

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 228
PROPOSED COMMITTEE SUBSTITUTE H228-PCS40607-SVxfr-43

Short Title: Rev. Laws Tech., Clarifying, & Admin. Chngs.

(Public)

Sponsors:

Referred to:

March 2, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE
3 CHANGES TO THE REVENUE LAWS, TO MAKE TECHNICAL CHANGES TO THE
4 MEDICAID HOSPITAL ASSESSMENT STATUTES, AND TO UPDATE THE
5 DEFINITION OF A THRESHOLD EXCLUSION.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. INDIVIDUAL INCOME TAX CHANGES**

9 **SECTION 1.1.(a)** G.S. 105-160.4(f) and (g) are repealed.

10 **SECTION 1.1.(b)** This section is effective for taxable years beginning on or after
11 January 1, 2023.

12 **SECTION 1.2.(a)** G.S. 105-153.3 reads as rewritten:

13 "**§ 105-153.3. Definitions.**

14 The following definitions apply in this Part:

15 ...

16 (7a) Income attributable to the State. – Either of the following:

17 a. With respect to a partnership, all items of income, loss, deduction, or
18 credit of the partnership apportioned and allocated to this State
19 pursuant to G.S. 105-130.4.

20 b. With respect to an S Corporation, as defined in G.S. 105-131(b)(4).

21 (7b) Income not attributable to the State. – Either of the following:

22 a. With respect to a partnership, all items of income, loss, deduction, or
23 credit of the partnership other than income attributable to the State.

24 b. With respect to an S Corporation, as defined in G.S. 105-131(b)(5).

25"

26 **SECTION 1.2.(b)** This section is effective for taxable years beginning on or after
27 January 1, 2023.

28 **SECTION 1.3.** G.S. 105-153.8 reads as rewritten:

29 "**§ 105-153.8. Income tax returns.**

30 ...

31 (e) Joint Returns. – A husband and wife Two lawfully married individuals who are
32 required to file an income tax return pursuant to subsection (a) of this section and whose adjusted
33 gross income is determined on a joint federal return must file a single with the Secretary a joint
34 income tax return jointly if each spouse either is a resident of this State or has North Carolina
35 taxable income and may file a single income tax return jointly if one spouse is not a resident and
36 has no North Carolina taxable income. return. If two lawfully married individuals file a joint



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1 federal return but only one individual is required to file an income tax return pursuant to
 2 subsection (a) of this section, that individual must file the income tax return pursuant to
 3 subsection (f) of this section. Except as otherwise provided in this Part, the following provisions
 4 apply to the individuals filing a joint income tax return:

5 (1) ~~a wife and husband filing jointly~~ The individuals are treated as one taxpayer
 6 for the purpose of determining the tax imposed by this Part.

7 (2) ~~A husband and wife filing jointly are~~ Each individual is jointly and severally
 8 liable for the tax imposed by this Part reduced by the sum of all credits
 9 allowable including tax payments made by or on behalf of ~~the husband and~~
 10 ~~wife~~ each individual. However, if a ~~spouse~~ one of the individuals qualifies
 11 for relief of liability for federal tax pursuant to section 6015 of the Code, that
 12 ~~spouse individual~~ is not liable for the corresponding tax imposed by this Part.

13 (3) ~~A wife and husband filing jointly have~~ Each individual has expressly agreed
 14 that if the amount of the payments made by them with respect to the taxes for
 15 which they are liable, including withheld and estimated taxes, exceeds the
 16 total of the taxes due, refund of the excess may be made payable to both
 17 ~~spouses individuals~~ jointly or, if either is deceased, to the survivor alone.

18 (f) Exception. – If two lawfully married individuals file a joint federal return but only
 19 one individual is required to file an income tax return pursuant to subsection (a) of this section,
 20 that individual must file the income tax return as either of the following:

21 (1) Jointly under the provisions of subsection (e) of this section based on the filing
 22 status of married, filing jointly/surviving spouse.

