

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE DRH30579-LTf-173A (5/16)

Short Title: Enact Credit Enhancement Services Act/Funds. (Public)

Sponsors: Representatives Earle, Barnhart, Grady, and Saunders (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE CREDIT ENHANCEMENT SERVICES ACT AND TO
3 APPROPRIATE FUNDS FOR AN EVALUATION OF THE ACT BY THE STATE
4 BANKING COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 26.

9 "Credit Enhancement Services.

10 **"§ 53-430. Title.**

11 This Article shall be known and may be cited as the Credit Enhancement Services
12 Act.

13 **"§ 53-431. Purpose.**

14 The purpose of this Article is to:

- 15 (1) Provide a vehicle for credit building and credit rebuilding services so
16 that consumers in the financially underserved and unbanked
17 populations can improve their credit ratings and qualify for
18 mainstream financial services.
- 19 (2) Set forth a minimum set of credit enhancement services that a legal
20 entity licensed pursuant to this Article shall offer to persons who are
21 members of the traditionally financially underserved consumer
22 population and the unbanked persons not serviced by the normal
23 lending institutions.
- 24 (3) Recognize that the cost of serving the financially underserved and
25 unbanked consumers is extraordinarily high to the legal entity licensed
26 pursuant to this Article and therefore a higher risk-based interest rate
27 shall be permitted to cover this risk when the credit enhancement

1 services required by this Article are offered as a package by that legal
2 entity.

3 **"§ 53-432. Definitions.**

4 As used in this Article, the following terms have the following meanings:

- 5 (1) "Amount of the extension of credit" means the aggregate of the credit
6 enhancement loans and services and the charges authorized by
7 G.S. 53-440 through G.S. 53-442.
- 8 (2) "Customer" means any person who borrows money from any licensee
9 or who pays or obligates himself to pay any money or otherwise
10 furnishes any valuable consideration to any licensee for any act of the
11 licensee as a licensee.
- 12 (3) "Commission" means the State Banking Commission.
- 13 (4) "Commissioner" means the Commissioner of Banks.
- 14 (5) "Creditable assets" means cash or bank deposits, loans, or extensions
15 of credit made as a licensee pursuant to this Article or any other
16 amounts as the Commissioner may approve, or any combination of
17 two or more of these amounts.
- 18 (6) "Credit enhancement loans" or "credit enhancing loan" means a
19 consumer loan made within the state of North Carolina by a licensee
20 pursuant to this Article.
- 21 (7) "Credit enhancement services" means the following set of services that
22 shall be offered as a package to customers:
- 23 a. Access to financial services through multiple delivery channels
24 that are convenient to the consumer, including direct marketing
25 and neighborhood financial service centers.
- 26 b. Periodic reporting of credit bureau data, as incurred, and
27 without discrimination, on all data to major credit bureaus to
28 assist consumers in building or rebuilding their credit histories.
- 29 c. Graduating consumers to better interest rates and other terms
30 based on positive payment histories.
- 31 d. Financial literacy enhancement.
- 32 e. Offering at least one service to the financially unbanked
33 consumer that demonstrably provides access to traditional
34 banking services and for the development of a positive financial
35 performance history, including the following products:
- 36 1. Bank-issued debit cards, a prepaid and reloadable card
37 giving the customer access to automatic teller machines
38 and retailers worldwide, for the purpose of building or
39 rebuilding credit.
- 40 2. Check-to-card services, allowing the customer to load all
41 or a portion of the proceeds from a cashed check onto a
42 debit card.
- 43 3. Check cashing services.
- 44 4. Other services as approved by the Commissioner.

1 f. Offering at least one service to the financially underbanked
2 consumer that offers the opportunity to create a positive credit
3 history that reasonably can improve their individual
4 creditworthiness for traditional bank extensions of credit,
5 including the following products:

6 1. Credit enhancement loans.

7 2. Other services as approved by the Commissioner.

