



Office of the Commissioner of Banks

REPORT
TO THE GENERAL ASSEMBLY
ON PAYDAY LENDING

February 22, 2001

**REPORT OF THE COMMISSIONER OF BANKS
TO THE NORTH CAROLINA GENERAL ASSEMBLY
ON THE SUBJECT OF PAYDAY LENDING
FEBRUARY 22, 2001**

I. Consumer Complaints

Consumers register written complaints with the Commissioner of Banks. Complaints are evaluated and investigated with a view towards protecting consumers and ensuring compliance with laws and regulations. Since the Check Cashing Act became effective on October 1, 1997, the Office of the Commissioner of Banks (“OCOB”) has recorded these payday lending complaints which came directly from consumers:

1997	none
1998	5
1999	12
2000	27
TOTAL:	44

One licensee accumulated five complaints; the complaints were spread among 24 licensees. The complaints shown here were strictly limited to complaints arising from consumers and relating directly to payday lending.

Recommendations:

1. In addition to the disclosures currently mandated by law and regulation, the statute should provide for licensees to distribute to consumers a brochure prepared and published by the Commissioner of Banks. The brochure should inform consumers of the complaint mechanism, the relative cost of this form of credit, availability of other forms of credit, the right of the consumer to elect credit counseling and stop collection efforts, and such other matters as the Commissioner may from time to time believe are necessary or beneficial to consumers.
2. The law should provide that failure to comply with the Commissioner’s request for assistance in resolving a complaint is grounds for imposition of a civil money penalty and suspension or revocation of license.
3. The law should prohibit a lender from the use or threatened use of criminal process to collect a delayed deposit check, unless the NSF check resulted from the customer committing fraud.
4. The law should permit a lender, solely as an accommodation to the borrower, to modify the contract and extend the agreed date of deposit, but at no additional fee.

II. Unfair or Deceptive Trade Practices

While “unfair or deceptive acts or practices” has been expansively defined under N.C.G.S. § 75-1.1(a), we are aware of no reported cases yet which apply that law to payday lending. We have interpreted the Legislature’s request for evidence of unfair or deceptive trade practices to include violations of Article 22 of Chapter 53. Most of these violations were discovered during our examinations of properly licensed payday lenders. We have also included in this category, however, violations which were discovered during our investigations of unlicensed payday lenders.

Examiners from the Office of the Commissioner of Banks performed 713 examinations of all licensed Check Cashing Businesses during 1998, 1999, and 2000; they recorded 8,911 violations of N.C.G.S. § 53-281, broken out as follows:

Table II (A) N.C.G.S. § 53-281 Violations

	§ 53-281(a)		§ 53-281(b)		§ 53-281(c)		§ 53-281(d)		§ 53-281(e)		Total #	Total
	Total #	Impact	Total #	Impact	Total #	Impact	Total #	Impact	Total #	Impact		
1998	0	\$0.00	119	\$68,215.85	215	\$0.00	0	\$0.00	1851	\$228,102.23	2185	\$296,318.08
1999	18	\$0.00	475	\$15,135.54	1813	\$0.00	29	\$688.00	8	\$375.00	2343	\$16,198.54
2000	30	\$0.00	1968	\$237,639.59	2368	\$0.00	15	\$2.99	2	\$90.00	4383	\$237,732.58
Totals	48	\$0.00	2562	\$320,990.98	4396	\$0.00	44	\$690.99	1861	\$228,567.23	8911	\$550,249.20

Notes: 1) N.C.G.S. § 53-281(a) allows a deposit to be delayed for up to 31 days; § 53-281(b) limits the face amount of the delayed deposit check to \$300; § 53-281(c) states the requirements for the contract between borrower and payday lender; § 53-281(d) limits fees to 15% of the face amount of the check; § 53-281(e) prohibits roll-overs or extensions. 2) For this chart, “impact” means dollar violations: the difference between lawful fees and actual fees charged.

