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Short Title: Regulate Deferred Deposit.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE 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) "Lender" means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the

1 third party is exempt from licensing under this Article or whether
2 approval, acceptance, or ratification by the third party is necessary to
3 create a legal obligation for the third party. Notwithstanding that a
4 bank, savings institution, credit union, or farm credit system may be
5 exempted by federal law from this Article's provisions related to
6 interest rate, finance charges, and licensure, all other applicable
7 provisions of this Article apply to these entities. Any lender that is not
8 a bank, savings institution, credit union, or farm credit system must
9 comply with all the provisions of this Article, whether acting on its
10 own account or as an agent or broker of the third party, to the extent
11 federal law does not preempt the application of this Article to agents or
12 brokers.

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

15 (5a) "Loan amount" means the amount financed as defined in Regulation
16 "Z" of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b)).

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

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

20 **"§ 53-276. License required.**

21 No person or other entity may engage in the business of cashing checks, drafts, or
22 money orders for ~~consideration~~ consideration, nor engage in the business of making,
23 offering, or arranging deferred deposit transactions, or acting as an agent for a third
24 party that makes deferred deposit transactions, without first obtaining a license under
25 this Article. No person or other entity providing a check-cashing service may avoid the
26 requirements of this Article by providing a check or other currency equivalent instead of
27 currency when cashing payment instruments."

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

30 **"§ 53-281.1. Deferred deposit transactions permitted.**

31 Lenders may make deferred deposit transactions pursuant to the following
32 requirements:

33 (1) The face amount of the deferred deposit check may include a fee but
34 the principal loan amount shall not exceed three hundred dollars
35 (\$300.00).

36 (2) Each deferred deposit check cashed by a lender shall be deemed to be
37 a loan and shall be documented by a written agreement as provided in
38 G.S. 53-281.2.

39 (3) A lender shall not directly or indirectly charge a fee or other
40 consideration in excess of fifteen percent (15%) of the loan amount,
41 provided the maximum fee charged to a borrower for entering into a
42 deferred deposit transaction shall not exceed forty dollars (\$40.00).

43 (4) No check cashed under the provisions of this section shall be repaid by
44 the proceeds of another check cashed by the same lender or any

1 affiliate of the lender. A lender shall not, for any consideration, renew
2 or otherwise extend any deferred deposit check or withhold the check
3 from deposit for any period beyond the time set forth in the written
4 agreement, except as allowed under G.S. 53-281.4.

5 **§ 53-281.2. Written agreement and disclosures required for deferred deposit**
6 **transactions.**

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

10 (b) The written agreement shall contain:

11 (1) The name and address of the borrower.

12 (2) The name, local street address, and telephone number of the lender.

13 (3) The transaction date, which shall be prominently labeled.

14 (4) The loan amount as defined in G.S. 53-275(5a).

15 (5) The amount of any fees charged, expressed as both a dollar amount
16 and as an effective annual percentage rate (APR).

17 (6) The maturity date, which shall be no fewer than 14 days nor more than
18 60 days after the transaction date.

19 (7) The following notices immediately above the borrower's signature line
20 in at least ten-point type: **THIS TRANSACTION IS NOT MEANT**
21 **TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD**
22 **BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.**
23 **YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION**
24 **AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS**
25 **DAY AFTER THE TRANSACTION DATE SHOWN ABOVE.**
26 **TO CANCEL YOU MUST RETURN ALL OF THE CASH**
27 **PROCEEDS TO THE LENDER. THE LENDER WILL REFUND**
28 **TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

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

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

39 (1) A hold harmless clause.

40 (2) A confession of judgment clause.

