

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 947

Short Title: Regulate Deferred Deposits. (Public)

Sponsors: Senators Hoyle, Holloman, Berger of Rockingham, Shaw; Apodaca, Bingham, East, and Jenkins.

Referred to: Commerce.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PREVENT PREDATORY PAYDAY LOAN PRACTICES AND
REGULATE STATE DEFERRED DEPOSIT TRANSACTIONS, AND TO
PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"§ 53-275. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Gross monthly income" means monthly income before the withholding of taxes or other payments, as demonstrated by official documentation of the income, including a pay stub or receipt reflecting

1 payment of government benefits for the period 30 days prior to the
2 date on which the loan is made.

3 (4c) "Lender" means the following:

4 a. Any person or entity that offers or makes a deferred deposit
5 transaction, arranges a deferred deposit transaction for a third
6 party, or acts as an agent for a third party, regardless of whether
7 the third party is exempt from licensing under this Article or
8 whether approval, acceptance, or ratification by the third party
9 is necessary to create a legal obligation for the third party.

10 b. Notwithstanding the foregoing, a State or federally chartered
11 bank, savings and loan association, credit union, or supervised
12 lender shall not be considered a lender for purposes of this
13 Article and shall be specifically exempt from provisions of this
14 Article so long as all of the following are satisfied:

15 1. It initially advances the loan proceeds to the borrower.

16 2. It does not sell, assign, or transfer in the aggregate a
17 preponderant economic interest in the deferred deposit
18 transactions to an arranger, agent, or assistant, or an
19 affiliate or subsidiary of the State or federally chartered
20 bank, savings and loan association, credit union, or
21 supervised lender, unless selling, assigning, or
22 transferring a preponderant economic interest is
23 permitted by the primary regulator of the State or
24 federally chartered bank, savings and loan association,
25 credit union, or supervised lender.

26 3. It develops the deferred deposit transaction program on
27 its own.

28 c. If a lender offers, arranges, acts as an agent for, or assists a
29 State or federally chartered bank, savings and loan association,
30 credit union, or supervised lender in any way in the making of a
31 deferred deposit transaction and the State or federally chartered
32 bank, savings and loan association, credit union, or supervised
33 lender meets the standards set forth in sub-subdivision b. of this
34 subdivision, the lender shall comply with all other provisions of
35 this Article to the extent they are not preempted by other State
36 or federal laws.

37 (5) "Licensee" means a person or entity licensed to engage in a
38 check-cashing business under this Article.

39 (5a) "Loan amount" means the amount financed as defined in Regulation
40 'Z' of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b)).

41 (6) "Person" means an individual, partnership, association, or
42 corporation."

43 **SECTION 2.** G.S. 53-276 reads as rewritten:

44 **"§ 53-276. License required.**

1 No person or other entity may engage in the business of cashing checks, drafts, or
2 money orders for ~~consideration~~ consideration, nor engage in the business of making
3 deferred deposit transactions without first obtaining a license under this Article. No
4 person or other entity providing a check-cashing service may avoid the requirements of
5 this Article by providing a check or other currency equivalent instead of currency when
6 cashing payment instruments."

7 **SECTION 3.** Article 22 of Chapter 53 of the General Statutes is amended by
8 adding the following new sections to read:

9 **"§ 53-281.1. Deferred deposit transactions permitted.**

10 Lenders may make deferred deposit transactions pursuant to the following
11 requirements:

- 12 (1) The face amount of the deferred deposit check shall not exceed five
13 hundred dollars (\$500.00) or twenty-five percent (25%) of the
14 borrower's gross monthly income, whichever is less.
- 15 (2) Each deferred deposit check cashed by a lender shall be deemed to be
16 a loan and shall be documented by a written agreement as provided in
17 G.S. 53-281.2.
- 18 (3) A lender shall not directly or indirectly charge a fee or other
19 consideration in excess of fifteen percent (15%) of the face amount of
20 the check.
- 21 (4) No check cashed under the provisions of this section shall be repaid by
22 the proceeds of another check cashed by the same lender or any
23 affiliate of the lender. A lender shall not, for any consideration, renew
24 or otherwise extend any deferred deposit check or withhold the check
25 from deposit for any period beyond the time set forth in the written
26 agreement, except as allowed under G.S. 53-281.4.

27 **"§ 53-281.2. Written agreement and disclosures required for deferred deposit**
28 **transactions.**

29 (a) Each deferred deposit transaction shall be documented by a written agreement
30 signed by the borrower and the lender. A legible copy of the agreement shall be
31 provided to the borrower.

