

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 2030

Short Title: Increase Consumer Finance Fees.

(Public)

Sponsors: Senator Rand.

Referred to: Finance.

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE CONSUMER FINANCE ACT BY INCREASING FEES
PAID BY CONSUMER FINANCE LICENSEES AND TO CLARIFY THE
PROHIBITION AGAINST EVASIONS OF THE CONSUMER FINANCE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-122(a)(2) reads as rewritten:

"(2) Consumer Finance Licensees. – Each consumer finance licensee shall pay an annual assessment not to exceed ~~eighteen dollars (\$18.00)~~ forty-eight dollars (\$48.00) per one hundred thousand dollars (\$100,000) or fraction thereof of assets, or fraction thereof, average total loan receivables for the year preceding the required payment date, plus a fee of ~~three hundred dollars (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars (\$500.00).~~ five hundred dollars (\$500.00) per office. The assessment shall be determined on a consumer finance licensee's average total assets- loan receivables as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same."

SECTION 2. G.S. 53-168 reads as rewritten:

"§ 53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner of Banks, and the Commissioner shall not issue any such license unless and until the Commissioner finds:

- 1 (1) That authorizing the applicant to engage in such business will promote
2 the convenience and advantage of the community in which the
3 applicant proposes to engage in business; and
4 (2) That the financial responsibility, experience, character and general
5 fitness of the applicant are such as to command the confidence of the
6 public and to warrant the belief that the business will be operated
7 lawfully and fairly, within the purposes of this Article; and
8 (3) That the applicant has available for the operation of such business at
9 the specified location loanable assets of at least fifty thousand dollars
10 (\$50,000).

11 (b) Investigation of Applicants. – Upon the receipt of an application, the
12 Commissioner shall investigate the facts. If the Commissioner determines from such
13 preliminary investigation that the applicant does not satisfy the conditions set forth in
14 subsection (a), the Commissioner shall so notify the applicant who shall then be entitled
15 to an informal hearing thereon provided ~~he~~ the applicant so requests in writing within
16 30 days after the Commissioner has caused the above-referred to notification to be
17 mailed to the applicant. In the event of a hearing, to be held in the offices of the
18 Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application
19 and, after the hearing, issue a written order granting or denying ~~such~~ the application. ~~At~~
20 ~~the time of making such application, the applicant shall pay the Banking Department the~~
21 ~~sum of two hundred fifty dollars (\$250.00) as a fee for investigating the application,~~
22 ~~which shall be retained irrespective of whether or not a license is granted the applicant.~~
23 Every applicant for initial licensure under this Article shall pay a nonrefundable filing
24 fee of one thousand dollars (\$1,000) with the application.

25 (c) Repealed by Session Laws 2001-519, s. 2.

26 (d) Required Assets Available. – Each licensee shall continue at all times to have
27 available for the operation of the business at the specified location loanable assets of at
28 least fifty thousand dollars (\$50,000). The requirements and standards of this subsection
29 and subsection (a)(2) of this section shall be maintained throughout the period of the
30 license and failure to maintain such requirements or standards shall be grounds for the
31 revocation of a license under the provisions of G.S. 53-171 of this Article.

32 (e) License, Posting, Continuing. – Each license shall state the address at which
33 the business is to be conducted and shall state fully the name of the licensee, and if the
34 licensee is a copartnership, or association, the names of the members thereof, and if a
35 corporation, the date and place of its incorporation. Transfer or assignment of a license
36 by one person to another by sale or otherwise is ~~prohibited without the prior approval of~~
37 ~~the Commissioner.~~ prohibited. Each license shall be kept posted in the licensed place of
38 business. Each license shall remain in full force and effect until surrendered, revoked, or
39 suspended as hereinafter provided."

