HOUSE BILL 685:
Electronic Transaction Fees/Official Fees.

2021-2022 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	September 1, 2021
Introduced by:	Reps. Strickland, K. Hall, Szoka, D. Hall	**Prepared by:**	Amy Darden Staff Attorney
Analysis of:	First Edition		

OVERVIEW: House Bill 685 would do the following:

- ***Allow a consumer finance lender to recover from a borrower the actual cost of a fee imposed on the lender from an unaffiliated third-party for processing electronic payments and disbursing loan proceeds. Many consumer finance lenders will accept a debit card payment on a loan amount, and many will load loan proceeds onto a borrower's debit card. In these instances, the card company charges a fee for this service. Section 1 of the bill would allow the lender to recover the actual transaction charge imposed by the card company.***
- ***Provide that fees or charges paid by the seller for determining the existence of or to record a security interest in a consumer credit sale may be included in the amount finance but must be excluded from the finance charge.***

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

The North Carolina Consumer Finance Act specifically authorizes nonbank lenders to make small unsecured loans. This Act authorizes the Commissioner of Banks to license and supervise loan companies that make direct consumer loans of $15,000 or less. The Act sets out terms, interest rates, permissible fees and charges, provides limitations on agreements and practices, and provides for additional requirements and restrictions for lenders making loans to military service members. Lenders that do not charge interest rates higher than those permitted by Chapter 24 of the General Statutes are exempt from this Act. Also exempted are banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations, production credit associations, pawnbrokers, and installment paper dealers.

Section 1 of House Bill 685 would add a new section governing electronic transaction fees. Licensees would be allowed to recover from the borrower an amount not greater than the actual cost of any fees charged by a non-affiliate third party for a specific transaction for certain debit card, clearinghouse transactions, and electronic payments. However, the licensee must offer at least one type of transaction for account payment and loan disbursement where they will not seek to recover these electronic transaction fees. The bill also requires the licensee to publicly disclose any third-party fees a borrower will be charged.

This disclosure requirement would become effective January 1, 2022. The remainder of this section would become effective October 1, 2021 and applicable to transactions occurring on or after that date.

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This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The Retail Installment Sales Act governs consumer credit sales. A consumer credit sale is a sale of personal, family, household, or agricultural goods or services by a seller that regularly arranges for an extension of consumer credit, either payable in installments or with a finance charge, where the amount financed doesn't exceed $75,000, unless it is a debt secured by real property or a manufactured home. The Act includes limits on finance charge rates and terms of payments.

Section 2 of House Bill 685 would amend the definition of "official fees" to be any fees and charges prescribed by law to paid by the seller for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale. Current law limits the definition to those amounts paid to a public entity. The section also provides, consistent with federal truth-in-lending laws, that official fees may be included in the amount financed but must be excluded from the finance charge.

This section would become effective October 1, 2021, and apply to contracts entered into, or renewed or modified, on or after that date.