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HOUSE DRH70310-MLf-157A (01/29)

Short Title: Deferred Presentment Services. (Public)

Sponsors: Representatives W. Brawley, R. Moore, Johnson, and Burr (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AND REGULATE THE BUSINESS OF PROVIDING DEFERRED
3 PRESENTMENT SERVICES TO CERTAIN PERSONS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 53-275. Definitions.

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

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

11 (1a) "Cash advance" is as defined in G.S. 53-165(c).

12 (1b) "Check" means any payment instrument, including any customer
13 authorization for electronic payment.

14 (2) "Check-cashing service" means any person or entity engaged in the business
15 of cashing checks, drafts, or money orders for a fee, service charge, or other
16 consideration.

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

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

19 (4a) "Deferred presentment transaction" means a transaction pursuant to a written
20 agreement in which one party to the agreement accepts a check dated on the
21 date it was written and holds the check for a period of time set forth in the
22 agreement prior to presentment for payment or deposit.

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

25 (5a) "Payment instrument" is as defined in G.S. 53-208.2(a)(14).

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

27 (7) "Rollover" means the termination or extension of a deferred presentment
28 transaction by the payment of an additional fee and the continued holding of
29 the check or the substitution of a new check by a customer pursuant to a new
30 deferred presentment transaction."

31 SECTION 2. Article 22 of Chapter 53 of the General Statutes is amended by
32 adding a new section to read:

33 "§ 53-281.1. Deferred presentment transactions.

34 (a) For purposes of a deferred presentment transaction, a licensee may charge a fee to
35 defray operational costs. Operational costs may include investigating the checking account and
36 copying required documents; photographing the person signing the check; securing the check



1 and customer records in a safe, fireproof place; maintaining records as required by this section;
2 maintaining required capital and liquidity; processing, documenting, and closing the
3 transaction; and for other similar expenses that may be incurred by the licensee. The fee
4 authorized by this subsection shall not exceed fifteen percent (15%) of the cash advance
5 amount, and the maximum cash advance amount to a customer shall not exceed five hundred
6 dollars (\$500.00). The fee, when made and collected, shall not be deemed interest for any
7 purpose of State law. The licensee shall not charge any fees or interest not specifically
8 authorized by this section or G.S. 53-281.2. For purposes of this section, a licensee shall
9 include a person or entity licensed under Article 15 of this Chapter.

10 (b) Any agreement for the deferred presentment of a check must be signed by the maker
11 of the check. The maker of the check shall have the right to redeem the check from the licensee
12 before the agreed date of deposit upon payment to the licensee of the amount of the check. A
13 licensee shall not defer presentment of any personal check for more than 35 calendar days after
14 the date that the check is tendered to the licensee.

15 (c) Before entering into a deferred presentment transaction, a licensee shall do all of the
16 following:

17 (1) Provide each customer with a written explanation of (i) the fees charged by
18 the licensee and (ii) the date on which the check will be deposited or
19 presented for payment by the licensee. The written explanation shall be
20 written in clear and understandable language and shall include all
21 information required to comply with the federal Truth in Lending Act, 15
22 U.S.C. § 1601, et seq. The Commissioner may adopt rules establishing
23 additional notification requirements to assure complete and accurate
24 disclosure, including a rule requiring each licensee to issue a standardized
25 consumer notification and disclosure form that includes all information
26 required by this subsection. The required style, content, and method of
27 executing the form shall be prescribed by the rules and shall be designed
28 to ensure that the customer, prior to entering into a deferred presentment
29 transaction, receives and acknowledges an accurate and complete
30 notification and disclosure of the itemized and total amounts of all fees and
31 other costs that will or could be imposed as a result of the deferred
32 presentment transaction.

33 (2) In accordance with G.S. 53-281.2, inquire into whether any customer is
34 eligible to enter into a new deferred presentment transaction pursuant to this
35 section by submitting such information as the Commissioner may require to
36 the deferred presentment database. The licensee may rely on the information
37 contained in the database as accurate and is not subject to an administrative
38 penalty or civil liability as a result of relying on inaccurate information
39 contained in the database.

40 (3) Inquire into whether any customer is a member of the Armed Forces of the
41 United States or the spouse or other dependent of a member of the Armed
42 Forces of the United States. A licensee shall not knowingly enter into a
43 deferred presentment transaction with a customer who is a member of the
44 Armed Forces of the United States or the spouse or other dependent of a
45 member of the Armed Forces of the United States. A violation of Section
46 670 of the John Warner National Defense Authorization Act for Fiscal Year
47 2007, Public Law 109-364, or any regulation adopted pursuant thereto shall
48 be deemed to be a violation of this subsection.

49 (d) A licensee shall issue (i) a copy of the deferred presentment agreement required in
50 subdivision (c)(1) of this section and (ii) a receipt to each customer who enters into a deferred
51 presentation transaction with the licensee. The receipt shall include the information required in

1 subdivision (c)(1) of this section regarding the total amount of the fees charged by the licensee
2 and the date on which the check will be presented for deposit by the licensee.