23 (2) Separately based on the filing status of married, filing separately."

24 **SECTION 1.4.(a)** G.S. 105-155(a) reads as rewritten:

25 "(a) Return. – An income tax return shall be filed at the place and in the form prescribed
 26 by the Secretary. The income tax return of every taxpayer reporting on a calendar year basis is
 27 due on or before the fifteenth day of April in each year. The income tax return of every taxpayer
 28 reporting on a fiscal year basis is due on or before the fifteenth day of the fourth month following
 29 the close of the fiscal year. These dates do not apply to a nonresident alien whose federal income
 30 tax return is due at a later date under section 6072(c) of the Code. The return of a nonresident
 31 alien affected by that Code section is due on or before the fifteenth day of the sixth month
 32 following the close of the taxable year. An information return shall be filed at the times prescribed
 33 by the Secretary. A taxpayer may ~~ask the Secretary for~~ receive an extension of time to file a
 34 return under G.S. 105-263."

35 **SECTION 1.4.(b)** G.S. 105-160.6 reads as rewritten:

36 **"§ 105-160.6. Time and place of filing returns.**

37 An income tax return of an estate or a trust shall be filed as prescribed by the Secretary at the
 38 place prescribed by the Secretary. The return of every fiduciary reporting on a calendar year basis
 39 shall be filed on or before the 15th day of April in each year, and the return of every fiduciary
 40 reporting on a fiscal year basis shall be filed on or before the 15th day of the fourth month
 41 following the close of the fiscal year. A fiduciary may ~~ask the Secretary for~~ receive an extension
 42 of time to file a return under G.S. 105-263."

43 **SECTION 1.4.(c)** G.S. 105-130.17(d) reads as rewritten:

44 "(d) A taxpayer may ~~ask the Secretary for~~ receive an extension of time to file a return
 45 under G.S. 105-263."

46 **SECTION 1.4.(d)** G.S. 105-129 reads as rewritten:

47 **"§ 105-129. Extension of time for filing returns.**

48 A return required by this Article is due on or before the date set in this Article. A taxpayer
 49 may ~~ask the Secretary for~~ receive an extension of time to file a return under G.S. 105-263."

50 **SECTION 1.5.** Except as otherwise provided, this Part is effective when it becomes
 51 law.

1
2 **PART II. SALES TAX CHANGES**

3 **SECTION 2.1.(a)** G.S. 105-164.8 reads as rewritten:

4 "**§ 105-164.8. Retailer's obligation to collect tax; remote sales subject to tax.**

5 ...

6 (b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this
7 State and is subject to the tax levied under this Article if at least one of the following conditions
8 is met:

9 ...

10 (9) The retailer makes gross sales in excess of one hundred thousand dollars
11 (\$100,000) from remote sales sourced to this State, including sales as a
12 marketplace seller, for the previous or the current calendar year ~~that meet~~
13 ~~either of the following year.~~

14 a. ~~Gross sales in excess of one hundred thousand dollars (\$100,000).~~

15 b. ~~Two hundred or more separate transactions.~~

16 (10) The retailer is a marketplace facilitator that makes sales, gross sales in excess
17 of one hundred thousand dollars (\$100,000), including all
18 marketplace-facilitated sales for all marketplace sellers, from sales sourced to
19 this State for the previous or the current calendar year ~~that meet either of the~~
20 ~~following year.~~

21 a. ~~Gross sales in excess of one hundred thousand dollars (\$100,000).~~

22 b. ~~Two hundred or more separate transactions.~~

23"

24 **SECTION 2.1.(b)** This section is effective July 1, 2024. A person who holds a
25 certificate of registration with the Department as of June 30, 2024, and is solely engaged in
26 business in the State because the person exceeds the transaction threshold established in
27 G.S. 105-164.8(b)(9)b. or G.S. 105-164.8(b)(10)b. may close the person's certificate of
28 registration in accordance with procedures established by the Secretary. The person must collect
29 tax, file returns, and remit tax for periods ending prior to the later of (i) July 1, 2024, or (ii) the
30 date the person cancels his or her certificate of registration.

