

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 104  
Judiciary I Committee Substitute Adopted 4/23/01  
House Committee Substitute Favorable 8/28/02

Short Title: Regulate Deferred Deposit.

(Public)

Sponsors:

Referred to:

February 8, 2001

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 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 whether

1 approval, acceptance, or ratification by the third party is necessary to  
2 create a legal obligation for the third party. Notwithstanding that a  
3 bank, savings institution, credit union, or farm credit system may be  
4 exempted by federal law from this Article's provisions related to  
5 interest rate, finance charges, and licensure, all other applicable  
6 provisions of this Article apply to both a deferred deposit transaction  
7 and a deferred deposit lender.

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

10 (5a) "Loan amount" means the amount financed as defined in regulation Z  
11 of the federal Truth in Lending Act, (12 C.F.R. 226.18(b).

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

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

15 **"§ 53-276. License required.**

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

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

24 **"§ 53-281.1. Deferred deposit transactions permitted.**

25 Lenders may make deferred deposit transactions pursuant to the following  
26 requirements:

27 (1) The face amount of the deferred deposit check may include a fee but  
28 the principal loan amount shall not exceed three hundred dollars  
29 (\$300.00).

30 (2) Each deferred deposit check cashed by a lender shall be deemed to be  
31 a loan and shall be documented by a written agreement as provided in  
32 G.S. 32-281.2.

33 (3) A lender shall not directly or indirectly charge a fee or other  
34 consideration in excess of fifteen percent (15%) of the loan amount.

35 (4) No check cashed under the provisions of this section shall be repaid by  
36 the proceeds of another check cashed by the same lender or any  
37 affiliate of the lender. A lender shall not, for any consideration, renew  
38 or otherwise extend any deferred deposit check or withhold the check  
39 from deposit for any period beyond the time set forth in the written  
40 agreement, except as allowed under G.S. 53-281.4.

41 **"§ 53-281.2. Written agreement and disclosures required for deferred deposit**  
42 **transactions.**

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

4 (b) The written agreement shall contain:

5 (1) The name and address of the borrower.

6 (2) The name, local street address, and telephone number of the lender.

7 (3) The transaction date, which shall be prominently labeled.

8 (4) The loan amount as defined in G.S. 53-275(5a).

9 (5) The amount of any fees charged, expressed as both a dollar amount  
10 and as an effective annual percentage rate (APR).

11 (6) The maturity date, which shall be no less than 14 days nor more than  
12 60 days after the transaction date.

13 (7) The following notices immediately above the borrower's signature line  
14 in at least ten-point type: **THIS TRANSACTION IS NOT MEANT**  
15 **TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD**  
16 **BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.**  
17 **YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION**  
18 **AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS**  
19 **DAY AFTER THE TRANSACTION DATE SHOWN ABOVE.**  
20 **TO CANCEL YOU MUST RETURN ALL OF THE CASH**  
21 **PROCEEDS TO THE LENDER. THE LENDER WILL REFUND**  
22 **TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

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

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

33 (1) A hold harmless clause.

34 (2) A confession of judgment clause.

35 (3) A mandatory arbitration clause.

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

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

39 **"§ 53-281.3. Deferred deposit transactions limited.**

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

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

9           (2)    The lender verifies the accuracy of this certification through  
10          reasonable means, including a manual investigation or an electronic  
11          query of all of the lender's own records, and also available databases  
12          approved by the Commissioner.

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

17          **§ 53-281.4. Mandatory repayment plan.**

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

21               (1)    The borrower and the lender sign a repayment plan agreement  
22               providing for four equal installments due on each of the borrower's  
23               next four paydays, with at least 14 days between the installments.

24               (2)    The borrower agrees not to enter into any additional deferred deposit  
25               transactions during the term of the repayment plan.

26               (3)    Upon completion of the plan, the lender shall report the borrower's  
27               positive payment history to consumer credit reporting agencies.

28               (4)    Upon completion of the plan, the borrower is prohibited from entering  
29               into any deferred deposit transactions with any lender for at least one  
30               pay period.

31               (5)    The lender may collect a fifteen-dollar (\$15.00) processing charge for  
32               each repayment plan.

33          **§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

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

36               (1)    Taking or attempting to take any security other than the borrower's  
37               instrument.

38               (2)    Taking or attempting to take more than a single check or other  
39               instrument from the borrower in connection with a single transaction.

40               (3)    Selling, offering, or soliciting any application for credit insurance in  
41               connection with a transaction.

42               (4)    Tying the transaction to any other transaction, offer, or obligation of  
43               the borrower.

- 1           (5) Failing to comply with the Commissioner's request for assistance in  
2           resolving a complaint.
- 3           (6) Using or threatening to use criminal process to collect a dishonored  
4           check, unless fraud is involved.
- 5           (7) Assigning or selling to another lender an instrument taken in  
6           connection with a deferred deposit transaction unless the instrument  
7           bears the following endorsement: **THIS INSTRUMENT WAS**  
8           **GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT**  
9           **TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS**  
10           **DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE**  
11           **BOUND BY THE TERMS AND CONDITIONS OF THE LOAN**  
12           **AGREEMENT BETWEEN THE BORROWER AND THE**  
13           **ORIGINAL LENDER.**
- 14           (8) Failing to report accurately and promptly a borrower's positive  
15           repayment activity under G.S. 53-281.4 to credit reporting agencies.
- 16           (9) Failing to collect and provide information regarding the number, total,  
17           and average transaction amounts and any other information the  
18           Commissioner may request."

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

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

29           **SECTION 5.** This act becomes effective October 1, 2002, and applies to  
30           transactions made on or after that date.