3 (e) If the check is returned to the licensee from a payer financial institution due to
4 insufficient funds, a closed account, or a stop payment order, the licensee shall have the right to
5 charge a fee for returned checks pursuant to G.S. 53-175. No customer who issues a personal
6 check to a licensee under this section that is returned due to insufficient funds, a closed
7 account, or a stop payment order shall be subject to criminal prosecution under G.S. 14-107
8 unless the customer attempted to enter into a deferred presentment transaction through
9 misrepresentation or fraud. No licensee shall report to any credit reporting agency that a
10 customer has not paid, or has willfully refused to pay, a debt incurred under this section.

11 (f) No licensee shall do any of the following:

12 (1) Alter or delete the date on any check accepted by the licensee or accept a
13 check bearing no date or a date other than the date on which the licensee
14 accepts the check.

15 (2) Require a customer to provide security for the deferred presentment
16 transaction or require the customer to provide a guaranty from another
17 person.

18 (3) Engage in any acts or practices that (i) constitute an unfair and deceptive
19 trade practice in violation of G.S. 75-1.1 or (ii) violate any State or federal
20 law regarding cash transactions and cash transaction reporting.

21 (g) Upon entering into a deferred presentment transaction, each licensee shall pay
22 directly to the customer the full amount of any check to be held, less the fee authorized by
23 subsection (a) of this section. The payment required under this subsection may be made to the
24 customer in the form of (i) cash, (ii) a check payable on the account of the licensee, (iii) a
25 money order, (iv) a debit card, (v) an electronic funds transfer to the customer's designated
26 account, or (vi) through any other electronic payment mechanism. A licensee shall not charge
27 an additional fee to the customer for making the payment required under this subsection in a
28 form other than cash.

29 (h) A licensee or any person related to the licensee by common ownership or control
30 shall not engage in the rollover of a deferred presentment transaction. A licensee shall not
31 redeem, extend, or otherwise consolidate a deferred presentment transaction with the proceeds
32 of another deferred presentment transaction made by the same licensee or any person related to
33 the licensee by common ownership or control. Upon payment of the full amount of any check,
34 a licensee shall not enter into another deferred presentment transaction until 24 hours after the
35 check was fully paid by the given customer.

36 (i) A licensee shall not use any device or agreement, including agreements with other
37 licensees, with the intent to obtain greater charges than otherwise would be authorized by this
38 section or circumvent the rollover prohibition in subsection (h) of this section.

39 (j) A licensee may provide to a customer once a year an extended payment plan
40 agreement if, at any time on or before the due date of the loan, the customer declares an
41 inability to repay. An extended payment plan shall be subject to the following terms:

42 (1) The principal balance due under the extended payment plan shall be the
43 outstanding principal balance and finance charges due under the existing
44 loan.

45 (2) The licensee may not impose a finance charge for entering into the extended
46 payment plan. The licensee may only impose the fees and charges in
47 subsection (e) of this section for returned checks.

48 (3) The extended payment plan agreement shall allow the customer to pay the
49 sums due under the extended payment plan in at least four substantially
50 equal installments. Each plan installment must be due on a date on which the
51 customer receives regular income.

1 (k) Except as expressly provided in this section, a deferred presentment transaction
2 shall not be subject to the provisions of Article 15 of this Chapter.

3 (l) A transaction entered into in violation of this section is void and unenforceable in
4 law or equity.

5 **"§ 53-281.2. Deferred presentment transaction database.**

6 (a) In order to prevent a customer from having a deferred presentment transaction that
7 exceeds the limits set in G.S. 53-281.1, the Commissioner shall implement a common database
8 with real-time access through an Internet connection for licensees providing deferred
9 presentment services. The Commissioner shall enter into a contract with a single source private
10 vendor to develop and operate the database. By no later than October 1, 2013, the database
11 shall be accessible to meet the verification requirements of G.S. 53-281.1(c)(2).

12 (b) A licensee shall submit the customer's information to the database provider before
13 entering into a deferred presentment transaction. The Commissioner shall adopt rules
14 prescribing the information that must be provided by the licensee, and the format in which the
15 information must be provided. When the deferred presentment transaction is paid in full, the
16 licensee shall designate the transaction as closed and inform the database provider within 24
17 hours after the transaction is paid in full that the transaction is closed. When the database
18 provider receives notification that the transaction is closed, the database provider shall
19 immediately designate the transaction as closed in the database. For purposes of this
20 subsection, a transaction is paid in full and closed when the payer financial institution makes
21 final payment on the customer's check or the customer has redeemed the check by paying the
22 licensee the full amount of the check.