8 g. The following full-range banking services may be offered to all
9 customers of a licensee:

10 1. Money transfer services.

11 2. Bill payment services.

12 3. Money transmitter services, where applicant is an agent
13 for a money transfer service provider.

14 4. Money orders.

15 5. Other services as approved by the Commissioner.

16 (8) "Deputy" means the deputy commissioner of banks.

17 (9) "License" means the certificate issued by the Commissioner under the
18 authority of this Article to conduct credit enhancing services.

19 (10) "Licensee" means a person to whom one or more licenses have been
20 issued.

21 (11) "Person" includes any person, firm, partnership, association, or
22 corporation.

23 **§ 53-433. Scope of Article; evasions; penalties; extension of credits in violation of**
24 **Article void.**

25 (a) Scope. – No person shall engage in the business of offering credit
26 enhancement loans or services in amounts of three thousand dollars (\$3,000) or less and
27 contract for, exact, or receive, directly or indirectly, on or in connection with any
28 extension of credit, any charges whether for interest, compensation, consideration, or
29 expense, or any other purpose whatsoever, which in the aggregate are greater than
30 authorized by this Article, and without first having obtained a license from the
31 Commissioner. The word "lending" as used in this section shall include, but shall not be
32 limited to, endorsing or otherwise securing extensions of credit or contracts for the
33 repayment of extensions of credit.

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

37 (c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession.
38 – Any person not exempt from this Article who fails to comply with or who otherwise
39 violates any of the provisions of this Article, or any regulation of the Banking
40 Commission adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor.
41 Each violation shall be considered a separate offense. It shall be the duty of the
42 Commissioner of Banks to provide the district attorney of the court having jurisdiction
43 of any offense under this Article with facts and evidence in his actual or constructive

1 possession, and to testify as to those facts upon the trial of any person for any offense
2 under this Article.

3 (d) Additional Penalties. – Any contract for the extension of credit, the making or
4 collecting of which violates any provision of this Article, or regulation issued pursuant
5 to this Article, except as a result of accidental or bona fide error of computation shall be
6 void, and the licensee or any other party in violation shall have no right to collect,
7 receive, or retain any principal or charges whatsoever with respect to that extension of
8 credit.

9 **"§ 53-434. Expenses of supervision.**

10 Each licensee, for the purpose of defraying necessary expenses of the Commissioner
11 of Banks and his agents in supervising them, shall pay to the Commissioner of Banks
12 the fees prescribed in G.S. 53-122 at the times specified in that section.

13 **"§ 53-435. License required; showing of convenience, advantage and financial
14 responsibility; investigation of applicants; hearings; existing businesses;
15 contents of license; transfer; posting.**

16 (a) Necessity for License; Prerequisites to Issuance. – No person shall engage in
17 or offer to engage in the business regulated by this Article unless and until a license has
18 been issued by the Commissioner of Banks, and the Commissioner shall issue a license
19 under this Article if the Commissioner finds all of the following:

- 20 (1) That authorizing the applicant to engage in the business will promote
21 the convenience and advantage of the community in which the
22 applicant proposes to engage in business authorized by this Article.
- 23 (2) That the financial responsibility, experience, character, and general
24 fitness of the applicant merit the confidence of the public and warrant
25 the belief that the business will be operated lawfully and fairly, within
26 the purposes of this Article.
- 27 (3) That the applicant has, on a consolidated basis and computed in
28 accordance with accepted accounting principles, a minimum net worth
29 of not less than ten million dollars (\$10,000,000) at the time of
30 application for a license.

