

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 904

Short Title: Small Installment Consumer Loans - 1. (Public)

Sponsors: Senator Weinstein.

Referred to: Judiciary I.

March 23, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES
3 FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

4 The General Assembly of North Carolina enacts:

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

7 "Article 15A.

8 "Small Installment Consumer Loans.

9 "§ 53-191.10. Title.

10 This Article shall be known and cited as the "Small Installment Consumer Loan
11 Act".

12 "§ 53-191.11. Definitions.

13 As used in this Article, the following terms mean:

- 14 (1) Actuarial method. – The Actuarial Method as defined by the federal
15 Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq.,
16 commonly referred to as the Truth-In-Lending Act or TILA), as
17 amended from time to time, together with the regulations issued from
18 time to time by the Board of Governors of the Federal Reserve System
19 pursuant to that Act.
- 20 (2) Amount of the loan. – The aggregate of the cash advance and the
21 charges authorized by G.S. 53-191.15.
- 22 (3) Borrower. – Any person who borrows money from any licensee or
23 who pays or obligates himself or herself to pay any money or
24 otherwise furnishes any valuable consideration to any licensee for any
25 act of the licensee as a licensee.
- 26 (4) Cash advance. – The Amount Financed as defined by the federal
27 Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq.,
28 commonly referred to as the Truth-In-Lending Act or TILA), as
29 amended from time to time, together with the regulations issued from

1 time to time by the Board of Governors of the Federal Reserve System
2 pursuant to that Act.

3 (5) Commission. – The State Banking Commission.

4 (6) Commissioner. – The Commissioner of Banks.

5 (7) Deputy commissioner. – The deputy commissioner of banks.

6 (8) Lender. – A person who makes a loan under this Article.

7 (9) License. – The certificate issued by the Commissioner under the
8 authority of this Article to conduct a consumer loan business.

9 (10) Licensee. – A person to whom one or more licenses have been issued.

10 (11) Loanable assets. – Cash, bank deposits, or installment loans made as a
11 licensee pursuant to this Article as the Commissioner may approve.

12 (12) Person. – Any person, firm, partnership, association, or corporation.

13 **"§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article**
14 **void.**

15 (a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no
16 person shall engage in the business of lending in amounts of one thousand two hundred
17 dollars (\$1,200) or less and contract for, exact, or receive, directly or indirectly, on or in
18 connection with any such loan, any charges whether for interest, compensation,
19 consideration, or expense, or any other purpose whatsoever, which in the aggregate are
20 greater than permitted by Chapter 24 of the General Statutes, except as provided in and
21 authorized by this Article, and without first having obtained a license from the
22 Commissioner. The word "lending" as used in this section includes endorsing or
23 otherwise securing loans or contracts for the repayment of loans.

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

27 (c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's
28 Possession. – Any person not exempt from this Article, or any officer, agent, employee,
29 or representative thereof, who intentionally fails to comply with or who otherwise
30 intentionally violates any of the provisions of this Article, or any rule adopted pursuant
31 to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be
32 considered a separate offense. It shall be the duty of the Commissioner to provide the
33 district attorney of the court having jurisdiction of any such offense with all facts and
34 evidence in the Commissioner's actual or constructive possession and to testify as to
35 those facts upon the trial of any person for any such offense.

36 (d) Additional Penalties. – Any contract of loan, the making or collecting of
37 which violates any provision of this Article or any rules adopted pursuant to the
38 authority granted in this Article, except as a result of accidental or bona fide error of
39 computation, shall be void, and the licensee or any other party in violation shall have no
40 right to collect, receive, or retain any principal or charges whatsoever with respect to
41 such loan.

42 **"§ 53-191.13. Expense of supervision.**

1 Each licensee, for the purpose of defraying necessary expenses of the Commissioner
2 and the Commissioner's agents in supervising them, shall pay to the Commissioner the
3 fees prescribed in G.S. 53-122 at the times therein specified.

