

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

S

D

SENATE BILL 198  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S198-PCS15313-MU-2

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

Sponsors:

Referred to:

March 9, 2021

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.



\* S 1 9 8 - P C S 1 5 3 1 3 - M U - 2 \*

- 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."~~

## 26 PART II. AMENDMENTS RELATING TO NC COMMERCIAL RECEIVERSHIP ACT

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

### 28 "§ 1-502. In what cases appointed.

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

- 30 ...
- 31 (4) ~~In cases provided in G.S. 1-507.1 and in similar cases, regarding property~~  
32 ~~within this State of foreign corporations.~~
- 33 ...

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]".

The filing of a civil action under this subsection by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver does not waive or limit any rights or remedies the creditor or other party in interest has against the debtor or the debtor's property.

(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

1 judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is  
2 appointed, the following provisions apply:

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

27 ...

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

30 ...

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

34 ...

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

36 ...

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

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

45 "**§ 1-507.30. Duties of debtor.**

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

- 48 (1) To assist and cooperate fully with the receiver in the administration of the  
49 receivership and the receivership property and the discharge of the receiver's  
50 ~~duties, duties and to~~ comply with all rules and orders of the court.

1 (2) To deliver to the receiver, immediately upon the receiver's ~~appointment,~~  
2 appointment and demand, all of the receivership property in the debtor's  
3 possession, custody, or control, including all books and records, electronic  
4 data, passwords, access codes, statements of accounts, deeds, titles or other  
5 evidence of ownership, financial statements, financial and lien information,  
6 bank account statements, and all other papers and documents related to the  
7 receivership property.

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

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

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

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

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

24 **"§ 1-507.40. Turnover of receivership property.**

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

31 ...

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

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

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

43 **"§ 1-507.42. Stays.**

44 ...

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

47 ...

48 (9) Any other exception as provided in United States Code, Title 11, ~~§ 326(b),~~ §  
49 362(b), as to the automatic stay in federal bankruptcy cases in effect from time  
50 to time.

51 ...

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

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

5 "**§ 46A-28. Court's authority to make orders before final determination of proceeding;**  
 6 **notice and hearing.**

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

14 ...."

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

16 "**§ 53C-9-401. Statute Article relating to receivers applicable to insolvent banks.**

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

20  
 21 **PART III. TECHNICAL CHANGES TO VARIOUS LAWS REGULATING FINANCIAL**  
 22 **PRACTICES**

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

24 "**§ 53-249. Filing and posting of loan fees; disclosures.**

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

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

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

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

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

51 ...."

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

2   "**§ 53-258. Authority and procedures governing reverse mortgage loans.**

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

8       ...

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

12           (1) The North Carolina Housing Finance Agency.

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

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

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

21       ...."

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

23   "**§ 53-277. Exemptions.**

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

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

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

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

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

39   "**§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust**  
40 **company.**

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

43       ...

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

48           a. G.S. 53C-8-2.

49           b. G.S. 53C-8-3.

50           c. G.S. 53C-8-17.

51       ...

1 (b) Rules adopted by the Commissioner to implement those provisions of this Chapter  
2 made applicable to authorized trust institutions by subsection (a) of this section also shall apply  
3 to authorized trust institutions unless the rules are inconsistent with this Article or it clearly  
4 appears from the context that a particular provision is inapplicable to trust business or trust  
5 marketing.

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

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

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

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

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

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

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

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

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

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

39 **"§ 66-106. Definitions.**

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

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

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

48 (2) Loan broker. – Any person, firm, or corporation that, in return for any  
49 consideration from any person, promises to do any of the following:

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



1                    b. Consider whether or not it will make a loan to the person. This  
2                    sub-subdivision does not apply to a lender whose loans or advances to  
3                    any person in North Carolina aggregate more than one million dollars  
4                    (\$1,000,000) in the preceding calendar year.

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

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

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

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

16           (4) With respect to a residential mortgage loans, to any loan, a residential  
17           mortgage banker-lender or mortgage broker licensed pursuant to Article 19A  
18           19B of Chapter 53 of the General Statutes or exempt from licensure pursuant  
19           to G.S. 53-243.01(12) and G.S. 53-243.02; nor to any G.S. 53-244.040(d).

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

27  
28 **PART IV. EFFECTIVE DATE**

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