31 (b) Investigation of Applicants. – Upon the receipt of an application, the
32 Commissioner shall investigate the facts. The Commissioner shall approve or deny
33 every application for a license within 120 days from the date a complete application is
34 submitted. This period may be extended by the written consent of the applicant. The
35 Commissioner shall notify the applicant of the date when the application is deemed
36 complete. In the absence of approval or denial of the application, or consent to the
37 extension of the 120-day period, the application is deemed approved, and the
38 Commissioner shall issue the license effective as of the first day after the 120-day or
39 extended period has elapsed. If the Commissioner reasonably determines from a
40 preliminary investigation that the applicant does not satisfy the conditions set forth in
41 subsection (a) of this section, the Commissioner shall so notify the applicant in writing
42 and making specific findings of fact as to the provisions of this section that have not
43 been met. The applicant shall then be entitled to an informal hearing on the decision that
44 the applicant does not satisfy the conditions set forth in this section, provided that the

1 applicant requests an informal hearing in writing within 30 days after the Commissioner
2 has caused the failure notification to be mailed to the applicant. In the event of a
3 hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the
4 Commissioner shall reconsider the application and, after the hearing, issue a written
5 order granting or denying the application. At the time of making an application, the
6 applicant shall pay the Banking Department the sum of two thousand five hundred
7 dollars (\$2,500) as a fee for investigating the application, which shall be retained
8 whether or not a license is granted the applicant.

9 (c) Required Assets Available. – Each licensee shall continue at all times to have
10 available for the operation of the business on a consolidated basis and computed in
11 accordance with accepted accounting principles, a minimum net worth of not less than
12 ten million dollars (\$10,000,000). The requirements and standards of this subsection and
13 subdivision (a)(2) of this section shall be maintained throughout the period of the
14 license, and failure to maintain these requirements or standards shall be grounds for the
15 revocation of a license under the provisions of G.S. 53-438.

16 **"§ 53-436. Application for license.**

17 The application for license shall be made on a form prepared and furnished by the
18 Commissioner of Banks and shall state all of the following:

- 19 (1) The fact that the applicant desires to engage in business under this
20 Article.
- 21 (2) Whether the applicant is an individual, partnership, association, or
22 corporation.
- 23 (3) The name and address of the person who will manage and be in
24 immediate control of the business.
- 25 (4) The name and address of the owners and their percentage of equity in
26 the company, unless the Commissioner deems it not feasible to furnish
27 the information because of the number of stockholders involved. This
28 subdivision shall not apply to publicly held corporations and their
29 operating subsidiaries.
- 30 (5) When the applicant proposes to commence doing business.
- 31 (6) Any other information that the Commissioner of Banks deems
32 necessary.

33 The statements made in this application shall be sworn to by the applicant or the
34 persons making the application on the applicant's behalf.

35 **"§ 53-437. Locations; change of ownership or management.**

36 (a) Business Location. – A licensee may conduct and carry on its business only at
37 the location or locations that are approved by the Commissioner of Banks, and no
38 changes shall be made from one location to another without the approval of the
39 Commissioner.

40 (b) Places of Business. – The Commissioner may issue more than one certificate
41 to conduct business to the same licensee for multiple places of business upon
42 compliance with all the provisions of this Article governing issuance of a license.

43 (c) Change of Location, Ownership, or Management. – If any change occurs in
44 the name and address of the licensee, the legal agent of a licensed corporation, or in the

1 membership of any licensed partnership a full statement of the change, sworn to as
2 required by G.S. 53-436 for an original application, shall be filed within 30 days with
3 the Commissioner.

4 **"§ 53-438. Revocation, suspension, or surrender of license.**

5 (a) If the Commissioner finds, after due notice and hearing, or opportunity for
6 hearing, that any licensee, or an officer, agent, employee, or representative of a licensee
7 has done any of the following, the Commissioner may issue an order revoking or
8 suspending the right of that licensee and that officer, agent, employee, or representative
9 to do business in North Carolina as a licensee:

10 (1) Willfully violated any of the provisions of this Article.

11 (2) Failed to comply with the rules, regulations, instructions, or orders
12 issued by the Commission.

13 (3) Failed or refused to make its reports to the Commissioner.

14 (4) Failed to pay the fees for its examination and supervision.

