

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35044-MUZ-7

Short Title: GSC Good Funds Settlement/Comm. Receivership. (Public)

Sponsors: Senators Edwards and Galey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A SETTLEMENT AGENT MAY DISBURSE SETTLEMENT
3 PROCEEDS IN RELIANCE ON A CHECK DRAWN ON THE ACCOUNT OF OR
4 ISSUED BY A LICENSED MORTGAGE LENDER, TO MAKE AMENDMENTS
5 RELATING TO THE NORTH CAROLINA COMMERCIAL RECEIVERSHIP ACT, AND
6 TO MAKE TECHNICAL CHANGES TO VARIOUS LAWS REGULATING FINANCIAL
7 PRACTICES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. GOOD FUNDS SETTLEMENT ACT AMENDMENTS**

11 **SECTION 1.** G.S. 45A-4 reads as rewritten:

12 "**§ 45A-4. Duty of settlement agent.**

13 (a) The settlement agent shall cause recordation of the deed, if any, the deed of trust or
14 mortgage, or other loan documents required to be recorded at settlement. The settlement agent
15 shall not disburse any of the closing funds prior to verification that the closing funds used to fund
16 disbursement are deposited in the settlement agent's trust or escrow account in one or more forms
17 prescribed by this Chapter. A settlement agent may disburse funds from the settlement agent's
18 trust or escrow account (to either the applicable register of deeds or directly to a private company
19 authorized to electronically record documents with the office of the register of deeds) as
20 necessary to record any deeds, deeds of trust, and any other documents required to be filed in
21 connection with the closing, including excise tax (revenue stamps) and recording fees, but the
22 settlement agent ~~may~~ shall not disburse any other funds from its trust or escrow account until the
23 deeds, deeds of trust, and other required loan documents have been recorded in the office of the
24 register of deeds. Unless otherwise provided in this Chapter, a settlement agent shall not cause a
25 disbursement of settlement proceeds unless those settlement proceeds are collected funds.
26 Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not
27 constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds
28 from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the
29 following forms:

- 30 (1) A certified ~~check;~~ check.
31 (2) A check issued by the State, the United States, a political subdivision of the
32 State, or an agency or instrumentality of the United States, including an
33 agricultural credit ~~association;~~ association.
34 (3) A cashier's check, teller's check, or official bank check drawn on or issued by
35 a financial institution insured by the Federal Deposit Insurance Corporation
36 or a comparable agency of the federal or state ~~government;~~ government.



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- 1 (4) A check drawn on the trust account of an attorney licensed to practice in the
2 ~~State of North Carolina; Carolina.~~
- 3 (5) A check or checks drawn on the trust or escrow account of a real estate broker
4 licensed under Chapter 93A of the General ~~Statutes; Statutes.~~
- 5 (6) A personal or commercial check or checks in an aggregate amount not
6 exceeding five thousand dollars (\$5,000) per closing if the settlement agent
7 making the deposit has reasonable and prudent grounds to believe that the
8 deposit will be irrevocably credited to the settlement agent's trust or escrow
9 ~~account; account.~~
- 10 (7) A check drawn on the account of or issued by a mortgage ~~banker~~ lender
11 licensed under Article ~~19A-19B~~ of Chapter 53 of the General ~~Statutes that has~~
12 ~~posted with the Commissioner of Banks a surety bond in the amount of at least~~
13 ~~three hundred thousand dollars (\$300,000). The surety bond shall be in a form~~
14 ~~satisfactory to the Commissioner and shall run to the State for the benefit of~~
15 ~~any settlement agent with a claim against the licensee for a dishonored~~
16 ~~check. Statutes.~~

