspension~~
6 ~~agreements shall not be written for or included in any loan that is subject to this Article. No~~
7 ~~lender shall use any device, subterfuge, or any other mechanism to evade the provisions of this~~
8 ~~section.~~

9 (b) ~~The premium or cost of credit life, credit accident and health, credit unemployment,~~
10 ~~or credit property insurance, when written by or through any lender or other creditor, its~~
11 ~~affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or~~
12 ~~an amount in excess of permitted charges in connection with the loan or credit transaction and~~
13 ~~any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary,~~
14 ~~arising out of the premium or commission or dividend from the sale or provision of such~~
15 ~~insurance shall not be deemed a violation of any other law, general or special, civil or criminal,~~
16 ~~of this State, or of any rule, regulation or order issued by any regulatory authority of this State."~~

17 **SECTION 7.** This act becomes effective October 1, 2009.