40 **SECTION 3.** G.S. 53-278 reads as rewritten:

41 "**§ 53-278. Application for license; investigation; application fee.**

42 (a) An application for licensure under this Article shall be in writing, under oath,
43 and on a form prescribed by the Commissioner. The application shall set forth all of the
44 following:

- 1 (1) The name and address of the applicant.
- 2 (2) If the applicant is a firm or partnership, the name and address of each
- 3 member of the firm or partnership.
- 4 (3) If the applicant is a corporation, the name and address of each officer,
- 5 director, registered agent, and principal.
- 6 (4) The addresses of the locations of the business to be licensed.
- 7 (5) Other information concerning the financial responsibility, background
- 8 experience, and activities of the applicant and its members, officers,
- 9 directors, and principals as the Commissioner requires.

10 (b) The Commissioner may make such investigations as the Commissioner
11 deems necessary to determine if the applicant has complied with all applicable
12 provisions of this Article and State and federal law.

13 (c) The application shall be accompanied by payment of a ~~two hundred fifty~~
14 ~~dollar (\$250.00)~~ five hundred dollar (\$500.00) application ~~fee and fee,~~ a five hundred
15 dollar (\$500.00) investigation fee, fee, and a fee for each anticipated location of one
16 hundred dollars (\$100.00) each. These fees are not refundable or abatable, but, if the
17 license is granted, payment of the application fee shall satisfy the fee requirement for
18 the first license year or remaining part thereof.

19 (d) Licenses shall expire annually and may be renewed upon payment of a
20 license fee of ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) plus a
21 ~~fifty dollar (\$50.00)~~ one hundred dollar (\$100.00) fee for each ~~branch~~ office location
22 certificate issued under a license."

23 **SECTION 4.** G.S. 53-248 reads as rewritten:

24 "**§ 53-248. Registration procedure; informal hearing.**

25 (a) Initial Registration. An application to become registered as a facilitator shall
26 be in writing, under oath, and in a form prescribed by the Commissioner. The
27 application shall contain all information prescribed by the Commissioner. Each
28 application for registration shall be accompanied by a fee, payable to the Commissioner,
29 of ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) for each office
30 where the registrant intends to facilitate refund anticipation loans.

31 Upon the filing of an application for registration, if the Commissioner finds that the
32 responsibility and general fitness of the applicant are such as to command the
33 confidence of the community and to warrant belief that the business of facilitating
34 refund anticipation loans will be operated within the purposes of this Article, the
35 Commissioner shall register the applicant as a facilitator of refund anticipation loans
36 and shall issue and transmit to the applicant a certificate attesting to the registration. If
37 the Commissioner does not so find, he shall not register the applicant and shall notify
38 the applicant of the reasons for the denial.

39 Upon receipt of a certificate of registration, the applicant is registered under this
40 Article and may engage in the business of facilitating refund anticipation loans at the
41 offices identified on the application for registration.

42 (b) Renewal. Each registration as a facilitator of refund anticipation loans shall
43 expire on December 31 following the date it was issued, unless it is renewed for the
44 succeeding year. Before the registration expires, the registrant may renew the

1 registration by filing with the Commissioner an application for renewal in the form and
2 containing all information prescribed by the Commissioner. Each application for
3 renewal of registration shall be accompanied by a fee of ~~one hundred dollars (\$100.00)~~
4 two hundred dollars (\$200.00) for each office where the registrant intends to facilitate
5 refund anticipation loans during the succeeding year.

6 Upon the filing of an application for renewal of registration under this Article, the
7 Commissioner shall renew the registration unless the Commissioner determines that the
8 fitness of the registrant or the operations of the registrant would not support registration
9 of the registrant under subsection (a). If the Commissioner makes such a determination,
10 he shall so notify the registrant, stating the reasons for the determination.

11 (c) Display of Certificate. Each registrant shall prominently display a certificate
12 issued under this Article in each place of business in the State where the registrant
13 facilitates the making of refund anticipation loans.

14 (d) Within five days of receipt of the Commissioner's notice, as required by
15 subsections (a) and (b) of this section, the applicant may make written demand of the
16 Commissioner for a hearing. The hearing before the Commissioner shall be an informal
17 hearing and shall be held with reasonable promptness."

