

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1071*

Short Title: Procedure for Delayed Deposit Checks.

(Public)

Sponsors: Representatives Buchanan and Church.

Referred to: Financial Institutions.

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FROM THE PROVISIONS OF THE CHECK
CASHER ACT AUTHORIZING POSTDATED OR DELAYED DEPOSIT
CHECKS AND TO AMEND THOSE PROVISIONS TO PROVIDE
ADDITIONAL CONSUMER PROTECTIONS AND REQUIREMENTS ON
LICENSEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-281 reads as rewritten:

"§ 53-281. (~~Expires July 31, 2001~~) ~~Postdated or delayed deposit checks.~~ Deferred
deposit loans.

(a) A licensee may ~~defer~~ make a deferred deposit loan by deferring the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section. Prior to any deferred deposit loan transaction made under this section, the licensee shall provide the customer with a brochure prepared and published by the Commissioner of Banks. The brochure shall inform the customer of the relative cost of this form of credit, availability of other forms of credit, the customer's right to obtain credit counseling and stop collection efforts, how to make complaints about a licensee and such other matters as the Commissioner may from time to time believe are necessary or beneficial to consumers.

(b) ~~The face amount of any postdated or delayed deposit check cashed~~ amount of credit extended pursuant to this section shall not exceed three hundred dollars (\$300.00).

(b1) No customer may have outstanding deferred deposit loan transactions, which in the aggregate exceed three hundred dollars (\$300.00), with all licensees. A customer shall have the right to rescind a deferred deposit loan transaction at no cost on or before the close of the next business day following the day of the transaction.

1 (c) Each ~~postdated or delayed deposit check cashed by a licensee~~ deferred
2 deposit loan transaction shall be documented by a written agreement that has been
3 signed by the customer and the licensee. The written agreement ~~shall~~ shall:

4 (1) ~~contain~~ Contain a statement of the total amount of any fees charged,
5 expressed both as a dollar amount and as an effective annual
6 percentage rate (APR).

7 (2) ~~The written agreement shall authorize~~ Authorize the licensee to defer
8 deposit of the personal check until a specific date not later than 31
9 days from the date the check is cashed.

10 (3) Advise the customer that the customer has the right to rescind the
11 delayed deposit transaction at no cost to the customer on or before the
12 close of the following business day.

13 (4) Advise the customer that improprieties in the transaction or in the
14 collection process may be referred to the Commissioner of Banks and
15 state the address and telephone number of the Commissioner.

16 (5) Include the following notice set in at least 10-point type:

17 **STATE LAW PROHIBITS YOU FROM HAVING MORE THAN**
18 **\$300.00 OUTSTANDING IN DELAYED DEPOSIT CHECKS AT**
19 **ONE TIME. FAILURE TO ABIDE BY THIS LAW MAY**
20 **CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR**
21 **FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS**
22 **TRANSACTION ON OR BEFORE THE CLOSE OF THE**
23 **FOLLOWING BUSINESS DAY.**

24 (6) Contain a statement, signed by the customer, attesting that the
25 customer does not have outstanding deferred deposit loan transactions,
26 which in the aggregate exceed three hundred dollars (\$300.00) with all
27 licensees, at the time of the transaction which is the subject of the
28 agreement.

29 (d) A licensee shall not directly or indirectly charge any fee or other
30 consideration for ~~cashing a postdated or delayed deposit check~~ making a deferred
31 deposit loan in excess of fifteen ~~per cent~~ percent (15%) of the ~~face amount of the~~
32 ~~check~~ amount of credit extended.

33 (e) No check cashed under the provisions of this section shall be repaid by the
34 proceeds of another check cashed by the same licensee or any affiliate of the licensee. A
35 licensee shall not, for any consideration, renew or otherwise extend any ~~postdated or~~
36 ~~delayed check~~ deferred deposit loan or withhold ~~such a~~ a check from deposit for any
37 period beyond the time set forth in the written agreement with the customer. Solely as
38 an accommodation to the customer, a licensee may modify the agreement and extend
39 the agreed date of deposit at no additional fee.

40 (f) If a customer is unable to pay the amount due pursuant to a deferred deposit
41 loan transaction, the customer may seek assistance from an authorized consumer credit
42 counselor in establishing a comprehensive debt management repayment plan for the
43 customer. A licensee shall accept any reasonable installment repayment plan offered by
44 an authorized consumer credit counselor, on behalf of the customer, that provides for

1 the repayment of the amounts owed the licensee over a period not to exceed four of a
2 customer's regular pay periods. Once a plan is offered to a licensee by an authorized
3 consumer credit counselor, a licensee shall suspend any collection activities initiated by
4 the licensee until, and only if, the customer does not comply with the repayment plan.
5 For the purposes of this subsection, an 'authorized consumer credit counselor' is a credit
6 counselor who is in good standing with the National Foundation of Credit Counselors or
7 who is accredited by the Council on Accreditation of Services for Families and
8 Children.