31 **SECTION 2.2.** G.S. 105-164.3(259) reads as rewritten:

32 "(259) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as
33 amended as of ~~December 22, 2022.~~ November 7, 2023."

34 **SECTION 2.3.(a)** G.S. 105-241.8(b) reads as rewritten:

35 "(b) Exceptions. – The exceptions to the general statute of limitations for proposing an
36 assessment are as follows:

37 ...

38 (5) Sales and use tax customer refund. – If a purchaser receives a refund from a
39 seller of sales and use tax paid to the seller, the period for proposing an
40 assessment against the customer of any tax refunded is three years after the
41 date of the refund."

42 **SECTION 2.3.(b)** This section becomes effective July 1, 2024, and applies to
43 assessments not barred by the statute of limitations prior to that date.

44 **SECTION 2.4.** G.S. 105-236 reads as rewritten:

45 "**§ 105-236. Penalties; situs of violations; penalty disposition.**

46 (a) Penalties. – The following civil penalties and criminal offenses apply:

47 ...

48 (5a) ~~Misuse of Exemption Certificate.~~ Certificate or Affidavit of Capital
49 Improvement. – For misuse of an exemption certificate or affidavit of capital
50 improvement by a purchaser, the Secretary shall assess a penalty equal to two
51 hundred fifty dollars (\$250.00). An exemption certificate is a certificate issued

1 by the Secretary that authorizes a retailer to sell ~~tangible personal property~~ an
 2 item to the holder of the certificate and either collect tax at a preferential rate
 3 or not collect tax on the sale. Examples of an exemption certificate include a
 4 certificate of exemption, a direct pay certificate, and a conditional exemption
 5 certificate. An affidavit of capital improvement substantiates that a contract,
 6 or a portion of work to be performed to fulfill a contract, is to be taxed for
 7 sales and use tax purposes as a real property contract.

8"

9 **SECTION 2.5.** G.S. 105-164.4H(a1) reads as rewritten:

10 "(a1) Substantiation. – Generally, services to real property are retail sales of or the gross
 11 receipts derived from repair, maintenance, and installation services and subject to tax in
 12 accordance with G.S. 105-164.4(a)(16), unless a person substantiates that a transaction is subject
 13 to tax as a real property contract in accordance with subsection (a) of this section, subject to tax
 14 as a mixed transaction in accordance with subsection (d) of this section, or the transaction is not
 15 subject to tax. A person may substantiate that a transaction is a real property contract or a mixed
 16 transaction by records that establish the transaction is a real property contract or by receipt of an
 17 affidavit of capital improvement. The receipt of an affidavit of capital improvement, absent fraud
 18 or other egregious activities, establishes that the subcontractor or other person receiving the
 19 affidavit should treat the transaction as a capital improvement, and the transaction is subject to
 20 tax in accordance with subsection (a) of this section. A person that issues an affidavit of capital
 21 improvement is liable for any additional tax due on the transaction, in excess of tax paid on
 22 related purchases under subsection (a) of this section, if it is determined that the transaction is
 23 not a capital improvement but rather the transaction is subject to tax as a retail sale. A person
 24 who receives an affidavit of capital improvement from another ~~person,~~ person within 90 days of
 25 the sale or within 120 days of a substantiation request by the Secretary, absent fraud or other
 26 egregious activities, is not liable for any additional tax on the gross receipts from the transaction
 27 if it is determined that the transaction is not a capital improvement.

28 The Secretary may establish guidelines for transactions where an affidavit of capital
 29 improvement is not required, but rather a person may establish by records that such transactions
 30 are subject to tax in accordance with subsection (a) of this section."

31 **SECTION 2.6.** Except as otherwise provided, this Part is effective when it becomes
 32 law.

