

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 1213

Short Title: Regulate Deferred Deposit. (Public)

Sponsors: Representatives Culpepper and Grady (Primary Sponsors).

Referred to: Financial Institutions.

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 the following:

a. 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 third party is exempt from licensing under this Article or

1 whether approval, acceptance, or ratification by the third party
2 is necessary to create a legal obligation for the third party.

3 b. Notwithstanding the foregoing, a state or federally chartered
4 bank, savings and loan association, credit union, or supervised
5 lender shall not be considered a lender for purposes of the
6 Article and shall be specifically exempt from provisions of this
7 Article so long as all of the following are satisfied:

8 1. It initially advances the loan proceeds to the borrower;

9 2. It does not sell, assign, or transfer in the aggregate a
10 preponderant economic interest in the deferred deposit
11 transactions to arranger, agent, or assistant, or an affiliate
12 or subsidiary of the state or federally chartered bank,
13 savings and loan association, credit union or supervised
14 lender, unless selling, assigning or transferring a
15 preponderant economic interest is permitted by the
16 primary regulator of the state or federally chartered bank,
17 savings and loan association, credit union or supervised
18 lender; and

19 3. It develops the deferred deposit transaction program on
20 its own.

21 c. If a lender offers, arranges, acts as an agent for, or assists a state
22 or federally chartered bank, savings and loan association, credit
23 union or supervised lender in any way in the making of a
24 deferred deposit transaction and the state or federally chartered
25 bank, savings and loan association, credit union or supervised
26 lender meets the standards set forth in sub-subdivision b. of this
27 subdivision, the lender shall comply with all other provisions of
28 this Article to the extent they are not preempted by other state
29 or federal laws.

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

32 (5a) "Loan amount" means the amount financed as defined in Regulation Z
33 of the federal Truth in Lending Act (12 C.F.R. § 226.18(b).

34 (6) "Person" means an individual, partnership, association, or
35 corporation."

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

37 **"§ 53-276. License required.**

38 No person or other entity may engage in the business of cashing checks, drafts, or
39 money orders for ~~consideration~~ consideration, nor engage in the business of making
40 deferred deposit transactions without first obtaining a license under this Article. No
41 person or other entity providing a check-cashing service may avoid the requirements of
42 this Article by providing a check or other currency equivalent instead of currency when
43 cashing payment instruments."

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

3 **"§ 53-281.1. Deferred deposit transactions permitted.**

4 Lenders may make deferred deposit transactions pursuant to the following
5 requirements:

- 6 (1) The face amount of the deferred deposit check may include a fee but
7 the principal loan amount shall not exceed three hundred dollars
8 (\$300.00).
- 9 (2) Each deferred deposit check cashed by a lender shall be deemed to be
10 a loan and shall be documented by a written agreement as provided in
11 G.S. 32-281.2.
- 12 (3) A lender shall not directly or indirectly charge a fee or other
13 consideration in excess of fifteen percent (15%) of the loan amount,
14 provided the maximum fee charged to a borrower for entering into a
15 deferred deposit transaction shall not exceed forty dollars (\$40.00).
- 16 (4) No check cashed under the provisions of this section shall be repaid by
17 the proceeds of another check cashed by the same lender or any
18 affiliate of the lender. A lender shall not, for any consideration, renew
19 or otherwise extend any deferred deposit check or withhold the check
20 from deposit for any period beyond the time set forth in the written
21 agreement, except as allowed under G.S. 53-281.4.

22 **"§ 53-281.2. Written agreement and disclosures required for deferred deposit**
23 **transactions.**

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

27 (b) The written agreement shall contain:

- 28 (1) The name and address of the borrower.
- 29 (2) The name, local street address, and telephone number of the lender.
- 30 (3) The transaction date, which shall be prominently labeled.
- 31 (4) The loan amount as defined in G.S. 53-275(5a).
- 32 (5) The amount of any fees charged, expressed as both a dollar amount
33 and as an effective annual percentage rate (APR).
- 34 (6) The maturity date, which shall be no less than 14 days nor more than
35 60 days after the transaction date.
- 36 (7) The following notices immediately above the borrower's signature line
37 in at least ten-point type: **THIS TRANSACTION IS NOT MEANT**
38 **TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD**
39 **BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.**
40 **YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION**
41 **AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS**
42 **DAY AFTER THE TRANSACTION DATE SHOWN ABOVE.**
43 **TO CANCEL YOU MUST RETURN ALL OF THE CASH**

PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.

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

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

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that is oppressive, unconscionable or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act shall be presumed not to violate this subsection.

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

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

"§ 53-281.3. Deferred deposit transactions limited.

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

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

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

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

b. A query of a subprime credit reporting service.

(b) Within 90 days after the effective date of this Act, each lender shall subscribe to a subprime credit reporting service, designated by the Commissioner, which has the capability of verifying the number and loan amounts of outstanding deferred deposit transactions entered into by any borrower with any lender licensed under this Act.

1 Within 30 days of the effective date of this Act, the Commissioner shall issue a
2 "Request for Proposal" from subprime credit reporting services capable of verifying the
3 information described in this subsection and within 45 days of the effective date of this
4 Act, the Commissioner shall designate that service which is capable of providing such
5 verification and charges the lowest cost per query.

6 (c) Each lender shall report to the subprime credit reporting service the
7 information necessary for the subprime credit reporting service to verify the number and
8 loan amounts of outstanding deferred deposit transactions entered into by borrowers
9 with lenders licensed under this Article.

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

14 **"§ 53-281.4. Mandatory repayment plan.**

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

- 18 (1) The borrower and the lender sign a repayment plan agreement
19 providing for four equal installments due on each of the borrower's
20 next four paydays, with at least 14 days between the installments.
- 21 (2) The borrower agrees not to enter into any additional deferred deposit
22 transactions during the term of the repayment plan.
- 23 (3) Upon completion of the plan, the lender shall report the borrower's
24 positive payment history to consumer credit reporting agencies.
- 25 (4) Upon completion of the plan, the borrower is prohibited from entering
26 into any deferred deposit transactions with any lender for at least one
27 pay period.
- 28 (5) The lender may collect a fifteen-dollar (\$15.00) processing charge for
29 each repayment plan.

30 **"§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

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

- 33 (1) Taking or attempting to take any security other than the borrower's
34 instrument.
- 35 (2) Taking or attempting to take more than a single check or other
36 instrument from the borrower in connection with a single transaction.
- 37 (3) Selling, offering, or soliciting any application for credit insurance in
38 connection with a transaction.
- 39 (4) Tying the transaction to any other transaction, offer, or obligation of
40 the borrower.
- 41 (5) Failing to comply with the Commissioner's request for assistance in
42 resolving a complaint.
- 43 (6) Using or threatening to use criminal process to collect a dishonored
44 check, unless fraud is involved.

1 (7) Assigning or selling to another lender an instrument taken in
2 connection with a deferred deposit transaction unless the instrument
3 bears the following endorsement: THIS INSTRUMENT WAS
4 GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT
5 TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS
6 DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE
7 BOUND BY THE TERMS AND CONDITIONS OF THE LOAN
8 AGREEMENT BETWEEN THE BORROWER AND THE
9 ORIGINAL LENDER.

10 (8) Failing to report accurately and promptly a borrower's positive
11 repayment activity under G.S. 53-281.4 to credit reporting agencies.

12 (9) Failing to collect and provide information regarding the number, total,
13 and average transaction amounts and any other information the
14 Commissioner may request."

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

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

25 **SECTION 5.** This act becomes effective October 1, 2003, and applies to
26 transactions made on or after that date.