

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)**

BILL NUMBER: Senate Bill 104, House Committee Substitute (2nd Edition)

SHORT TITLE: Regulate Deferred Deposit

SPONSOR(S): Representative Culpepper

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
<u>Revenue</u>					
County School Funds	\$9,500	\$9,500	\$9,500	\$9,500	\$9,500
<u>Expenditures</u>					
Commissioner of Banks	0	0	0	0	0
GENERAL FUND					
Correction		<i>*Repeated violations may incur criminal penalties.</i>			
Judicial		<i>*Repeated violations may incur criminal charges.</i>			
ADDITIONAL PRISON BEDS**		<i>*Repeated violations may incur criminal penalties.</i>			
 PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Office of State Commissioner of Banks, Department of Correction; Judicial Branch, County School Funds					
 EFFECTIVE DATE: October 1, 2002					
<i>**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

The proposed committee substitute for SB 104 (hereinafter PCS) reinstates the authorization for payday lending that had been authorized originally by the North Carolina (NC) General Assembly in 1997 and extended in 2001.¹ In reauthorizing payday lending, the PCS also redefines the cashing of postdated and delayed deposit checks as “deferred deposit transactions,” a term that was not present in the 1997 legislation, and identifies as “lenders” persons or businesses acting as agents for third parties who may be exempt from licensing under the act. The PCS also adds to statute a number of procedural requirements and limitations with which deferred deposit lenders must comply in order to avoid possible criminal and civil penalties. Finally, by specifying that civil penalties imposed for violations may be imposed “upon persons acting on behalf of a licensee,” the PCS extends the statutory requirements to a larger group of businesses than had been identified in the former legislation.

ASSUMPTIONS AND METHODOLOGY:**County School Funds**

Statute directs that all civil money penalties imposed by the Commissioner of Banks (Commissioner) under the act shall be paid to the county school fund. According to the Commissioner, since 1997 approximately \$38,000 in civil penalties for violations of payday lending laws had been collected. The Commissioner does not anticipate that the reauthorization would lead to more violations of the law than occurred from 1997-2001. Furthermore, the Commissioner does not anticipate that increasing the maximum imposable civil penalty from \$1,000 to \$10,000 will significantly affect the total amount of penalty monies imposed. Assuming equal distribution of the penalties imposed from 1997-2001, and a frequency and severity of future penalties that is consistent with historical trends, this data suggests that approximately \$9,500 will be collected in each of the next five fiscal years.

Commissioner of Banks

The Commissioner is authorized in statute to regulate the check cashing and deferred deposit industry in NC and to charge fees to recover the costs of licensure and investigations.² According to the Commissioner, this regulatory function was supported completely by fees from 1997 to 2001. Beginning October 1, 2002, when the new legislation takes effect, the Commissioner will once again operate on a completely fee-supported basis. While the reauthorization of payday lending, and accompanying regulatory function, will certainly increase the activity of the Commissioner, the PCS will therefore have no net fiscal impact on the Commissioner.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.*

¹ S.L. 1997-391, “An Act to Regulate the Check-Cashing Business;” S.L. 2001-323, “An Act to Delay the Sunset of the Provisions of the Check Casher Act Authorizing Postdated or Delayed Deposit Checks.”

² G.S. 53-278

The proposed legislation would create a new category of license for lenders offering deferred deposit transactions. These lenders would be subject to G.S. 53-276 and 53-287, making violation of the new statute a Class I felony. Since this is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. The Office of the N.C. Commissioner of Banks anticipates that most violations will not result in criminal charges or convictions.

Using available data on average sentences for Class I felons, the Sentencing Commission estimates that if this bill resulted in 5 additional convictions for Class I felonies each year, there would be the need for 1 additional prison bed in the first year and 2 additional beds in the second year due to active sentences and post-release sentencing revocations. While only 9 percent of Class I felons served active sentences (and thus impact prison beds) in FY 2000-01, another 37 percent served intermediate sentences and 54 percent served community sentences. In FY 2000-01, the average operating cost for a prison bed was \$65.29 per day, and the average length of sentence for a Class I felon was seven months. Also in FY 2000-01, the average cost of an intermediate punishment was \$12.69 per offender per day, and the average cost of a community punishment was \$1.87 per offender per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The PCS provides various regulations for deferred deposit transactions and creates a new Class I felony offense for engaging in the business of making deferred deposit transactions without first obtaining a license. While under current G.S. 53-287, any violation of G.S. 53-276 by a person required to obtain a license under Article 22 is a Class I felony, deferred deposit transactions are not currently permitted by law. As a result, there could be some additional workload for the courts due to violations arising under the bill.

The AOC does not have an offense code for the Class I felony under current G.S. 53-287, which is an indication that charges or convictions occur infrequently. The N.C. Commissioner of Banks website indicates that 233 licensed check-cashing businesses owned 1,131 check-cashing locations or branches across the State during 2000. Of those 233 check-cashing businesses, 165 check-cashing businesses owned locations that conducted either deferred deposit transactions only or both check cashing and deferred deposit transactions. The Office of the N.C. Commissioner of Banks also indicates that there were 260 licensed check-cashing businesses across the state as of August 31, 2001, 50 businesses reported for engaging in unlawful deferred deposit transactions as of May 21, 2002, and 13,805 deferred deposit transactions violations between August 1998 and August 2001.

While the data provided by the Office of the N.C. Commissioner of Banks suggest that there are numerous locations or branches owned by various check-cashing businesses across the State that could result in frequent violations under the bill, the Office does not expect many violations to

arise. The Office expects that most check-cashing businesses engaging in deferred deposit transactions will comply with the law initially, or, if caught engaging in these transactions unlawfully, will then comply with the law (i.e., apply for the required license) and pay applicable civil penalties imposed by the Commissioner. The Office indicated that, although available by law, criminal penalties do not typically result from these violations. To the extent that check-cashing businesses conducting deferred deposit transactions comply with the law and civil penalties are imposed by the Commissioner rather than criminal penalties pursued, the AOC would not anticipate many new cases under the bill.

SOURCES OF DATA: Office of the NC Commissioner of Banks; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: The effective date for this legislation is October 1, 2002. Typically, criminal penalties are effective December 1, 2002, to give the court system time to adjust to the new statutes.

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