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

The General Assembly of North Carolina enacts:

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


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.

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

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

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

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

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

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

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

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

"§ 53-281. Deferred presentment transactions."

(a) For purposes of a deferred presentment transaction, a licensee may charge a fee to defray operational costs. Operational costs may include investigating the checking account and
copying required documents; photographing the person signing the check; securing the check
and customer records in a safe, fireproof place; maintaining records as required by this section;
maintaining required capital and liquidity; processing, documenting, and closing the
transaction; and for other similar expenses that may be incurred by the licensee. The fee
authorized by this subsection shall not exceed fifteen percent (15%) of the cash advance
amount, and the maximum cash advance amount to a customer shall not exceed five hundred
dollars ($500.00). The fee, when made and collected, shall not be deemed interest for any
purpose of State law. The licensee shall not charge any fees or interest not specifically
authorized by this section or G.S. 53-281.2. For purposes of this section, a licensee shall
include a person or entity licensed under Article 15 of this Chapter.

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

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

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

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

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

(d) A licensee shall issue (i) a copy of the deferred presentment agreement required in
subdivision (c)(1) of this section and (ii) a receipt to each customer who enters into a deferred
presentation transaction with the licensee. The receipt shall include the information required in subdivision (c)(1) of this section regarding the total amount of the fees charged by the licensee and the date on which the check will be presented for deposit by the licensee.

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

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

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

2. Require a customer to provide security for the deferred presentment transaction or require the customer to provide a guaranty from another person.

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

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

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

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

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

1. The principal balance due under the extended payment plan shall be the outstanding principal balance and finance charges due under the existing loan.

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

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

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

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

§ 53-281.2. Deferred presentment transaction database.
(a) In order to prevent a customer from having a deferred presentment transaction that
exceeds the limits set in G.S. 53-281.1, the Commissioner shall implement a common database
with real-time access through an Internet connection for licensees providing deferred
presentment services. The Commissioner shall enter into a contract with a single source private
vendor to develop and operate the database. By no later than October 1, 2013, the database
shall be accessible to meet the verification requirements of G.S. 53-281.1(c)(2).

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

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

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

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

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

§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.
(a) Every licensee and applicant shall have and maintain liquid assets of at least fifty
thousand dollars ($50,000) per licensee.

(a1) Each application for a license from an applicant that intends to offer deferred
presentment transactions shall be accompanied by a surety bond acceptable to the
Commissioner in the amount of ten thousand dollars ($10,000). If the applicant proposes to
engage in business under this Article at more than one location, then the amount of the security
bond will be increased by ten thousand dollars ($10,000) per location, up to a maximum of fifty
thousand dollars ($50,000). The surety bond shall be made by a surety bonding company.
licensed and authorized to do business in North Carolina, shall be in a form satisfactory to the
Commissioner, and shall run to the State for the benefit of any claimants against the licensee to
secure the faithful performance of the obligations of the licensee with respect to deferred
presentment transactions. The aggregate liability of the surety in no event shall exceed the
principal sum of the bond. Claimants against the licensee may themselves bring suit directly on
the security bond, or the Commissioner may bring suit on behalf of claimants, either in one
action or in successive actions. The surety bond shall remain in effect until cancellation, which
may occur only after 90 days' written notice to the Commissioner. Cancellation shall not affect
any liability incurred or accrued during that period.

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

SECTION 4. G.S. 53-280 reads as rewritten:
"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.
(a) Notwithstanding any other provision of law, no check-cashing business licensed
under this Article shall directly or indirectly charge or collect fees or other consideration for
check-cashing services in excess of the following:
(1) Three percent (3%) of the face amount of the check or five dollars ($5.00),
whichever is greater, for checks issued by the federal government, State
government, or any agency of the State or federal government, or any county
or municipality of this State.
(2) Ten percent (10%) of the face amount of the check or five dollars ($5.00), whichever is greater, for
personal checks.
(3) Five percent (5%) of the face amount of the check or five dollars ($5.00),
whichever is greater, for all other checks, or for money orders.
(b) A licensee may not advance monies on the security of any check unless the account
from which the check being presented is drawn is legitimate, open, and active. Except as
provided by G.S. 53-281(a),G.S. 53-281.1, any licensee who cashes a check for a fee shall
deposit the check not later than three business days from the date the check is cashed.
(c) A licensee shall ensure that in every location conducting business under a license
issued under this Article, there is conspicuously posted and at all times displayed a notice
stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further
ensure that notice of the fees currently charged at every location shall be filed with the
Commissioner.
(d) A licensee shall endorse every check, draft, or money order presented by the
licensee for payment in the name of the licensee."

SECTION 5. G.S. 53-283(2) reads as rewritten:
"§ 53-283. Prohibited practices.
No person required to be licensed under this Article shall do any of the following:
Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281-G.S. 53-281.1.

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