

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 65
Commerce Committee Substitute Adopted 4/3/95
Corrected Copy 4/5/95
Fourth Edition Engrossed 4/24/95
House Committee Substitute Favorable 6/7/95

Short Title: Regulate Check Cashing

(Public)

Sponsors:

Referred to:

January 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 53 of the General Statutes is amended by adding the
5 following new Article to read:

6 **"ARTICLE 22.**
7 **"CHECK-CASHING BUSINESSES.**

8 **"§ 53-275. Definitions.**

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

- 10 (1) 'Cashing' means providing currency for payment instruments, but does
11 not include travelers checks and foreign denomination payment
12 instruments.
13 (2) 'Check-cashing service' means any person or entity engaged in the
14 business of cashing checks, drafts, or money orders for a fee, service
15 charge, or other consideration.
16 (3) 'Commission' means the State Banking Commission.

1 (4) 'Commissioner' means the Commissioner of Banks.

2 (5) 'Licensee' means a person or entity licensed to engage in a check-
3 cashing business under this Article.

4 (6) 'Person' means an individual, partnership, association, or corporation.

5 **"§ 53-276. License required.**

6 No person or other entity may engage in the business of cashing checks, drafts, or
7 money orders for consideration without first obtaining a license under this Article. No
8 person or other entity providing a check-cashing service may avoid the requirements of
9 this Article by providing a currency equivalent instead of currency when cashing
10 payment instruments.

11 **"§ 53-277. Exemptions.**

12 (a) This Article shall not apply to:

13 (1) A bank, savings institution, credit union, or farm credit system
14 organized under the laws of the United States or any state; and

15 (2) Any person or entity principally engaged in the bona fide retail sale of
16 goods or services, who either as an incident to or independently of a
17 retail sale or service and not holding itself out to be a check-cashing
18 service, from time to time cashes checks, drafts, or money orders for a
19 fee or other consideration, where not more than two dollars (\$2.00) is
20 charged for the service.

21 (b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is
22 exempt from G.S. 53-276, 53-278, 53-279, and 53-283, but is deemed a licensee for
23 purposes of the remaining provisions of this Article. This exemption does not apply to an
24 agent of a person licensed under Article 16 of this Chapter.

25 **"§ 53-278. Application for license; investigation; application fee.**

26 (a) An application for licensure under this Article shall be in writing, under oath,
27 and on a form prescribed by the Commissioner. The application shall set forth all of the
28 following:

29 (1) The name and address of the applicant.

30 (2) If the applicant is a firm or partnership, the name and address of each
31 member of the firm or partnership.

32 (3) If the applicant is a corporation, the name and address of each officer,
33 director, registered agent, and principal.

34 (4) The addresses of the locations of the business to be licensed.

35 (5) Other information concerning the financial responsibility, background,
36 experience, and activities of the applicant and its members, officers,
37 directors, and principals as the Commissioner requires.

38 (b) The Commissioner may make such investigations as the Commissioner deems
39 necessary to determine if the applicant has complied with all applicable provisions of this
40 Article and State and federal law.

41 (c) The application shall be accompanied by payment of a two hundred fifty dollar
42 (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee. These
43 fees are not refundable or abatable, but, if the license is granted, payment of the

1 application fee shall satisfy the fee requirement for the first license year or remaining part
2 thereof.

3 (d) Licenses shall expire annually and may be renewed upon payment of a license
4 fee of two hundred fifty dollars (\$250.00) plus a fifty dollar (\$50.00) fee for each branch
5 location certificate issued under a license.

6 **"§ 53-279. Liquid assets required; other qualifications; denial of license; appeal to**
7 **Commission.**

8 (a) Every licensee and applicant shall have and maintain liquid assets of at least
9 twenty-five thousand dollars (\$25,000) per licensee.

10 (b) Upon the filing and investigation of an application, and compliance by the
11 applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver to
12 the applicant the license applied for to engage in business under this Article at the
13 locations specified in the application, provided that the Commissioner finds that the
14 financial responsibility, character, reputation, experience, and general fitness of the
15 applicant and its members, officers, directors, and principals are such as to warrant belief
16 that the business will be operated efficiently and fairly, in the public interest, and in
17 accordance with law. If the Commissioner fails to make such findings, no license shall
18 be issued, and the Commissioner shall notify the applicant of the denial and the reasons
19 therefor. The applicant shall be entitled to an informal hearing on the denial provided the
20 applicant requests the hearing in writing within 30 days after the Commissioner has
21 mailed the notice required under this subsection to the applicant. In the event of a
22 hearing, which shall be held in the offices of the Commissioner of Banks in Raleigh, the
23 Commissioner shall reconsider the application and, after hearing, issue a written order
24 granting or denying the application.

25 **"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.**

26 (a) No check-cashing business licensed under this Article shall directly or
27 indirectly charge or collect fees or other consideration for check-cashing services in
28 excess of the following:

29 (1) Three percent (3%) of the face amount of the check or five dollars
30 (\$5.00), whichever is greater, for checks issued by the federal
31 government, State government, or any agency of the State or federal
32 government, or any county or municipality of this State.