17 (b) If the settlement agent receives information from the lender as provided in
18 G.S. 45A-5(b) or otherwise has actual knowledge that a mortgage broker or other person acted
19 as a mortgage broker in the origination of the loan, the settlement agent shall place an entry on
20 page 1 of the deed of trust showing the name of the mortgage broker or other person ~~who that~~
21 ~~acted as a mortgage broker in the origination of the loan. Information pertaining to the identity~~
22 ~~of the mortgage broker or other person who that acted as a mortgage broker in the origination of~~
23 ~~the loan shall not be considered is not confidential information. The terms term "mortgage~~
24 ~~broker" and "act as a mortgage broker" shall have has the same meaning as provided in~~
25 ~~G.S. 53-243.01. G.S. 53-244.030."~~

27 PART II. AMENDMENTS RELATING TO NC COMMERCIAL RECEIVERSHIP ACT

28 **SECTION 2.** G.S. 1-502 reads as rewritten:

29 "§ 1-502. In what cases appointed.

30 A receiver may be appointed in any of the following cases:

- 31 ...
- 32 (4) ~~In cases provided in G.S. 1-507.1 and in similar cases, regarding property~~
33 ~~within this State of foreign corporations.~~

34 ...

35 ~~The provisions of Part 2 of Article 38 of Chapter 1 of the General Statutes apply to the~~
36 ~~appointment of a receiver of a corporation under this section."~~

37 **SECTION 3.** G.S. 1-507.20 reads as rewritten:

38 "§ 1-507.20. Short title; definitions.

39 (a) Short Title. – This Article may be cited as the North Carolina Commercial
40 Receivership Act.

41 (b) Definitions. – The following definitions apply throughout this ~~Article unless the~~
42 ~~context requires otherwise: Article:~~

- 43 ...
- 44 (5) Court. – The superior or district court in which the receivership is pending,
45 except that in the case of a receiver appointed to partition real property
46 pursuant to ~~G.S. 46-3.1, G.S. 46A-28~~, the term shall mean the clerk of
47 superior court that has jurisdiction over the receiver and the receivership.

- 48 ...
- 49 (16) Insider. – As to any person, includes the following:

50 ...

d. An affiliate, or insider of an affiliate, as if ~~such~~the affiliate were the person.

...
 (24) Property. – All of the debtor's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of ~~the same were or are~~it was or is acquired. The term includes any proceeds, products, offspring, rents, or profits of or from the property. The term does not include (i) any power that the debtor may exercise solely for the benefit of another person, (ii) a power of withdrawal exercisable by the debtor over property of a trust for which the debtor is not the settlor, to the extent that the power is not subject to the claims of the debtor's creditors pursuant to G.S. 36C-5-505(b), or (iii) if the debtor is an individual, any real property owned jointly by the debtor and the debtor's spouse that is held by them as a tenancy by the entireties, unless the debtor's spouse is also a debtor in the receivership and there is a joint debt owed to one or more creditors.

...
 (27) Receivership property. – In the case of a general receivership, all or substantially all of the nonexempt property of the debtor, or in the case of a limited receivership, the property of the debtor identified in the order appointing the receiver, or in any subsequent order, and, in each case, except for the debtor's property that is wholly exempt from the enforcement of claims of creditors pursuant to applicable law, including without limitation, pursuant to G.S. 1-362, 1C-1601(a), 1C-1602, 25C-4, 30-15, 30-17, 131E-91(d)(5), and 135-9. ~~Notwithstanding the foregoing, receivership~~Receivership property in a general receivership of an individual business ~~debtor shall~~debtor, however, does not include (i) the principal residence of the individual business debtor if the value of the principal residence is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in the principal residence and (ii) any consumer good if the value of ~~such~~the consumer good is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in ~~such~~the consumer good.

...."

SECTION 4. G.S. 1-507.24 reads as rewritten:

"§ 1-507.24. Appointment of receivers; receivership not a trust.

(a) Action in Which Receivers Appointed. – A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a power of sale or judicial foreclosure proceeding. However, in the case of an individual business debtor, a creditor to whom only consumer debt is owing ~~may~~shall not file a civil action or motion to appoint a receiver for the individual business debtor. If the debtor files the complaint commencing a civil action in which the sole relief requested is the appointment of a receiver, then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:

"In re: _____ [name of debtor]".