18 **SECTION 5.** The General Assembly makes the following findings:

- 19 (1) Consumer loans in North Carolina are regulated by the North Carolina
20 Consumer Finance Act, Article 15 of Chapter 53 of the General
21 Statutes. The North Carolina Consumer Finance Act requires
22 consumer finance lenders to be licensed and authorizes a maximum
23 interest rate of thirty-six percent (36%) on the first six hundred dollars
24 (\$600.00) of the loan.
- 25 (2) Some lenders have attempted to evade the restrictions of the North
26 Carolina Consumer Finance Act by offering cash advances in the form
27 of instant cash rebates or other guises. These cash advance transactions
28 are typically offered in conjunction with the sale of Internet access,
29 telephone time units, catalog certificates, or the use of office
30 equipment, when in fact the sale of the goods or services is a pretext
31 for the making of a loan.
- 32 (3) North Carolina courts have declared some of these transactions are
33 unlawful, but new schemes continue to be devised in order to
34 circumvent the lending laws of North Carolina and to avoid regulation
35 by the Commissioner of Banks.
- 36 (4) It is the intent of the General Assembly that G.S. 53-166(a) should be
37 construed broadly to prohibit illicit lending schemes and to clarify the
38 devices, subterfuges, and pretenses that are prohibited under
39 G.S. 53-166(b), as amended by Section 6 of this act.

40 **SECTION 6.** G.S. 53-166 reads as rewritten:

41 **"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.**

42 (a) Scope. – No person shall engage in the business of lending in amounts of ten
43 thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or
44 indirectly, on or in connection with any such loan, any charges whether for interest,

1 compensation, consideration, or expense, or any other purpose whatsoever, which in the
2 aggregate are greater than permitted by Chapter ~~24,24~~ of the General Statutes, except as
3 provided in and authorized by this Article, and without first having obtained a license
4 from the Commissioner. The word "lending" as used in this section, shall include, but
5 shall not be limited to, endorsing or otherwise securing loans or contracts for the
6 repayment of loans.

7 (b) Evasions. – The provisions of subsection (a) of this section shall apply to any
8 person who seeks to avoid its application by any device, subterfuge or pretense
9 whatsoever. For purposes of this section, devices, subterfuges, and pretenses include,
10 but are not limited to, any transaction in which a cash rebate or other advance of funds
11 is offered and all of the following apply:

12 (1) The cash advance is made contemporaneously with the transaction.

13 (2) The amount of the cash advance is required to be repaid at a later date.

14 (3) The selling or providing of any item, service, or commodity with the
15 transaction is incidental to, or a pretext for, the advance of funds.

16 (4) The transaction requires the consumer to present a check or electronic
17 debit authorization for the purpose of making future repayment.

18 (c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession.
19 – Any person not exempt from this Article, or any officer, agent, ~~employee~~ employee,
20 or representative thereof, who fails to comply with or who otherwise violates any of the
21 provisions of this Article, or any regulation of the Banking Commission adopted
22 pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each such violation
23 shall be considered a separate offense. It ~~shall be~~ is the duty of the Commissioner of
24 Banks to provide the district attorney of the court having jurisdiction of any ~~such~~
25 offense under this Article with all facts and evidence in ~~his~~ the Commissioner's actual
26 or constructive possession, and to testify as to ~~such~~ the facts upon the trial of any person
27 for ~~any such~~ the offense.

28 (d) Additional Penalties. – Any contract of loan, the making or collecting of
29 which violates any provision of this Article, or regulation thereunder, except as a result
30 of accidental or bona fide error of computation ~~shall be~~ is void and the licensee or any
31 other party in violation shall ~~have no right to~~ not collect, receive ~~receive~~, or retain any
32 principal or charges whatsoever with respect to ~~such~~ the loan. If an affiliate operating in
33 the same office or subsidiary operating in the same office of a licensee makes a loan in
34 violation of ~~G.S. 53-180(i)~~ such G.S. 53-180(i), the affiliate or subsidiary may recover
35 only its principal on ~~such~~ the loan."

36 **SECTION 7.** This act becomes effective October 1, 2006.