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

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

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

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

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

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

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

13 **"§ 53-281.3. Deferred deposit transactions limited.**

14 (a) A lender shall not knowingly enter into a deferred deposit transaction with a
15 borrower whom the lender knows has other transactions in the aggregate exceeding the
16 principal amount of three hundred dollars (\$300.00) or the lender knows would exceed
17 three transactions regardless of value. It shall be mandatory for the lender to meet both
18 of the following conditions:

19 (1) The borrower signs a certification in substantially the following form:
20 **I UNDERSTAND THAT NORTH CAROLINA LAW**
21 **PROHIBITS A PERSON FROM HAVING MORE THAN \$300.00**
22 **IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE**
23 **TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT**
24 **AMOUNTS AND NO OTHERS:** (Write the amount you owe and the
25 names of the licensees or write 'NONE'). This certification shall not
26 constitute the basis of a criminal prosecution under G.S. 14-100.

27 (2) The lender shall verify the accuracy of this certification by:

28 a. A query of all of the lender's own records, and

29 b. A query of the database created pursuant to G.S. 53-281.6.

30 (b) A lender may pay the proceeds from a deferred deposit transaction to the
31 borrower in the form of a check from the lender. Upon the borrower's request, the lender
32 may cash the lender's check if the lender has cash available to do so. The borrower shall
33 not be charged an additional finance charge or fee for cashing the lender's check.

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

38 **"§ 53-281.4. Mandatory repayment plan.**

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

42 (1) The borrower and the lender sign a repayment plan agreement
43 providing for six equal installments due on each of the borrower's next
44 six paydays, with at least 14 days between the installments.

- 1 (2) The borrower agrees not to enter into any additional deferred deposit
2 transactions during the term of the repayment plan.
- 3 (3) Upon completion of the plan, the lender shall report the borrower's
4 positive payment history to consumer credit reporting agencies.
- 5 (4) The lender may collect a fifteen-dollar (\$15.00) processing charge for
6 each repayment plan.

7 **"§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

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

- 10 (1) Taking or attempting to take any security other than the borrower's
11 instrument.
- 12 (2) Taking or attempting to take more than a single check or other
13 instrument from the borrower in connection with a single transaction.
- 14 (3) Selling, offering, or soliciting any application for credit insurance in
15 connection with a transaction.
- 16 (4) Tying the transaction to any other transaction, offer, or obligation of
17 the borrower.
- 18 (5) Failing to comply with the Commissioner's request for assistance in
19 resolving a complaint.
- 20 (6) Using or threatening to use criminal process to collect a dishonored
21 check, unless fraud is involved.
- 22 (7) Assigning or selling to another lender an instrument taken in
23 connection with a deferred deposit transaction unless the instrument
24 bears the following endorsement: **THIS INSTRUMENT WAS**
25 **GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT**
26 **TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS**
27 **DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE**
28 **BOUND BY THE TERMS AND CONDITIONS OF THE LOAN**
29 **AGREEMENT BETWEEN THE BORROWER AND THE**
30 **ORIGINAL LENDER.**
- 31 (8) Engaging in any device or subterfuge to evade the requirements of this
32 Article including making loans disguised as personal property sales
33 and leaseback transactions or disguising loan proceeds as cash
34 "rebates" for the pretextual installment sale of goods or services.
- 35 (9) Failing to collect and provide information regarding the number, total,
36 and average transaction amounts and any other information the
37 Commissioner may request.
- 38 (10) Offering, arranging, acting as an agent for, or assisting a lender in the
39 making of a deferred deposit transaction unless the lender complies
40 with the provisions of this Article.

41 **"§ 53-281.6. Database for reporting of deferred deposit loans.**

42 (a) On or before October 1, 2003, the Commissioner shall contract with a third-
43 party provider to develop, implement and maintain a database, with real-time access
44 through an Internet connection, in accordance with the provisions of this section. The

1 database must be accessible to the Commissioner and the lender to ensure compliance
2 with this Article and to provide such other information as the Commissioner deems
3 necessary. The Commissioner shall select a database provider based on an assessment
4 of cost of service and an ability to perform the reporting requirements of this Article and
5 pursuant to G.S. 143-129.7. The Commissioner shall also give consideration to the
6 database provider's ability to provide additional credit information relevant to the
7 borrower's ability to pay. The Commissioner may adopt procedures to administer and
8 enforce the provisions of this section and to ensure that the database is used by lenders
9 in accordance with this section. The Commissioner shall require the database provider
10 to maintain a real time copy of the required reporting information in the database that
11 shall be available to the Commissioner at all times and shall be the property of the
12 Commissioner.