(b) Appointment by Judge. – Either a judge of the Superior Court Division or the District Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is appointed, the following provisions apply:

- 1 (1) If a receiver is appointed for an individual business debtor or if a limited
 2 receiver is appointed for an entity, the clerk shall provide a copy of the order
 3 appointing the receiver to the senior resident superior court judge or the ~~senior~~
 4 chief district court judge for the court in which the receivership is pending. If
 5 the receivership is pending in the Superior Court Division, the senior resident
 6 superior court judge for the court in which the receivership is pending shall
 7 designate either one of the resident judges for the court in which the
 8 receivership is pending, or one of the nonresident judges of the Superior Court
 9 Division then assigned to the district in which the receivership is pending, to
 10 be the presiding judge over the receiver and the receivership. The presiding
 11 judge shall retain jurisdiction and supervision of the receiver and the
 12 receivership until the receivership is terminated and the receiver discharged
 13 pursuant to G.S. 1-507.37, or until the senior resident superior court judge
 14 enters an order transferring jurisdiction and supervision of the receiver to
 15 another superior court judge. The judge of the Superior Court Division so
 16 designated shall retain jurisdiction and supervision notwithstanding the
 17 judge's rotation out of the district. If the receivership is pending in the District
 18 Court Division, the chief district court judge for the court in which the
 19 receivership is pending shall designate one of the judges of the District Court
 20 Division to retain jurisdiction and supervision of the receiver and the
 21 receivership until the receivership is terminated and the receiver is discharged
 22 pursuant to G.S. 1-507.37, or until the chief district court judge enters an order
 23 transferring jurisdiction and supervision of the receiver to another district
 24 court judge.

25 ...

26 This subsection ~~shall~~ does not apply to the appointment of a receiver in a pending action to
 27 partition real property pursuant to G.S. 46A-28.

28 ...

29 (e) Receiver for Entities and Individual Business Debtors. – In addition to those situations
 30 specifically provided for by law, a limited or general receiver may be appointed when an entity
 31 or an individual business debtor meets any of the following criteria:

32 ...

- 33 (8) The person is the subject of an action to dissolve ~~such~~ the person.

34 ...

35 (k) Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual
 36 business debtor other than on consent of the party or parties seeking the appointment of the
 37 receiver and the debtor, and if the debtor does not waive the right to judgment under this
 38 subsection, the court may grant judgment against the party or parties seeking the appointment of
 39 the receiver for any damages proximately caused by ~~such~~ the filing, including costs and
 40 reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing,
 41 that the motion was filed in bad faith."

42 **SECTION 5.** G.S. 1-507.30 reads as rewritten:

43 "**§ 1-507.30. Duties of debtor.**

44 (a) Duties. – In addition to those duties conferred by statute or order of the court, the
 45 debtor ~~shall have~~ has the following duties:

- 46 (1) To assist and cooperate fully with the receiver in the administration of the
 47 receivership and the receivership property and the discharge of the receiver's
 48 ~~duties, duties and to~~ comply with all rules and orders of the court.
 49 (2) To deliver to the receiver, immediately upon the receiver's ~~appointment,~~
 50 appointment and demand, all of the receivership property in the debtor's
 51 possession, custody, or control, including all books and records, electronic

1 data, passwords, access codes, statements of accounts, deeds, titles or other
2 evidence of ownership, financial statements, financial and lien information,
3 bank account statements, and all other papers and documents related to the
4 receivership property.

5 (3) To supply to the receiver information as requested relating to the
6 administration of the receivership and the receivership property, including
7 information necessary to complete any reports or other documents that the
8 receiver may be required to file.

9 (4) To remain responsible for the filing of all tax returns, including those returns
10 applicable to periods which include those in which the receivership is in effect,
11 except as otherwise ordered by the court.

12 (b) Debtor Not Individual. – If the debtor is not an individual, this section applies to each
13 officer, director, manager, member, partner, trustee, or other person exercising or having the
14 power to exercise control over the affairs of the debtor immediately before the appointment of
15 the receiver.

