

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 881  
SENATE BILL 1354

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.

(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 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 misdemeanor and upon conviction shall be fined not less than five hundred dollars (\$500.00) nor more than twenty-five hundred dollars (\$2,500) or imprisoned not less than four months nor more than two years, or both, in the discretion of the court. Each such violation shall be considered a separate offense. It shall be the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in his actual or constructive possession, and to testify as to such facts upon the trial of any person for any such offense.

(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 and the licensee or any other party in violation shall have no right to collect, receive or retain any principal or charges whatsoever with respect to such 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 affiliate or subsidiary may recover only its principal on such loan."

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

"ARTICLE 20.

"Refund Anticipation Loan Act.

"§ 53-245. Title and scope.

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

(b) Scope. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of this Article. In addition, G.S. 143-3.3 prohibits refund anticipation loans repaid from refunds of North Carolina tax.

"§ 53-246. Definitions.

The following definitions apply in this Article:

- (1) Applicant. A person who applies for registration as a facilitator of refund anticipation loans.
- (2) Commission. The State Banking Commission.
- (3) Commissioner. The Commissioner of Banks.
- (4) Creditor. A person who makes a refund anticipation loan.
- (5) Debtor. A person who receives the proceeds of a refund anticipation loan.
- (6) Facilitator. A person who individually or in conjunction or cooperation with another person processes, receives, or accepts for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitates the making of a refund anticipation loan.
- (7) Person. An individual, a firm, a partnership, an association, a corporation, or another entity.
- (8) Refund anticipation loan. A loan that the creditor arranges to be repaid directly from the proceeds of the debtor's income tax refund.
- (9) Refund anticipation loan fee. The charges, fees, or other consideration charged or imposed by the creditor or facilitator for the making of a refund anticipation loan. This term does not include any charge, fee, or other consideration usually charged or imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

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

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

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

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

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

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

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

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

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

(b) Renewal. Each registration as a facilitator of refund anticipation loans shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Commissioner an application for renewal in the form and containing all information prescribed by the Commissioner. Each application for renewal of registration shall be accompanied by a fee of one hundred dollars (\$100.00) for each office where the registrant intends to facilitate refund anticipation loans during the succeeding year.

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

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

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

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

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

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

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

- (1) The fee for the loan.
- (2) The fee for electronic filing of a tax return.
- (3) The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.
- (4) That the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.
- (5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority within which a taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.
- (6) Examples of the annual percentage rates, as defined by the Truth In Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for refund anticipation loans of five hundred dollars (\$500.00), seven hundred fifty dollars (\$750.00), one thousand dollars (\$1,000), one

thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000), and three thousand dollars (\$3,000). Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account.

**"§ 53-250. Prohibited activities.**

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

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

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

(a) Cease and Desist Order. Upon the finding that any action of a registrant may be in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall give reasonable notice to the registrant of the suspected violation or unfair or deceptive act or practice, and an opportunity for the registrant to be heard. If, following the hearing, the Commissioner finds that an action of the registrant is in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall order the registrant to cease and desist from the action.

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

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

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

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

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

**"§ 53-253. Rules; enforcement.**

Notwithstanding the provisions of G.S. 53-95, the Commissioner may promulgate reasonable rules as necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to assist registrants in interpreting this Article. In order to enforce this Article, the Commissioner may make investigations, subpoena witnesses, require audits and reports, and conduct hearings regarding possible violations of its provisions.

**"§ 53-254. Exemption.**

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

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

**"§ 53-99. Official records.**

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

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

- (1) Records compiled during or in connection with an examination, audit or investigation of any bank, banking office, bank holding company or its nonbank subsidiary, or trust department which operates or has applied to operate under the provisions of this Chapter;
- (2) Records containing information compiled in preparation or anticipation of litigation, examination, audit or investigation;
- (3) Records containing the names of any borrowers from a bank or revealing the collateral given by any such borrower: Provided, however, that every report of insider transactions made by a bank which report is required to be filed with the appropriate State or federal regulatory agency by either State or federal statute or regulation shall be filed with the Commissioner of Banks in a form prescribed by him and shall be open to inspection, examination and copying by any person;
- (4) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by an agency of the United States, or jointly by such agency and the Commissioner of Banks, if such records would be confidential under federal law or regulation;
- (4a) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by a regulatory agency of jurisdiction of the region defined in G.S. 53-210(11) if these records would be confidential under that jurisdiction's law or regulation;
- (5) Records of information and reports submitted by banks to federal regulatory agencies, if such records would be confidential under federal law or regulation;
- (6) Records of complaints from the public received by the banking department and concerning banks under its supervision if such complaints would or could result in an investigation;
- (7) Records of examinations and investigations of consumer finance licensees;
- (7a) Records of examinations and investigations of licensees under the Sale of Checks Act, Article 16 of this Chapter;
- (7b) Records of examinations and investigations of registrants under the Mortgage Bankers and Brokers Act, Article 19 of this Chapter;
- (7c) Records of applications and investigations of registrants under the Refund Anticipation Loan Act, Article 20 of this Chapter;

- (8) Records of pre-need burial contracts maintained pursuant to ~~Article 7A of Chapter 65~~ Article 13B of Chapter 90 of the General Statutes including investigations of such contracts and related credit inquiries;
- (9) Any letters, reports, memoranda, recordings, charts, or other documents which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (8).

(c) Notwithstanding the provisions of subsection (b), the Commissioner of Banks may, by written agreement with any state or federal regulatory agency, share with that agency any confidential information set out in subsection (b) on the condition that the information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency."

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

In the General Assembly read three times and ratified this the 10th day of July, 1990.