

April 10, 2003

H 1213. REGULATE DEFERRED DEPOSIT. TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL DISCLOSURES AND PROTECTIONS.

Amends GS 53-275, -276, and -286, and adds new GS 53-281.1 through -281.5 as title indicates.

(1) Adds new definition of "deferred deposit transaction," to mean a check-cashing transaction in which a lender pays cash to a customer in exchange for a check that the lender agrees to hold for deposit or presentment at a specified later date (or in exchange for a draft or electronic debit to be made on a later date).

(2) Provides (a) that the face amount of any deferred deposit transaction may not exceed \$300, (b) that a lender may not enter into a deferred deposit transaction with a borrower if the lender knows that the borrower has other deferred deposit transactions that in the aggregate exceed \$300 or exceed three in number. Requires the borrower to certify that he or she is not, with the new deferred deposit transaction, exceeding these limits, and requires the lender to verify the accuracy of the certification by reviewing its own records and making an inquiry of a sub-prime credit reporting service. Requires the Commissioner of Banks, within 45 days of the effective date of the bill, to designate a service capable of verifying the number and loan amounts of outstanding deferred deposit transactions by any borrower and requires all lenders to make timely reports to such service.

(3) Limits the fee that a lender may charge on a deferred deposit transaction to 15% of the loan amount or \$40, whichever is less. Provides that no check cashed in connection with a deferred deposit transaction may be repaid by the proceeds of another check cashed by the same lender or affiliate.

(4) Requires each deferred deposit transaction to be documented by a written agreement signed by lender and borrower, containing (a) specified information including the amount of fees expressed both as a dollar amount and as an effective annual percentage rate, (b) a statement warning the borrower that the deferred deposit transaction is not meant to meet long-term financial needs, (c) a statement guaranteeing the right to cancel the transaction by 5:00 pm the following day. The agreement may not include a hold harmless clause, a confession of judgment clause, a waiver of defenses, or a mandatory arbitration clause that is oppressive, unconscionable, or substantially in derogation of the rights of consumers.

(5) Permits the borrower at any time before the maturity date of the deferred deposit transaction to declare an inability to pay and to enter a mandatory repayment plan calling for repayment in four installments due on each of the borrower's next four paydays (at least 14 days apart). The borrower by this plan agrees not to enter into any other deferred deposit transaction during the payout and the borrower is prohibited from entering into any other deferred deposit transaction for at least one pay period.

(6) Prohibits lenders from taking any security other than the borrower's check, taking more than a single check in a single transaction, selling or offering credit insurance in connection with a deferred deposit transaction, tying the transaction to any other transaction, or threatening to use criminal process to collect a dishonored check unless fraud is involved.

(7) Excludes from the definition of "lender" for purposes of the bill a state or federally chartered bank, savings and loan association, credit union, or supervised lender, so long as such bank initially advances the loan to the borrower, does not transfer the deferred deposit transaction (unless the transfer is permitted by the regulatory authority), and has developed the deferred deposit transaction on its own.

(8) Raises the civil penalty that may be imposed by the Comm'r of Banks from \$1,000 to \$10,000 per violation and provides that the imposition of a penalty does not limit the right of a customer to pursue any available civil remedies.

Effective Oct. 1, 2003.

Intro. by Culpepper, Grady.

Ref. to Financial Inst.

GS 53

April 30, 2003

H 1213. REGULATE DEFERRED DEPOSIT. Intro. 4/10/03. House committee substitute adopted 4/29/03 makes the following changes to 1st edition. Amends GS 53-281.2(d)(3) to delete

prohibition against oppressive or unconscionable arbitration clauses and replace it with requirement that such clauses comply with National Consumer Dispute Advisory Comm. of American Arbitration Association. Makes act effective when it becomes law (was, Oct. 1, 2003). Makes technical changes.

May 1, 2003

H 1213. REGULATE DEFERRED DEPOSIT. Intro. 4/10/03. House amendments adopted 4/30/03 make the following changes to 2nd edition. (1) amend GS 53-281.2 to provide that a lender shall not enter into a deferred deposit transaction with a borrower who has elected a mandatory repayment plan on two separate occasions within a year unless the borrower obtains credit counseling services; and (2) amend GS 53-281.2 to provide that in addition to providing a written agreement to the borrower before entering into a transaction, the lender must orally inform the borrower of the borrower's right to cancel, the terms of the agreement, and the borrower's right to elect a mandatory repayment plan.

