

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 2894

Short Title: Prohibit Various Lending Subterfuges. (Public)

Sponsors: Representative Howard.

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

July 3, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE APPLICATION OF THE NORTH CAROLINA
3 CONSUMER FINANCE ACT TO VARIOUS LENDING SUBTERFUGES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The General Assembly makes the following findings:

- 6 (1) Consumer loans in North Carolina are regulated by the North Carolina
7 Consumer Finance Act, Article 15 of Chapter 53 of the General
8 Statutes. The North Carolina Consumer Finance Act requires
9 consumer finance lenders to be licensed and, under G.S. 53-173,
10 authorizes interest rates of up to thirty-six percent (36%) on loans of
11 three thousand dollars (\$3,000) or less.
- 12 (2) Some lenders have attempted to evade the restrictions of the North
13 Carolina Consumer Finance Act by offering cash advances in the form
14 of instant cash rebates or other guises. These cash advance transactions
15 are typically offered in conjunction with the sale of Internet access,
16 telephone time units, catalog certificates, or the use of office
17 equipment, when in fact the sale of the goods or services is a pretext
18 for the making of a loan.
- 19 (3) North Carolina courts have declared some of these transactions to be
20 unlawful, but new schemes continue to be devised in order to
21 circumvent the lending laws of North Carolina and to avoid regulation
22 by the Commissioner of Banks.
- 23 (4) It is the intent of the General Assembly that G.S. 53-166(a) should be
24 construed broadly to prohibit illicit lending schemes and to clarify the
25 devices, subterfuges, and pretenses that are prohibited under
26 G.S. 53-166(b), as amended by Section 2 of this act.

27 **SECTION 2.** G.S. 53-166 reads as rewritten:

28 **"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.**

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

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

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

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

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

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

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

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

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