15 (5) Furnished false information to the Commissioner or the Commission.

16 Upon receipt of an order revoking or suspending the right of that licensee or that person
17 to do business in North Carolina from the Commissioner, the licensee shall immediately
18 surrender its license to the Commissioner. Within five days after the entry of an order to
19 cease business in North Carolina, the Commissioner shall place on file his findings of
20 fact and mail or otherwise deliver a copy to the licensee. Any licensee who fails to make
21 any extension of credits during any period of 90 consecutive days after being licensed
22 shall surrender his license to the Commissioner.

23 (b) Any licensee may surrender any license by delivering it to the Commissioner
24 with written notice of its surrender, but the surrender shall not affect its civil or criminal
25 liability for acts committed prior to the surrender of the license.

26 (c) No revocation, suspension, or surrender of any license shall impair or affect
27 the obligation of any preexisting lawful contract between the licensee and any obligor.

28 (d) The Commissioner, in his discretion, may reinstate suspended licenses or
29 issue new licenses to a person whose license or licenses have been revoked or
30 surrendered if and when he determines no fact or condition exists which clearly would
31 have justified the Commissioner in refusing originally to issue the license under this
32 Article.

33 **"§ 53-439. Conduct of other business in same office.**

34 (a) A licensee may conduct the business of offering credit enhancing services
35 under this Article in any office, suite, room, or place of business in which any other
36 financial business is solicited or transacted.

37 (b) The Commissioner may authorize in writing the solicitation and transaction
38 of other business in any office, suite, room, or place of business in which a licensee is
39 conducting the business of providing credit enhancement services if the Commissioner
40 reasonably determines that the other business would not be contrary to the best interests
41 of the populations intended to be served.

42 (c) The Commissioner may require, consistent with the provisions of 12 C.F.R.
43 Part 226 (Regulation Z) of the federal Truth-In-Lending Act, for any extension of credit,
44 the other business authorized under subsection (b) of this section to:

- 1 (1) Disclose the cost of consumer credit of goods and services sold.
2 (2) Provide the purchaser with a reasonable cancellation period for goods
3 and services purchased.
4 (d) No licensee shall either:
5 (1) Make the purchase of goods and services sold under the authorization
6 of subsection (b) of this section a condition of making available credit
7 enhancing services.
8 (2) Consider the customer's decision to purchase, or not purchase, goods
9 and services sold under the authorization of subsection (b) of this
10 section a factor in its approval or denial of credit enhancing services,
11 or in its determination of the amount of or terms of credit enhancing
12 services for the customer.
13 (e) The licensee shall notify the customer in writing that the purchase of the
14 goods and services offered under the authorization under subsection (b) of this section is
15 voluntary and that the customer's decision whether or not to purchase the goods and
16 services will not affect the licensee's decision to grant credit or the amount of or terms
17 of the credit granted.
18 (f) If, at any time, the Commissioner has reason to believe that the conduct of
19 any other business authorized under this section is contrary to the best interests of the
20 borrowing public, the Commissioner shall hold a hearing pursuant to Chapter 150B of
21 the General Statutes to determine whether or not to revoke the authority to conduct that
22 business. The Commissioner shall revoke the authority to conduct any other business if
23 he or she finds that the conduct of any other business authorized under this section is
24 contrary to the best interests of the borrowing public.
25 (g) This section shall not be construed as authorizing the collection of any
26 extension of credits or charges in violation of the prohibitions contained in G.S. 53-190.
27 (h) The books, records, and accounts relating to credit enhancement loans shall
28 be kept in the manner prescribed by the Commissioner of Banks to delineate clearly the
29 credit enhancement services business from any other business authorized by the
30 Commissioner.
31 **§ 53-440. Maximum rate of interest and fee; computation of interest; limitation**
32 **on interest after judgment; limitation on interest after maturity of the**
33 **extension of credit.**
34 (a) Maximum Rate of Interest. – Every licensee under this section may make
35 credit available through credit enhancement services in an amount not exceeding three
36 thousand dollars (\$3,000) at an initial interest rate of up to sixty percent (60%). Interest
37 shall be contracted for and collected at the single simple interest rate applied to the
38 outstanding balance that would earn the same amount of interest as the above rate for
39 payment according to schedule.
40 (b) Maximum Fee. – In addition to the interest authorized in subsection (a) of this
41 section, a licensee offering credit enhancement services under this section may collect
42 from the customer a fee for processing the credit enhancement services up to
43 twenty-five dollars (\$25.00), provided that these charges may not be assessed more than
44 twice in any 12-month period.