13 The database must be able to do all of the following:

- 14 (1) Validate a borrower's social security number and must report to the
15 lender if any such social security number is invalid, has been issued
16 within the past five years prior to the date of submission, or represents
17 a deceased person.
- 18 (2) Validate whether a new deferred deposit transaction may be extended
19 to the borrower based on the allowable number of loans and aggregate
20 loan amount pursuant to this Article.
- 21 (3) Provide access to the database 24 hours a day, seven days a week.
- 22 (4) Provide information necessary to ensure lender compliance with the
23 federal Office of Foreign Asset Control requirements.

24 In the discretion of the Commissioner and at the option and sole expense of the
25 lender, the database may also provide additional credit information. The Commissioner
26 shall maintain investigative and enforcement responsibility for violations of this section
27 and shall not delegate this responsibility to any third-party provider.

28 (b) The database provider may impose and collect a verification fee, which shall
29 be approved by the Commissioner, to be paid by the lender, to pay the costs required to
30 validate whether a deferred deposit transaction may be extended to the borrower
31 pursuant to this Article. Lenders may rely on the information contained in the database
32 as accurate and are not subject to any administrative penalty or civil liability as a result
33 of relying on inaccurate information contained in the database.

34 (c) A lender may not enter into any loan transaction with a person who has
35 outstanding loan transactions, the principal amount of which in the aggregate would
36 exceed three hundred dollars (\$300.00). The lender must verify the following
37 information:

- 38 (1) The lender shall maintain an intracompany database and shall verify
39 the total number of and aggregate dollar amount of all outstanding
40 deferred deposit loan transactions between a particular person and that
41 lender or an affiliate of the lender.
- 42 (2) Upon full implementation of the statewide common database, the
43 lender shall access the database established pursuant to subsection (a)
44 of this section and shall verify whether a loan may be made to the

1 borrower based on the allowable number of loans and aggregate loan
2 amounts pursuant to this Article.

3 (d) Before entering into each deferred deposit loan, a lender shall submit the
4 required borrower data in the format the Commissioner shall reasonably require,
5 including the borrower's name, social security number, address, drivers license number,
6 amount of the transaction, borrower check number, date of the transaction, maturity date
7 of the transaction, and any other information reasonably required by the Commissioner.

8 (e) Prior to implementation of the database or during times when the database is
9 unavailable to lenders due to technical problems, a lender may rely upon the written
10 verification of the borrower in a statement provided in substantially the following form
11 in at least ten-point type as follows:

12 **INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO**
13 **ENTER, I DO NOT HAVE OUTSTANDING DEFERRED DEPOSIT LOANS,**
14 **WITH AN AGGREGATE OUTSTANDING BALANCE EXCEEDING \$300.00,**
15 **WITH THIS OR OTHER LICENSED DEFERRED DEPOSIT LENDERS.**

16 (f) Any deferred deposit loan that has been fully paid and satisfied, as defined in
17 subsection (g) of this section, shall be designated as a closed transaction in the database
18 immediately, but in no event later than 11:59 P.M. on the day the loan was fully paid
19 and satisfied. Failure to report the loan as paid in a timely manner will result in an
20 automatic civil administrative penalty of one hundred dollars (\$100.00) for each day
21 that the lender fails to indicate in the database that the loan has been paid. A lender shall
22 not be subject to civil administrative penalties in the event updates to the database are
23 not possible due to circumstances beyond the lender's control, including the database
24 temporarily experiencing technical problems.

