

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

1

SENATE BILL 89

Short Title: Deferred Presentment Services. (Public)

Sponsors: Senators Tillman (Primary Sponsor); and Jenkins.

Referred to: Commerce.

February 14, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW AND REGULATE THE BUSINESS OF PROVIDING DEFERRED  
3 PRESENTMENT SERVICES TO CERTAIN PERSONS.

4 The General Assembly of North Carolina enacts:

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

6 **"§ 53-275. Definitions.**

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

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

11 (1a) "Cash advance" is as defined in G.S. 53-165(c).

12 (1b) "Check" means any payment instrument, including any customer  
13 authorization for electronic payment.

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

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

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

19 (4a) "Deferred presentment transaction" means a transaction pursuant to a written  
20 agreement in which one party to the agreement accepts a check dated on the  
21 date it was written and holds the check for a period of time set forth in the  
22 agreement prior to presentment for payment or deposit.

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

25 (5a) "Payment instrument" is as defined in G.S. 53-208.2(a)(14).

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

27 (7) "Rollover" means the termination or extension of a deferred presentment  
28 transaction by the payment of an additional fee and the continued holding of  
29 the check, or the substitution of a new check by a customer pursuant to a  
30 new deferred presentment transaction."

31 **SECTION 2.** Article 22 of Chapter 53 of the General Statutes is amended by  
32 adding a new section to read:

33 **"§ 53-281.1. Deferred presentment transactions.**

34 (a) For purposes of a deferred presentment transaction, a licensee may charge a fee to  
35 defray operational costs. Operational costs may include investigating the checking account and  
36 copying required documents; photographing the person signing the check; securing the check



1 and customer records in a safe, fireproof place; maintaining records as required by this section;  
2 maintaining required capital and liquidity; processing, documenting, and closing the  
3 transaction; and for other similar expenses that may be incurred by the licensee. The fee  
4 authorized by this subsection shall not exceed fifteen percent (15%) of the cash advance  
5 amount, and the maximum cash advance amount to a customer shall not exceed five hundred  
6 dollars (\$500.00). The fee, when made and collected, shall not be deemed interest for any  
7 purpose of State law. The licensee shall not charge any fees or interest not specifically  
8 authorized by this section. For purposes of this section, a licensee shall include a person or  
9 entity licensed under Article 15 of this Chapter.

10 (b) Any agreement for the deferred presentment of a check must be signed by the maker  
11 of the check. The maker of the check shall have the right to redeem the check from the licensee  
12 before the agreed date of deposit upon payment to the licensee of the amount of the check. A  
13 licensee shall not defer presentment of any personal check for more than 35 calendar days after  
14 the date that the check is tendered to the licensee.

15 (c) Before entering into a deferred presentment transaction, a licensee shall do all of the  
16 following:

17 (1) Provide each customer with a written explanation of (i) the fees charged by  
18 the licensee and (ii) the date on which the check will be deposited or  
19 presented for payment by the licensee. The written explanation shall be  
20 written in clear and understandable language and shall include all  
21 information required to comply with the federal Truth in Lending Act, 15  
22 U.S.C. § 1601, et seq. The Commission may adopt rules establishing  
23 additional notification requirements to assure complete and accurate  
24 disclosure, including a rule requiring each licensee to issue a standardized  
25 consumer notification and disclosure form that includes all information  
26 required by this subsection. The required style, content, and method of  
27 executing the form shall be prescribed by the rules and shall be designed to  
28 ensure that the customer, prior to entering into a deferred presentment  
29 transaction, receives and acknowledges an accurate and complete  
30 notification and disclosure of the itemized and total amounts of all fees and  
31 other costs that will or could be imposed as a result of the deferred  
32 presentment transaction.

33 (2) Inquire into whether any customer seeking deferred presentment services has  
34 outstanding checks from other licensees by requiring the customer to verify,  
35 under penalty of perjury and in a signed writing, that the customer does not  
36 have any outstanding checks with any other licensees. No licensee shall  
37 knowingly enter into a deferred presentment transaction with a customer  
38 who has an outstanding deferred presentment transaction.

39 (3) Inquire into whether any customer is a member of the Armed Forces of the  
40 United States or the spouse or other dependent of a member of the Armed  
41 Forces of the United States. A licensee shall not knowingly enter into a  
42 deferred presentment transaction with a customer who is a member of the  
43 Armed Forces of the United States or the spouse or other dependent of a  
44 member of the Armed Forces of the United States.