33 **PART III. EXCISE TAX CHANGES**

34 **SECTION 3.1.** G.S. 105-113.83 reads as rewritten:

35 **"§ 105-113.83. Payment and reporting of excise taxes.**

36 (a) Filing Periods. – The excise tax imposed by this Article is payable when a report is
 37 due. A report is due annually or monthly, as specified in this section, and must be filed regardless
 38 of whether alcoholic beverages were sold or otherwise disposed of in this State. A report covers
 39 liabilities that accrue in the reporting period. Liabilities accrue in the reporting period in which
 40 the alcoholic beverage is first sold or otherwise disposed of in this State. A return must be in the
 41 form prescribed by, and contain information required by, the Secretary.

42 (a1) Liquor. – The excise tax on liquor levied under G.S. 105-113.80(c) is payable
 43 monthly by the local ABC board and by a distillery ~~permittee to the Secretary. The tax shall be~~
 44 ~~paid~~ distillery. The local ABC board and distillery must file a monthly report, and the report is
 45 due on or before the 15th day of the month following the month in which the tax was
 46 collected. ~~covered by the report.~~

47 (b) Malt Beverage and Wine. – The excise taxes on malt beverages and wine levied under
 48 G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary ~~by the resident wholesaler~~
 49 ~~or importer who first handles the beverages in this State. The taxes on malt beverages and wine~~
 50 ~~are payable only once on the same beverages. Unless otherwise provided, the tax is~~ The
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1 wholesaler or importer must file a monthly report, and the report is due on or before the 15th day
2 of the month following the month in which the beverage is first sold or otherwise disposed of in
3 this State by the wholesaler or importer. When excise taxes are paid on wine or malt beverages,
4 the wholesaler or importer must submit to the Secretary verified reports on forms provided by
5 the Secretary detailing covered by the report. The report must include the sales records for the
6 month for which the taxes are paid. The report must ~~paid~~, indicate the amount of excise tax due,
7 ~~contain the information required by the Secretary~~, and indicate separately any transactions to
8 which the excise tax does not apply.

9 (b1) Brewery and Winery Option. – A brewery or winery may be relieved of paying the
10 tax levied under G.S. 105-113.80(a) and (b) if all of the following apply:

- 11 (1) The brewery or winery holds a permit issued under G.S. 18B-1101, 18B-1102,
12 or 18B-1104.
- 13 (2) The brewery or winery transfers malt beverages or wine to a wholesaler
14 permitted under G.S. 18B-1107 or G.S. 18B-1109.
- 15 (3) The wholesaler agrees in writing to be responsible for the tax due on the
16 transferred malt beverages or ~~wine~~ wine and provides the Secretary a copy of
17 the agreement upon request.
- 18 (4) The brewery or winery files a monthly report ~~when the tax would otherwise~~
19 ~~be due~~ reporting the transfer of malt beverages or wine to the wholesaler.

20 (b2) Backup Tax Liability. – If a brewery or winery is relieved of paying the excise tax as
21 provided under subsection (b1) of this section, the wholesaler receiving the malt beverages or
22 wine is liable for any tax due under this section.

23 (b3) Wine Shipper Permittee. – A wine shipper permittee must pay the excise tax levied
24 under G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to
25 G.S. 18B-1001.1. A wine shipper permittee must ~~submit verified file~~ reports once a year ~~on forms~~
26 ~~provided by the Secretary~~ detailing sales records for the year taxes are paid. The ~~verified~~ report
27 is due on or before the fifteenth day of the first month of the following calendar year.

