

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1365

Short Title: Improve Regulation of Payday Lenders.

(Public)

Sponsors: Representative Baddour.

Referred to: Financial Institutions, if favorable, Finance.

April 23, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND CERTAIN PROVISIONS OF THE CHECK CASHER ACT
3 RELATING TO POSTDATED OR DELAYED DEPOSIT CHECKS AND TO
4 REMOVE THE SUNSET FROM THAT PROVISION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 53-275 reads as rewritten:

7 **"§ 53-275. Definitions.**

8 As used in this Article, unless the context clearly requires otherwise, the term:

9 (1) "Cashing" means providing currency for payment instruments, but
10 does not include the bona fide sale or exchange of travelers checks and
11 foreign denomination payment instruments.

12 (2) "Check-cashing service" means any person or entity engaged in the
13 business of cashing checks, drafts, or money orders for a fee, service
14 charge, or other consideration. Check-cashing service shall also mean
15 any person or entity engaged in the business of making, originating,
16 processing, or accepting or transmitting applications for deferred
17 deposit transactions whether the transactions are done directly or in
18 conjunction with another person or entity.

19 (3) "Commission" means the State Banking Commission.

20 (4) "Commissioner" means the Commissioner of Banks.

21 (4a) "Deferred deposit transaction" means a check-cashing or similar loan
22 transaction in which a person pays a cash advance to a consumer in
23 return for a check dated on the date it was written and agrees to hold
24 the check for a period of days prior to deposit or presentment, or
25 accepts a postdated check and agrees to hold the check for deposit or
26 presentment at least until the date written on the check. The term shall
27 also include any such arrangement in which a person pays a cash

1 advance in return for an authorization from a consumer for a draft or
2 electronic debit rather than a check.

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

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

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

8 **"§ 53-276. License required.**

9 No person or other entity may engage in the business of cashing checks, drafts, or
10 money orders for consideration without first obtaining a license under this Article. No
11 person or other entity providing a check-cashing service may avoid the requirements of
12 this Article by providing a check or other currency equivalent instead of currency when
13 cashing payment ~~instruments.~~instruments, or by using drafts or electronic debits to
14 collect on the instrument."

15 **SECTION 3.** G.S. 53-277 reads as rewritten:

16 **"§ 53-277. Exemptions.**

17 (a) This Article shall not apply to:

18 (1) A bank, savings institution, credit union, or farm credit system
19 organized under the laws of the United States or any ~~state;~~ state and
20 maintaining a place of business in this State; and

21 (2) Any person or entity principally engaged in the bona fide retail sale of
22 goods or services, who either as an incident to or independently of a
23 retail sale or service and not holding itself out to be a check-cashing
24 service, from time to time cashes checks, drafts, or money orders for a
25 fee or other consideration, where not more than two dollars (\$2.00) is
26 charged for the service.

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

31 **SECTION 4.** G.S. 53-278 reads as rewritten:

32 **"§ 53-278. Application for license; investigation; application fee.**

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

36 (1) The name and address of the applicant.

37 (2) If the applicant is a firm or partnership, the name and address of each
38 member of the firm or partnership.

39 (3) If the applicant is a corporation, the name and address of each officer,
40 director, registered agent, and principal.

41 (4) The addresses of the locations of the business to be licensed.

42 (5) Other information concerning the financial responsibility, background
43 experience, and activities of the applicant and its members, officers,
44 directors, and principals as the Commissioner requires.

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

4 (c) The application shall be accompanied by payment of a two hundred fifty
5 dollar (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee. If
6 the applicant intends to offer deferred deposit check-cashing services under G.S. 53-
7 281, the application fee shall be five hundred dollars (\$500.00) and the investigation fee
8 shall be one thousand dollars (\$1,000). These fees are not refundable or abatable, but, if
9 the license is granted, payment of the application fee shall satisfy the fee requirement
10 for the first license year or remaining part thereof.

11 (d) Licenses shall expire annually and may be renewed upon payment of a
12 license fee of two hundred fifty dollars (\$250.00) plus a fifty dollar (\$50.00) fee for
13 each branch location certificate issued under a license. For any licensee who offers
14 deferred deposit check-cashing under G.S. 53-281, the renewal fee shall be five hundred
15 dollars (\$500.00) plus a two hundred fifty dollar (\$250.00) fee for every branch location
16 certificate."

