

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 755
Apr 11, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40441-MU-34 (03/17)

Short Title: Bankruptcy and Receivership Amendments. (Public)

Sponsors: Representative Blust.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND AUTHORIZATION TO SEEK CHAPTER NINE BANKRUPTCY
3 RELIEF TO ADDITIONAL GOVERNMENTAL UNITS, TO UPDATE REFERENCES
4 TO BANKRUPTCY LAWS APPEARING THROUGHOUT THE GENERAL
5 STATUTES, AND TO ALLOW A RECEIVER TO SELL ASSETS OF THE
6 RECEIVERSHIP FREE AND CLEAR OF INTERESTS IN THE ASSETS.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. MUNICIPALITIES AND OTHER GOVERNMENTAL UNITS SEEKING**
10 **BANKRUPTCY RELIEF**

11 **SECTION 1.(a)** Article 7 of Chapter 23 of the General Statutes reads as rewritten:
12 "Article 7.

13 "~~Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages.~~Municipalities and
14 Other Governmental Units Authorized for Bankruptcy Relief.

15 "**§ 23-48. ~~Local units authorized to avail themselves of provisions of bankruptcy~~**
16 **law.**Municipalities and other governmental units authorized for bankruptcy
17 **relief.**

18 ~~With the approval of the Local Government Commission of North Carolina and with the~~
19 ~~consent of the holders of such percentage or percentages of its indebtedness as may be required~~
20 ~~by Public Act Number three hundred two of the Seventy-fifth Congress, First Session, entitled~~
21 ~~"An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy~~
22 ~~throughout the United States' approved July first, one thousand eight hundred ninety eight and~~
23 ~~Acts amendatory thereof and supplementary thereto," approved August sixteenth, one thousand~~
24 ~~nine hundred thirty seven, as amended, any taxing district, local improvement district, school~~
25 ~~district, county, city, town or village in the State of North Carolina is authorized to avail itself~~
26 ~~of the provisions of said act of Congress as said act now exists or may be hereafter amended.~~

27 (a) The following governmental entities may seek any relief afforded under Chapter 9
28 of Title 11 of the United States Code:

- 29 (1) A taxing district, local improvement district, county, or municipality, with
30 the approval of the Local Government Commission.
31 (2) A correction enterprise as described in Article 14 of Chapter 148 of the
32 General Statutes, with the approval of the Secretary of Public Safety.
33 (3) A local school administrative unit, with the approval of the State Board of
34 Education.
35 (4) A community college, with the approval of the State Board of Community
36 Colleges. However, a community college shall not seek relief under Chapter



1 9 of Title 11 of the United States Code if the filing of a bankruptcy petition
2 would result in the community college's loss of eligibility for federally
3 funded financial aid.

4 (b) A governmental unit that is denied approval under this section may appeal the
5 decision to the superior court. The superior court shall review whether the decision is arbitrary
6 or capricious.

7 **"§ 23-49. Additional working capital.**

8 Notwithstanding any other provision of the General Statutes, a governmental unit that is
9 authorized to seek bankruptcy relief under G.S. 23-48 may use or borrow additional working
10 capital pursuant to a plan of adjustment confirmed by a United States Bankruptcy Court or
11 pursuant to an order issued by a United States Bankruptcy Court. Nothing in this section
12 prescribes a method of composition of indebtedness, as described in 11 U.S.C. § 903."

13 **SECTION 1.(b)** This section becomes effective October 1, 2017.
14

15 **PART II. UPDATE REFERENCES TO BANKRUPTCY LAWS**

16 **SECTION 2.** G.S. 1-245 reads as rewritten:

17 **"§ 1-245. ~~Cancellation Notice of judgments discharged through bankruptcy proceedings.~~**

18 (a) When a ~~referee-debtor~~ in bankruptcy or other party-in-interest furnishes the clerk of
19 the superior court of any county in this State a written ~~statement-form, order,~~ or certificate ~~from~~
20 a United States Bankruptcy Court to the effect that (i) a ~~bankrupt-debtor~~ has been discharged,
21 ~~indicating in said certificate that~~ (ii) the plaintiff or judgment creditor in whose favor judgments
22 against the defendant ~~bankrupt-debtor~~ are docketed in the office of the clerk of the superior
23 court have received due notice as provided by ~~law from the said referee,~~ law, and ~~that said~~ (iii)
24 the judgments have been ~~discharged,~~ it shall be the duty of ~~discharged or avoided in whole or in~~
25 part, the clerk of the superior court ~~to shall file said~~ the form, order, or certificate and enter a
26 notation thereof on the margin of ~~said~~ the judgments.