16 (c) Enforcement. – If a person knowingly fails to perform a duty imposed by this section,
17 the court may (i) compel the person to comply with that duty, (ii) award the receiver actual
18 damages caused by the person's ~~failure, failure~~ and reasonable attorneys' fees and costs, and (iii)
19 sanction the person for civil contempt."

20 **SECTION 6.** G.S. 1-507.40 reads as rewritten:

21 "**§ 1-507.40. Turnover of receivership property.**

22 (a) Demand by Receiver. – Except as expressly provided in this section, and unless
23 otherwise ordered by the court, upon demand by a receiver: (i) subject to subsection (b) of this
24 section, any person shall turn over to the receiver any receivership property that is within the
25 possession, custody, or control of that person and (ii) any person that owes a debt that is
26 receivership property and is matured or payable on demand or on order shall pay the debt to or
27 on the order of the receiver, except to the extent that the debt is subject to setoff or recoupment.

28 ...

29 (c) Turnover Motion by Receiver. – A receiver may seek to compel turnover of
30 receivership property required by ~~subdivision clause~~ (i) of subsection (a) of this section by motion
31 in the receivership. If there exists a bona fide dispute with respect to the existence or nature of
32 the receiver's or the debtor's interest in the receivership property, turnover shall be sought by
33 means of an action under G.S. 1-507.38. Unless a bona fide dispute exists about a receiver's right
34 to possession, custody, or control of receivership property, the court may sanction as civil
35 contempt a person's failure to turn over the property when required by this section.

36 (d) Payment Only to Receiver. – A person that has notice of the appointment of a receiver
37 and owes a debt that is receivership property ~~may shall~~ not satisfy the debt by payment to the
38 debtor."

39 **SECTION 7.** G.S. 1-507.42 reads as rewritten:

40 "**§ 1-507.42. Stays.**

41 ...

42 (f) Inapplicability of Stay. – The entry of an order appointing a receiver does not operate
43 as a stay of any of the following:

44 ...

45 (9) Any other exception as provided in United States Code, Title 11, ~~§ 326(b), §~~
46 362(b), as to the automatic stay in federal bankruptcy cases in effect from time
47 to time.

48 ...

49 (h) Enforcement. – If a person knowingly violates a stay under this section, the court may
50 award actual damages caused by the violation, reasonable attorneys' fees, and ~~costs, costs~~ and
51 may sanction the violation as civil contempt."

1 **SECTION 8.** G.S. 46A-28 reads as rewritten:

2 "**§ 46A-28. Court's authority to make orders before final determination of proceeding;**
3 **notice and hearing.**

4 (a) Before final determination of a proceeding to partition real property, on application
5 of any of the parties, the court may make any orders that it finds to be in the best interest of the
6 parties, including, but not limited to, orders relating to possession, payment of secured debt or
7 other liens on the property, occupancy and payment of rents, the appointment of a receiver
8 pursuant to G.S. 1-502(6) or a limited receiver for the real property pursuant to Article 38A of
9 Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting,
10 surveying, appraising, or selling the property.

11 "

12 **SECTION 9.** G.S. 53C-9-401 reads as rewritten:

13 "**§ 53C-9-401. Statute Article relating to receivers applicable to insolvent banks.**

14 The provisions of G.S. 1-507.1 through 1-507.11, Article 38A of Chapter 1 of the General
15 Statutes, relating to receivers, when not inconsistent with the provisions of this Article, ~~shall~~
16 ~~apply~~ applies to the liquidation of banks under this Article."

17
18 **PART III. TECHNICAL CHANGES TO VARIOUS LAWS REGULATING FINANCIAL**
19 **PRACTICES**

20 **SECTION 10.** G.S. 53-249 reads as rewritten:

21 "**§ 53-249. Filing and posting of loan fees; disclosures.**

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

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

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

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

47 (1) ~~The fee for the loan.~~ refund anticipation loan fee.

