SENATE BILL 331:
Consurmer Finance Act Amendments.

2023-2024 General Assembly

Committee:		**Date:**	December 4, 2023
Introduced by:		**Prepared by:**	Nicholas Giddings Staff Attorney
Analysis of:	S.L. 2023-61		

OVERVIEW: S.L. 2023-61 makes various changes to the Consumer Finance Act.

This bill was vetoed by the Governor on June 19, 2023, and that veto was overridden by the General Assembly on June 27, 2023. This act became effective October 1, 2023, and applies to contracts entered into, modified, or renewed on or after that date.

CURRENT LAW/BILL ANALYSIS:

S.L. 2023-61 changes the following statutes in the Consumer Finance Act (Article 15 of Chapter 53):

GENERAL STATUTE	CURRENT LAW/BILL ANALYSIS
G.S. 53-165	The act removes the definition of "cash advance" and expands the list of definitions to include definitions for "amount financed," "electronic payment," "loan amount," and "servicing loans."
G.S. 53-166	Requires any person engaging in the business of lending amounts of $15,000 or less to consumers at interest rates higher than those allowed under the usury laws of North Carolina (Chapter 24 of the General Statutes) to be licensed under the Consumer Finance Act. The act increases the amount a person can lend under the Consumer Finance Act to $25,000 and requires the servicers of those loans to be licensed.
G.S. 53-167	Requires licensees to pay an annual assessment to the Commissioner of Banks (Commissioner). The annual assessment is $18 per $100,000 of assets plus a fee of $300 per office. The minimum annual assessment is currently $500. The act increases the minimum annual assessment to $1,000.
G.S. 53-168	Outlines the requirements of a person seeking to apply for a consumer finance license. Among other requirements, the applicant must pay an application fee of $250. Once an applicant is approved for a license, that license must be posted at the licensee's place of business and the license cannot be transferred without prior approval of the Commissioner. The act increases the application fee to $500. The act also allows a licensee to post their license on their website and mandate that any licensee seeking to transfer their

	license must provide the Commissioner at least 30-days' notice of the proposed transfer.
G.S. 53-170	Requires a licensee to notify the Commissioner of any change in the name and address of the licensee or of the president, secretary, or agent of a corporation, or in the membership of a partnership, but does not outline when that notice must be filed. The act requires that notice be filed within 90 days of the change.
G.S. 53-171	Outlines when the Commissioner can suspend or revoke a license, as well as the process for a licensee to surrender their license. Currently, a licensee must surrender their license if they fail to make any loans during any period of 90 consecutive days after being licensed. The act removes the requirement to surrender a license for failure to make any loans during a 90-day period.
G.S. 53-172	Prohibits licensees from making consumer finance loans within any place of business in which any other business is solicited or transacted, unless specifically excepted from this requirement. One exception is for the collection by a licensee of loans legally made in North Carolina; this type of business is not considered as being any other business within the meaning of the statute. The act adds loans legally made in North Carolina under Chapter 24 (Interest) and Chapter 25A (Retail Installment Sales Act) as part of that exception.
G.S. 53-173	Outlines how interest is computed under the Consumer Finance Act. Currently, interest cannot be compounded and is (i) computed and paid only as a percentage of the unpaid principal balance or portion thereof, and (ii) computed on the basis of the number of days actually elapsed; however, if part or all of the consideration is the principal balance of a prior loan, then the principal amount payable under the loan contract can include any unpaid interest on the prior loan that has accrued within 90 days before making the new loan contract. The act removes reference to "principal balance" and "principal amount" and substitutes with "amount financed." Therefore, the updated statute provides that interest is to be computed on the unpaid portion of the amount financed.
G.S. 53-176	Outlines the rate of interest that can be charged on consumer finance loans. The rate of interest depends on the amount of the loan. The current interest limitations are: **Loan amount up to $10,000** — **Interest Rate** $0 - $4,000 — 30% >$4,000 - $8,000 — 24% >$8,000 - $10,000 — 18% If a loan is greater than $10,000, the interest rate cannot exceed 18%. Licensees are also limited in the amount of loan processing fees they can charge a borrower at closing. Currently, the licensee is limited to charging $25 for loans up to $2,500, and for any loan above $2,500, 1% of the cash advance of the loan, with a maximum fee not to exceed $40.

