

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 1354*

Short Title: Regulate Tax Refund Loans.

(Public)

Sponsors: Senators Staton, Plyler, Carpenter, Conder; Block, Johnson of Cabarrus, Marvin, and Sands.

Referred to: Banks & Thrift Institutions.

May 23, 1990

A BILL TO BE ENTITLED

AN ACT TO REGULATE REFUND ANTICIPATION LOANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-166 reads as rewritten:

"§ 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, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. ~~Provided further, no person shall in the course of any business service individually or in conjunction or cooperation with any bank or other lender process or accept for delivery to any bank or other lender any loan application, or receive or accept for delivery any loan proceed checks or in any manner facilitate the extension of credit the purpose of which is to fund a loan in anticipation of any sums of money due by reason of a tax refund without first having obtained a license from the Commissioner.~~ 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 apply to any person who seeks to avoid its application by any device, subterfuge or pretense whatsoever.

1 (c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession.
2 – Any person not exempt from this Article, or any officer, agent, employee or
3 representative thereof, who fails to comply with or who otherwise violates any of the
4 provisions of this Article, or any regulation of the Banking Commission adopted
5 pursuant to this Article, shall be guilty of a misdemeanor and upon conviction shall be
6 fined not less than five hundred dollars (\$500.00) nor more than twenty-five hundred
7 dollars (\$2,500) or imprisoned not less than four months nor more than two years, or
8 both, in the discretion of the court. Each such violation shall be considered a separate
9 offense. It shall be the duty of the Commissioner of Banks to provide the district
10 attorney of the court having jurisdiction of any such offense with all facts and evidence
11 in his actual or constructive possession, and to testify as to such facts upon the trial of
12 any person for any such offense.

13 (d) Additional Penalties. – Any contract of loan, the making or collecting of
14 which violates any provision of this Article, or regulation thereunder, except as a result
15 of accidental or bona fide error of computation shall be void and the licensee or any
16 other party in violation shall have no right to collect, receive or retain any principal or
17 charges whatsoever with respect to such loan. If an affiliate operating in the same office
18 or subsidiary operating in the same office of a licensee makes a loan in violation of G.S.
19 53-180(i) such affiliate or subsidiary may recover only its principal on such loan."

20 Sec. 2. Chapter 53 of the General Statutes is amended by adding at the end a
21 new Article to read:

22 **"ARTICLE 20.**

23 **"REFUND ANTICIPATION LOAN ACT.**

24 **"§ 53-245. Title and scope.**

25 (a) Title. This Article shall be known and cited as the 'Refund Anticipation Loan
26 Act'.

27 (b) Scope. No person may individually or in conjunction or cooperation with
28 another person process, receive, or accept for delivery an application for a refund
29 anticipation loan or a check in payment of refund anticipation loan proceeds or in any
30 other manner facilitate the making of a refund anticipation loan unless the person has
31 complied with the provisions of this Article.

32 **"§ 53-246. Definitions.**

33 The following definitions apply in this Article:

34 (1) Applicant. A person who applies for registration as a facilitator of
35 refund anticipation loans.

36 (2) Commission. The State Banking Commission.

37 (3) Commissioner. The Commissioner of Banks.

38 (4) Creditor. A person who makes a refund anticipation loan.

39 (5) Debtor. A person who receives the proceeds of a refund anticipation
40 loan.

41 (6) Facilitator. A person who individually or in conjunction or
42 cooperation with another person processes, receives, or accepts for
43 delivery an application for a refund anticipation loan or a check in

1 payment of refund anticipation loan proceeds or in any other manner
2 facilitates the making of a refund anticipation loan.

3 (7) Person. An individual, a firm, a partnership, an association, a
4 corporation, or another entity.

5 (8) Refund anticipation loan. A loan that the creditor arranges to be repaid
6 directly from the proceeds of the debtor's income tax refund.

7 (9) Refund anticipation loan fee. The charges, fees, or other consideration
8 charged or imposed by the creditor or facilitator for the making of a
9 refund anticipation loan. This term does not include any charge, fee,
10 or other consideration usually charged or imposed by the facilitator in
11 the ordinary course of business for nonloan services, such as fees for
12 tax return preparation and fees for electronic filing of tax returns.

13 (10) Registrant. A person who is registered as a facilitator of refund
14 anticipation loans under this Article.

15 **§ 53-247. Registration requirement.**

16 (a) Registration Requirement. No person may individually or in conjunction or
17 cooperation with another person process, receive, or accept for delivery an application
18 for a refund anticipation loan or a check in payment of refund anticipation loan proceeds
19 without first being registered with the Commissioner in accordance with the registration
20 procedure provided in this Article.