4 **"§ 53-191.14. License required; showing financial responsibility; investigation of**
5 **applicants; hearings; existing businesses; contents of license; transfer;**
6 **posting.**

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

11 (1) The financial responsibility, experience, character, and general fitness
12 of the applicant are such as to command the confidence of the public
13 and to warrant the belief that the business will be operated lawfully
14 and fairly within the purposes of this Article.

15 (2) The applicant has available for the operation of the business at the
16 specified location loanable assets of at least fifty thousand dollars
17 (\$50,000).

18 (b) Investigation of Applicants. – Upon the receipt of an application, the
19 Commissioner shall investigate the facts. If the Commissioner determines from such
20 preliminary investigation that the applicant does not satisfy the conditions set forth in
21 subsection (a) of this section, the Commissioner shall so notify the applicant who shall
22 then be entitled to an informal hearing thereon provided the applicant so requests in
23 writing within 30 days after the Commissioner has caused the notice to be mailed to the
24 applicant. In the event of a hearing, to be held in the offices of the Commissioner of
25 Banks in Raleigh, the Commissioner shall reconsider the application and, after the
26 hearing, issue a written order granting or denying the application. At the time of making
27 the application, the applicant shall pay the Commissioner of Banks the sum of two
28 hundred fifty dollars (\$250.00) as a fee for investigating the application, which shall be
29 retained irrespective of whether or not a license is granted the applicant.

30 (c) Required Assets Available. – Each licensee shall continue at all times to have
31 available for the operation of the business at the specified location loanable assets of at
32 least fifty thousand dollars (\$50,000). The requirements and standards of this subsection
33 and subdivision (a)(2) of this section shall be maintained throughout the period of the
34 license and failure to maintain these requirements or standards shall be grounds for the
35 revocation of a license under the provisions of this Article.

36 (d) License; Posting; Continuing. – Each license shall state the address at which
37 the business is to be conducted and shall state fully the name of the licensee, and if the
38 licensee is a partnership or association, the names of the members thereof, and if a
39 corporation, the date and place of its incorporation. Transfer or assignment of a license
40 by one person to another by sale or otherwise is prohibited without the prior approval of
41 the Commissioner. Each license shall be kept posted in the licensed place of business.
42 Each license shall remain in full force and effect until surrendered, revoked, or
43 suspended as provided in this Article.

44 **"§ 53-191.15. Alternative rates and maturities for loans not exceeding \$1,200.**

1 (a) Notwithstanding any other provisions of law, a licensee may elect to make
2 installment loans with cash advances not exceeding one thousand two hundred dollars
3 (\$1,200) under the following terms and conditions:

4 (1) No acquisition charge in excess of ten percent (10%) of the cash
5 advance of the loan may be charged.

6 (2) On any loan with a cash advance of not more than three hundred
7 dollars (\$300.00), no installment account handling charge in excess of
8 four and one-half percent (4.5%) of the cash advance per month may
9 be charged.

10 (3) On any loan with a cash advance in excess of three hundred dollars
11 (\$300.00) but not more than five hundred dollars (\$500.00), no
12 installment account handling charge in excess of four percent (4%) of
13 the cash advance per month may be charged.

14 (4) On any loan with a cash advance in excess of five hundred dollars
15 (\$500.00) but not more than seven hundred dollars (\$700.00), no
16 installment account handling charge in excess of three percent (3%) of
17 the cash advance per month may be charged.

18 (5) On any loan with a cash advance in excess of seven hundred dollars
19 (\$700.00) but not more than one thousand dollars (\$1,000), no
20 installment account handling charge in excess of two and one-half
21 percent (2.5%) of the cash advance per month may be charged.

22 (6) On any loan with a cash advance in excess of one thousand dollars
23 (\$1,000) but not more than one thousand two hundred dollars (\$1,200),
24 no installment account handling charge in excess of two percent (2%)
25 of the cash advance per month may be charged.

26 (7) The minimum term for any loan made under this section shall be three
27 months and the maximum term shall be 18 months.

28 (b) If a loan made under this section is prepaid in full, including payment in cash
29 or by a new loan or the renewal of the loan, or if the licensee demands payment in full
30 of the unpaid balance, the licensee shall refund or credit to the borrower that portion of
31 the installment account handling charge contracted for on the loan, the acquisition
32 charge being fully earned as of the date of the loan, determined by the actuarial method
33 computed as of the next scheduled installment due date next following the date of
34 prepayment.