25 (g) A deferred deposit transaction shall be considered a closed transaction at the
26 time that any of the following have been done with the check:

- 27 (1) Redeemed by the customer by payment to the lender of the face
28 amount of the check in cash.
29 (2) Exchanged by the lender for a cashier's check or cash from the
30 borrower's financial institution.
31 (3) Deposited by the lender and the lender has evidence that the check has
32 cleared.
33 (4) Collected by the lender or its agent through any civil remedy available
34 under State law.
35 (5) Collected by means of a repayment plan agreed upon by the borrower
36 and the lender or as the result of credit counseling where the lender has
37 been paid the amount agreed upon by the lender under the plan.

38 (h) Notwithstanding the provisions of subsection (f) of this section, the
39 designated third-party provider shall automatically close any outstanding customer
40 transaction five (5) days following the loan maturity date unless a lender reports to the
41 database provider prior to that time that any of the following apply:

- 42 (1) The transaction remains open, due to the borrower's failure to make
43 payment.

1 (2) The transaction is pending, due to the borrower's check or an
2 electronic redeposit being in the process of clearing the banking
3 system.

4 (3) The transaction remains open, due to the borrower's check being
5 returned to the lender for insufficient funds, closed accounts, or stop
6 payment order.

7 If a lender timely reports the status of a transaction as open or pending, the
8 transaction shall remain an open transaction until fully paid and satisfied, as defined in
9 subsection (g) of this section and reported as such by the lender. If a lender ceases
10 offering deferred deposit loans, all open transactions with the lender shall automatically
11 close 60 days following the date the lender ceases offering deferred deposit loans,
12 unless the lender reports to the designated third-party provider prior to the expiration of
13 the 60-day period (i) those borrower transactions that remain open; and (ii) the specific
14 reason each transaction remains open; and further provides to the Commissioner a
15 reasonably acceptable plan which outlines how the lender will continue to update the
16 database following the ceasing of its deferred deposit operations. If at any time the
17 Commissioner reasonably determines that a lender who has ceased its deferred deposit
18 operations is not updating the database in accordance with its approved plan, the
19 Commissioner shall immediately close all remaining transactions attributable to the
20 lender.

21 (i) Inquiries to the database by lenders shall only state that a person is eligible or
22 ineligible for a new deferred presentment transaction together with a description of the
23 reason for the determination. Only information previously registered and recorded by
24 the lender on the database shall be made available to the lender by the database or the
25 Commissioner. Only the person seeking the deferred presentment transaction may make
26 a direct inquiry to the designated third-party provider to request a more detailed
27 explanation of a particular transaction that was the basis for the database's ineligibility
28 determination. Any information regarding any person's transactional history is
29 confidential pursuant to this section, shall not be subject to public inspection, and is not
30 a public record under Chapter 132 of the General Statutes.

31 (j) As used in this section, the following terms mean:

32 (1) Open transaction or open. – A deferred deposit transaction that has
33 been registered and recorded in the database but not closed or pending.

34 (2) Pending transaction or pending. – An open transaction that is in the
35 process of clearing the banking system.

36 (3) Closed transaction or closed. – A deferred deposit transaction that has
37 been terminated as defined in subsection (g) of this section.

38 **"§ 53-281.7. Annual reports.**

39 (a) The Commissioner shall require licensees to submit an annual report to the
40 Commissioner on or before the last day of February for the preceding year disclosing:

41 (1) The resources, assets, and liabilities of the licensees at the beginning
42 and end of the period.

- 1 (2) The income, expense, gain, loss, and a reconciliation of surplus or net
2 worth with the balance sheets, and the ratios of the profits to the assets
3 reported.
- 4 (3) The total dollar amount and number of returned checks, checks
5 recovered, and checks charged off during the calendar year ending as
6 of December 31 of the previous year.
- 7 (4) A statement verifying that the licensee has not used the criminal
8 process or caused the criminal process to be used in the collection of
9 any deferred deposit loan during the calendar year ending as of
10 December 31 of the previous year.
- 11 (5) Any additional data or information that is reasonably necessary to the
12 performance of the Commissioner's oversight duties.

13 The Commissioner shall maintain as confidential any proprietary financial information
14 submitted by lenders pursuant to this section.