28 (c) Railroad Sales. – Each person operating a railroad train in this State on which
29 alcoholic beverages are sold must ~~submit file~~ monthly reports of the amount of alcoholic
30 beverages sold in this State ~~and must remit the applicable excise tax due on the sale of these~~
31 ~~beverages when the report is submitted.~~ State. The report is due on or before the ~~15th~~ fifteenth
32 day of the month following the month in which the beverages are sold. ~~The report must be made~~
33 ~~on a form prescribed by the Secretary covered by the report.~~"

34 **SECTION 3.2.** G.S. 105-449.45(a) reads as rewritten:

35 "(a) Return. – A motor carrier must report its operations to the Secretary on a quarterly
36 basis unless subsection (b) of this section exempts the motor carrier from this requirement. A
37 licensed motor carrier required to report its operations must file a return even if the person did
38 not operate or cause to operate a qualified motor vehicle during the reporting period. A quarterly
39 return covers a calendar quarter and is due by the last day of the month following the quarter. A
40 return must be filed in the form required by the Secretary."

41 **SECTION 3.3.** G.S. 105-449.60 reads as rewritten:

42 **"§ 105-449.60. Definitions.**

43 The following definitions apply in this Article:

44 ...

- 45 (12) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel
46 in a diesel-powered highway vehicle. The term includes biodiesel, renewable
47 diesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The
48 term does not include jet fuel.

49 ...

(43a) Renewable diesel. – A diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that is suitable for use as a fuel in a diesel-powered highway vehicle.

...."

SECTION 3.4. This Part is effective when it becomes law.

PART IV. TAX ADMINISTRATION CHANGES

SECTION 4.1. Section 5.6(e) of S.L. 2022-13 reads as rewritten:

"**SECTION 5.6.(e)** Subsection (a) of this section becomes effective June 30, 2022. Subsection (b) of this section becomes effective January 1, 2023, and applies to tax assessed on or after that date. Subsection (c) of this section becomes law ~~July 1, 2024,~~ July 1, 2027, and applies to tax assessed on or after that date. The remainder of this section is effective when this act becomes law."

SECTION 4.2. This Part is effective when it becomes law.

PART V. MEDICAID HOSPITAL ASSESSMENTS TECHNICAL CORRECTIONS

SECTION 5.1. G.S. 108A-147.7 reads as rewritten:

"**§ 108A-147.7. Administration component.**

(a) The administration component is an amount of money that is calculated by adding the State administration subcomponent calculated under subsection (b) of this section and the county administration subcomponent calculated under subsection (c) of this section.

(b) For each quarter of the 2023-2024 State fiscal year, the State administration subcomponent is the product of one million three hundred fifty thousand dollars (\$1,350,000) multiplied by the number of months in that State fiscal quarter in which G.S. 108A-54.3A(24) is effective during any part of the month. For each quarter of the 2024-2025 State fiscal year, the State administration subcomponent is four million fifty thousand dollars (\$4,050,000) increased by a percentage that is the sum of each monthly percentage change in the Consumer Price Index: All Urban Consumers. Consumers for the most recent 12 months available on the first day of the current quarter. For each subsequent State fiscal year, the State administration subcomponent shall be increased over the prior year's quarterly amount by a percentage that is the sum of each monthly percentage change in the Consumer Price Index: All Urban Consumers. Consumers for the most recent 12 months available on the first day of the current quarter.

(c) For each quarter of the 2022-2023 State fiscal year and the 2023-2024 State fiscal year, the county administration subcomponent is the product of one million six hundred sixty-seven thousand dollars (\$1,667,000) multiplied by the number of months in that State fiscal quarter in which G.S. 108A-54.3A(24) is effective during any part of the month. The county administration subcomponent is seven million four hundred thousand dollars (\$7,400,000) for each quarter of the 2024-2025 State fiscal year and seven million eight hundred thousand dollars (\$7,800,000) for each quarter of the 2025-2026 State fiscal year. For each State fiscal year after the 2025-2026 State fiscal year, the county administration subcomponent shall be increased over the prior year's quarterly amount by a percentage that is the sum of each monthly percentage change in the Consumer Price Index: All Urban Consumers. Consumers for the most recent 12 months available on the first day of the current quarter."

SECTION 5.2.(a) G.S. 108A-145.3(19) reads as rewritten:

"(19) Private hospital historical assessment share. – Eighty and ~~two-tenths~~ seventeen hundredths percent (~~80.2%~~), (~~80.17%~~), expressed as a decimal."