27 (b) The effect of any form, order, or certificate filed by the clerk pursuant to this section
28 is governed by Title 11 of the United States Code and other applicable federal law. This section
29 shall apply to judgments ~~of this kind~~ already docketed as well as to future ~~judgments of the~~
30 same kind ~~judgments.~~"

31 **SECTION 3.** G.S. 44A-12(a) reads as rewritten:

32 "(a) Place of Filing. – All claims of lien on real property ~~must~~ shall be filed in the office
33 of the clerk of superior court in each county where the real property subject to the claim of lien
34 on real property is located. The clerk of superior court shall note the claim of lien on real
35 property on the judgment docket and shall index the ~~same~~ claim under the name of the record
36 owner of the real property at the time the claim ~~of lien on real property~~ is filed. An additional
37 copy of the claim of lien on real property may also be filed with any receiver, ~~referee in~~
38 bankruptcy trustee, debtor in possession, or assignee for benefit of creditors who obtains legal
39 authority over the real property."

40 **SECTION 4.** G.S. 44A-13(a) reads as rewritten:

41 "(a) Where and When Action Commenced. – An action to enforce a claim of lien on real
42 property may be commenced in any county where venue is otherwise proper. No ~~such~~ action
43 may be commenced later than 180 days after the last furnishing of labor or materials at the site
44 of the improvement by the person claiming the claim of lien on real property. If the title to the
45 real property against which the claim of lien on real property is asserted is by law vested in a
46 receiver or is subject to the control of ~~the a~~ bankruptcy court, the claim of lien on real property
47 shall be enforced in accordance with the orders of the court having jurisdiction over ~~said~~ the
48 real property. ~~The filing of a proof of claim with a receiver or in bankruptcy and the filing of a~~
49 ~~notice of lis pendens in each county where the real property subject to the claim of lien on real~~
50 ~~property is located within the time required by this section satisfies the requirement for the~~

~~commencement of a civil action.~~ The following filings within the time required by this section satisfy the requirement for the commencement of a civil action:

- (1) The filing of a proof of claim with a receiver.
- (2) The filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located.
- (3) The filing of a proof of claim pursuant to 11 U.S.C. § 501."

SECTION 5. G.S. 47-29 reads as rewritten:

"§ 47-29. Recording of bankruptcy records.

A copy of the petition with the schedules omitted beginning a proceeding under ~~the United States Bankruptcy Act, Title 11 of the United States Code or of the decree of adjudication any form, order, or certificate of a United States Bankruptcy Court in such proceeding, or of the order approving the bond of the trustee appointed in such proceeding,~~ the proceeding shall be recorded in the office of any register of deeds in North Carolina, and it shall be the duty of the register of deeds, on request, to record the same form, order, or certificate. The register of deeds ~~shall be~~ is entitled to the same fees for ~~such the~~ the registration as ~~he the~~ the register of deeds is ~~now~~ entitled to for recording conveyances."

SECTION 6. G.S. 59-32(1) reads as rewritten:

"(1) "Bankrupt" means ~~bankrupt under the Federal Bankruptcy Act or insolvent to be any of the following:~~

- a. A debtor having filed a petition under any applicable chapter of Title 11 of the United States Code.
- b. A debtor against which an order for relief has been entered pursuant to 11 U.S.C. § 303.
- c. Insolvent under any State insolvent act."

SECTION 7. G.S. 84-5(a)(2) ~~l.~~ reads as rewritten:

"~~l.~~ Performing legal services in insolvency proceedings or before a ~~referee in bankruptcy or in court.~~ United States Bankruptcy Court."

SECTION 8. G.S. 96-10(c) reads as rewritten:

"(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred ~~and~~ fifty dollars (\$250.00) to each claimant, earned within six months of the commencement of the proceeding. ~~In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.~~

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Division any contributions, ~~penalties~~ penalties, or interest then due out of moneys or assets on hand or coming into ~~his~~ the receiver's possession before any ~~such of the~~ the moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership."

PART III. SALE OF PROPERTY BY RECEIVER

SECTION 9.(a) Article 38 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-505.1. Power of sale with liens attached to proceeds.

In a sale of property ordered under G.S. 1-505, a receiver may sell assets of the receivership free and clear of interests in the assets in the manner provided by 11 U.S.C. § 363."

1 **SECTION 9.(b)** This section becomes effective October 1, 2017, and applies to
2 sales of property ordered on or after that date.

3

4 **PART IV. EFFECTIVE DATE**

5 **SECTION 10.** The headings to the parts of this act are a convenience to the reader
6 and are for reference only. The headings do not expand, limit, or define the text of this act.

7 **SECTION 11.** Except as otherwise provided, this act is effective when it becomes
8 law.