15 (b) The Commissioner shall compile an annual report by April 1 of each year,
16 beginning April 1, 2005, containing, at a minimum, data regarding all deferred deposit
17 loans made in the preceding year by the lender and on an aggregate basis. Annual
18 reports shall be made available to interested parties and the general public. The report
19 shall include in the aggregate all information reported by lenders pursuant to subsection
20 (a) of this section. Consistent with North Carolina law, the report shall include, at a
21 minimum, nonidentifying borrower data from the preceding year, which is available
22 from the database, including:

- 23 (1) The total number and dollar amount of deferred deposit loans made in
24 the calendar year ending as of December 31 of the previous year.
- 25 (2) The total number and dollar amount of deferred deposit loans
26 outstanding as of December 31 of the previous year.
- 27 (3) The minimum, maximum, and average dollar amount of payment
28 devices whose deposits were deferred in the calendar year ending
29 December 31 of the previous year.
- 30 (4) The average annual percentage rate and the average number of days a
31 deposit of a payment device is deferred during the calendar year
32 ending as of December 31 of the previous year.
- 33 (5) The number of loans made in the amount of one hundred dollars
34 (\$100.00) or less, the number of loans made in the amount of one
35 hundred one dollars (\$101.00) to two hundred dollars (\$200.00), the
36 number of loans in the amount of two hundred one dollars (\$201.00) to
37 three hundred dollars (\$300.00), and the percentage of total loans
38 made in each of these ranges.
- 39 (6) The number of loans that, upon repayment or deposit of a borrower's
40 deferred deposit payment device, ended in the first week of the loan
41 and the number of loans repaid or ending with the deposit of a
42 borrower's deferred deposit payment device for successive weeks up to
43 14 weeks with the corresponding APR range for each week.

1 (7) The total dollar amount of fees collected for deferred deposit payment
2 devices cashed.

3 (8) The total number and dollar amount of returned deferred deposit
4 payment devices and fees charged for those returned deferred deposit
5 payment devices.

6 (9) The total number of loans and the total dollar amount of the net
7 charge-offs or write-offs and recoveries of the lender.

8 (10) The number of deferred deposit loans entered into by borrowers in
9 numerical order from one to the highest number of loans entered into
10 by any borrower in the calendar year, with the corresponding
11 percentages for each numerical category."

12 **SECTION 4.** G. S. 53-286 reads as rewritten:

13 "(a) The Commissioner may order and impose civil penalties upon any person
14 required to be licensed under this Article for violations of this Article or rules adopted
15 thereunder. Civil penalties may also be imposed upon persons acting on behalf of a
16 licensee or any other person who violates this Article. Civil penalties shall not exceed
17 one thousand dollars (\$1,000) ten thousand dollars (\$10,000) per violation. All civil
18 money penalties collected under this Article shall be paid to the county school fund. The
19 Commissioner may also order repayment of unlawful or excessive fees charged to
20 customers. The imposition or pendency of any order or penalty by the Commissioner
21 shall not limit the right of any customer to pursue any available civil remedies.

22 (b) Any deferred deposit loan agreement, and the accompanying payment device,
23 the making or collecting of which violates any provision of this Article or rule adopted
24 thereunder shall be void, and the lender or any other party acting by or through the
25 lender shall have no right to collect, receive, or retain any principal or charges
26 whatsoever with respect to the loan. In a successful action to enforce this provision,
27 borrowers shall be entitled to recover their costs, including reasonable attorneys' fees."

28 **SECTION 5.** G.S. 53-277(a)(1) reads as rewritten:

29 "**§ 53-277. Exemptions.**

30 (a) This Article shall not apply to:

31 (1) A bank, savings institution, credit union, or farm credit system
32 organized under the laws of the United States or any ~~state~~;state, except
33 that those provisions applicable to deferred deposit transactions, as
34 defined in G.S. 53-275(4a), shall apply to lenders, as set forth in G.S.
35 53-275(4b); and

36 "

37 **SECTION 6.** This act is effective when it becomes law.