

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**HOUSE BILL 685
RATIFIED BILL**

AN ACT TO AMEND THE CONSUMER FINANCE ACT TO ALLOW THE RECOVERY OF ELECTRONIC TRANSACTION FEES IMPOSED BY THIRD PARTIES AND TO AMEND THE RETAIL INSTALLMENT SALES ACT TO CLARIFY THE DEFINITION OF OFFICIAL FEES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 15 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-177.1. Electronic transaction fees.

(a) The following definitions apply in this section:

(1) Affiliate. – In relation to a licensee, an entity that directly or indirectly controls, is controlled by, or is under joint control with the licensee.

(2) Control. – Any of the following:

a. Own, directly or indirectly, at least fifty percent (50%) of the capital of an entity.

b. Have the power to direct or cause the direction of the management of and set the policies of an entity.

(b) In addition to the recovery of other costs allowed under this Article, a licensee may collect from a borrower an amount not to exceed the actual cost of any fees charged by a non-affiliate third party for the following transactions:

(1) Online debit card payments to the borrower's account.

(2) In-person debit card payments to the borrower's account.

(3) Automated clearinghouse transaction payments to the borrower's account.

(4) Disbursement of loan proceeds via automated clearinghouse transactions.

(5) Disbursement of loan proceeds via prepaid debit cards or stored value cards.

(6) Disbursement of loan proceeds via electronic payments to the borrower's account at a financial institution or financial services company.

(c) A licensee shall make available to borrowers at least one type of transaction for an account payment and at least one type of transaction for a disbursement of loan proceeds in which it will not seek to recover the cost of third-party fees associated with the transaction.

(d) A licensee shall publish on its website and publicly display at all its retail locations a disclosure on whether a borrower will be charged for any third-party fees with regard to each available type of transaction for account payments and disbursements of loan proceeds. A licensee shall also provide this information as a separate disclosure to a borrower when the borrower establishes a loan account with the licensee.

(e) Nothing in this section prohibits a borrower from directly paying transaction-based fees to a non-affiliate third party for account payments and disbursements of loan proceeds."

SECTION 1.(b) The disclosure requirement in G.S. 53-177.1(d), as enacted by this section, becomes effective January 1, 2022. The remainder of this section becomes effective October 1, 2021, and applies to transactions occurring on or after that date.

SECTION 2.(a) G.S. 25A-10 reads as rewritten:



"§ 25A-10. "Official fees" defined.

"Official fees" ~~means:~~means any of the following:

- (1) Fees and charges prescribed by law ~~which that~~ actually are or will be paid ~~to public officials by the seller~~ for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale; ~~or sale.~~
- (2) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the seller in connection with a consumer credit sale if the premium does not exceed the fees or charges described in subdivision (1) of this section ~~which that~~ would otherwise be payable."

SECTION 2.(b) G.S. 25A-15 reads as rewritten:

"§ 25A-15. Finance charge rates for consumer credit installment sale contracts.

(a) With respect to a consumer credit installment sale contract, a seller may contract for and receive a finance charge not exceeding that permitted by this section. For the purposes of this section, the finance charge rates are the rates that are required to be disclosed by the Consumer Credit Protection Act, except that official fees under G.S. 25A-10 shall be (i) included in the amount financed to the extent payment is deferred by the seller and (ii) excluded from the finance charge.

(b) Except as hereinafter provided, provided in this section, the finance charge rate imposed for a consumer credit installment sales sale contract may shall not exceed: exceed the following rate except that a minimum finance charge of five dollars (\$5.00) may be imposed:

- (1) Twenty-four percent (24%) per annum where the amount financed is less than one thousand five hundred dollars ~~(\$1,500); (\$1,500).~~
- (2) Twenty-two percent (22%) per annum where the amount financed is one thousand five hundred dollars (\$1,500) or greater, but less than two thousand dollars ~~(\$2,000); (\$2,000).~~
- (3) Twenty percent (20%) where the amount financed is two thousand (\$2,000) or greater, but less than three thousand dollars ~~(\$3,000); (\$3,000).~~
- (4) Eighteen percent (18%) per annum where the amount financed is three thousand dollars (\$3,000) or ~~greater, greater.~~

~~except that a minimum finance charge of five dollars (\$5.00) may be imposed.~~

(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) of this section or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor vehicle:

- (1) Eighteen percent (18%) per annum for vehicles one and two model years ~~old; old.~~
- (2) Twenty percent (20%) per annum for vehicles three model years ~~old; old.~~
- (3) Twenty-two percent (22%) per annum for vehicles four model years ~~old; and old.~~
- (4) Twenty-nine percent (29%) per annum for vehicles five model years old and older.

A motor vehicle is one model year old on January 1 of the year following the designated year model of the vehicle.

(d) Notwithstanding ~~the provisions of subsections (b) and (c), above, (c)~~ of this section, in the event that the amount financed in a consumer credit sale contract is secured in whole or in part by a security interest in real property, the finance charge rate ~~may shall~~ not exceed sixteen percent (16%) per annum.

(e) A seller ~~may shall~~ not divide a single credit sale transaction into two or more sales to avoid the limitations as to maximum finance charges imposed by this section.

(f) Notwithstanding ~~the provisions of subsections (b) or (d), and (d)~~ of this section, the parties to a consumer credit installment sale contract for the sale of a residential manufactured

home ~~which that~~ is secured by a first lien on that home or on the land on which ~~such the~~ home is located may contract in writing for the payment of a finance charge as agreed upon by the parties. ~~Provided, this subsection shall only apply~~ This subsection only applies if the parties ~~would have been~~ are entitled to so contract by ~~the provisions of section~~ Section 501 of United States Public Law 96-221, and have complied with the regulations ~~promulgated thereto~~ adopted under it.

For the purposes of this ~~subsection (f), subsection,~~ a "residential manufactured home" means a ~~mobile-manufactured~~ home as defined in ~~G.S. 143-145(7) which~~ G.S. 143-145 that is used as a dwelling."

SECTION 2.(c) This section becomes effective October 1, 2021, and applies to contracts entered into, renewed, or modified on or after that date.

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of September, 2021.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Howard Penny, Jr.
Presiding Officer of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2021