33 (2) Eight percent (8%) of the face amount of the check or five dollars
34 (\$5.00), whichever is greater, for personal checks, money orders, and all
35 other checks.

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

41 (c) Checks, drafts, and money orders cashed at every location conducting business
42 under a license issued under this Article shall be deposited or presented for payment
43 within seven days of the date the check is cashed for the customer. A licensee shall

1 endorse every check, draft, or money order presented by the licensee for payment in the
2 name of the licensee.

3 **"§ 53-281. Record keeping; receipt requirements.**

4 (a) Every person required to be licensed under this Article shall maintain in its
5 offices such books, accounts, and records as the Commissioner may reasonably require.
6 The Commissioner may examine the books, accounts, and records in order to determine
7 whether the person is complying with this Article and rules adopted pursuant thereto.
8 The books, accounts, and records shall be maintained separate from any other business in
9 which the person is engaged, and shall be retained for a period prescribed by the
10 Commissioner.

11 (b) The licensee shall ensure that each customer cashing a check shall be provided
12 a receipt showing the name or trade name of the licensee, the transaction date, amount of
13 the check, and the fee charged.

14 **"§ 53-282. Prohibited practices.**

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

- 16 (1) Charge fees in excess of those authorized under this Article.
- 17 (2) Engage in the business of making loans of money, credit, goods, or
18 things; or discounting notes, bills of exchange, items, or other evidences
19 of debt; or accepting deposits or bailments of money or items.
- 20 (3) Hold checks cashed by customers for more than seven days before
21 depositing or presenting the checks for payment.
- 22 (4) Use or cause to be published or disseminated any advertising
23 communication which contains any false, misleading, or deceptive
24 statement or representation.
- 25 (5) Conduct business at premises or locations other than locations licensed
26 by the Commissioner.
- 27 (6) Engage in unfair, deceptive, or fraudulent practices.
- 28 (7) Cash a check, draft, or money order made payable to a payee other than
29 a natural person unless the licensee has previously obtained appropriate
30 documentation from the executive entity of the payee clearly indicating
31 the authority of the natural person or persons cashing the check, draft, or
32 money order on behalf of the payee.

33 **"§ 53-283. Suspension and revocation of license; grounds; procedure.**

34 (a) The Commissioner may suspend or revoke any license or licenses issued
35 pursuant to this Article if, after notice and opportunity for hearing, the Commissioner
36 issues written findings that the licensee has engaged in any of the following conduct:

- 37 (1) Violated this Article or applicable State or federal law or rules.
- 38 (2) Made a false statement on the application for a license under this
39 Article.
- 40 (3) Refused to permit investigation by the Commissioner authorized under
41 this Article.
- 42 (4) Failed to comply with an order of the Commissioner.

1 (5) Demonstrated incompetency or untrustworthiness to engage in the
2 business of check cashing.

3 (6) Been convicted of a felony or misdemeanor involving fraud,
4 misrepresentation, or deceit.

5 (b) The Commissioner may not suspend or revoke any license issued under this
6 Article unless the licensee has been given notice and opportunity for hearing in
7 accordance with Article 3A of Chapter 150B of the General Statutes.

8 **"§ 53-284. Cease and desist orders.**

9 If the Commissioner determines that a person required to be licensed under this
10 Article has violated this Article or rules adopted pursuant to it, then the Commissioner
11 may, upon notice and opportunity for hearing in accordance with Article 3A of Chapter
12 150B of the General Statutes, order the person to cease and desist from the violations and
13 to comply with this Article. The Commissioner may enforce compliance with an order
14 issued pursuant to this section by the imposition and collection of civil penalties
15 authorized under this Article.

16 **"§ 53-285. Civil penalties and restitution.**

17 The Commissioner may order and impose civil penalties upon any person required to
18 be licensed under this Article for violations of this Article or rules adopted thereunder.
19 Civil penalties shall not exceed one thousand dollars (\$1,000) per violation. All civil
20 money penalties collected under this Article shall be deposited in the General Fund. The
21 Commissioner may also order repayment of unlawful or excessive fees charged to
22 customers.

23 **"§ 53-286. Criminal penalties.**

24 A violation of G.S. 53-276 by a person required to obtain a license under this Article
25 is a Class I felony. Each transaction involving the unlawful cashing of a check, draft, or
26 money order constitutes a separate offense.

27 **"§ 53-287. Commissioner to adopt rules.**

28 The Commissioner may adopt rules necessary to carry out the purposes of this Article,
29 to provide for the protection of the public, and to assist licensees in interpreting and
30 complying with this Article.

31 **"§ 53-288. Commission may review rules, orders, or acts by Commissioner.**

32 The Commission shall have full authority to review any rule, regulation, order, or act
33 of the Commissioner done pursuant to or with respect to the provisions of this Article,
34 and any person aggrieved by any such rule, regulation, order, or act may appeal to the
35 Commission for review upon giving notice in writing within 20 days after such rule,
36 regulation, order, or act complained of is adopted, issued, or done."

37 Sec. 2. This act becomes effective October 1, 1995.