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

14 (d) Computation of Minimum Repayment Requirements. – Initial minimum
15 payment requirements shall be based on repayment of the credit enhancement loan in
16 not less than 120 days.

17 (e) Limitation on Interest After Judgment. – If a money judgment is obtained
18 against any party on any extension of credit made under the provisions of this section,
19 neither the judgment nor the extension of credit shall carry, from the date of the
20 judgment, any interest in excess of eight percent (8%) per annum.

21 (f) Limitation of Interest After Maturity of Extension of credit. – After the
22 maturity date of any credit enhancement loan made under the provisions of this section
23 and until that credit enhancement loan is paid in full by cash, new extension of credit,
24 refinancing or otherwise, no charges other than interest as agreed by the parties (but not
25 to exceed the maximum rate permitted under North Carolina law) shall be computed or
26 collected from any party to the credit enhancement loan upon the unpaid principal
27 balance of the credit enhancement loan.

28 **"§ 53-441. Fee for returned checks.**

29 A licensee may collect the fee for returned checks to the extent permitted by
30 G.S. 25-3-506. This section shall apply to any extension of credit made by any licensee
31 under this Article.

32 **"§ 53-442. Additional fees; no splitting contracts; certain contracts void.**

33 (a) The following fees may be assessed:

34 (1) Monthly maintenance fee not to exceed twenty-nine dollars and
35 ninety-five cents (\$29.95).

36 (2) Late fee not to exceed twenty-five dollars (\$25.00).

37 (b) No licensee shall divide into separate parts any credit enhancement loan made
38 for the purpose of or with the effect of obtaining charges in excess of those authorized
39 by this Article. Nothing in this subsection shall prohibit a licensee from offering a
40 customer multiple credit enhancement services at the same time and charging the
41 applicable interest and fees authorized by this Article.

42 (c) All balances due to a licensee from any person as a customer or as an
43 endorser, guarantor, or surety for any customer or otherwise shall be considered a part

1 of any credit enhancement loan being made by a licensee to that person for the purpose
2 of computing interest or charges.

3 **"§ 53-443. Multiple-office credit enhancing loans limitation.**

4 (a) A licensee shall not make credit enhancing loans in one office to any
5 customer who already has an outstanding credit enhancing loan in another office
6 operated by the same entity or by another licensee that is an affiliate, parent, subsidiary,
7 or under the same ownership, management, or control, whether partial or complete.

8 (b) A licensee shall take every reasonable precaution to prevent granting credit
9 enhancing loans in violation of subsection (a) of this section.

10 (c) A licensee may service credit enhancing loans and modify the terms of the
11 loans within the limits authorized by G.S. 53-440(a) at any office operated by that
12 licensee regardless of where the credit enhancing loan was originated.

13 **"§ 53-444. Limitations and prohibitions on practices and agreements.**

14 (a) No Assignment of Earnings. – A licensee may not take an assignment of
15 earnings of the customer for payment or as security for payment of credit enhancement
16 loan. An assignment of earnings in violation of this section is unenforceable by the
17 assignee of the earnings and is revocable by the customer.