45 (d) A licensee shall issue (i) a copy of the deferred presentment agreement required in  
46 subsection (c)(1) of this section and (ii) a receipt to each customer who enters into a deferred  
47 presentation transaction with the licensee. The receipt shall include the information required in  
48 subsection (c)(1) of this section regarding the total amount of the fees charged by the licensee  
49 and the date on which the check will be presented for deposit by the licensee.

50 (e) If the check is returned to the licensee from a payer financial institution due to  
51 insufficient funds, a closed account, or a stop payment order, the licensee shall have the right to

1 charge a fee for returned checks pursuant to G.S. 53-175. No customer who issues a personal  
2 check to a licensee under this section that is returned due to insufficient funds, a closed  
3 account, or a stop payment order shall be subject to criminal prosecution under G.S. 14-107  
4 unless the customer attempted to enter into a deferred presentment transaction through  
5 misrepresentation or fraud. No licensee shall report to any credit reporting agency that a  
6 customer has not paid, or has willfully refused to pay, a debt incurred under this section.

7 (f) No licensee shall do any of the following:

8 (1) Alter or delete the date on any check accepted by the licensee or accept a  
9 check bearing no date or a date other than the date on which the licensee  
10 accepts the check.

11 (2) Require a customer to provide security for the deferred presentment  
12 transaction or require the customer to provide a guaranty from another  
13 person.

14 (3) Engage in any acts or practices that (i) constitute an unfair and deceptive  
15 trade practice in violation of G.S. 75-1.1 or (ii) violate any State or federal  
16 law regarding cash transactions and cash transaction reporting.

17 (g) Upon entering into a deferred presentment transaction, each licensee shall pay  
18 directly to the customer the full amount of any check to be held, less the fee authorized by  
19 subsection (a) of this section. The payment required under this subsection may be made to the  
20 customer in the form of (i) cash, (ii) a check payable on the account of the licensee, (iii) a  
21 money order, (iv) a debit card, (v) an electronic funds transfer to the customer's designated  
22 account, or (vi) through any other electronic payment mechanism. A licensee shall not charge  
23 an additional fee to the customer for making the payment required under this subsection in a  
24 form other than cash.

25 (h) A licensee or any person related to the licensee by common ownership or control  
26 shall not engage in the rollover of a deferred presentment transaction. A licensee shall not  
27 redeem, extend, or otherwise consolidate a deferred presentment transaction with the proceeds  
28 of another deferred presentment transaction made by the same licensee or any person related to  
29 the licensee by common ownership or control. Upon payment of the full amount of any check,  
30 a licensee shall not enter into another deferred presentment transaction until 24 hours after the  
31 check was fully paid by the given customer.

32 (i) A licensee shall not use any device or agreement, including agreements with other  
33 licensees, with the intent to obtain greater charges than otherwise would be authorized by this  
34 section or circumvent the rollover prohibition in subsection (h) of this section.

35 (j) A licensee may provide to a customer once a year an extended payment plan  
36 agreement if, at any time on or before the due date of the loan, the customer declares an  
37 inability to repay. An extended payment plan shall be subject to the following terms:

38 (1) The principal balance due under the extended payment plan shall be the  
39 outstanding principal balance and finance charges due under the existing  
40 loan.

41 (2) The licensee may not impose a finance charge for entering into the extended  
42 payment plan. The licensee may only impose the fees and charges in  
43 subsection (e) of this section for returned checks.

44 (3) The extended payment plan agreement shall allow the customer to pay the  
45 sums due under the extended payment plan in at least four substantially  
46 equal installments. Each plan installment must be due on a date on which the  
47 customer receives regular income.

48 (k) Except as expressly provided in this section, a deferred presentment transaction  
49 shall not be subject to the provisions of Article 15 of this Chapter.

50 (l) A transaction entered into in violation of this section is void and unenforceable in  
51 law or equity."

SECTION 3. G.S. 53-280 reads as rewritten:

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

- (1) Three percent (3%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.
- (2) ~~Ten~~ Except as provided for in G.S. 53-281.1, ten percent (10%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for personal checks.
- (3) Five percent (5%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. Except as provided by ~~G.S. 53-281(a)~~, G.S. 53-281.1, any licensee who cashes a check for a fee shall deposit the check not later than three business days from the date the check is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee."

SECTION 4. G.S. 53-283(2) reads as rewritten:

"§ 53-283. Prohibited practices.

No person required to be licensed under this Article shall do any of the following:

- ...
- (2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by ~~G.S. 53-281~~ G.S. 53-281.1.

...."

SECTION 5. This act becomes effective July 1, 2013.