21 (b) Criminal Penalty. Violation of this section is a misdemeanor, punishable by
22 imprisonment up to 60 days, a fine of up to two thousand dollars (\$2,000), or both.

23 (c) Exemption. This section does not apply to a person doing business as a bank,
24 savings association, or credit union, under the laws of this State or the United States.

25 **§ 53-248. Registration procedure.**

26 (a) Initial Registration. An application to become registered as a facilitator shall
27 be in writing, under oath, and in a form prescribed by the Commissioner. The
28 application shall contain all information prescribed by the Commissioner. Each
29 application for registration shall be accompanied by a fee, payable to the Commissioner,
30 of two hundred fifty dollars (\$250.00) for each office where the registrant intends to
31 facilitate refund anticipation loans.

32 Upon the filing of an application for registration, if the Commissioner finds that the
33 responsibility and general fitness of the applicant are such as to command the
34 confidence of the community and to warrant belief that the business of facilitating
35 refund anticipation loans will be operated within the purposes of this Article, the
36 Commissioner shall register the applicant as a facilitator of refund anticipation loans
37 and shall issue and transmit to the applicant a certificate attesting to the registration. If
38 the Commissioner does not so find, he shall not register the applicant and shall notify
39 the applicant of the reasons for the denial.

40 Upon receipt of a certificate of registration, the applicant is registered under this
41 Article and may engage in the business of facilitating refund anticipation loans at the
42 offices identified on the application for registration.

43 (b) Renewal. Each registration as a facilitator of refund anticipation loans shall
44 expire on December 31 following the date it was issued, unless it is renewed for the

1 succeeding year. Before the registration expires, the registrant may renew the
2 registration by filing with the Commissioner an application for renewal in the form and
3 containing all information prescribed by the Commissioner. Each application for
4 renewal of registration shall be accompanied by a fee of one hundred dollars (\$100.00)
5 for each office where the registrant intends to facilitate refund anticipation loans during
6 the succeeding year.

7 Upon the filing of an application for renewal of registration under this Article, the
8 Commissioner shall renew the registration unless the Commissioner determines that the
9 fitness of the registrant or the operations of the registrant would not support registration
10 of the registrant under subsection (a). If the Commissioner makes such a determination,
11 he shall so notify the registrant, stating the reasons for the determination.

12 (c) Display of Certificate. Each registrant shall prominently display a certificate
13 issued under this Article in each place of business in the State where the registrant
14 facilitates the making of refund anticipation loans.

15 **"§ 53-249. Filing and posting of loan fees; disclosures.**

16 (a) Filing of Fee Schedule. On or before January 2 of each year, each registrant
17 shall file with the Commissioner a schedule of the refund anticipation loan fees for
18 refund anticipation loans to be facilitated by the registrant during the succeeding year.
19 Immediately upon learning of any change in the refund anticipation loan fee for that
20 year, the registrant shall file an amendment with the Commissioner setting out the
21 change. Filing is effective upon receipt by the Commissioner.

22 (b) Notice of Unconscionable Fee. If the Commissioner finds that a refund
23 anticipation loan fee filed pursuant to subsection (a) is unconscionable, he shall notify
24 the registrant that (i) in his opinion the fee is unconscionable and (ii) the consequences
25 of charging a refund anticipation loan fee in an amount that the Commissioner has
26 notified the registrant is unconscionable include liability to the debtor for three times the
27 amount of that fee and possible revocation of registration as a facilitator after notice and
28 a hearing.

29 (c) Posting of Fee Schedule. Every registrant shall prominently display at each
30 office where the registrant is facilitating refund anticipation loans a schedule showing
31 the current refund anticipation loan fees for refund anticipation loans facilitated at the
32 office and the current electronic filing fees for the electronic filing of the taxpayer's tax
33 return. Every registrant shall also prominently display on each fee schedule a statement
34 to the effect that the taxpayer may have the tax return filed electronically without also
35 obtaining a refund anticipation loan. No registrant may facilitate a refund anticipation
36 loan unless (i) the schedule required by this subsection is displayed and (ii) the refund
37 anticipation loan fee actually charged is the same as the fee displayed on the schedule
38 and the fee filed with the Commissioner pursuant to subsection (a).

39 (d) Disclosures. At the time a debtor applies for a refund anticipation loan, the
40 registrant shall disclose to the debtor on a form separate from the application:

41 (1) The fee for the loan.

42 (2) The fee for electronic filing of a tax return.

43 (3) The time within which the proceeds of the loan will be paid to the
44 debtor if the loan is approved.

