GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2005

H 2

HOUSE BILL 2894 Senate Judiciary II Committee Substitute Adopted 7/18/06

Short Title: Prohibit various Lending Subterfuges.	(Public)
Sponsors:	
Referred to:	
July 3, 2006	
A BILL TO BE ENTITLED	
AN ACT TO CLARIFY THE APPLICATION OF THE NORT	
CONSUMER FINANCE ACT TO VARIOUS LENDING SUBTER	FUGES.
The General Assembly of North Carolina enacts:	
SECTION 1. The General Assembly makes the following firm	
 Consumer loans in North Carolina are regulated by the Consumer Finance Act, Article 15 of Chapter 53 Statutes. The North Carolina Consumer Finance consumer finance lenders to be licensed and, und authorizes interest rates of up to thirty-six percent (3 three thousand dollars (\$3,000) or less. Some lenders have attempted to evade the restriction Carolina Consumer Finance Act by offering cash advance of instant cash rebates or other guises. These cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advance typically offered in conjunction with the sale of the consumer Finance Act by offering cash advanced typically offered in conjunction with the sale of the consumer Finance Act by offering cash advanced typically offered in conjunction with the sale of the consumer Finance Act by offering cash advanced typically offered typical	of the General e Act requires der G.S. 53-173, 66%) on loans of ons of the North ances in the form ance transactions Internet access,
telephone time units, catalog certificates, or the equipment, when in fact the sale of the goods or serv for the making of a loan.	
(3) North Carolina courts have declared some of these trunlawful, but new schemes continue to be devis circumvent the lending laws of North Carolina and to by the Commissioner of Banks.	sed in order to
(4) It is the intent of the General Assembly that G.S. 53-construed broadly to prohibit illicit lending schemes a devices, subterfuges, and pretenses that are p. G.S. 53-166(b), as amended by Section 2 of this act. SECTION 2. G.S. 53-166 reads as rewritten:	and to clarify the

"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.

- (a) Scope. No person shall engage in the business of lending in amounts of ten thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24,24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.
 - (b) Evasions. The provisions of subsection (a) of this section shall applyapply to any person who seeks to avoid its application by any device, subterfuge subterfuge, or pretense whatsoever. Devices, subterfuges, and pretenses include any transaction in which a cash rebate or other advance of funds is offered and all of the following apply:
 - (1) The cash advance is made contemporaneously with the transaction or soon thereafter.
 - (2) The amount of the cash advance is required to be repaid at a later date.
 - (3) The selling or providing of any item, service, or commodity with the transaction is incidental to, or a pretext for, the advance of funds.
 - (c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession. Any person not exempt from this Article, or any officer, agent, employee employee, or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each such—violation shall be considered a separate offense. It shall beig the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any such offense under this subsection with all facts and evidence in his—the Commissioner's actual or constructive possession, and to testify as to such—these facts upon the trial of any person for any such the
 - (d) Additional Penalties. Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation shall be void is void, and the licensee or any other party in violation shall have no right to not collect, receive receive, or retain any principal or charges whatsoever with respect to such the loan. If an affiliate operating in the same office or subsidiary operating in the same office of a licensee makes a loan in violation of G.S. 53-180(i) such G.S. 53-180(i), the affiliate or subsidiary may recover only its principal on such the loan."
 - **SECTION 3.** This act becomes effective October 1, 2006, and applies to transactions that are investigated on or after that date under the North Carolina Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes, as amended by this act, and applies to transactions that are subject to enforcement actions under the North Carolina Consumer Finance Act that are filed on or after that date.