Loan amount up to $10,000	Interest Rate
$0 - $4,000	30%
>$4,000 - $8,000	24%
>$8,000 - $10,000	18%

	The act increases the loan amounts allowed to utilize the blended interest rates above, to $12,000. It also increases the interest rate for the first $4,000 of those loans from 30% to 33%. Lastly, it changes the amount of processing fees a licensee can charge at closing. The processing fees under the act cannot exceed $30 for any loan up to $3,000, and for any loan exceeding $3,000, the fee would be 1% of the amount financed, with a maximum fee not to exceed $150.
G.S. 53-177	Outlines fees allowed to be charged by the licensee to the borrower, including recording fees, late fees, deferral charges, payments for insurance policies in lieu of recording, and recovery of court costs. The act makes the following changes to the fee statute: • Increases late fees from $15 to $18. • Provides that the licensee can apply a borrower's most recent payment to the oldest installment due. • Provides that a licensee cannot collect more than one late fee per installment owed. • Provides that late fees on installment payments past due for 10 or more days can still be collected if the licensee places the borrower in default. • Provides that if a loan is refinanced, the licensee can include late fees on installment payments past due for 10 or more days in the amount refinanced. • Provides that if a loan reaches maturity, late fees for installment payments past due for 10 or more days can be included in the final balance. • Provides that a licensee can assess a deferral charge for each month of the remaining loan term on each installment owed after the date of deferral.
G.S. 53-180	Provides that a licensee cannot take an assignment of earnings of the borrower for payment of or as security for a loan. Any assignment in violation of the statute is unenforceable by the assignee of the earnings and is revocable by the borrower. The act alters the language of the statute to remove reference to revocation by the borrower and provides that an assignment in violation of the statute is unenforceable.
G.S. 53-181	Licensees are currently required to deliver to the borrower a copy of the loan contract or a written statement outlining certain required items. The act allows a licensee to provide this information electronically, removes the requirement that the licensee include the face amount of the note evidencing the loan in the statement, and requires the licensee to include that the loan is regulated by the Consumer Finance Act in the statement. Currently, each licensee must make available to borrowers a schedule of charges and insurance premiums on all classes of loans currently being made by the licensee as well as provide a copy of the schedule to the Commissioner. The act deletes these requirements. Currently, a licensee is generally not permitted to take any confession of judgment from a borrower. Section 11 of S.L. 2022-75, however, provided that this prohibition does not apply to a licensee taking a confession of judgment from a borrower following the borrower's failure to make a payment as required under the loan contract. The act deletes the language added under Section 11 of S.L. 2022-75.

G.S. 53-182	Currently, licensees are required to provide a receipt for loan payments made via certain methods. The act adds electronic payments to the list of payments a licensee is not required to provide a receipt for. Upon payment in full of a loan, licensees are currently required to cancel and return any note, assignment, mortgage, deed of trust, or other instrument securing such loan. The act instead allows the licensee to make these documents available electronically.
G.S. 53-184	Outlines record-keeping and accounting requirements of licensees. The act mandates the following of licensees: • Maintain separate loan ledgers and accounts related to the making and collecting of loans under the Consumer Finance Act. • Allocate expenses monthly according to generally accepted accounting principles. • Retain all required books and records for a period of two years after the last transaction. • Outline the required books and records in the following categories: general ledger, loan documents, judgments, and repossessions.
G.S. 53-190	Loan contracts made outside of North Carolina in the amount of $15,000 or less, for which greater consideration or charges than allowed under the Consumer Finance Act have been charged, contracted for, or received, are not enforceable in the State. The act increases the monetary threshold of these loan contracts to $25,000.
G.S. 53C-1-4	Makes a conforming change.

EFFECTIVE DATE: This bill was vetoed by the Governor on June 19, 2023, and that veto was overridden by the General Assembly on June 27, 2023. This act became effective October 1, 2023, and applies to contracts entered into, modified, or renewed on or after that date.