

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-391
SENATE BILL 312

AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 22.

"Check-Cashing Businesses.

"§ 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.
- (5) 'Licensee' means a person or entity licensed to engage in a check-cashing business under this Article.
- (6) 'Person' means an individual, partnership, association, or corporation.

"§ 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.

"§ 53-277. Exemptions.

- (a) This Article shall not apply to:
 - (1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and
 - (2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a

fee or other consideration, where not more than two dollars (\$2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.

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

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

- (1) The name and address of the applicant.
- (2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.
- (3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.
- (4) The addresses of the locations of the business to be licensed.
- (5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

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

(c) The application shall be accompanied by payment of a two hundred fifty dollar (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

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

"§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.

(a) Every licensee and applicant shall have and maintain liquid assets of at least fifty thousand dollars (\$50,000) per licensee.

(b) Upon the filing and investigation of an application, and compliance by the applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver to the applicant the license applied for to engage in business under this Article at the locations specified in the application, provided that the Commissioner finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the Commissioner fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons therefor. The applicant shall be entitled to an informal hearing on the denial provided the applicant requests the hearing in writing within 30 days after the

Commissioner has mailed the notice required under this subsection to the applicant. In the event of a hearing, which shall be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application.

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

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

- (1) Three percent (3%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.
- (2) Ten percent (10%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for personal checks.
- (3) Five percent (5%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. Except as provided by G.S. 53-281(a), any licensee who cashes a check for a fee shall deposit the check not later than three business days from the date the check is cashed.

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

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

"§ 53-281. Postdated or delayed deposit checks.

(a) A licensee may defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.

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

(c) Each postdated or delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or delayed deposit check in excess of fifteen per cent (15%) of the face amount of the check.

(e) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee.

A licensee shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer.

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

(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

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

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

"§ 53-283. Prohibited practices.

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

- (1) Charge fees in excess of those authorized under this Article.
- (2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.
- (3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.
- (4) Conduct business at premises or locations other than locations licensed by the Commissioner.
- (5) Engage in unfair, deceptive, or fraudulent practices.
- (6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

"§ 53-284. Suspension and revocation of license; grounds; procedure.

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

- (1) Violated this Article or applicable State or federal law or rules.
- (2) Made a false statement on the application for a license under this Article.
- (3) Refused to permit investigation by the Commissioner authorized under this Article.

- (4) Failed to comply with an order of the Commissioner.
- (5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.
- (6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

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

"§ 53-285. Cease and desist orders.

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

"§ 53-286. Civil penalties and restitution.

The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars (\$1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

"§ 53-287. Criminal penalties.

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

"§ 53-288. Commissioner to adopt rules.

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

"§ 53-289. Commission may review rules, orders, or acts by Commissioner.

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

Section 2. The Commissioner of Banks shall report to the 2001 General Assembly on the practices of licensees with regard to checks cashed pursuant to the provisions of G.S. 53-281, including any evidence as to consumer complaints, unfair or deceptive trade practices, and the frequency of repeat use by individuals of postdated or delayed deposit checks. It is the intent of the General Assembly that the sunset contained in Section 3 of this act be repealed if there is no evidence of excessive complaints or unfair and deceptive trade practices.

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

In the General Assembly read three times and ratified this the 7th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:35 a.m. this 14th day of August, 1997