17 SECTION 5. G.S. 53-281 reads as rewritten:

18 "**§ 53-281. (~~Expires July 31, 2001~~) Postdated or ~~delayed~~ deferred deposit**
19 **checks.transactions.**

20 (a) A licensee may defer the deposit of a personal check cashed for a customer
21 for ~~up to 31~~ a minimum period of 30 days pursuant to the provisions of this section.

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

24 (c) Each ~~postdated or delayed deposit check cashed by a licensee~~ deferred
25 deposit transaction shall be documented by a written agreement that has been signed by
26 the customer and the licensee. The written agreement shall contain a statement of the
27 cash advance and the total amount of any fees charged, expressed both as a dollar
28 amount and as an effective annual percentage rate (APR). The written agreement shall
29 authorize the licensee to defer deposit of the personal check until a specific date ~~not~~
30 ~~later than 31~~ at least 30 days from the date the check is cashed. The written agreement
31 shall contain the following specific disclosures:

32 (1) The address and telephone number of the Office of the Commissioner
33 of Banks with a statement that the licensee is licensed by the
34 Commissioner of Banks and that the consumer may file a complaint
35 with the Commissioner if the consumer believes the licensee has acted
36 improperly or unlawfully.

37 (2) The consumer may not be prosecuted for a worthless check violation if
38 the check is returned for insufficient funds but the consumer may be
39 liable for a fifteen dollar (\$15.00) worthless check fee.

40 (3) The consumer has the right to contact a consumer credit counseling
41 service for counseling or a debt management repayment program if the
42 consumer is unable to pay on the deferred deposit transaction when it
43 becomes due.

1 (d) A licensee shall not directly or indirectly charge any fee or other
2 consideration for cashing a postdated or ~~delayed~~-deferred deposit check in excess of
3 ~~fifteen per cent (15%)~~ thirteen percent (13%) of the ~~face amount of the check, cash~~
4 advance for the first check cashed for a customer in a calendar year. For every
5 subsequent check cashed for the same customer in the same calendar year, the fee shall
6 decrease by one percent (1%), so that the maximum fee for the second check shall be
7 twelve percent (12%), the maximum fee for the third check shall be eleven percent
8 (11%), the maximum fee for the fourth check shall be ten percent (10%), and the
9 maximum fee for the fifth check shall be nine percent (9%). Upon the request of a
10 customer made prior to the deposit of the check by the licensee, the licensee shall
11 extend the date for deposit of the check for a period of 14 days beyond the time set
12 forth in the agreement. The licensee may charge an additional fee for such an extension
13 of up to five percent (5%) of the cash advanced to the customer. If a customer obtains
14 an extension, the licensee shall not enter into another deferred deposit transaction with
15 that customer for a period of at least 14 days after the conclusion of the extension
16 period. Only one extension fee may be charged for an outstanding check.

17 (e) No check cashed under the provisions of this section shall be repaid by the
18 proceeds of another check cashed by the same licensee or any affiliate of the licensee.
19 Except for the one-time extension fee authorized by subsection (d) of this section, A
20 licensee shall not, for any additional consideration, renew or otherwise extend any
21 postdated or ~~delayed~~-deferred check or withhold such check from deposit for any period
22 beyond the time set forth in the written agreement with the customer. A licensee may
23 agree with its customer at any time to defer deposit or collection of a check without
24 additional consideration.

25 (f) No licensee may make more than two deferred deposit transactions with the
26 same customer in any one calendar quarter. No licensee may make more than five
27 deferred deposit transactions with the same customer in any calendar year.

28 (g) No licensee shall knowingly enter into a deferred deposit transaction with any
29 customer who has in the aggregate more than three hundred dollars (\$300.00) in
30 deferred deposit transactions outstanding with any other licensees. The licensee shall
31 use available information databases or make reasonable inquiry of the customer to
32 determine whether the customer has more than three hundred dollars (\$300.00)
33 outstanding in deferred deposit checks.

34 (h) A licensee may collect a fee for a returned check pursuant to G.S. 25-3-506,
35 but the fee shall not exceed fifteen dollars (\$15.00) if the check is returned for
36 insufficient funds. Only one such fee may be collected per check.