We have also conducted 10 detailed investigations of unlicensed payday lenders. These investigations came about as a result of OCOB inquiries, consumer complaints, and complaints from licensees about unlicensed competitors. As might be expected, violations of law by unlicensed payday lenders were too numerous to capture in meaningful data. Of those 10 investigations of unlicensed payday lenders, five were resolved by signed consent orders. These five unlicensed lenders brought their operations into legal compliance, applied for a license, and commenced lawful business. Four matters are still pending; one ceased operations entirely. As of December 31, 2000, refunds to consumers from these unlicensed payday lenders had been paid in the amount of \$195,631.89.

Recommendations:

1. The Legislature should modify the language of existing N.C.G.S. § 53-281(d) from “face amount of the check” to “amount of credit extended.” This change will simplify interest calculations and end the collection of interest on the fee already paid for the loan.
2. The law should restrict the amount of credit extended to \$300. No lender shall accept transactions which, in the aggregate, exceed this limit. No lender may require a borrower to prepare more than one check per delayed deposit transaction.

III. Frequency of Repeat Use by Individuals

The Consolidated 1999 Annual Report of Check Cashing Businesses shows that 201 responded to the Commissioner's request for data. There were 220 check cashing licensees in business at year end; however, seventeen licensees ceased operations without filing a report. One licensee never commenced operations, and revocation proceedings have begun against the remaining licensee who failed to report. The 201 respondents operated 1,017 locations in 1999. Of the 201 licensed check cashers reporting, 59 licensees engaged in regular check cashing only; the remaining 142 reporting licensees engaged in payday lending transactions. Of these 142 payday lenders, 55 did delayed deposit transactions only; they did not offer regular check cashing services. Information derived from this 1999 data is shown below in tabular form.

Table III (A) shows the size distribution of delayed deposit check cashing transactions for 1999. It shows that 66.99% of the total transactions were for an amount at or near the \$300 maximum face amount.

Table III (A) Size Distribution

Face Amount of the Check	Number of Delayed Deposit Transactions*	Percentage of Total
\$100 or less	243,853	8.38%
\$101 to 200	716,955	24.63%
\$201 to 300	1,949,558	66.99%
Total	2,910,366	100%
*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.		

Table III (B) shows the term of these transactions, or the number of days between the day the cash advance is made and the day the customer's check is deposited. The data shows that while our statute contemplated a 31 day term for these loans, 72.79% of the loans are for 14 days or less. As a result, the borrower pays a 15% fee for a loan whether it is for 31 days or for 14 or fewer days. The effect of the term on the customer's annual percentage rate, or "APR," is demonstrated in the final column Table III (B).

Table III (B) Term Distribution, with APR

Term (days)	Number of Delayed Deposit Transactions*	Percentage of Total	APR range
1 to 7	285,958	9.83%	6441.18%---920.17%
8 to 14	1,832,462	62.96%	805.15%---460.08%
15 to 21	582,370	20.01%	429.41%---306.72%
22 to 28	87,097	2.99%	292.78%---230.04%
29 or more	122,479	4.21%	222.11%---207.78% (at 31days)
Total	2,910,366	100%	
Notes: 1) APR Calculation Method: (Fee Amount / Cash Advance) X (365 / Term in Days) X 100 = APR 2) Maximum fee is assumed (15% of the face amount of the check).			
*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.			

When the term of the loan is shortened but the fee remains the same, the APR (which is the effective cost of the loan) goes up. The APR for a given term is shown in Table III (C) below. The APR figures shown in Table III

(B) and Table III (C) below are based on a fee of 15% of the face amount of the check. The effective cost of the loan climbs steeply when the very short term loan is repeated at the same fee. To take a typical example, if a borrower takes a 14 day loan for a \$300 face amount (\$255 advance) on day one and then takes another on day 15, then the borrower's total fees would be \$90, at a 460.08 % APR for each of the two successive loans. Had the customer done one transaction at the outset for the maximum period of 31 days, there would have been a single fee of \$45, at a 207.78 % APR.