- 1 (4) That the debtor is responsible for repayment of the loan and related
2 fees in the event the tax refund is not paid or is not paid in full.
- 3 (5) The availability of electronic filing of the taxpayer's tax return, along
4 with the average time announced by the appropriate taxing authority
5 within which a taxpayer can expect to receive a refund if the taxpayer's
6 return is filed electronically and the taxpayer does not obtain a refund
7 anticipation loan.
- 8 (6) Examples of the annual percentage rates, as defined by the Truth In
9 Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for
10 refund anticipation loans of five hundred dollars (\$500.00), seven
11 hundred fifty dollars (\$750.00), one thousand dollars (\$1,000), one
12 thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000),
13 and three thousand dollars (\$3,000). Regardless of disclosures of the
14 annual percentage rate required by the Truth In Lending Act, if the
15 debtor is required to establish or maintain a deposit account with the
16 creditor for receipt of the debtor's tax refund to offset the amount owed
17 on the loan, the maturity of the loan for the purpose of determining the
18 annual percentage rate disclosure under this section shall be assumed
19 to be the estimated date when the tax refund will be deposited in the
20 debtor's account.

21 **"§ 53-250. Prohibited activities.**

22 A facilitator of a refund anticipation loan may not engage in any of the following
23 activities:

- 24 (1) Misrepresenting a material factor or condition of a refund anticipation
25 loan.
- 26 (2) Failing to arrange for a refund anticipation loan promptly after the
27 debtor applies for the loan.
- 28 (3) Engaging in any transaction, practice, or course of business that
29 operates a fraud upon any person in connection with a refund
30 anticipation loan.
- 31 (4) Facilitating a refund anticipation loan for which the refund anticipation
32 loan fee is (i) different from the fee posted or the fee filed with the
33 Commissioner or (ii) in an amount that the Commissioner has notified
34 the facilitator is unconscionable.
- 35 (5) Directly or indirectly arranging for payment of any portion of the
36 refund anticipation loan for check cashing, credit insurance, or any
37 other good or service unrelated to (i) preparing and filing tax returns or
38 (ii) facilitating refund anticipation loans.
- 39 (6) Arranging for a creditor to take a security interest in any property of
40 the debtor other than the proceeds of the debtor's tax refund to secure
41 payment of the loan.

42 **"§ 53-251. Cease and desist; revocation of registration; penalties.**

43 (a) Cease and Desist Order. Upon the finding that any action of a registrant may
44 be in violation of this Article or that the registrant has engaged in an unfair or deceptive

1 act or practice, the Commissioner shall give reasonable notice to the registrant of the
2 suspected violation or unfair or deceptive act or practice, and an opportunity for the
3 registrant to be heard. If, following the hearing, the Commissioner finds that an action
4 of the registrant is in violation of this Article or that the registrant has engaged in an
5 unfair or deceptive act or practice, the Commissioner shall order the registrant to cease
6 and desist from the action.

7 If the registrant fails to appeal a cease and desist order of the Commissioner in
8 accordance with G.S. 53-252 and continues to engage in an action in violation of the
9 Commissioner's order to cease and desist from the action, the registrant shall be subject
10 to a penalty of one thousand dollars (\$1,000) for each action it takes in violation of the
11 Commissioner's order.

12 (b) Revocation of Registration. After notice and hearing, and upon the finding
13 that a registrant has (i) engaged in a course of conduct that is in violation of this Article
14 or (ii) continued to engage in an action in violation of a cease and desist order of the
15 Commissioner that has not been stayed upon application of the registrant, the
16 Commissioner may revoke the registration of the registrant temporarily or permanently
17 in the discretion of the Commissioner.

18 (c) Civil Penalties. Except in the case of a refund anticipation loan that is not
19 approved by the creditor, a facilitator who fails to deliver to the debtor the proceeds of a
20 refund anticipation loan within 48 hours after the time period promised by the facilitator
21 when the debtor applied for the loan shall pay to the debtor an amount equal to the
22 refund anticipation loan fee. A facilitator who engages in an activity prohibited under
23 G.S. 53-250 in connection with a refund anticipation loan is liable to the debtor for
24 damages of three times the amount of the refund anticipation loan fee or other
25 unauthorized charge plus a reasonable attorney's fee.