32 (b) The written agreement shall contain:

- 33 (1) The name and address of the borrower.
- 34 (2) The name, local street address, and telephone number of the lender.
- 35 (3) The transaction date, which shall be prominently labeled.
- 36 (4) The loan amount as defined in G.S. 53-275(5a).
- 37 (5) The amount of any fees charged, expressed as both a dollar amount
38 and as an effective annual percentage rate (APR).
- 39 (6) The maturity date, which shall be no less than 10 days nor more than
40 30 days after the transaction date.
- 41 (7) The following notice immediately above the borrower's signature line
42 in at least ten-point type: **THIS TRANSACTION IS NOT MEANT**
43 **TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD**
44 **BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.**

YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth-in-Lending Act (12 U.S.C. § 1601, et seq.), and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

(e) In addition to providing the written agreement, prior to entering a deferred deposit transaction, the lender shall verbally inform the borrower of the following:

(1) The borrower has the right to cancel the transaction and how the borrower can exercise this right.

(2) The terms of the transaction including the loan amount, the amount of any fees charged, expressed both as a dollar amount and as an annual percentage rate.

(3) The right of the borrower to elect a mandatory repayment plan and how the borrower can exercise this right.

§ 53-281.3. Deferred deposit transactions limited.

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding five hundred dollars (\$500.00) or twenty-five percent (25%) of the borrower's gross monthly income, whichever is less. It shall be mandatory for the lender to obtain from the borrower a certification signed by the borrower in substantially the following form: "I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN FIVE HUNDRED DOLLARS (\$500.00) OR TWENTY-FIVE PERCENT (25%) OF THE BORROWER'S GROSS MONTHLY INCOME, WHICHEVER IS LESS, IN DEFERRED DEPOSIT CHECKS

1 **OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED**
2 **DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the
3 names of the licensees or write 'NONE'). This certification shall not constitute the basis
4 of a criminal prosecution under G.S. 14-100."

5 (b) A lender must pay the proceeds from a deferred deposit transaction to the
6 borrower in the form of a check, cash, or debit card.

7 (c) No lender shall enter into a deferred deposit transaction with a borrower who
8 has elected a mandatory repayment plan as provided in G.S. 53-281.4 on two separate
9 occasions within a calendar year unless the borrower obtains counseling from a credit
10 counseling service approved by the Commissioner.

11 (d) After a deferred deposit transaction has been paid in full by the borrower or
12 upon successful completion of a mandatory repayment plan, the lender shall not enter
13 into a new deferred deposit transaction with the borrower until after 8:00 A.M. on the
14 next day after the payment.

15 **"§ 53-281.4. Mandatory repayment plan.**

16 If the borrower elects and so informs the lender at any time prior to the maturity date
17 of the deferred deposit transaction, the borrower may declare an inability to repay and
18 the lender shall accept a mandatory repayment plan with the following terms:

- 19 (1) The borrower and the lender sign a repayment plan agreement
20 providing for four equal installments due on each of the borrower's
21 next four paydays, with at least 14 days between the installments.
- 22 (2) The borrower agrees not to enter into any additional deferred deposit
23 transactions during the term of the repayment plan.
- 24 (3) Upon completion of the plan, the borrower is prohibited from entering
25 into any deferred deposit transactions with any lender for at least one
26 pay period.
- 27 (4) The lender may collect a fifteen-dollar (\$15.00) processing charge for
28 each repayment plan.

29 **"§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

30 In addition to the prohibited practices under G.S. 53-283, the following are
31 prohibited regarding deferred deposit transactions:

- 32 (1) Taking or attempting to take any security other than the borrower's
33 instrument.
- 34 (2) Taking or attempting to take more than a single check or other
35 instrument from the borrower in connection with a single transaction.
- 36 (3) Selling, offering, or soliciting any application for credit insurance in
37 connection with a transaction.
- 38 (4) Tying the transaction to any other transaction, offer, or obligation of
39 the borrower.
- 40 (5) Failing to comply with the Commissioner's request for assistance in
41 resolving a complaint.
- 42 (6) Using or threatening to use criminal process to collect a dishonored
43 check, unless fraud is involved.

1 (7) Assigning or selling to another lender an instrument taken in
2 connection with a deferred deposit transaction unless the instrument
3 bears the following endorsement: THIS INSTRUMENT WAS
4 GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT
5 TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS
6 DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE
7 BOUND BY THE TERMS AND CONDITIONS OF THE LOAN
8 AGREEMENT BETWEEN THE BORROWER AND THE
9 ORIGINAL LENDER.

10 (8) Failing to collect and provide information regarding the number, total,
11 and average transaction amounts and any other information the
12 Commissioner may request.

13 **"§ 53-281.6. Practices concerning members of the military.**

14 (a) A licensee shall defer collection activity against a borrower who is a member
15 of the military and who has been deployed to a combat or combat support posting for
16 the duration of the deployment.

17 (b) A licensee may not contact the commanding officer of a borrower who is a
18 member of the military in an effort to collect on a deferred deposit transaction.

19 (c) Licenseses must honor the terms of any repayment plan that they have entered
20 into with any borrower, including a repayment agreement negotiated through military
21 counselors or third-party credit counselors."

22 **SECTION 4.** This act is effective when it becomes law.