48 "

49 **SECTION 11.** G.S. 53-258 reads as rewritten:

50 "**§ 53-258. Authority and procedures governing reverse mortgage loans.**

1 (a) Except as provided in subsection (b1) of this section, no person, firm, or corporation
 2 shall engage in the business of making reverse mortgage loans without first being approved as
 3 an authorized reverse mortgage lender by the Commissioner. Mortgage lenders licensed under
 4 Article ~~19A-19B~~ of this Chapter must also be authorized under this Article before making reverse
 5 mortgage loans.

6 ...

7 (b1) Each of the following lenders shall be considered authorized to engage in the business
 8 of making reverse mortgage loans without being required to apply pursuant to subsection (b) of
 9 this section and may represent to the public that it is so authorized:

10 (1) The North Carolina Housing Finance Agency.

11 (2) A bank, savings institution, or credit union formed under the laws of this or
 12 any other state or of the United States.

13 (3) A wholly owned subsidiary of an entity described in subdivision (2) of this
 14 subsection.

15 Each lender listed in this subsection may, upon written request to the ~~Commissioner of Banks,~~
 16 Commissioner, obtain written confirmation of its authority to engage in the business of making
 17 reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3) of this subsection,
 18 the request shall be accompanied by the fee set forth in subsection (d) of this section.

19"

20 **SECTION 12.** G.S. 53-277 reads as rewritten:

21 "**§ 53-277. Exemptions.**

22 (a) This Article ~~shall~~does not apply to any of the following:

23 (1) A bank, savings institution, credit union, or farm credit system organized
 24 under the laws of the United States or any ~~state; and state.~~

25 (2) Any person or entity principally engaged in the bona fide retail sale of goods
 26 or ~~services, who services that,~~ either as an incident to or independently of a
 27 retail sale or service and not holding itself out to be a check-cashing service,
 28 from time to time cashes checks, drafts, or money orders for a fee or other
 29 ~~consideration, where not more than two dollars (\$2.00) is charged for the~~
 30 service consideration and charges no more than two dollars (\$2.00) for the
 31 service.

32 (b) A person licensed under Article ~~16A-16B~~ of this Chapter (Money Transmitters Act)
 33 is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes
 34 of the remaining provisions of this Article. This exemption does not apply to an authorized ~~agent~~
 35 delegate of a person licensed under Article ~~16A-16B~~ of this Chapter."

36 **SECTION 13.** G.S. 53-366 reads as rewritten:

37 "**§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust**
 38 **company.**

39 (a) Except as otherwise provided in this Article, the following provisions of this Chapter
 40 and Chapter 53C of the General Statutes ~~shall~~ apply to authorized trust institutions:

41 ...

42 (7) Article 8 of Chapter 53C of the General Statutes, except where it clearly
 43 appears from the context that a particular provision is not applicable to trust
 44 business or trust marketing, and except that the provisions of this Article ~~shall~~
 45 apply in lieu of the following provisions:

46 a. G.S. 53C-8-2.

47 b. G.S. 53C-8-3.

48 c. G.S. 53C-8-17.

49 ...

50 (b) Rules adopted by the Commissioner to implement those provisions of this Chapter
 51 made applicable to authorized trust institutions by subsection (a) of this section also ~~shall~~ apply

1 to authorized trust institutions unless the rules are inconsistent with this Article or it clearly
2 appears from the context that a particular provision is inapplicable to trust business or trust
3 marketing.

4 (c) Activities of authorized trust institutions for clients shall not be considered ~~the sale or~~
5 ~~issuance of checks~~ money transmission under Article ~~46-16B~~ of Chapter 53 of the General
6 Statutes.

7 (d) Until the Commissioner has issued new rules governing State trust companies, State
8 trust companies ~~shall be~~ are governed by rules issued by the Commissioner for banks acting in a
9 fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly
10 appears from the context that a particular provision is inapplicable to the business of a State trust
11 company.