18 (b) Limitation on Default Provisions. – An agreement between a licensee and a
19 customer pursuant to a credit enhancement loan under this Article with respect to
20 default by the customer is enforceable only to the extent that (i) the customer fails to
21 make a payment as required by the agreement, or (ii) the prospect of payment,
22 performance, or realization of collateral is significantly endangered or impaired, the
23 burden of establishing the prospect of a significant endangerment or impairment being
24 on the licensee.

25 (c) Prohibitions on Discrimination. – No licensee shall deny any credit
26 enhancement loan or services or discriminate in the fixing of the amount, duration,
27 application procedures, or other terms or conditions of any credit enhancement loan or
28 services because of the race, color, religion, national origin, sex, or marital status of the
29 applicant or any other person connected with the transaction.

30 (d) Limitation on Attorneys' fees. – With respect to a credit enhancement loan or
31 services made pursuant to the provisions of G.S. 53-440, the agreement shall not
32 provide for payment by the customer of attorneys' fees.

33 (e) No Real Property as Security. – No licensee shall make any credit
34 enhancement loan within this State which shall in any way be secured by real property.

35 (f) Deceptive Acts or Practices. – No licensee shall engage in any unfair method
36 of competition or unfair or deceptive trade practices in the conduct of making or
37 providing any credit enhancement loans or services to customers pursuant to this Article
38 or in collecting or attempting to collect any money alleged to be due and owing by a
39 customer.

40 **"§ 53-445. Statements and information to be furnished to customers; power of**
41 **attorney or confession of judgment prohibited.**

42 (a) Contents of Statement Furnished to Customer. – At the time credit enhancing
43 services are made available to a customer, the licensee shall deliver to the customer, or

1 if there be two or more customers, to one of them a copy of a written statement,
2 showing in clear and distinct terms all of the following:

3 (1) The name and address of the licensee and one of the primary obligors
4 on the credit enhancement loan.

5 (2) The date of the credit contract.

6 (3) Schedule or descriptions of required payments.

7 (4) All applicable interest rates.

8 (5) Financial literacy materials available to the customer.

9 (b) Schedule of Charges, etc., to Be Made Available; Copy Filed with
10 Commissioner. – At each place of business in North Carolina, the licensee shall make
11 readily available to the customer, in a form prescribed by the Commissioner, a full and
12 accurate schedule of charges on all types of credit enhancement services currently being
13 made available by the licensee.

14 (c) A copy of that schedule required by subsection (b) of this section shall be
15 filed in the office of the Commissioner of Banks.

16 (d) Periodic Statements. – At each place of business in North Carolina, or by
17 direct mail to the customer, the licensee shall make readily available to the customer
18 periodic activity statements for those credit enhancement services that require a
19 statement under federal law.

20 (e) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall
21 take any confession of judgment or permit any customer to execute a power of attorney
22 in favor of any licensee or in favor of any third person to confess judgment or to appear
23 for the customer in any judicial proceeding, and any confession of judgment or power of
24 attorney to confess judgment taken in violation of this subsection shall be absolutely
25 void.

26 **"§ 53-446. Payment of extension of credits; statements.**

27 (a) Periodically the licensee shall give to the person making payments a
28 statement showing the amounts paid and the balance due on the credit enhancement
29 services or loans.

30 (b) Upon payment for credit enhancing services or loans, and no less often than
31 quarterly, the licensee shall report all customer credit activity which is routinely
32 accepted by national credit bureaus.

33 (c) Upon payment of any credit enhancement services or loan in full, a licensee
34 shall cancel and return to the customer, within a reasonable length of time, originals or
35 copies of any instrument securing the credit enhancement services or loans, which no
36 longer secures any indebtedness of the customer to the licensee.