23 (c) To make an inquiry as to whether a customer is eligible to enter into a deferred
24 presentment transaction, a licensee shall submit to the database provider the information
25 required by the Commissioner. The database provider shall only state that a customer is eligible
26 or ineligible and describe the reason for that determination.

27 (d) The information contained in the database shall be used solely for the purpose of
28 verifying whether a customer is eligible to enter into a deferred presentment transaction. All
29 information contained in the database is privileged and confidential, in accordance with
30 applicable State law and federal guidelines, and shall not be public records as that term is
31 defined in G.S. 132-1.

32 (e) The database provider may charge a database verification fee to a licensee for
33 making an inquiry as to whether a customer is eligible to enter into a deferred presentment
34 transaction only if the licensee enters into a deferred presentment transaction with the customer.
35 The fee shall be set by the Commissioner as the actual cost of verifying a customer's eligibility
36 to enter into a deferred presentment transaction, not to exceed one dollar (\$1.00). In addition to
37 the fees authorized by G.S. 53-281.1, a licensee may charge a customer entering into a deferred
38 presentment transaction the actual cost of the fee to verify the customer's eligibility to enter into
39 the transaction, not to exceed one dollar (\$1.00)."

40 **SECTION 3.** G.S. 53-279 reads as rewritten:

41 **"§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.**

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

44 (a1) Each application for a license from an applicant that intends to offer deferred
45 presentment transactions shall be accompanied by a surety bond acceptable to the
46 Commissioner in the amount of ten thousand dollars (\$10,000). If the applicant proposes to
47 engage in business under this Article at more than one location, then the amount of the security
48 bond will be increased by ten thousand dollars (\$10,000) per location, up to a maximum of fifty
49 thousand dollars (\$50,000). The surety bond shall be made by a surety bonding company
50 licensed and authorized to do business in North Carolina, shall be in a form satisfactory to the
51 Commissioner, and shall run to the State for the benefit of any claimants against the licensee to

1 secure the faithful performance of the obligations of the licensee with respect to deferred
2 presentment transactions. The aggregate liability of the surety in no event shall exceed the
3 principal sum of the bond. Claimants against the licensee may themselves bring suit directly on
4 the security bond, or the Commissioner may bring suit on behalf of claimants, either in one
5 action or in successive actions. The surety bond shall remain in effect until cancellation, which
6 may occur only after 90 days' written notice to the Commissioner. Cancellation shall not affect
7 any liability incurred or accrued during that period.

8 (b) Upon the filing and investigation of an application, and compliance by the applicant
9 with G.S. 53-278, and this section, the Commissioner shall issue and deliver to the applicant
10 the license applied for to engage in business under this Article at the locations specified in the
11 application, provided that the Commissioner finds that the financial responsibility, character,
12 reputation, experience, and general fitness of the applicant and its members, officers, directors,
13 and principals are such as to warrant belief that the business will be operated efficiently and
14 fairly, in the public interest, and in accordance with law. If the Commissioner fails to make
15 such findings, no license shall be issued, and the Commissioner shall notify the applicant of the
16 denial and the reasons therefor. The applicant shall be entitled to an informal hearing on the
17 denial provided the applicant requests the hearing in writing within 30 days after the
18 Commissioner has mailed the notice required under this subsection to the applicant. In the
19 event of a hearing, which shall be held in the offices of the Commissioner of Banks in Raleigh,
20 the Commissioner shall reconsider the application and, after hearing, issue a written order
21 granting or denying the application."

22 **SECTION 4.** G.S. 53-280 reads as rewritten:

23 **"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.**

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

- 27 (1) Three percent (3%) of the face amount of the check or five dollars (\$5.00),
28 whichever is greater, for checks issued by the federal government, State
29 government, or any agency of the State or federal government, or any county
30 or municipality of this State.
- 31 (2) ~~Ten~~ Except as provided for in G.S. 53-281.1, ten percent (10%) of the face
32 amount of the check or five dollars (\$5.00), whichever is greater, for
33 personal checks.
- 34 (3) Five percent (5%) of the face amount of the check or five dollars (\$5.00),
35 whichever is greater, for all other checks, or for money orders.

36 (b) A licensee may not advance monies on the security of any check unless the account
37 from which the check being presented is drawn is legitimate, open, and active. Except as
38 provided by ~~G.S. 53-281(a)~~, G.S. 53-281.1, any licensee who cashes a check for a fee shall
39 deposit the check not later than three business days from the date the check is cashed.

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

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

47 **SECTION 5.** G.S. 53-283(2) reads as rewritten:

48 **"§ 53-283. Prohibited practices.**

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

50 ...

1 (2) Engage in the business of making loans of money, or extensions of credit, or
2 discounting notes, bills of exchange, items, or other evidences of debt; or
3 accepting deposits or bailments of money or items, except as expressly
4 provided by ~~G.S. 53-281~~G.S. 53-281.1.

5 "

6 **SECTION 6.** This act becomes effective July 1, 2013.