9 (g) A licensee shall not use the criminal process to collect a deferred deposit loan
10 unless: (i) the account on which the check held by the licensee is drawn was closed by
11 the customer before the agreed date of deposit, (ii) the check was originally written on a
12 closed account, or (iii) the customer stopped payment on the check before the agreed
13 date of deposit. The licensee shall have the right to exercise all civil means authorized
14 by law to collect a deferred deposit check.

15 (h) A licensee may make up to five consecutive same-day transactions to a single
16 customer. Following the fifth consecutive same-day transaction, the licensee shall not
17 make another deferred deposit loan transaction to the customer until the next business
18 day following the consummation of the last deferred deposit loan transaction. For
19 purposes of this subsection, a 'same-day transaction' is a deferred deposit loan
20 transaction that occurs on the same business day as the consummation of a previous
21 deferred deposit loan transaction between the licensee and the customer."

22 **SECTION 2.** G.S. 53-282 reads as rewritten:

23 **"§ 53-282. Record keeping; receipt requirements.**

24 (a) Every person required to be licensed under this Article shall maintain in its
25 offices the following records:

26 (1) Delayed deposit checks currently held for deposit.

27 (2) A daily transaction journal, or an equivalent record, of both traditional
28 check cashing and delayed deposit check-cashing transactions.

29 (3) The written receipt required by G.S. 53-282(b).

30 (4) The customer agreement required by G.S. 53-281.

31 (5) A history card, or its equivalent, for each customer that reflects the
32 time, date, and amount of each delayed deposit transaction for that
33 customer during the most recent three-year period. The history card
34 shall also state whether each delayed deposit check was deposited or
35 redeemed for cash.

36 (6) Bank statements of the licensee. – If the statements are not maintained
37 on the premises of the licensee, the statements shall be made available
38 immediately upon request of the Commissioner.

39 ~~Every person required to be licensed under this Article~~ In addition to the records
40 required in this subsection, each licensee shall maintain in its offices such books,
41 accounts, and records as the Commissioner may reasonably require. The books,
42 accounts, and records shall be maintained separate from any other business in which the
43 person is engaged, and shall be retained for a period ~~prescribed by the Commissioner.~~ of
44 three years.

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

4 (c) The Commissioner may examine the books, accounts, and records in order to
5 determine whether the person is complying with this Article and rules adopted pursuant
6 thereto. The cost of the examination shall be paid by the licensee and shall be
7 determined by applying the hourly rate for special examinations adopted by the State
8 Banking Commission by regulation.

9 (d) The Commissioner may require each licensee to submit any data or
10 information, including information concerning deferred deposit loan transactions, which
11 the Commissioner deems necessary to report on the check-cashing industry."

12 **SECTION 3.** G.S. 53-283 reads as rewritten:

13 "**§ 53-283. Prohibited practices.**

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

- 15 (1) Charge fees in excess of those authorized under this Article.
- 16 (2) Engage in the business of making loans of money, or extensions of
17 credit, or discounting notes, bills of exchange, items, or other
18 evidences of debt; or accepting deposits or bailments of money or
19 items, except as expressly provided by G.S. 53-281.
- 20 (3) Use or cause to be published or disseminated any advertising
21 communication which contains any false, misleading, or deceptive
22 statement or representation.
- 23 (4) Conduct business at premises or locations other than locations licensed
24 by the Commissioner.
- 25 (5) Engage in unfair, deceptive, or fraudulent practices.
- 26 (6) Cash a check, draft, or money order made payable to a payee other
27 than a natural person unless the licensee has previously obtained
28 appropriate documentation from the executive entity of the payee
29 clearly indicating the authority of the natural person or persons cashing
30 the check, draft, or money order on behalf of the payee.
- 31 (7) Use or threaten to use the criminal process to collect a deferred deposit
32 loan, except as provided in G.S. 53-281(g)."

33 **SECTION 4.** G.S. 53-284(a) reads as rewritten:

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.
- 43 (5) Demonstrated incompetency or untrustworthiness to engage in the
44 business of check cashing.

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

3 (7) Failed to comply with the Commissioner's request for assistance in
4 resolving a complaint.

5 (8) Failed to cooperate with any investigation conducted by the
6 Commissioner."

7 **SECTION 5.** Section 3 of S.L. 1997-391 reads as rewritten:

8 "Section 3. This act becomes effective ~~October 1, 1997, and the provisions of G.S.~~
9 ~~53-281 shall expire on July 31, 2001.~~October 1, 1997."

10 **SECTION 6.** This act becomes effective October 1, 2001.