37 **"§ 53-447. Advertising, broadcasting, etc., false or misleading statements.**

38 No licensee subject to this Article shall advertise, display, distribute, telecast, or
39 broadcast or cause or permit to be advertised, displayed, distributed, telecasted, or
40 broadcasted, in any manner whatsoever, any false, misleading, or deceptive statement or
41 representation with regard to the rates, terms, or conditions of credit enhancement
42 services or loans. The Commissioner may require that charges or rates of charge, if
43 stated by a licensee, be stated fully and clearly in any manner as he deems necessary to
44 prevent misunderstanding by prospective customers. The Commissioner may permit or

1 require licensees to refer in their advertising to the fact that their business is under State
2 supervision, subject to any conditions, to prevent an erroneous impression as to the
3 scope or degree of protection provided by this Article.

4 **"§ 53-448. Securing of information; records and reports; allocations of expense.**

5 (a) Each licensee shall maintain all financial books and records directly relating
6 to any credit enhancement loans and services made or provided under this Article
7 reasonably required by the Commissioner of Banks to be kept, and the Commissioner,
8 his deputy, or duly authorized examiner or agent or employee may examine those
9 records at any reasonable time to determine whether the licensee is complying with this
10 Article and the rules issued to implement this Article. The required financial books and
11 records may be maintained in any form authorized by the Commissioner. The financial
12 books and records of each licensed office shall be clearly segregated. When a licensee
13 maintains its financial books and records outside of North Carolina, the licensee shall
14 make them available for examination at the place where they are maintained and shall
15 pay for all reasonable and necessary expenses incurred by the Commissioner in
16 conducting any examination. Where the data processing for any licensee is performed
17 by a person other than the licensee, the licensee shall provide to the Commissioner of
18 Banks a copy of a binding agreement between the licensee and the data processor which
19 allows the Commissioner, his deputy, or duly authorized examiner or agent or employee
20 to examine that particular data processor's activities pertaining to the licensee to the
21 same extent as if the data processing services were being performed by the licensee on
22 its own premises; and, notwithstanding the provisions of G.S. 53-434 and G.S. 53-122,
23 when billed by the Commissioner, the licensee shall reimburse the Commissioner for all
24 costs and expenses incurred by the Commissioner in an examination under this
25 subsection.

26 (b) Each licensee shall file annually with the Commissioner on or before the
27 thirty-first day of March for the 12 months' period ending the preceding December 31
28 reports on forms prescribed by the Commissioner. These annual reports shall disclose in
29 detail, and under appropriate headings, any changes from the information contained in
30 the original license application and other information necessary to show that the
31 licensee continues to be in compliance with this Article. Reports shall be verified by the
32 oath or affirmation of the owner, manager, president, vice-president, cashier, secretary,
33 or treasurer of the licensee.

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

38 **"§ 53-449. Rules and regulations by Banking Commission and Commissioner.**

39 The State Banking Commission may issue all rules it deems necessary in
40 implementing this Article and in providing for the protection of the borrowing public
41 and the efficient management of licensees under this Article and to give all necessary
42 instructions to these licensees for the purpose of interpreting this Article. The
43 Commissioner may issue rules and orders in implementing and carrying out the
44 provisions of G.S. 53-448. All licensees under this Article, their officers, agents, and

1 employees shall comply fully with all of the rules and instructions. When issued, any
2 rule shall be forwarded by mail to each licensee at its licensed place of business at least
3 20 days prior to the rule's effective date.

4 **"§ 53-450. Commissioner to issue subpoenas, conduct hearings, give publicity to**
5 **investigations, etc.**

6 The Commissioner may issue subpoenas, including subpoenas duces tecum, and
7 compel attendance of witnesses, administer oaths, conduct hearings, and transcribe
8 testimony in making the investigations and conducting the hearings required by this
9 Article or in the other discharge of his duties, and to give any publicity to his
10 investigations and findings as he may deem best for the public interest.