SECTION 5.2.(b) G.S. 108A-145.3(21) reads as rewritten:

"(21) Public hospital historical assessment share. – Nineteen and ~~eight-tenths~~ eighty-three hundredths percent (~~19.8%~~), (~~19.83%~~), expressed as a decimal."

SECTION 5.3.(a) G.S. 108A-145.3 is amended by adding a new subdivision to read:

"(22a) Rural emergency hospital. – As defined in 42 C.F.R. § 485.502."

1 **SECTION 5.3.(b)** G.S. 108A-145.3(18) reads as rewritten:

2 "(18) Private acute care hospital. – An acute care hospital that (i) is not qualified to
3 certify public expenditures as described in 42 C.F.R. § 433.51(b), (ii) is not a
4 critical access hospital, (iii) is not a rural emergency hospital, and ~~(iii)-(iv)~~ (iv) is
5 not part of the UNC Health Care System."

6 **SECTION 5.3.(c)** G.S. 108A-145.3(20) reads as rewritten:

7 "(20) Public acute care hospital. – An acute care hospital that (i) is qualified to
8 certify public expenditures as described in 42 C.F.R. § 433.51(b), (ii) is not a
9 critical access hospital, (iii) is not a rural emergency hospital, (iv) is not part
10 of the UNC Health Care System, and ~~(iv)-(v)~~ (v) is not the primary affiliated
11 teaching hospital for the East Carolina University Brody School of Medicine."

12 **SECTION 5.3.(d)** G.S. 108A-146.9(c) reads as rewritten:

13 "(c) The subcomponent pertaining to claims for which there is third-party coverage is the
14 product of the total fee-for-service payments for claims not attributable to newly eligible
15 individuals for which there is third-party coverage made for inpatient hospital services and
16 outpatient hospital services to (i) public acute care hospitals, (ii) private acute care hospitals, ~~and~~
17 (iii) critical access ~~hospitals~~ hospitals, and (iv) rural emergency hospitals multiplied by the
18 nonfederal share for not newly eligible individuals."

19 **SECTION 5.3.(e)** G.S. 108A-147.9(b)(1) reads as rewritten:

20 "(1) Sixty percent (60%) of the public hospital share of the sum of the presumptive
21 service cost component calculated under G.S. 108A-147.5 for the current
22 quarter, the administration component calculated under G.S. 108A-147.7 for
23 the current quarter, and the State retention component under G.S. 108A-147.8
24 for the current quarter. The public hospital share is the total hospital costs for
25 all public acute care hospitals divided by the total hospital costs for all acute
26 care hospitals except for critical access hospitals and rural emergency
27 hospitals for the current quarter."

28 **SECTION 5.3.(f)** G.S. 108A-147.9(c)(1) reads as rewritten:

29 "(1) The UNC Health Care System share of the presumptive service cost
30 component calculated under G.S. 108A-147.5 for the current quarter and the
31 administration component calculated under G.S. 108A-147.7 for the current
32 quarter. The UNC Health Care System share is the total hospital costs for the
33 UNC Health Care System hospitals divided by the total hospital costs for all
34 acute care hospitals except for critical access hospitals and rural emergency
35 hospitals for the current quarter."

36 **SECTION 5.3.(g)** G.S. 108A-147.9(d)(1) reads as rewritten:

37 "(1) The East Carolina University share of the presumptive service cost component
38 calculated under G.S. 108A-147.5 for the current quarter and the
39 administration component calculated under G.S. 108A-147.7 for the current
40 quarter. The East Carolina University share is the total hospital costs for the
41 primary affiliated teaching hospital for the East Carolina University Brody
42 School of Medicine divided by the total hospital costs for all acute care
43 hospitals except for critical access hospitals and rural emergency hospitals for
44 the current quarter."