35 (c) On any loan established under this section, no insurance charge or any other
36 charge of any nature whatsoever is permitted except as provided in this section, and
37 except for the following:

38 (1) A delinquent payment charge of ten dollars (\$10.00) on any
39 installment not paid within 10 days after its due date.

40 (2) The return check charge permitted under G.S. 25-3-506.

41 (3) Fees actually paid to any public official or agency of a county or the
42 State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of
43 the General Statutes, or G.S. 20-58, the lender's security interest in any
44 collateral securing the loan.

1 (4) Interest after maturity on the outstanding balance at a rate equal to
2 eight percent (8%) per annum.

3 (d) The loan charges allowed under this section may not be imposed on a loan to
4 a borrower who has one or more loans outstanding under this Article with the same
5 lender or an affiliated lender except that a licensee may make a loan having the charges
6 allowed under this section to pay off the balance due under any other loan or loans made
7 by the lender or its affiliates provided that the aggregate payoff balance of the loan or
8 loans being paid off does not exceed one thousand two hundred dollars (\$1,200). The
9 acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made
10 under this Article to a borrower who, at the time of the acquisition, has a loan under this
11 section from the acquiring licensee or an affiliate of the licensee shall not be a violation
12 of this section.

13 (e) Any loan made under this section must provide for repayment in substantially
14 equal monthly installments. No loan made under this section may be prepaid by a loan
15 from the same licensee or an affiliate of the same licensee who made the initial loan
16 until at least 61 days after the initial loan date nor may a licensee or an affiliate of the
17 same licensee under this section make a new loan to the same borrower until at least 61
18 days after the initial loan date.

19 **"§ 53-191.16. Businesses exempted.**

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

31 **"§ 53-191.17. Applicable provisions.**

32 The provisions of the following sections shall apply to loans, borrowers, and lenders
33 governed by this Article as if these transactions were transactions under Article 15 of
34 this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

35 **SECTION 2.** G.S. 53-169 reads as rewritten:

36 **"§ 53-169. Application for license.**

37 The application for license shall be made on a form prepared and furnished by the
38 Commissioner of Banks and shall state:

- 39 (1) The fact that the applicant desires to engage in business under this
40 Article; ~~Article~~ or under Article 15A of this ~~and~~ Chapter; and
41 (2) Whether the applicant is an individual, partnership, association or
42 corporation; and
43 (3) The name and address of the person who will manage and be in
44 immediate control of the business; and

- 1 (4) The name and address of the owners and their percentage of equity in
2 the company, except when the Commissioner does not deem it feasible
3 to furnish such information because of the number of stockholders
4 involved; and
5 (5) When the applicant proposes to commence doing business; and
6 (6) Such other information as the Commissioner of Banks deems
7 necessary.

8 The statements made in such application shall be sworn to by the applicant or
9 persons making application on the applicant's behalf."

10 **SECTION 3.** G.S. 53-172(a) reads as rewritten:

11 "(a) No licensee shall conduct the business of making loans under ~~this Article~~
12 Article 15 or Article 15A of this Chapter within any office, suite, room, or place of
13 business in which any other business is solicited or transacted.

14 ~~Installment~~The business of installment paper dealers as defined in G.S. 105-83,
15 small installment consumer lenders under Articles 15 and 15A of this Chapter,
16 check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made
17 in North Carolina, or another state by another government regulated lender or lending
18 agency, shall not be considered as being any other business within the meaning of this
19 section."

20 **SECTION 4.** G.S. 53-173 is amended by adding a new subsection to read:

21 "(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted
22 under this section, a licensee may collect a delinquent payment charge of the greater of
23 ten dollars (\$10.00) or five percent (5%) of the amount of the payment due not paid
24 within 10 days after its due date."

25 **SECTION 5.** G.S. 53-176(c) reads as rewritten:

26 "(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c),
27 (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

28 **SECTION 6.** This act becomes effective October 1, 2005.