12 (e) Notwithstanding any other provision of this Chapter, a State trust ~~company;~~ company
13 is deemed to be all of the following:

14 (1) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

15 (2) ~~Is a~~ A "bank" for purposes of laws made applicable to authorized trust
16 institutions in this section and for purposes of G.S. 53-277.

17 (3) ~~Is a~~ A trust company organized and doing business under the laws of ~~the State~~
18 ~~of~~ North Carolina, a substantial part of the business of which is exercising
19 fiduciary powers similar to those permitted national banks under authority of
20 the Comptroller of the Currency, and ~~which is~~ subject by law to supervision
21 and examination by the ~~Commissioner as a banking institution;~~
22 ~~and~~ Commissioner.

23 (4) ~~Is a~~ A financial institution similar to a bank.

24 (f) In the case of a State trust company controlled by a company that has declared itself
25 to be a "financial holding company" under ~~12 U.S.C. § 1843(l)(1)(C)(i), 12 U.S.C. §~~
26 ~~1843(l)(1)(D)(i),~~ deposits held for an account ~~shall be~~ are deemed to be "trust funds" within the
27 meaning of 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are
28 explicitly disclaimed. This subsection does not prescribe the nature or extend the scope of any
29 fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits held for
30 accounts ~~shall be~~ are as provided by the instruments and laws applicable to those accounts.

31 (g) Subject to any limitations contained in this Article, an authorized trust institution is a
32 "trust ~~company,~~ company," a "corporate ~~trustee,~~ trustee," a "corporate ~~fiduciary,~~ fiduciary,"
33 and a "corporation acting in a fiduciary ~~capacity,~~ capacity," as ~~such these~~ and similar terms are
34 used in the General Statutes, except where it clearly appears from the context in which those
35 terms are used that a different meaning is intended."

36 **SECTION 14.** G.S. 66-106 reads as rewritten:

37 "**§ 66-106. Definitions.**

38 (a) For purposes of this ~~Article~~ Article, the following definitions apply:

39 (1) ~~A "loan broker" is any person, firm, or corporation who, in return for any~~
40 ~~consideration from any person, promises to (i) procure for such person, or~~
41 ~~assist such person in procuring, a loan from any third party; or (ii) consider~~
42 ~~whether or not it will make a loan to such person.~~

43 (2)(1) A "loan" is an agreement to advance money or property in return for the
44 promise to make payments therefor, whether ~~such the~~ agreement is styled as
45 a loan, credit card, line of credit, ~~a lease~~ lease, or otherwise.

46 (2) A "loan broker" is any person, firm, or corporation that, in return for any
47 consideration from any person, promises to do any of the following:

48 a. Procure for the person, or assist the person in procuring, a loan from
49 any third party.

50 b. Consider whether or not it will make a loan to the person. This
51 sub-subdivision does not apply to a lender whose loans or advances to

any person in North Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar year.

(b) Except for residential mortgage loans as defined in ~~G.S. 53-243.01~~, G.S. 53-244.030, this Article ~~shall~~ does not apply to any of the following:

(1) A party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association-Association, or any federal agency; nor to any agency.

(2) A party currently designated and compensated by a North Carolina licensed insurance company as its agent to service loans it makes in this State; nor to any State.

(3) An insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with Commissioner.

(4) With respect to a residential mortgage loans, to any loan, a residential mortgage banker-lender or mortgage broker licensed pursuant to Article 19A-19B of Chapter 53 of the General Statutes or exempt from licensure pursuant to G.S. 53-243.01(12) and G.S. 53-243.02; nor to any G.S. 53-244.040(d).

(5) An attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which such the attorney-at-law, public accountant, or dealer is registered or licensed under the laws of the State of North Carolina. Provided further that subdivision (1)(ii) above shall not apply to any lender whose loans or advances to any person, firm or corporation in North Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar year."

PART IV. EFFECTIVE DATE

SECTION 15. This act is effective when it becomes law.