45 **SECTION 5.3.(h)** G.S. 108A-147.11(c) reads as rewritten:

46 "(c) The share of public hospital costs is calculated by adding total hospital costs for the
47 UNC Health Care System, total hospital costs for the primary affiliated teaching hospital for the
48 East Carolina University Brody School of Medicine, and sixty percent (60%) of the total hospital
49 costs for all public acute care hospitals and dividing that sum by the total hospital costs for all
50 acute care hospitals except for critical access hospitals and rural emergency hospitals."

1 **SECTION 5.4.** This Part is effective on the first day of the next assessment quarter
2 after the date this act becomes law and applies to assessments imposed on or after that date.

3
4 **PART VI. UPDATE THE DEFINITION OF THRESHOLD EXCLUSION FOR**
5 **PURPOSES OF HIGH-COST HOME LOANS**

6 **SECTION 6.(a)** G.S. 24-1.1E reads as rewritten:

7 **"§ 24-1.1E. Restrictions and limitations on high-cost home loans.**

8 (a) Definitions. – The following definitions apply for the purposes of this section:

9 ...

10 (6) "Thresholds" means:

11 a. Without regard to whether the loan transaction is or may be a
12 "residential mortgage transaction" (as the term "residential mortgage
13 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
14 of Federal Regulations, as amended from time to time), the annual
15 percentage rate of the loan at the time the loan is consummated is such
16 that the loan is considered a "mortgage" under section 152 of the Home
17 Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15
18 U.S.C. § 1602(aa)]), as the same may be amended from time to time,
19 and regulations adopted pursuant thereto by the Federal Reserve
20 Board, including section 226.32 of Title 12 of the Code of Federal
21 Regulations, as the same may be amended from time to time;

22 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed five
23 percent (5%) of the total loan amount if the total loan amount is twenty
24 thousand dollars (\$20,000) or more, or (ii) the lesser of eight percent
25 (8%) of the total loan amount or one thousand dollars (\$1,000), if the
26 total loan amount is less than twenty thousand dollars (\$20,000);
27 provided, the following discount points and prepayment fees and
28 penalties shall be excluded from the calculation of the total points and
29 fees payable by the borrower:

30 1. Up to and including two bona fide loan discount points payable
31 by the borrower in connection with the loan transaction, but
32 only if the interest rate from which the loan's interest rate will
33 be discounted does not exceed by more than one percentage
34 point (1%) ~~the required net yield for a 90-day standard~~
35 ~~mandatory delivery commitment for a reasonably comparable~~
36 ~~loan from either Fannie Mae or the Federal Home Loan~~
37 ~~Mortgage Corporation, whichever is greater;~~the average prime
38 offer rate as defined in 12 C.F.R. § 1026.35 that applies to a
39 comparable transaction, as published by the United States
40 Consumer Financial Protection Bureau as of the last date the
41 discounted interest rate for the transaction is set before
42 consummation;

43 2. Up to and including one bona fide loan discount point payable
44 by the borrower in connection with the loan transaction, but
45 only if the interest rate from which the loan's interest rate will
46 be discounted does not exceed by more than two percentage
47 points (2%) ~~the required net yield for a 90-day standard~~
48 ~~mandatory delivery commitment for a reasonably comparable~~
49 ~~loan from either Fannie Mae or the Federal Home Loan~~
50 ~~Mortgage Corporation, whichever is greater;~~the average prime
51 offer rate as defined in 12 C.F.R. § 1026.35 that applies to a

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comparable transaction, as published by the United States Consumer Financial Protection Bureau as of the last date the discounted interest rate for the transaction is set before consummation;

3. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing;

4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, 30 months after the date the borrower voluntarily exercises that right or option; or

c. If the loan is a closed-end loan, the loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid. If the loan is an open-end credit plan, the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, more than 30 months after the date the borrower voluntarily exercises that right or option, or (iii) which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

...."

SECTION 6.(b) This Part becomes effective June 1, 2024.

PART VII. EFFECTIVE DATE

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