Table III (C) APR According to Term of Loan

Days	APR	Days	APR	Days	APR	Days	APR
1	6441.18%	9	715.69%	17	378.89%	25	257.65%
2	3220.59%	10	644.12%	18	357.84%	26	247.74%
3	2147.06%	11	585.56%	19	339.01%	27	238.56%
4	1610.29%	12	536.76%	20	322.06%	28	230.04%
5	1288.24%	13	495.48%	21	306.72%	29	222.11%
6	1073.53%	14	460.08%	22	292.78%	30	214.71%
7	920.17%	15	429.41%	23	280.05%	31	207.78%
8	805.15%	16	402.57%	24	268.38%		

Notes: 1) APR Calculation Method: (Fee Amount / Cash Advance) X (365 / Term in Days) X 100 = APR
2) Maximum fee is assumed (15% of the face amount of the check).

Table III (D) shows additional summary data. In 1999, 142 payday lenders accounted for 2,910,366 delayed deposit check cashing transactions. Data for regular check cashing and for payday lending in 1999 are shown side by side for comparison.

Table III (D) All Check Cashing Activity*

	Regular Check Cashing	Payday Lending
Total number and dollar amount of undeposited checks held at December 31, 1999:	# 3,669 \$1,358,023	# 140,344 \$34,476,536
Total number and dollars (face amount) of checks cashed:	# 2,143,306 \$750,826,639	# 2,910,366 \$649,506,935
Total dollar amount of fees collected for checks cashed:	\$17,317,922	\$96,608,226
Total number and dollar amount of returned (NSF) checks:	# 4,756 \$10,085,303	# 166,558 \$36,477,592
Total dollar amount of additional fees collected for returned (NSF) checks:	\$2,857,776	\$1,842,941
Total dollar amount of net charge offs (losses):	\$2,908,236	\$9,878,891

*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.

Summary for the combined businesses shows that there were 2,227 employees in North Carolina with a total payroll for the year of \$29.56 million. Total income (before taxes) derived from the combined businesses was \$35,595,157. We observed rapid growth and then some consolidation in the industry as shown in Table III (E) below:

Year	Number of Licensees	Number of Branches
1997 (from 10/1/97)	71	307
1998	158	730
1999	220	1119
2000	242	1204

Table III (F) on page 6 reflects data that relate directly to frequency of use. The data is merely the sum of all companies reporting. It reflects only the total usage of given customers at a given company in a year. It does not show how frequently customers used multiple transactions at several companies concurrently. The table collects all payday loan transactions; it is impossible to know, without obtaining data which would identify individual borrowers, how many of the transactions are back to back.

The summary data shows that 36.49% of the borrowers at a given company used payday lending four or fewer times during the year; 65.63% used it 10 or fewer times. As one might expect, there are some who use the service in an isolated instance; 22.39% of the customers used the company only once or twice during the year. But, there are some consumers who are using delayed deposit transactions as a source of revolving credit; 14.06% of the customers used this source of credit 19 or more times at the same company during the year.

Recommendations:

1. The law should require that licensees provide data as to operations upon request of the Commissioner so that monitoring of the three items contained in this report can continue.
2. The Legislature should consider some limits on back-to-back or repeated transactions so as to allow for an orderly work-out. Roll-overs, however, should continue to be prohibited.

Table III (F)**Frequency of Use in 1999***

Customer Usage	Number of Customers Using the Delayed Deposit Service	Percentage	Cumulative Percentage
1 time	55,422	13.21%	13.21%
2 times	38,507	9.18%	22.39%
3 times	30,734	7.32%	29.71%
4 times	28,470	6.79%	36.49%
5 times	24,612	5.87%	42.36%
6 times	23,711	5.65%	48.01%
7 times	20,328	4.84%	52.86%
8 times	19,916	4.75%	57.60%
9 times	17,238	4.11%	61.71%
10 times	16,467	3.92%	65.63%
11 times	14,997	3.57%	69.21%
12 times	16,218	3.87%	73.07%
13 times	11,038	2.63%	75.70%
14 times	10,020	2.39%	78.09%
15 times	8,884	2.12%	80.21%
16 times	8,164	1.95%	82.16%
17 times	8,130	1.94%	84.09%
18 times	7,763	1.85%	85.94%
19 or more times	58,982	14.06%	100.00%
Total	419,601	100%	
*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.			