

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 875

Short Title: Deferred Presentment Services. (Public)

Sponsors: Representatives W. Brawley, R. Moore, Johnson, and Burr (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking, if favorable, Finance.

April 15, 2013

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



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

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

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

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

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

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

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

1 presentation transaction with the licensee. The receipt shall include the information required in  
2 subdivision (c)(1) of this section regarding the total amount of the fees charged by the licensee  
3 and the date on which the check will be presented for deposit by the licensee.

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

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

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

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

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

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

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

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

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

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

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

49 (3) The extended payment plan agreement shall allow the customer to pay the  
50 sums due under the extended payment plan in at least four substantially

1           equal installments. Each plan installment must be due on a date on which the  
2           customer receives regular income.

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

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

7           **"§ 53-281.2. Deferred presentment transaction database.**

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

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

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

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

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

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

43           **"§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.**

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

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

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

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

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

25 **"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.**

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

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

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

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

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

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

50 **"§ 53-283. Prohibited practices.**

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

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...  
(2) 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.