

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-243
HOUSE BILL 2894**

**AN ACT TO CLARIFY THE APPLICATION OF THE NORTH CAROLINA
CONSUMER FINANCE ACT TO VARIOUS LENDING SUBTERFUGES.**

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly makes the following findings:

- (1) Consumer loans in North Carolina are regulated by the North Carolina Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes. The North Carolina Consumer Finance Act requires consumer finance lenders to be licensed and, under G.S. 53-173, authorizes interest rates of up to thirty-six percent (36%) on loans of three thousand dollars (\$3,000) or less.
- (2) Some lenders have attempted to evade the restrictions of the North Carolina Consumer Finance Act by offering cash advances in the form of instant cash rebates or other guises. These cash advance transactions are typically offered in conjunction with the sale of Internet access, telephone time units, catalog certificates, or the use of office equipment, when in fact the sale of the goods or services is a pretext for the making of a loan.
- (3) North Carolina courts have declared some of these transactions to be unlawful, but new schemes continue to be devised in order to circumvent the lending laws of North Carolina and to avoid regulation by the Commissioner of Banks.
- (4) It is the intent of the General Assembly that G.S. 53-166(a) should be construed broadly to prohibit illicit lending schemes and to clarify the devices, subterfuges, and pretenses that are prohibited under G.S. 53-166(b), as amended by Section 2 of this act.

SECTION 2. G.S. 53-166 reads as rewritten:

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

(a) Scope. – No person shall engage in the business of lending in amounts of ten thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter ~~24,24~~ of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section ~~shall apply~~ apply to any person who seeks to avoid its application by any device, ~~subterfuge~~ ~~subterfuge~~, or pretense whatsoever. Devices, subterfuges, and pretenses include any transaction in which a cash rebate or other advance of funds is offered and all of the following apply:

- (1) The cash advance is made contemporaneously with the transaction or soon thereafter.
- (2) The amount of the cash advance is required to be repaid at a later date.

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

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

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

SECTION 3. This act becomes effective October 1, 2006, and applies to transactions that are investigated on or after that date under the North Carolina Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes, as amended by this act, and applies to transactions that are subject to enforcement actions under the North Carolina Consumer Finance Act that are filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:22 p.m. this 13th day of August, 2006