37 (i) The Commissioner shall prepare and distribute to all licensees a consumer
38 information sheet or pamphlet to educate consumers about deferred deposit lending. The
39 informational materials shall include information on the responsible use of deferred
40 deposit transactions, the costs of deferred deposit transactions, the limitations on the
41 number of transactions, and the dollar amount of outstanding checks, the fact that the
42 consumer cannot be prosecuted for a deferred deposit insufficient funds check, the
43 availability of consumer credit counseling services and debt repayment alternatives, and
44 the procedure for filing consumer complaints with the Commissioner. The

1 Commissioner's informational materials shall be made available by the licensee in a
2 conspicuous place at each location that offers deferred deposit check-cashing and shall
3 be presented to each customer before the deferred deposit transaction is executed. The
4 costs of producing, printing, and distributing the materials shall be paid out of licensing
5 fees collected from licensees."

6 **SECTION 6.** G.S. 53-282 reads as rewritten:

7 **"§ 53-282. Record keeping; receipt requirements.**

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

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

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

21 (d) The Commissioner may require licensees to submit any data or information,
22 including information concerning deferred deposit transactions, which is reasonably
23 available to the licensee and which the Commissioner deems necessary to the
24 performance of his oversight duties."

25 **SECTION 7.** G.S. 53-283 reads as rewritten:

26 **"§ 53-283. Prohibited practices.**

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

- 28 (1) Charge fees in excess of those authorized under this ~~Article~~Article, or
29 originate, process, or accept or transmit applications for deferred
30 deposit transactions for which the fees exceed those permitted in this
31 Article.
- 32 (2) Engage in the business of making loans of money, or extensions of
33 credit, or discounting notes, bills of exchange, items, or other
34 evidences of debt; or accepting deposits or bailments of money or
35 items, except as expressly provided by G.S. 53-281.
- 36 (3) Use or cause to be published or disseminated any advertising
37 communication which contains any false, misleading, or deceptive
38 statement or representation.
- 39 (4) Conduct business at premises or locations other than locations licensed
40 by the Commissioner.
- 41 (5) Engage in unfair, deceptive, or fraudulent practices.
- 42 (6) Cash a check, draft, or money order made payable to a payee other
43 than a natural person unless the licensee has previously obtained
44 appropriate documentation from the executive entity of the payee

1 clearly indicating the authority of the natural person or persons cashing
2 the check, draft, or money order on behalf of the payee.

3 (7) Use or threaten to use the criminal process to collect on a check in a
4 deferred deposit transaction that is returned or may be returned for
5 insufficient funds.

6 (8) Make more than one deferred deposit transaction to a customer at the
7 same time or accept or hold more than one deferred deposit instrument
8 from a customer at the same time."

9 **SECTION 8.** G.S. 53-284(a) reads as rewritten:

10 **"§ 53-284. Suspension and revocation of license; grounds; procedure.**

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

14 (1) Violated this Article or applicable State or federal law or rules.

15 (2) Made a false statement on the application for a license under this
16 Article.

17 (3) Refused to permit investigation by the Commissioner authorized under
18 this Article.

19 (4) Failed to comply with an order of the Commissioner.

20 (5) Demonstrated incompetency or untrustworthiness to engage in the
21 business of check cashing.

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

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

26 (8) Failed to cooperate with any investigation conducted by the
27 Commissioner."

28 **SECTION 9.** G.S. 53-286 reads as rewritten:

29 **"§ 53-286. Civil penalties and restitution.**

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

36 (b) Any deferred deposit check-cashing agreement, the making or collecting of
37 which violates any provision of this Article, or rule adopted thereunder, except as a
38 result of accidental or bona fide error of computation, shall be void, and the licensee or
39 any other party acting by or through a licensee shall have no right to collect, receive, or
40 retain any principal or charges whatsoever with respect to the transaction."

41 **SECTION 10.** Section 3 of S.L. 1997-391 reads as rewritten:

42 "Section 3. This act becomes effective ~~October 1, 1997~~, and the provisions of G.S.
43 ~~53-281 shall expire on July 31, 2001.~~ October 1, 1997."

1 **SECTION 11.** Section 10 of this act becomes effective when it becomes
2 law. The remainder of this act becomes effective October 1, 2001, and the provisions of
3 G.S. 53-281, as amended by Section 5 of this act, shall expire on July 31, 2004.