

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE DRH60570-LD-151C (02/15)**

Short Title: Prohibit Various Lending Subterfuges. (Public)

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Sponsors: Representative Howard.

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Referred to:

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A BILL TO BE ENTITLED

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:

1 **"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.**

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

11 (b) Evasions. – The provisions of subsection (a) of this section ~~shall apply~~  
12 to any person who seeks to avoid its application by any device, ~~subterfuge~~  
13 or pretense whatsoever. Such devices, subterfuges, and pretenses include, but are not  
14 limited to, any transaction in which a cash rebate or other advance of funds is offered  
15 and all of the following apply:

16 (1) The cash advance is made contemporaneously with the transaction.

17 (2) The amount of the cash advance is required to be repaid at a later date.

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

20 (4) The transaction requires the consumer to present a check or electronic  
21 debit authorization for the purpose of making future repayment.

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

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

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