26 **"§ 53-252. Appeal of Commissioner's decision.**

27 Notwithstanding any other provision of law, an aggrieved party may, within 30 days
28 after a final decision of the Commissioner and with written notice to the Commissioner,
29 appeal the decision directly to the North Carolina Court of Appeals for judicial review
30 on the record. In the event of an appeal, the Commissioner shall certify the record to
31 the Clerk of the Court of Appeals within 30 days after receipt of notice of appeal. The
32 record shall include all memoranda and briefs, and any other documents, data,
33 information, or evidence submitted by any party to the proceeding except for material
34 such as trade secrets normally not available through commercial publication for which a
35 party has made a claim of confidentiality and requested exclusion from the record. All
36 factual information contained in any report submitted to or obtained by the
37 Commissioner's staff shall also be made a part of the record unless deemed confidential
38 by the Commissioner.

39 **"§ 53-253. Rules; enforcement.**

40 Notwithstanding the provisions of G.S. 53-95, the Commissioner may promulgate
41 reasonable rules as necessary to effectuate the purpose of this Article, to provide for the
42 protection of the borrowing public, and to assist registrants in interpreting this Article.
43 In order to enforce this Article, the Commissioner may make investigations, subpoena

1 witnesses, require audits and reports, and conduct hearings regarding possible violations
2 of its provisions.

3 **"§ 53-254. Exemption.**

4 This Article does not apply to a person who does not deal directly with debtors but
5 who acts solely as an intermediary by processing or transmitting, electronically or
6 otherwise, tax or credit information or by preparing for a facilitator refund anticipation
7 loan checks to be delivered by the facilitator to the debtor."

8 Sec. 3. G.S. 53-99 reads as rewritten:

9 **"§ 53-99. Official records.**

10 (a) The Commissioner of Banks shall keep a record in his office of his official
11 acts, rulings, and transactions which, except as hereinafter provided, shall be open to
12 inspection, examination and copying by any person.

13 (b) Notwithstanding any laws to the contrary, the following records of the
14 Commissioner of Banks shall be confidential and shall not be disclosed or be subject to
15 public inspection:

16 (1) Records compiled during or in connection with an examination, audit
17 or investigation of any bank, banking office, bank holding company or
18 its nonbank subsidiary, or trust department which operates or has
19 applied to operate under the provisions of this Chapter;

20 (2) Records containing information compiled in preparation or
21 anticipation of litigation, examination, audit or investigation;

22 (3) Records containing the names of any borrowers from a bank or
23 revealing the collateral given by any such borrower: Provided,
24 however, that every report of insider transactions made by a bank
25 which report is required to be filed with the appropriate State or
26 federal regulatory agency by either State or federal statute or
27 regulation shall be filed with the Commissioner of Banks in a form
28 prescribed by him and shall be open to inspection, examination and
29 copying by any person;

30 (4) Records prepared during or as a result of an examination, audit or
31 investigation of any bank, bank affiliate, bank holding company or its
32 nonbank subsidiary, data service center or banking practice by an
33 agency of the United States, or jointly by such agency and the
34 Commissioner of Banks, if such records would be confidential under
35 federal law or regulation;

36 (4a) Records prepared during or as a result of an examination, audit or
37 investigation of any bank, bank affiliate, bank holding company or its
38 nonbank subsidiary, data service center or banking practice by a
39 regulatory agency of jurisdiction of the region defined in G.S. 53-
40 210(11) if these records would be confidential under that jurisdiction's
41 law or regulation;

42 (5) Records of information and reports submitted by banks to federal
43 regulatory agencies, if such records would be confidential under
44 federal law or regulation;

- 1 (6) Records of complaints from the public received by the banking
2 department and concerning banks under its supervision if such
3 complaints would or could result in an investigation;
- 4 (7) Records of examinations and investigations of consumer finance
5 licensees;
- 6 (7a) Records of examinations and investigations of licensees under the Sale
7 of Checks Act, Article 16 of this Chapter;
- 8 (7b) Records of examinations and investigations of registrants under the
9 Mortgage Bankers and Brokers Act, Article 19 of this Chapter;
- 10 (7c) Records of applications and investigations of registrants under the
11 Refund Anticipation Loan Act, Article 20 of this Chapter;
- 12 (8) Records of pre-need burial contracts maintained pursuant to ~~Article 7A~~
13 ~~of Chapter 65~~ Article 13B of Chapter 90 of the General Statutes
14 including investigations of such contracts and related credit inquiries;
- 15 (9) Any letters, reports, memoranda, recordings, charts, or other
16 documents which would disclose any information set forth in any of
17 the confidential records referred to in subdivisions (1) through (8).
- 18 (c) Notwithstanding the provisions of subsection (b), the Commissioner of Banks
19 may, by written agreement with any state or federal regulatory agency, share with that
20 agency any confidential information set out in subsection (b) on the condition that the
21 information shared shall be treated as confidential under the applicable laws and
22 regulations governing the recipient agency."

23 Sec. 4. This act shall become effective October 1, 1990.