

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 670

Short Title: Reform Payday Lending.

(Public)

Sponsors: Representatives Harrington; Miller, Davis, Morris, Rayfield, and Buchanan.

Referred to: Rules, Calendar, and Operations of the House.

March 19, 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 CLARIFY THAT SUCH TRANSACTIONS ARE AN EXTENSION OF CREDIT AND TO PROVIDE ADDITIONAL CONSUMER PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-276 reads as rewritten:

"§ 53-276. **License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments. No person or other entity may act as an agent or facilitator for the purpose of making deferred deposit loans as authorized by G.S. 53-281 without first obtaining a license under this Article, regardless of whether the principal making the loan would have been required to obtain a license."

SECTION 2. 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

1 and such other matters as the Commissioner may from time to time believe are
2 necessary or beneficial to consumers.

3 (b) ~~The face amount of any postdated or delayed deposit check cashed~~ amount of
4 credit extended pursuant to this section shall not exceed three hundred dollars
5 (\$300.00). No licensee shall accept transactions which, in the aggregate, exceed this
6 limit. No licensee shall require a customer to prepare more than one check per deferred
7 deposit loan transaction.

8 (c) ~~Each postdated or delayed deposit check cashed by a licensee~~ deferred
9 deposit loan transaction shall be documented by a written agreement that has been
10 signed by the customer and the licensee. The written agreement shall contain a
11 statement of the total amount of any fees charged, expressed both as a dollar amount
12 and as an effective annual percentage rate (APR). The written agreement shall authorize
13 the licensee to defer deposit of the personal check until a specific date not later than 31
14 days from the date the check is cashed. The agreement shall also contain a statement
15 that the customer has received and read a copy of the brochure published by the
16 Commissioner. The customer shall affirm that he or she has no more than three
17 outstanding deferred deposit loan transactions.

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

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

29 (f) When a licensee makes a third consecutive deferred deposit loan transaction
30 to the same customer, the licensee shall not directly or indirectly charge any fee or other
31 consideration in excess of five percent (5%) of the amount of credit extended for that
32 and all subsequent consecutive transactions."

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

34 **"§ 53-283. Prohibited practices.**

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

- 36 (1) Charge fees in excess of those authorized under this Article.
- 37 (2) Engage in the business of making loans of money, or extensions of
38 credit, or discounting notes, bills of exchange, items, or other
39 evidences of debt; or accepting deposits or bailments of money or
40 items, except as expressly provided by G.S. 53-281.
- 41 (3) Use or cause to be published or disseminated any advertising
42 communication which contains any false, misleading, or deceptive
43 statement or representation.

- 1 (4) Conduct business at premises or locations other than locations licensed
2 by the Commissioner.
3 (5) Engage in unfair, deceptive, or fraudulent practices.
4 (6) Cash a check, draft, or money order made payable to a payee other
5 than a natural person unless the licensee has previously obtained
6 appropriate documentation from the executive entity of the payee
7 clearly indicating the authority of the natural person or persons cashing
8 the check, draft, or money order on behalf of the payee.
9 (7) Use or threaten to use the criminal process to collect a deferred deposit
10 loan, unless the failure to collect resulted from the customer
11 committing fraud."

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

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

- 16 (1) Violated this Article or applicable State or federal law or rules.
17 (2) Made a false statement on the application for a license under this
18 Article.
19 (3) Refused to permit investigation by the Commissioner authorized under
20 this Article.
21 (4) Failed to comply with an order of the Commissioner.
22 (5) Demonstrated incompetency or untrustworthiness to engage in the
23 business of check cashing.
24 (6) Been convicted of a felony or misdemeanor involving fraud,
25 misrepresentation, or deceit.
26 (7) Failed to comply with the Commissioner's request for assistance in
27 resolving a complaint."

28 **SECTION 5.** G.S. 14-107(a) reads as rewritten:

29 "**§ 14-107. Worthless checks.**

30 (a) It is unlawful for any person, firm or corporation, to draw, make, utter or
31 issue and deliver to another, any check or draft on any bank or depository, for the
32 payment of money or its equivalent, knowing at the time of the making, drawing,
33 uttering, issuing and delivering the check or draft, that the maker or drawer of it has not
34 sufficient funds on deposit in or credit with the bank or depository with which to pay the
35 check or draft upon presentation. This section shall not apply to any check or draft
36 drawn pursuant to a deferred deposit loan made in accordance with G.S. 53-281."

37 **SECTION 6.** Section 3 of S.L.1997-391 reads as rewritten:

38 "Section 3. This act becomes effective ~~October 1, 1997, and the provisions of G.S.~~
39 ~~53-281 shall expire on July 31, 2001.~~October 1, 1997."

40 **SECTION 7.** This act becomes effective October 1, 2001.