11 **"§ 53-451. Injunctive powers; receivers.**

12 When the Commissioner has reasonable cause to believe that any person is violating
13 or is threatening to violate any provision of this Article, he may in addition to all actions
14 provided for in this Article, and without prejudice to those other actions, enter an order
15 requiring a person to desist or to refrain from a violation; and an action may be brought
16 in the name of the Commissioner on the relation of the State of North Carolina to enjoin
17 the person from engaging in or continuing the violation or from doing any act or acts in
18 furtherance of the violation. In any desist action an order or judgment may be entered
19 awarding any preliminary or final injunction as may be deemed proper. In addition to all
20 other means provided by law for the enforcement of a restraining order or injunction,
21 the court in which the action is brought may impound, and appoint a receiver for the
22 property and business of the defendant, including any books, papers, documents, and
23 records that the court deems reasonably necessary to prevent violations of this Article
24 through or by means of the use of that property and business. The receiver, when
25 appointed and qualified, shall have those powers and duties as to custody, collection,
26 administration, winding up, and liquidation of the property and business as shall from
27 time to time be conferred upon him by the court.

28 **"§ 53-452. Review of regulations, order or act of Commission or Commissioner.**

29 The Commission may review any rule, order, or act of the Commissioner done
30 pursuant to or with respect to the provisions of this Article, and any person aggrieved by
31 any rule, order, or act may appeal to the Commission for review upon giving notice in
32 writing within 20 days after the rule, order, or act complained of is adopted, issued, or
33 done. Notwithstanding any other provision of law to the contrary, any aggrieved party
34 to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92.

35 **"§ 53-453. Loans and extensions of credit made elsewhere.**

36 (a) No credit enhancement loan made after the effective date of this Article that
37 is made outside this State in the amount or of the value of three thousand dollars
38 (\$3,000) or less for which greater consideration or charges than are authorized by
39 G.S. 53-440 through G.S. 53-442 have been charged, contracted for, or received, shall
40 be enforced in this State. This prohibition shall not apply to credit enhancement loans in
41 which contractual activities, including solicitation, discussion, negotiation, offer,
42 acceptance, signing of documents, or delivery and receipt of funds, occur entirely
43 outside North Carolina.

1 (b) If any lender, not licensed in North Carolina, makes credit enhancement loans
2 outside this State in the amount or of the value of three thousand dollars (\$3,000) or less
3 and comes into this State to solicit or otherwise conduct activities in regard to those
4 credit enhancement loans, then that lender shall be subject to the requirements of this
5 Article.

6 (c) No lender licensed to do business under this Article may collect, or cause to
7 be collected, any credit enhancement loans made by a lender in another state, not
8 licensed in this State, to a customer who was a legal resident of North Carolina at the
9 time the credit enhancement loan was made. The purchase of a credit enhancement loan
10 account by a licensee shall not alter this prohibition.

11 **"§ 53-454. Businesses exempted.**

12 Nothing in this Article shall be construed to apply to any person, firm, or corporation
13 doing business under the authority of any law of this State or of the United States
14 relating to banks, trust companies, savings and loan associations, cooperative credit
15 unions, agricultural credit corporations or associations organized under the laws of
16 North Carolina, production credit associations organized under the act of Congress
17 known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on
18 specific articles of personal property, industrial banks, the business of negotiating loans
19 on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in
20 G.S. 105-83 other than persons, firms, and corporations engaged in the business of
21 accepting fees for endorsing or otherwise securing loans or contracts for repayment of
22 loans."

23 **SECTION 2.** There is appropriated from the General Fund to the State
24 Banking Commission the sum of one hundred fifty thousand dollars (\$150,000) for the
25 2006-2007 fiscal year to evaluate the effectiveness of the Credit Enhancement Services
26 Act and to report its findings to the Joint Legislative Commission on Governmental
27 Operations. The report of the State Banking Commission shall be submitted to the Joint
28 Legislative Commission on Governmental Operations on or before March 1, 2008, and
29 shall include a statement of the number of entities licensed under the Credit
30 Enhancement Services Act and an analysis of the population served by the Act.

31 **SECTION 3.** This act becomes effective October 1, 2006.