June 18, 2003

H 1213. REGULATE DEFERRED DEPOSIT. Intro. 4/10/03. Senate committee substitute makes the following changes to 3rd edition. Rewrites the definition of "lender" to (1) provide that although banks, savings institutions, credit unions, or the farm credit system may be exempted by law from some of the Article's provisions, all other provisions do apply to such entities; and (2) other lenders must comply with Article whether acting on own account or as agent or broker of third party. Specifically requires license under Article to act as agent for third party that makes deferred deposit transactions. Previous edition required lender to pay proceeds from deferred deposit transaction by check; substitute makes such form of payment permissive. Modifies mandatory repayment plan to provide for six (was, four) equal installments and to remove prohibition on borrower entering into new deferred deposit transactions for at least one pay period. Adds following practices prohibited by lenders: (1) engaging in devices or subterfuges to evade Article, such as making loans disguised as sales and lease-backs or disguising loan proceeds as cash rebates for pretextual installment sales; and (2) assisting lender in making deferred deposit transactions unless lender complies with Article. Deletes provisions requiring lenders to use subprime reporting agencies and directs Comm'r, by Oct. 1, 2003, to contract with third-party provider to develop and maintain database for reporting deferred deposit transactions. Sets out operating details for such database and requirements on lenders to use and supply information to database. Requires lenders to make annual reports to Comm'r, with such information as set out in Article; and requires Comm'r to make annual report to public that summarizes deferred deposit transaction business for preceding year. Makes void any deferred deposit loan agreement, and accompanying payment device, when making or collecting is in violation of Article.

July 16, 2004

H 1213. MONETARY COMPENSATION/OUTDOOR ADVERTISING (NEW). Intro. 4/10/03. Senate committee substitute makes the following changes to 4th edition. Replaces existing bill with new bill entitled *AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PAY MONETARY COMPENSATION FOR REMOVAL OF LAWFULLY ENACTED OFF-PREMISES OUTDOOR ADVERTISING SIGNS AND TO AUTHORIZE LOCAL GOVERNMENTS TO ENTER INTO RELOCATION AND RECONSTRUCTION AGREEMENTS WITH OWNERS OF NONCONFORMING OFF-PREMISES OUTDOOR ADVERTISING SIGNS*. Enacts GS 153A-143 and 160A-199 to provide that counties and cities may not require removal of off-premise outdoor advertising signs that do not conform to local ordinances without payment of monetary compensation to the owners such signs unless: (1) the local government and sign owners agree to relocation of the sign; (2) the local government and sign owner enter a voluntary agreement providing for removal of the sign after a set period of time in lieu of monetary compensation; (3) the sign is a public nuisance or is a detriment to public health or safety; (4) removal is related to construction of streets, sidewalks, or public enterprises and the sign is allowed to be relocated to a comparable location; or (5) the removal is required pursuant to an ordinance of generally applicability to demolition or removal of damaged structures. When required, the monetary

compensation is the fair-market value of the sign (without consideration of the removal requirement), with fair market value determined according to the factors in GS 105-317.1(a) regarding valuation of personal property for tax purposes and the listed property tax value of the sign, along with other information regarding value submitted to the taxing authority. If agreement on monetary compensation is not reached, the local government may bring an action in superior court to for a determination of fair market value. Specifies the content and factors to be considered in relocation agreements and authorizes the local government to provide dimensional, spacing, setback, and use variances as deemed appropriate to accommodate relocation. Provides for binding arbitration if local government and sign owner have agreed to relocation but fail to agree as to what constitutes a comparable or better site for relocation (and if arbitration results in finding that relocation site is not comparable, compensation is required if the local government elects to proceed with removal). Allows local government to make payment of monetary compensation over a three year period, provided the nonconforming sign remains in place until compensation is paid. These provisions do not apply to regulations in effect as of effective date of legislation (including geographic expansion of existing municipal ordinances through annexation or extraterritorial jurisdiction changes), do not affect the exercise of eminent domain under GS Ch. 40A or 136, and do not affect amortization of nonconforming uses other than off-premise outdoor advertising.

July 16, 2004

H 1213. MONETARY COMPENSATION/OUTDOOR ADVERTISING. Intro. 4/10/03. Senate amendment makes the following changes to 5th edition. Amends proposed GS 160A-199(d) to clarify that compensation exception applies to municipal ordinances generally applicable to demolition or removal of damaged structures (as previously provided with comparable county provision).

August 6, 2004

SL 2004-152 (H 1213). MONETARY COMPENSATION/OUTDOOR ADVERTISING. AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PAY MONETARY COMPENSATION FOR REMOVAL OF LAWFULLY ERECTED OFF-PREMISES OUTDOOR ADVERTISING SIGNS AND TO AUTHORIZE LOCAL GOVERNMENTS TO ENTER INTO RELOCATION AND RECONSTRUCTION AGREEMENTS WITH OWNERS OF NONCONFORMING OFF-PREMISES OUTDOOR ADVERTISING SIGNS. Summarized in *Daily Bulletin* 7/16/04. Enacted August 2, 2004. Effective August 2, 2004.